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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-395

Filed 17 December 2024

Haywood County, No. 23CRS34

STATE OF NORTH CAROLINA

v.

FALON VERITY RAMEY, Defendant.

Appeal by defendant from judgment entered 26 October 2023 by Judge Gary M. Gavenus in Haywood County Superior Court. Heard in the Court of Appeals 6 November 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Kerry M. Boehm, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for defendant-appellant.

FLOOD, Judge.

Defendant Falon Verity Ramey appeals from the trial court’s judgment entered upon her guilty plea to conspiracy to traffic four or more, but less than fourteen, grams of opium, opiate, opioid, or heroin by transportation. Defendant, by filing a petition for writ of certiorari (“PWC”), argues the trial court erred by failing to credit her time spent at FIRST at Blue Ridge (“FIRST”), a private residential therapeutic

community for chronic substance abusers, against her sentence. After careful review, because Defendant has not shown merit or that the trial court probably erred in sentencing her, we deny Defendant's PWC and dismiss the appeal.

I. Factual and Procedural Background

On 20 October 2022, Deputy Alexander Ledin was patrolling Interstate 40 when he received information about a vehicle traveling below the speed limit and with a non-operational headlight. Deputy Ledin located and pulled over the vehicle, and approached it to speak to the driver. Defendant sat in the front passenger seat. Deputy Hayden Green arrived at the traffic stop soon thereafter and obtained consent to search the vehicle. While searching the vehicle, Deputy Green found an uncapped needle in the driver's side door pocket. Officer Bellows¹ next arrived at the traffic stop and recovered one small bag containing a white, powdery substance from Defendant's person. Officer Bellows also recovered a small bag containing a white, powdery substance from the driver's person. Each bag was sent to the state crime lab and tested. Together, the bags contained 28.72 grams of fentanyl.

On 3 January 2023, Defendant was indicted by a grand jury for: (1) conspiracy to traffic twenty-eight or more grams of opium, opiate, opioid, or heroin by possession; and (2) conspiracy to traffic twenty-eight or more grams of opium, opiate, opioid, or heroin by transportation. Pursuant to a plea agreement, Defendant pleaded guilty to

¹ Officer Bellows' first name is not contained in the Record on appeal.

conspiracy to traffic four or more, but less than fourteen, grams of opium, opiate, opioid, or heroin by transportation.

On 23 October 2023, the matter came on for a sentencing hearing before the trial court. During the hearing, Defendant requested credit for her pre-sentencing time spent at FIRST. Defendant was required to complete an inpatient drug treatment program at FIRST under the terms of her bond. Allen Foils, the senior case manager at FIRST, testified that FIRST is licensed by the State of North Carolina as a “therapeutic community.” He also testified that FIRST provides programs for the Veterans Administration and the North Carolina Department of Corrections.

At the conclusion of the hearing, the trial court sentenced Defendant to an active sentence of seventy to ninety-three months, with seventy-eight days of credit for time spent in confinement prior to the date of the judgment. Defendant did not receive any days of credit for her time spent at FIRST. Defendant timely appealed.

II. Jurisdiction

“[T]he General Statutes do not expressly provide a right of appeal on [a] jail credit issue.” *State v. Galloway*, 271 N.C. App. 469, 470, 844 S.E.2d 326, 327 (2020); *see also* N.C. Gen. Stat. § 15A-1444(e) (2023). Defendant therefore lacks a statutory

basis for her appeal.² This Court, however, has “the discretion to consider the matter by granting a [PWC].” *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 321 (2005). Certiorari review is appropriate if two conditions are met: the petitioner must “show merit or that error was probably committed below[.]” and there must be “extraordinary circumstances” justifying the issuance of the writ. *Cryan v. Nat’l Council of YMCA of the U.S.*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023).

To appeal her award of credit for pre-judgment confinement, Defendant has filed a PWC. As explained in further detail below, because Defendant has not shown merit or that the trial court probably erred in sentencing her, we deny Defendant’s PWC.

III. Analysis

On appeal, Defendant argues the trial court erred by failing to credit her time spent at FIRST against her sentence. Defendant specifically argues that N.C. Gen. Stat. § 15-196.1 reflects our legislature’s intent that a defendant’s sentence “be credited with all time spent in custody[.]” We disagree.

Matters of statutory interpretation are reviewed de novo. *See Aman v. Nicholson*, 288 N.C. App. 1, 10, 885 S.E.2d 100, 107 (2023). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that

² While this Court has heard a direct appeal on a jail credit issue, *see State v. Farris*, 111 N.C. App. 254, 431 S.E.2d 803 (1993), this issue is ultimately inapposite as Defendant’s argument lacks merit, as explained below.

of the lower tribunal.” *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citation and internal quotation marks omitted). “Where statutory language is clear and unambiguous, there is no room for judicial construction.” *Univ. of N.C. at Chapel Hill v. Feinstein*, 161 N.C. App. 700, 704, 590 S.E.2d 401, 403 (2003). Under N.C. Gen. Stat. § 15-196.1:

The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any *State or local* correctional, mental or other institution as a result of the charge that culminated in the sentence or the incident from which the charge arose.

N.C. Gen. Stat. § 15-196.1 (2023) (emphasis added). The language of the statute, “in any State or local correctional, mental or other institution[,]” has been held to mean “an institution operated by State or local government.” *State v. Stephenson*, 213 N.C. App. 621, 623, 713 S.E.2d 170, 172 (2011).

In *Stephenson*, the defendant pleaded guilty to forgery and attempting to traffic in opiates and received a suspended sentence with supervised probation. *Id.* at 622, 713 S.E.2d at 171–72. The terms of her probation required that she enroll in an independent drug treatment program. *Id.* at 622–23, 713 S.E.2d at 172–73. After she violated the terms of her probation, the trial court activated her sentence, but did not give her credit for her time spent in the program. *Id.* at 622, 713 S.E.2d at 172. On appeal, this Court affirmed and explained that an “independent . . . rehabilitation program . . . not affiliated with or operated by either a State or local government

agency” is not a “State or local” institution under N.C. Gen. Stat. § 15-196.1, and concluded that the trial court “properly declined to give [the] defendant credit against her active sentence[.]” *Id.* at 623–24, 713 S.E.2d at 173.

Here, while FIRST is licensed by the State and provides programs for the Veterans Administration and the North Carolina Department of Corrections, it is a “private, nonprofit, charitable 501(c)(3) organization.” Like the independent rehabilitation program in *Stephenson*, FIRST is not an “institution operated by State or local government.” *See id.* at 623, 713 S.E.2d at 172. Under the plain and unambiguous language of N.C. Gen. Stat. § 15-196.1, because FIRST is not a “State or local correctional, mental, or other institution[.]” Defendant cannot show that she is entitled to any sentencing credit under N.C. Gen. Stat. § 15-196.1. *See id.* at 623–24, 713 S.E.2d at 172–73; *see also Feinstein*, 161 N.C. App. at 704, 590 S.E.2d at 403.

Accordingly, Defendant has not “shown merit” or that “error was probably committed below[.]” and as such, Defendant’s PWC is denied. *See Cryan*, 384 N.C. at 572, 887 S.E.2d at 851.

IV. Conclusion

Upon review, we conclude Defendant has not shown merit or that the trial court probably erred in sentencing her, because she was not confined by a State or local institution and thus cannot show she is entitled to a sentencing credit for her time spent at FIRST. We therefore deny Defendant’s PWC, and dismiss her appeal.

STATE V. RAMEY

Opinion of the Court

DISMISSED.

Judges GORE and THOMPSON concur.

Report per Rule 30(e).