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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-430

Filed 17 September 2024

Pitt County, Nos. 21CRS53490, 21CRS53773

STATE OF NORTH CAROLINA

v.

KEYONTA LEQUARY TAFT, Defendant.

Appeal by defendant from judgments entered 9 October 2023 by Judge William W. Bland in Pitt County Superior Court. Heard in the Court of Appeals 30 August 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Heather Haney, for the State.

Jason Christopher Yoder, for defendant-appellant.

PER CURIAM.

Keyonta Lequary Taft (defendant) appeals from judgments convicting him of felony assault, misdemeanor assault, and misdemeanor battery. On appeal, defendant argues that the trial court erred in imposing a probationary term greater than twenty-four months for his two misdemeanor convictions without making

statutorily required findings. After careful review, we affirm in part, vacate in part, and remand for resentencing.

I. Factual Background and Procedural History

On 13 December 2021, defendant was indicted upon a true bill of indictment by a Pitt County Grand Jury for assault by strangulation, assault on a female, and battery of an unborn child. On 10 October 2023, defendant entered an *Alford* plea on all of the aforementioned charges. The trial court sentenced defendant to, *inter alia*, fifteen to twenty-seven months in prison for assault by strangulation, 150 days in prison for battery of an unborn child, and 150 days in prison for assault on a female. All three sentences were suspended for thirty-six months' probation.

II. Discussion

A. Appellate jurisdiction

At the outset, we note that defendant failed to properly file notice of appeal from the judgment of the trial court. However, defendant has filed a petition for writ of certiorari pursuant to Rule 21(a)(1), and the State concedes that the writ should issue. Under Rule 21(a)(1), our Court may issue a writ of certiorari to permit review, “when the right to prosecute an appeal has been lost by failure to take timely action.” *See Anderson v. Hollifield*, 345 N.C. 480, 482, 480 S.E.2d 661, 663 (1997) (citation omitted) (acknowledging an appellate court’s authority to “review the merits of an appeal by certiorari even if the party has failed to file notice of appeal in a timely manner”). However, “[a] writ of certiorari is an *extraordinary* remedial writ to correct

errors of law . . . and its issuance is only appropriate when a defendant has shown merit in his arguments concerning the action to be reviewed or that error was probably committed below” *State v. Diaz-Tomas*, 382 N.C. 640, 651, 888 S.E.2d 368, 377 (2022) (citation and internal quotation marks omitted) (emphasis in original), *cert. denied*, __ U.S. __, 143 S. Ct. 2638 (2023).

In our discretion, we allow defendant’s petition for writ of certiorari because defendant has shown merit in his arguments concerning the trial court’s imposition of a probationary term exceeding the statutory maximum without making requisite findings that the longer probationary term was necessary.

B. Probationary term

On appeal, defendant argues, and the State concedes, that the trial court erred in imposing a probationary term exceeding twenty-four months for each of his two misdemeanor convictions without making “specific findings that longer or shorter periods of probation are necessary” as required by statute. *See* N.C. Gen. Stat. § 15A-1343.2(d) (2023) (providing that the maximum term of probation for a misdemeanor conviction is twenty-four months absent findings that a longer probationary period is necessary). After careful review, we agree with defendant and the State; the trial court erred in failing to comply with the statutory mandate of N.C. Gen. Stat. § 15A-1343.2(d) by failing to make findings of fact that a longer period of probation was necessary.

III. Conclusion

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Opinion of the Court

Because defendant has presented a meritorious argument regarding his sentence, we vacate the two misdemeanor judgments and remand this matter to the trial court. On remand, the trial court shall either reduce the probationary terms on the misdemeanor judgments to no more than twenty-four months or make appropriate findings as to why a probationary term longer than twenty-four months is necessary, in compliance with N.C. Gen. Stat. § 15A-1343.2(d). We otherwise affirm the felony judgment for assault by strangulation.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Panel consisting of Judges COLLINS, FLOOD, THOMPSON.

Report per Rule 30(e).