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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-662

Filed 5 March 2025

McDowell County, Nos. 15CRS440, 50733, 52019, 51062, 52258, 16CRS50062, 28

STATE OF NORTH CAROLINA

v.

KEVIN DALTON, Defendant.

Appeal by defendant from judgments entered 8 August 2017 and amended 12 December 2023 by Judge J. Thomas Davis in McDowell County Superior Court. Heard in the Court of Appeals 14 January 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General Sarah G. Zambon, for the State*

*Andrew H. Nelson for the defendant-appellant*

MURRY, Judge.

Kevin Dalton (Defendant) appeals the trial court's 12 December 2023 order amending three of its seven judgments entered on 8 August 2017 upon Defendant's plea of guilty and under his plea arrangement in McDowell County Superior Court. Defendant argues that the trial court erred by entering an order on 12 December 2023 amending the 8 August 2017 judgments. For the following reasons, we disagree with Defendant and affirm the trial court.

## **I. Background**

On 20 February 2015, Defendant’s mother filed a domestic violence protective order (DVPO) against Defendant under N.C.G.S. § 50B.1, effective for one year. On 20 July 2015, Defendant was indicted on six felony counts of violating the DVPO under N.C.G.S. § 50B-4.1(f). On 26 January 2016, Defendant was indicted for eight additional counts, for a total of fourteen counts of violating the DVPO.

On 8 August 2017, Defendant pled guilty to seven total counts of felony DVPO violations. Defendant was present at the hearing and represented by counsel. Under the plea arrangement, the State agreed to dismiss one count of second-degree arson, seven counts of felony violating a DVPO, and seven counts of obtaining habitual felon status. At the time of his plea, Defendant was serving an active sentence in the North Carolina Department of Adult Corrections (NCDAC) in 15CRS50330 (“preexisting sentence”). The State’s plea arrangement specified on the AOC-CR-300 form that Defendant “shall receive . . . 7 consecutive sentences of 18–31 months with the first four active and consecutive to any sentence [D]efendant . . . now serv[es] with . . . [3] suspended consecutive sentences subject to terms and conditions in the court’s discretion.”

The trial court accepted Defendant’s plea and rendered the judgment in open court. It sentenced Defendant to four consecutive active sentences and three suspended consecutive sentences of 18–31 months to begin at the conclusion of his preexisting one. The trial court’s rendered “the terms and conditions of [his] plea [as]

... plead[ing] guilty to the seven felony charges” and “receiv[ing] an individual sentence as to each one.” It clarified that “each of those [sentences] will run *consecutive* to each other . . . [a]nd . . . will run not only *consecutive* to each other[ ] but . . . *consecutive* to any other offense for which you are now serving time.” (Emphases added.) Over the course of the hearing, the trial court said the word “consecutive” fifteen times in describing Defendant’s sentences. At the hearing’s conclusion, the trial court stated that:

[A]ll seven of these judgments will run *consecutive* to any and all prior judgments and they will basically run *consecutive* to each other. So in summary, you have seven judgments, all of them running *consecutive* to any and all prior judgments and all of them run *consecutive* to each other except for 15CRS00440.

(Emphases added.) After accepting Defendant’s plea, the trial court reduced the judgments to writing on seven judgment sheets but later discovered errors in three of them. Altogether, it sentenced Defendant to:

- (1) 15CRS00440 (correctly entered): 18–31 months consecutive to the preexisting sentence.
- (2) 15CRS050733 (correctly entered): 18–31 months consecutive to 15CRS00440.
- (3) 15CRS052019: 18–31 months without initially specifying whether they were to run concurrently or consecutively. 15CRS052019 would later be amended on 12 December 2023.
- (4) 16CRS050062: 18–31 months without initially specifying whether they were to run concurrently or consecutively. 16CRS050062 would later be amended on 12 December 2023.
- (5) 16CRS00028 (correctly entered): 18–31 months suspended for 36 months of probation consecutive to Defendant’s release from custody in 16CRS050062.

- (6) 16CRS051062: 18–31 months suspended for 36 months of supervised probation consecutive to Defendant’s release from custody in 15CRS052019 instead of 16CRS050062. 16CRS051062 would later be amended on 12 December 2023.
- (7) 15CRS052288 (correctly entered): 18–31 months suspended for 36 months of supervised probation consecutive to Defendant’s release from custody in 16CRS050062.

