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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-660

Filed 16 April 2025

Union County, No. 21 CRS 053944

STATE OF NORTH CAROLINA

v.

TYON THOMPSON

Appeal by Defendant from a judgment entered 19 May 2023 by Judge James S. Carmichael in Union County Superior Court. Heard in the Court of Appeals 25 February 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Amanda J. Reeder, for the State.

Jason Christopher Yoder for the Defendant.

WOOD, Judge.

Tyon Thompson (“Defendant”) appeals from a jury’s verdict finding him guilty of assault on a female. On appeal, Defendant raises one issue, whether the trial court erred by failing to comply with the mandatory dictates of N.C. Gen. Stat. § 15A-1242 before allowing Defendant to represent himself. For the reasons stated below, we hold that the trial court adequately complied with N.C. Gen. Stat. § 15A-1242 and

Defendant received a fair trial free from error. N.C. Gen. Stat. § 15A-1242 (2024).

I. Factual and Procedural Background

On 31 October 2021, Defendant was confronted by his wife, Beverly Thompson (“Beverly”), at their home as she believed he was misleading her as to his whereabouts that weekend. After the conversation, Defendant left home to go out for the evening. Once Defendant left, Beverly realized Defendant had removed \$6,500.00 from their joint savings account. Throughout the remainder of the night, Defendant and Beverly exchanged text messages and spoke on the phone concerning the missing funds. Beverly believed Defendant made statements threatening her life during these exchanges. Defendant contends that he made no threats, but there may have been some confusion in the communications due to technology issues with his Bluetooth. Beverly called 911 and met with Waxhaw Police Officers. The officers told Beverly they could not order Defendant to stay away from the home and urged Beverly to avoid Defendant if he returned to the residence. Shortly after the officers left, Defendant returned.

There are significant discrepancies in the accounts of what happened once Defendant returned to the residence, but all parties agree Beverly blocked the door with her body and repeatedly asked Defendant to leave. Defendant states that he pushed through the door and Beverly pulled a gun on him. He then struggled with her down to the floor, eventually taking the gun from Beverly, who had hit the floor hard in the process. Defendant held Beverly down until police arrived. In contrast,

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Beverly contends that Defendant pushed through the door then strangled her before hitting her in the face. Beverly's daughter fled upstairs when Defendant came through the door, and she called 911 from an upstairs bathroom. Defendant was sitting on top of Beverly with his hands up and the gun on the floor next to him when the police arrived. The police separated the parties and listened to both accounts. Defendant was not placed under arrest at that time. However, Beverly was driven by a Waxhaw Police Officer to the Union County magistrate's office, where she obtained a Domestic Violence Protective Order and swore out warrants against Defendant for Communicating Threats and Assault on a Female.

Defendant retained Attorney Thomas Leitner to represent him. On 17 February 2022, Defendant was found guilty after a bench trial in District Court and sentenced to a 45-day sentence, suspended for 24 months of supervised probation. In addition, Defendant was assessed court costs of \$788.00, as well as a \$500.00 fine. Defendant appealed to Superior Court for trial *de novo*. On 7 December 2022, after a six-day trial, Defendant was acquitted on the charge of Communicating Threats. However, the jury deadlocked on the Assault on a Female charge, and the trial court declared a mistrial.

On 6 February 2023, Defendant appeared in Superior Court for a hearing on his attorney's motion to withdraw from representation of the Defendant. Attorney Leitner explained to the trial court that he had represented Defendant on the charges at both District Court and Superior Court. He had agreed to continue representing

Defendant on the pending charge resulting from the mistrial however he required payment. Defendant had not agreed to pay and had requested his records which he retrieved the morning of the hearing. Defendant objected to the motion, stating that Attorney Leitner was familiar with his case, and he wanted to work out an agreement for him to continue. The trial court granted Attorney Leitner's motion to withdraw, reasoning that it would not be fair to make him try the case again without payment for his services from Defendant. After granting the motion, the trial court informed Defendant, "[Y]ou're free to do whatever you like, whether that's hire another attorney, whether you hire Mr. Leitner or whether or not you seek a court-appointed attorney." The trial court further stated to Defendant, "But I wanted to advise you first as to your assault – the assault on a female charge is what exists right now; that's the only case that is before the Court. I want to make sure you understand the maximum punishment for that. That's 150 days." The trial court then stated that Defendant had the choice of representing himself, hiring an attorney, or asking for court-appointed counsel. Defendant stated he wished to represent himself. The trial court then conducted a thorough inquiry of Defendant:

THE COURT: Do you mind if I ask you – and this is just to make sure that you're making a voluntary and knowing decision on this. So I don't mean to – I don't mean this to be insulting, but I just want to make sure we have that foundation. What's the highest education level that you have completed?

