

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-53

Filed 17 September 2024

Buncombe County, Nos. 20CRS091286, 20CRS092077, 21CRS000472

STATE OF NORTH CAROLINA

v.

SCOTT MATTHEW ELLISON

Appeal by Defendant from judgment entered 3 March 2023 by Judge Jacqueline Grant in Buncombe County Superior Court. Heard in the Court of Appeals 28 August 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Lisa Bradley, for the State.*

*Stephen G. Driggers for Defendant-Appellant.*

PER CURIAM.

Defendant Scott Matthew Ellison was convicted of assault on a female and felonious restraint, and Defendant pled guilty to attaining habitual felon status. During sentencing, the trial court entered a \$8,310.90 civil judgment against Defendant for attorney fees. Defendant did not file a written notice appeal from the

civil judgment but filed a petition for writ of certiorari asking this Court to review the civil judgment.

In our discretion, we allow the petition and issue the writ of certiorari to review the civil judgment for attorney fees. *See* N.C. R. App. P. 21(a)(1).

We review de novo whether a trial court failed to allow a defendant notice and an opportunity to be heard before entering a civil judgment for payment of court-appointed attorney fees. *State v. Patterson*, 269 N.C. App. 640, 646, 839 S.E.2d 68, 73 (2020); *State v. Cox*, 367 N.C. 147, 151, 749 S.E.2d 271, 275 (2013).

“[A] trial court may enter a civil judgment against a convicted indigent defendant for the amount of fees incurred by the defendant’s court-appointed attorney.” *State v. Jacobs*, 172 N.C. App. 220, 235, 616 S.E.2d 306, 316 (2005); N.C. Gen. Stat. § 7A-455(a) (2023). However, a defendant is entitled to notice and the opportunity to be heard before such civil judgment can be entered. *State v. Webb*, 358 N.C. 92, 101, 591 S.E.2d 505, 513 (2004). “[T]rial courts should ask defendants—personally, not through counsel—whether they wish to be heard on the issue.” *State v. Friend*, 257 N.C. App. 516, 523, 809 S.E.2d 902, 907 (2018); N.C. Gen. Stat. § 7A-455. Absent a direct inquiry with the defendant, these requirements will only be met if there is other evidence indicating “the defendant received notice, was aware of the opportunity to be heard on the issue, and chose not to be heard.” *Id.*

Here, the trial court entered a \$8,310.90 civil judgment for attorney fees. At no point did the trial court ask Defendant, personally or through counsel, whether he

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wished to be heard on the issue of attorney fees. *See Friend*, 257 N.C. App. at 523, 809 S.E.2d at 907. Additionally, there is no evidence that Defendant “received notice, was aware of the opportunity to be heard on the issue, and chose not to be heard.” *Id.* We therefore vacate the civil judgment for attorney fees and remand for further proceedings.

VACATED AND REMANDED.

Panel consisting of:

Judges ARROWOOD, COLLINS, and WOOD.

Report per Rule 30(e).