Therefore, the 8 August 2017 versions of 15CRS052019, 16CRS050062, and 16CRS051062 contained errors (collectively, “2017 Judgments”). Despite 15CRS00440 and 15CRS050733 correctly recording Defendant’s active sentences, NCDAC released Defendant on 22 April 2023 before he served any 2017 sentence “for some unestablished reason . . . as a result of either not being received by or it or not being delivered to it.”

After Defendant violated his post-release supervision with two counts of misdemeanor larceny not relevant here, the State discovered that he never served those 2017 sentences. As a corrective, it moved the trial court to amend the sentences on 29 September 2023, which the trial court heard on 12 December 2023. Defendant was present and represented by counsel. At the hearing, the trial court “correct[ed] the judgments to speak the truth and to conform exactly as to what the transcript said was supposed to have been done at that time.”

On 12 December 2023, through the State’s Motion for Correction (MFC) and the trial court’s Motion for Appropriate Relief (MAR) *sua sponte*, the trial court found that Defendant “pled guilty to seven counts of felony [DVPO] violations [under] a written plea arrangement with the State” as recorded in the “transcribed transcript.”

Both the plea arrangement and the trial court recognized Defendant's obligation to serve "seven consecutive term judgments of 18 months minimum, 31 months maximum . . . consecutive to a [ ] [previously] active 90 month minimum, 120 month maximum sentence judgment." The trial court then found that the first four judgments, 15CRS00440, 15CRS050733, 15CRS052019, and 16CRS050062, should have remained "active with the remaining three suspended" in favor of "supervised probation." It also recognized that "only the first two of the consecutive active judgments were prepared consistent with . . . [the trial court's] recital" at sentencing because "[t]he remaining judgments erroneously failed to show the consecutive nature of each judgment as well as when the probation was to begin." The trial court could not determine why "none of the seven judgments were considered by the" NCDAC.

On 12 December 2023, the trial court entered an order amending the 2017 Judgments to match Defendant's plea agreements and the court's rendering (hereafter, as amended, "2023 Judgments"). Currently, Defendant is in custody for violating his post-release supervision but has not yet served any portion of either the 2017 or 2023 Judgments.

## **II. Jurisdiction**

Defendant does not have a general right to appeal the trial court's 2023 order to this Court. "In North Carolina, a defendant's right to appeal in a criminal proceeding is purely a creation of state statute." *State v. Pimental*, 153 N.C. App. 69,

72 (2002), *overruled on other grounds by State v. Killette*, 381 N.C. 686 (2022). A defendant who has been found guilty or has entered a plea of guilty or no contest is entitled to an appeal as a matter of right in limited circumstances, none of which apply here. *See* N.C.G.S. § 15A-1444(a1) (2023). Defendant’s purported appeal to this Court is therefore subject to dismissal. This Court nonetheless remands clerical errors to the trial court for correction and, here, it corrected the errors through its own motion. Therefore, we find it important to address its power to do so and grant Defendant’s petition for writ of certiorari.

### **III. Analysis**

Defendant argues that the trial court erred by amending the 2017 Judgments to the 2023 Judgments because the former contained substantive, not merely clerical, errors. We disagree because we find the 2017 Judgments to be clerical. Statutory errors regarding sentencing issues are questions of law reviewed *de novo*. *State v. Allen*, 249 N.C. App. 376, 379 (2016). Under *de novo* review, this Court looks at the matter anew and substitutes its judgment for that of the trial court. *State v. Williams*, 362 N.C. 628, 632–33 (2008).

#### **A. Clerical or Substantive Errors**

Generally, when a defendant alleges sentencing errors, this Court must determine “whether [the] sentence is supported by evidence introduced at the trial and sentencing hearing.” *State v. Deese*, 127 N.C. App. 536, 540 (1997) (alteration in original) (quoting N.C.G.S. § 15A-1444(a1)). If the alleged errors are found to be

clerical, however, this Court “remand[s] the case to the trial court for correction because of the importance that the record ‘speak the truth.’” *State v. Smith*, 188 N.C. App. 842, 845 (2008) (quoting *State v. Linemann*, 135 N.C. App. 734, 738 (1999)).