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THE DEFENDANT: College. I have taken criminal justice and I was in law enforcement for six years. So I have been in court cases, multiple trials.

THE COURT: All right. So you haven't had any problems understanding what I have told you?

THE DEFENDANT: I understand you clearly, sir.

THE COURT: And you understand that if you elect to – and you understand that if you meet certain financial conditions, the Court will appoint you counsel to represent you in this matter?

THE DEFENDANT: I understand that.

THE COURT: All right. Because this is – I'm not here to tell you what to do.

THE DEFENDANT: I understand.

THE COURT: But I want to make sure you understand what the parameters are.

THE DEFENDANT: We the only two knows this case.

THE COURT: All right. So you understand that. And you understand if you proceed on your own without the assistance of counsel, that you are on your own and you will be treated by the Court as a lawyer?

THE DEFENDANT: Correct.

TEHE COURT: And you're making this decision voluntarily and knowingly?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. The Court will find that this is a knowing and voluntary waiver; that the defendant knows the full effect of what he's doing with respect to this.

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The record also reflects – I think you said that you at times prior was a law enforcement officer?

THE DEFENDANT: For six years, yes, Your Honor.

THE COURT: And that you also have college?

THE DEFENDANT: In criminal justice.

THE COURT: All right. Did you have a four-year degree or –

THE DEFENDANT: Two-year.

THE COURT: Two-year degree?

THE DEFENDANT: Yes.

THE COURT: All right. If you will have him execute a block 1 well, actually a block 2 waiver, please. And we are going to swear you to your waiver. Okay.

This signed and sworn waiver of counsel was entered into the court file. The trial court then stated for the record that the motion to withdraw would be granted, Defendant again objected to this, and the trial court noted the objection. On 7 February 2023, the trial court signed the order allowing Attorney Leitner to withdraw.

On 17 May 2023, the remaining count of misdemeanor assault on a female came on for trial in Union County Superior Court. Prior to trial, the trial court reviewed the court file and noted there had been a prior jury trial on the charge. The trial court then addressed Defendant regarding his decision to proceed *pro se*. The trial court conducted a second colloquy with Defendant:

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THE COURT: So just to make sure I understand for the record then, is it presently your intention to appear in this case with or without an attorney?

THE DEFENDANT: Pro se, without an attorney, your Honor.

THE COURT: And that's certainly your call, just – just to make sure you understand, and I'm confident that you do because you've already been through a trial, but you do understand that you have the right to have a lawyer, that includes the right to hire an attorney, it includes the right to apply for a court appointed attorney if you want to be represented by an attorney but couldn't afford to and of course you have the right to represent yourself. You understand your rights?

THE DEFENDANT: Yes, your Honor.

THE COURT: And given that you understand those rights, are you prepared to represent yourself at this trial pro se, that is representing yourself without the assistance of an attorney?

THE DEFENDANT: I am. I'm prepared to represent myself pro se but there's a few matters for the Court that I'm actually looking for a few additional evidence from the DA.

THE COURT: And we're going to talk about that. I understand that you may have some pretrial issues, we'll talk about that. I just want to go through the file and just see what's been going on and then I'll come to you and address those issues. What I am going to do though, I am going to ask you to sign a waiver of counsel. And the clerk will swear you to it and you'll be waiving your right to hire a lawyer because you told me you're not going to, and waiving your right to ask for a court appointed attorney. By signing this form you're not admitting that you've done anything wrong, this only has to do with the issue of having

or not having a lawyer. Thank you. So if you'll listen to the clerk.

THE CLERK: Do you swear that you have been informed of the charges against you and the nature thereof and that you have a right to a court appointed attorney. Do you now state to the Court that you do not desire a court appointed attorney, that you're going to represent yourself?

