

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-57

Filed 1 October 2024

Yadkin County, No. 20 CRS 050583, 21 CRS 69, 22 CRS 123-33, 22 CRS 135

STATE OF NORTH CAROLINA

v.

TODD EMERSON COLLINS, JR., Defendant.

Appeal by Defendant from amended judgment entered 24 May 2023 by Judge Michael D. Duncan in Yadkin County Superior Court. Heard in the Court of Appeals 27 August 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Hilary R. Ventura, for the State.

Edward Eldred for defendant-appellant.

MURPHY, Judge.

The trial court was empowered to correct a clerical error in its written judgment to conform with its stated intention to run Defendant's sentence at the expiration of any sentence he was serving in accordance with N.C.G.S. § 14-7.6.

BACKGROUND

STATE V. COLLINS

Opinion of the Court

On 16 February 2021, the Surry County Superior Court sentenced Defendant to two consecutive active terms of imprisonment in Surry County file number 20 CRS 51069 for offenses designated as “Offense 51” and “Offense 52.”

On 26 April 2021, Defendant was indicted in the instant case for offenses alleged to have occurred on 24 April 2020 and for attaining habitual felon status.

On 3 May 2021, Defendant was indicted in Wilkes County Superior Court for offenses alleged to have occurred on 2 February 2020 and between 11 February 2020 and 13 February 2020 and for attaining habitual felon status. The venue for these matters was changed to Yadkin County.

On 21 April 2022, Defendant was charged by information in Yadkin County for offenses alleged to have occurred between 1 December 2017 and 4 December 2017, for offenses alleged to have occurred between 4 October 2017 and 5 November 2017, and for offenses alleged to have occurred between 31 January 2018 and 6 February 2018. On the same date, Defendant pled no contest to each of the charges brought between 26 April 2021 and 21 April 2022 pursuant to an open plea agreement. The trial court consolidated the charges into one judgment and sentenced Defendant in the mitigated range to an active term of 77 to 105 months. The trial court announced in open court that the “sentence [was] to run at the expiration of any sentence that [Defendant is] currently serving[]”; however, the written judgment reflected that the habitual felon sentence would begin at the expiration of Defendant’s sentence for Offense 51, at which time a second prior sentence imposed for Offense 52 would begin

to run, effectively running Defendant's habitual felon sentence concurrently with his sentence for Offense 52.

On 24 May 2023, the trial court conducted a resentencing hearing on an apparent oral motion by the State to amend the judgment to "make [the new sentence] [begin] at the expiration of the second [prior] sentence, which is how by operation of law [it] would have to run[,] by "chang[ing] . . . 51 to 52[.]" Later that day, the trial court entered an amended judgment, altering only the triggering offense number from "51" to "52." Defendant timely appealed.

ANALYSIS

Pursuant to N.C.G.S. § 14-7.6, sentences imposed under Article 2a, "Habitual Felons," "shall run consecutively with and shall commence at the expiration of any sentence being served" by the defendant sentenced as an habitual felon. N.C.G.S. § 14-7.6 (2023). The trial court has no discretion to run a "term of imprisonment imposed pursuant to a conviction as an habitual felon[]" consecutively with the prior sentence of its choice, but "must run consecutively with *any other sentence* or sentences being served by a defendant." *State v. Jarman*, 238 N.C. App. 128, 131 (2014) (cleaned up).

At the time of Defendant's sentencing, Defendant was serving consecutive sentences imposed for Offenses 51 and 52, respectively. "In light of that," Defendant's trial counsel requested that the trial court "consolidat[e] these charges to sentence [Defendant] on one habitual felon understanding that the law mandates that it shall

run at the expiration of the sentence he is currently serving[.]” The trial court agreed to sentence Defendant at the bottom of the mitigated range and announced in open court that Defendant’s “sentence is to run at the expiration of *any sentence* that [Defendant is] currently serving.” Later that day, however, the trial court entered written judgment indicating that Defendant’s sentence in the instant case shall run consecutively with his sentence for Offense 51 and thereby concurrently with his sentence for Offense 52.

The record clearly indicates that the trial court’s intended effect of reducing its judgment to writing was to comply with, rather than violate, the consecutive sentence structure mandated by N.C.G.S. § 14-7.6. The trial court’s clerical error merely clouded this intention. *See State v. Taylor*, 156 N.C. App. 172, 177 (2003) (citation omitted) (defining clerical error as “a minor mistake or inadvertence, . . . in writing or copying something on the record, and not from judicial reasoning or determination[]”).

Defendant’s sole contention on appeal is that the trial court lacked subject matter jurisdiction to enter an amended judgment in conformity with its stated intention to comply with N.C.G.S. § 14-7.6 by “run[ning] [Defendant’s sentence] at the expiration of *any sentence* that [Defendant is] currently serving.” We held under similar facts in *Jarman* that the trial court “has the power to amend its records, correct the mistakes of its clerk or other officers of the court, or to supply defects or omissions in the record, and no lapse of time will debar the court of the power to

STATE V. COLLINS

Opinion of the Court

discharge this duty.” *State v. Jarman*, 140 N.C. App. 198, 203 (2000). Here, as in *Jarman*, the trial court was empowered to correct the clerical error by amending Defendant’s judgment to reflect its intention to comply with the sentencing structure for habitual felon convictions, even more than a year after its entry.

CONCLUSION

The trial court properly amended its judgment to correct the clerical error.

AFFIRMED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).