The trial court must ensure the creation and preservation of “verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest.” N.C.G.S. § 15A-1026 (2023). Our appellate courts have long recognized the common-law duty of a trial court “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” that may conflict with the truth. *State v. Cannon*, 244 N.C. 399, 406 (1956). No amount of time “debar[s] the court of the power to discharge this duty.” *Id.*; see *Oliver v. Board of Comm’rs*, 194 N.C. 380 (1927) (“This power of a court to amend its records has been too often recognized . . . and . . . commended[ ] to require[ ] the citation of authorities . . . .” (quotation omitted)). A duly amended order relates *nunc pro tunc* to the original judgment because of the court’s “duty [to] keep[ ] [the record] faithfully and mak[e] it speak the truth” to the fullest extent possible. *Phillipse v. Higdon*, 44 N.C. 380, 382 (1853). “[T]he record, so amended, stands as if it never had been defective.” *Id.*; see *Cannon*, 244 N.C. at 406 (“[T]he record . . . , as amended, stands . . . as if the entries had been made at the proper t[i]m[e].”).

Despite this recognition, a trial court may only “make the record *correspond to the actual facts* and cannot, under the guise of an amendment . . . , correct a judicial error or incorporate anything in the minutes *except a recital of what actually*

*occurred.*” *State v. Bullock*, 183 N.C. App. 594, 600 (2007) (emphases added) (quoting *Cannon*, 244 N.C. at 404). A party by motion or the trial court *sua sponte* may, correct “[c]lerical errors in judgments . . . any time . . . before the appeal is docketed in the appellate division.” N.C. R. Civ. P. 60(a). A clerical error “result[s] from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination.” *State v. Lark*, 198 N.C. App. 82, 95 (2009) (alteration and quotation omitted). This type of error includes unchecked sentence-category boxes. *See State v. Newsome*, 264 N.C. App. 659, 665 (2019) (affirming defendant’s probation while remanding the case to correct a clerical error because the trial court erroneously checked a box on the judgment form); *State v. Jones*, 225 N.C. App. 181, 186 (2013) (affirming defendant’s probation revocation but remanding for correction of a clerical error on the judgment form due to the trial court’s failure to check a box in alignment with its ruling on both the record and transcript).

In the case *sub judice*, Defendant entered into a plea arrangement agreeing to seven consecutive sentences in exchange for the dismissal of several charges. Defendant exercised his right to be present both at the plea on 8 August 2017 and MFC hearing on 12 December 2023. *See State v. Beasley*, 118 N.C. App. 508, 514 (1995). Nevertheless, the corresponding judgment sheets were entered incorrectly after the 8 August 2017 plea hearing. The trial court (or another interstitial judicial participant) failed to check the boxes on 15CRS052019 and 16CRS050062 that



indicate whether their respective sentences run consecutively or concurrently as well as note the correct terminal sentence in 16CRS051062, thus committing “minor mistake[s] . . . in writing or copying something on the record.” *Lark*, 198 N.C. App. at 95.

Typographical mismatches between a written judgment sheet and its applicable ruling (e.g., failing to check a box) are “oversight[s] or omission[s]” consistent with our appellate courts’ understanding of clerical errors. N.C. R. Civ. P. 60(a); see *State v. Gill*, 351 N.C. 192, 218 (1999) (holding a checked box for an aggravating factor to obviously be a clerical error based on the transcript); *Lark*, 198 N.C. App. at 95 (clerical error remanded to trial court for amendment where a defendant’s judgments did not match “trial court’s [in-court] pronouncement[s] . . . that . . . convict[ions] were reportable”). “When considering in total the sentencing hearing, the conditions imposed by the trial court in Defendant’s presence, and the written judgment,” this Court has found that the “[t]he trial court manifested its decision” despite conflicting information on the judgment sheet. *State v. Hauser*, 271 N.C. App. 496, 504 (2010).