THE DEFENDANT: Yes, correct ma'am.

THE COURT: Thank you. And I'm going to get you to sign the waiver form so we can put it in the file.

This second sworn and signed waiver form was placed into the court file. On 19 May 2023, following a three-day trial, the jury returned a verdict of guilty on the charge of assault on a female. The trial court imposed a judgment of 60 days of active confinement. Defendant gave notice of appeal following the verdict but prior to sentencing.

II. Analysis

A. Writ of Certiorari

On 19 May 2023, after the jury found Defendant guilty of assault on a female Defendant gave oral notice of appeal:

THE COURT: [Defendant], anything else for the jury?

DEFENDANT: No, Your Honor, just offer appeal for the record.

THE COURT: I'll give you an opportunity in a minute to discuss that.

Prior to sentencing the following exchange took place:

THE COURT: [Defendant], what would you like to offer to the Court before the Court enters what the Court determines to be an appropriate judgment?

DEFENDANT: I would ask the Court for an appeal at this point in reference to this case and just give me time to get an attorney.

THE COURT: Okay. Well let me explain a couple of things. One, the Court does note that you give notice of appeal to the North Carolina Court of Appeals. The [c]ourt would point out that the status of this case is post trial. So this is not a situation in which the court would be determining pretrial conditions of release. I'm going to enter a judgment. You've given notice of appeal. You're entitled to appeal it. Is there anything else that you want me to consider with regard to the entry of judgment?

Initially, Defendant attempted to proceed *pro se* on appeal. However, on 15 June 2023, he filed a motion requesting the appointment of the Appellate Defender to assist him in his case. On 19 July 2023, the trial court allowed the motion and appointed the Appellate Defender to represent Defendant on his appeal.

The procedural rules for providing notice of appeal state,

Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal by:

- (1) giving oral notice of appeal at trial, or
- (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order or within fourteen days after a ruling on a motion for appropriate relief made during the fourteen-day period following entry of the judgment or order. Appeals from district court to superior court are governed by N.C.G.S. §§ 15A-1431 and -

1432.

N.C. R. App. P. Rule 4(a) (2024).

Here, Defendant gave oral notice of appeal at trial. However, his oral notice of appeal was entered prior to the trial court entering judgment and sentencing in the case. An oral notice of appeal is premature and technically defective under Rule 4 when given prior to entry of judgment and sentencing. *State v. Lopez*, 264 N.C. App. 496, 503, 826 S.E.2d 498, 503 (2019); *State v. Robinson*, 236 N.C. App. 446, 448, 763 S.E.2d 178, 179-80 (2014). Defendant filed a writ of *certiorari* with this Court 26 September 2024. Just as in the *Lopez* and *Robinson* cases, “[w]hile this Court cannot hear [D]efendant’s direct appeal, it does have the discretion to consider the matter by granting a petition for writ of *certiorari*.” *Lopez* at 503, 826 S.E.2d at 503. Under Appellate Rule 21(a)(1), this Court may issue its writ of *certiorari* to permit review “when the right to prosecute an appeal has been lost by the failure to take timely action[.]” N.C. R. App. P. Rule 21(a)(1) (2024).

Record evidence makes it clear Defendant desired to appeal the judgment and provided both the trial court and State with notice of his intent to appeal. Neither the trial court nor the State misunderstood Defendant’s request, and the State has stipulated to the record on appeal. In our discretion, we grant Defendant’s petition for a writ of *certiorari* to consider the substantive issue on appeal.

B. Standard of Review

A trial court's decision to allow a defendant to proceed *pro se* and waive his right to counsel pursuant to N.C. Gen. Stat. § 15A-1242 is reviewed *de novo*. *State v. Mahatha*, 267 N.C. App. 355, 360, 832 S.E.2d 914, 919 (2019). "Under de novo review, the reviewing court considers the matter anew and freely substitutes its own judgment for that of the lower court." *State v. Abbitt*, 385 N.C. 28, 40, 891 S.E.2d 249, 258 (2023) (cleaned up).

