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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-558

Filed 19 March 2025

New Hanover County, Nos. 17 CRS 60189, 60191, 60193, 60195, 60290

STATE OF NORTH CAROLINA

v.

NATHANIEL LAWRENCE, Defendant.

Appeal by defendant from judgment and resentencing entered 4 December 2023 by Judge Tiffany Peguise-Powers in New Hanover County Superior Court. Heard in the Court of Appeals 12 February 2025.

*Attorney General Joshua H. Stein, Special Deputy Attorney General Elizabeth Curran O'Brien, for the State.*

*Patterson Harkavy LLP, by Paul E. Smith, for the Defendant.*

DILLON, Chief Judge.

Defendant was convicted of five counts of armed robbery and eight counts of second-degree kidnapping. By opinion filed 21 November 2023, this Court vacated seven of the kidnapping charges and remanded the case for resentencing. *State v. Lawrence*, 291 N.C. App. 403 (2023) (unpublished) (hereinafter “*Lawrence I*”). Our mandate for *Lawrence I* issued on 10 December 2023.

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However, on 4 December 2023, prior to the date of our mandate, the trial court issued a new judgment, resentencing Defendant. Defendant appeals from that new judgment, arguing that the trial court lacked jurisdiction over his case on 4 December as the matter was technically still pending at our Court, as our Court’s mandate had not yet issued in *Lawrence I*. The State concedes this error.

We agree with the parties that the trial court lacked jurisdiction in resentencing Defendant while the matter remained pending in our Court and that, therefore, the new judgment is a nullity. *See State v. Seam*, 255 N.C. App. 417, 419 (2017) (holding that the trial court lacked jurisdiction to re-sentence a defendant prior to the mandate from our Supreme Court issuing).

Defendant further argues that the sentence rendered by the trial court at the resentencing hearing improperly exceeded his original sentence. Indeed, our General Assembly has provided that “[w]hen a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense . . . which is more severe than the prior sentence less the portion of the prior sentence previously served.” N.C.G.S. § 15A-1335 (2024). However, this argument is rendered moot by our holding that the judgment entered on resentencing is void for lack of jurisdiction.

In conclusion, we vacate the trial court’s 4 December 2023 judgment and sentences and remand the matter for resentencing.

VACATED AND REMANDED FOR RESENTENCING.

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Judges COLLINS and FLOOD concur.

Report per Rule 30(e).