We find *State v. Allen*, 249 N.C. App. 376 (2016), and *State v. Linemann*, 135 N.C. App. 734 (1999), analogous to the present case. In *Allen*, this Court remanded a trial court’s clerically erroneous judgment because its physical judgment sheet did not match the defendant’s sentence as “clearly stated” on the record. *Allen*, 249 N.C. App. at 381. The original sheet documented an intermediate-punishment sentence,

but the record reflected the State and presiding judge's concurrence with the defendant's community-service punishment under his plea agreement. *Id.* As in *Allen*, the record here reflects that the State and presiding judge agreed that Defendant would serve seven consecutive sentences under his plea arrangement. We similarly remanded a clerical sentencing error in *Linemann* because defendant's judgment sheet listed only the wrong misdemeanor class. *Linemann*, 135 N.C. App. at 738.

Contrary to Defendant's invocation of *State v. Bullock*, 183 N.C. App. 594 (2007), we find his argument relies on a misinterpretation of its issue; instead, we hold *Bullock* consistent with our understanding of clerical errors. *Id.* Defendant cites *Bullock* to assert that this Court "[can]not alter a judgment to add the notation" that he must serve his sentences consecutively when its "initial[ ] omi[ssion] . . . caused the[m] . . . to run concurrently." *Bullock*, 183 N.C. App. at 600. This argument misunderstands *Bullock*'s use of the word "omission." There, we distinguished the *Bullock* defendant because his "improper sequencing of . . . sentences" rose to a "judicial error . . . that [could not be] revealed by the record." *Id.* at 600–01.

*Bullock* distinguishes between judicial and clerical errors. Amendments of judgments from concurrent to consecutive are normally the latter. They only become the former when the record cannot reveal the necessary "actual facts" on appeal. *Id.* at 600 (quoting *Cannon*, 244 N.C. at 404). The issue centered on omissions from the record itself, not omissions from judgment sheets "reveal[able] by the record." *Id.* at

600–01. Thus, *Bullock* supports our Court’s duty to remand erroneous judgments if “the mistake is supported by the evidence in the record.” *Newsome*, 264 N.C. App. at 665. Unlike that in *Bullock*, the record here expressly “reveal[s]” the “actual fact” that Defendant’s sentences must run consecutively. *Bullock*, at 600–01. Therefore, the trial court properly amended the 2017 Judgments to reflect the “actual facts” and “recital of what actually occurred” during Defendant’s plea hearing. *Id.* at 594 (quoting *Cannon*, 244 N.C. at 404).

Reiterating *Allen* and *Linemann*, we hold that the trial court “only corrected clerical errors” in the 8 August 2017 judgment on 12 December 2023 by “marking them ‘amended.’” *Linemann*, 135 N.C. App. at 738. The *Linemann* Court held that “the court’s action [of amending the erroneous judgments] did not change the substance of defendant’s judgment and sentence.” *Id.* at 373. As in *Linemann*, the trial court here “did not grant [D]efendant a new trial or modify his sentence [under] Article 89.” It merely amended the judgments so that they would “speak the truth.” *Id.* (quoting *Cannon*, 244 N.C. at 403 (1956)). We hold the errors in the 2017 Judgments to be clerical and thus subject to “correct[ion] by the judge at any time.” N.C. R. Civ. P. 60(a) (2015); see *Cannon*, 244 N.C. at 406. Because the errors were clerical and the subsequent amendments were explicitly supported by the record, the trial court did not err in amending the 2017 Judgments through the 2023 Judgments. Defendant must serve all seven sentences consecutively as originally specified in his plea agreement.

**B. Defendant's Premature Release**

Defendant is a historically violent felon with 20 prior sentencing points and 5 prior DVPO violations. This Court finds troubling his release before serving any of his four active sentences, including those entered correctly in 2017. Defendant evaded his entire active sentence “for some unestablished reason . . . as a result of either [the orders] not being received by [NCDAC] or not being delivered to it.” We hope that those involved in this sequence, from the Judicial to the Executive Branch, seek to prevent future communication breakdowns that ultimately risk public safety.

**IV. Conclusion**

For the reasons discussed above, this Court holds that the trial court did not err in amending the 2017 Judgments and affirms the 2023 amendments to 15CRS52019, 15CRS51062, and 16CRS50062.

AFFIRMED

Chief Judge DILLON and Judge WOOD concur.

Report per Rule 30(e).