C. Compliance with N.C. Gen. Stat. § 15A-1242

On appeal, Defendant contends the trial court erred by failing to comply with N.C. Gen. Stat. § 15A-1242. Defendant argues because of this failure he is entitled to a new trial. After careful review, we disagree.

"Before allowing a defendant to waive in-court representation by counsel, the trial court must ensure that constitutional and statutory standards are satisfied. Thus, a trial court must determine whether the defendant knowingly, intelligently, and voluntarily waives the right to in-court representation by counsel." *State v. Mahatha*, 267 N.C. App. 355, 361, 832 S.E.2d 914, 919 (2019) (cleaned up). N.C. Gen. Stat. § 15A-1242 "satisfies any constitutional requirements by adequately setting forth the parameters of such inquiries." *State v. Fulp*, 355 N.C. 171, 175, 558 S.E.2d 156, 159 (2002).

N.C. Gen. Stat. § 15A-1242 provides in pertinent part,

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is

satisfied that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

N.C. Gen. Stat. § 15A-1242 (2024). The inquiry under N.C. Gen. Stat. § 15A-1242 is mandatory, and failure to conduct it is prejudicial error. *State v. Lindsey*, 271 N.C. App. 118, 128, 843 S.E.2d 322, 330 (2020). In conducting such inquiries, “North Carolina has not set out any specific requirements for how the statutory inquiry must be carried out. What is required is that the statutorily required information be communicated in such a manner that defendant’s decision to represent himself is knowing and voluntary.” *State v. Paterson*, 208 N.C. App. 654, 661, 703 S.E.2d 755, 759 (2010) (cleaned up).

Sub judice, Defendant was questioned twice concerning his desire to proceed *pro se*. The first inquiry occurred on 6 February 2023 when Defendant’s attorney, Mr. Leitner, originally moved to withdraw from the case. The second inquiry occurred on 17 May 2023, the first day of the second trial.

During the withdrawal hearing the trial court clearly presented Defendant with his options: he could re-engage Attorney Leitner, retain a different lawyer, or proceed *pro se*. The trial court clarified, “I wanted to advise you first as to your

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assault – the assault on a female charge is what exists right now; that’s the only case that is before the Court. I want to make sure you understand the maximum punishment for that. That’s 150 days.” Defendant responded to the trial court by clearly and unequivocally stating that he wished to represent himself as he was very familiar with his case. The trial court specifically stated they were going to ask questions to ensure that this decision was “voluntary and knowing.”

The trial court then questioned him at length about his level of education, his exposure to the legal system, his understanding that he could hire an attorney or may have one appointed if he met the financial conditions of indigency. Finally, the trial court again questioned Defendant if he understood that his waiver was knowing and voluntary. The trial court noted Defendant would be signing a waiver of these rights. Based on this interaction, Defendant clearly understood his rights as to representation by an attorney, he clearly indicated that based on his criminal justice education and law enforcement experience, he could appreciate the consequences of his decision. The trial court expressly informed him of the charge he faced as well as the maximum punishment associated with it. This inquiry was extensive, in line with the requirements under N.C. Gen. Stat. § 15A-1242 and consistent with this Court’s decisions in *Paterson* and *Bannerman*. *State v. Paterson*, 208 N.C. App. 654, 663, 703 S.E.2d 755, 760-61 (2010); *State v. Bannerman*, 276 N.C. App. 205, 209-10, 854 S.E.2d 831, 834 (2021).

The trial court made another inquiry concerning Defendant’s choice to proceed

pro se on 17 May 2023. However, while this inquiry was permissible, it was unnecessary based on the previous inquiry and waiver on 6 February 2023. Therefore, although the second inquiry did not detail the nature of the charges and the range of permissible punishments, it was not error because the requirements under N.C. Gen. Stat. § 15A-1242 previously had been met by the 6 February inquiry. Defendant's argument is overruled.

III. Conclusion

We conclude the trial court complied with the requirements set forth by N.C. Gen. Stat. § 15A-1242 on 6 February 2023 thereby ensuring Defendant clearly and unequivocally elected to proceed *pro se* and did so knowingly, intelligently and voluntarily. We hold Defendant received a fair trial free from error.

NO ERROR.

Judge TYSON and Judge MURRY concur.

Report per Rule 30(e).