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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-540

Filed 16 April 2025

Cherokee County, No. 23 CRS 7003

STATE OF NORTH CAROLINA

v.

MICHAEL PAUL FISHBACK, Defendant.

Appeal by Defendant from judgment entered 30 November 2023 by Judge William H. Coward in Cherokee County Superior Court. Heard in the Court of Appeals 14 January 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Jessica N. Price, for the State.

The Law Office of Sarah Holladay, PLLC, by Sarah Holladay, for Defendant-Appellant.

CARPENTER, Judge.

Michael Paul Fishback (“Defendant”) appeals from judgment entered after a jury found him guilty of possession of methamphetamine and attaining habitual felon status. On appeal, Defendant argues the trial court erred by failing to provide him with sufficient notice and an opportunity to be heard on the issue of attorneys’ fees. Defendant acknowledges that his notice of appeal was deficient and filed a petition

for writ of certiorari (“PWC”). After careful review, we deny Defendant’s PWC and dismiss his appeal.

I. Factual & Procedural Background

On 10 July 2023, a Cherokee County grand jury indicted Defendant for one count each of possession of methamphetamine, second-degree trespass, and attaining habitual felon status. Defendant’s case proceeded to trial on 27 November 2023. The jury found Defendant guilty of possession of methamphetamine and attaining habitual felon status.¹

The trial court sentenced Defendant to imprisonment between thirty-eight months minimum and fifty-five months maximum, with seventy-six days of credit for time served. Additionally, the trial court imposed \$1,001 in attorneys’ fees and court expenses. The trial court addressed Defendant directly on the matter:

Trial court: I will docket the attorney’s fees against him as a civil judgment. Before I do that, Mr. Fishback, is there anything you want to say about the attorney’s fees in this case or the appointment fee?

Defendant: I would like to say that - - upon payment or however that works - - I don’t know what you mean by that as far as do I have anything to say. I’m going to do the time. He’s put in his work. So regardless of whether I do the time or not - -

Trial court: All right, \$1001 for attorney fees docketed as a civil judgment.

Defendant gave oral notice of appeal but did not file written notice of appeal

¹ The State voluntarily dismissed the second-degree trespass charge before the case was submitted to the jury.

with the clerk of superior court.

II. Jurisdiction

A judgment entered against a defendant for attorneys' fees constitutes a civil judgment, thereby requiring compliance with Rule 3 of the North Carolina Rules of Appellate Procedure. *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 697 (2008) (citing *State v. Jacobs*, 361 N.C. 565, 566, 648 S.E.2d 841, 842 (2007)). Under Rule 3, a defendant's right to appeal is preserved only by filing notice of appeal with the clerk of superior court within thirty days after entry of the trial court's judgment. N.C. R. App. P. 3(a), (c) (2023).

Here, Defendant concedes he failed to comply with Rule 3 as he did not file notice of appeal with the clerk of superior court. Consequently, Defendant filed a PWC.

A PWC is a "prerogative writ[]" that we may issue to aid our jurisdiction. *See* N.C. Gen. Stat. § 7A-32(c) (2023). A PWC may be granted by this Court if the appellant satisfies a two-part test. *Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023). First, the appellant must show "merit or that error was probably committed below." *Id.* at 572, 862 S.E.2d at 851. Next, there must be "extraordinary circumstances" warranting issuance of the PWC. *Id.* at 572–73, 887 S.E.2d at 851. An extraordinary circumstance "generally requires a showing of substantial harm, considerable waste of judicial resources, or 'wide-reaching issues of justice.'" *Id.* at 573, 887 S.E.2d at 851 (quoting *Doe v. City of Charlotte*, 273 N.C.

App. 10, 23, 848 S.E.2d 1, 11 (2020)).

“We require extraordinary circumstances because a writ of certiorari ‘is not intended as a substitute for a notice of appeal.’” *Id.* at 573, 887 S.E.2d at 851 (quoting *Ricks*, 378 N.C. at 741, 862 S.E.2d at 839). “If courts issued writs of certiorari solely on the showing of some error below, it would ‘render meaningless the rules governing the time and manner of noticing appeals.’” *Id.* at 573, 887 S.E.2d at 851 (quoting *Ricks*, 378 N.C. at 741, 862 S.E.2d at 839).

According to Defendant, this Court should grant his PWC because he has presented a meritorious issue. In particular, Defendant argues the trial court did not provide him with sufficient notice and opportunity to be heard on the issue of attorneys’ fees. Moreover, because he “did not fully comprehend what was being asked of him,” Defendant contends the trial court should have provided “further explanation[.]” We disagree.

“Whether the trial court gave a defendant adequate notice and an opportunity to be heard regarding the total amount of hours and fees claimed by [their] court-appointed attorney is a question of law we review de novo.” *State v. Patterson*, 269 N.C. App. 640, 646, 839 S.E.2d 68, 73 (2020) (internal quotations and citations omitted). “Under a de novo review, [this Court] considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

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Opinion of the Court

Before imposing a civil judgment for attorneys' fees, the trial court must give the defendant notice and an opportunity to be heard regarding the hours and fees claimed by their court-appointed attorney. *State v. Crews*, 284 N.C. 427, 442, 201 S.E.2d 840, 849 (1974); *State v. Jacobs*, 172 N.C. App. 220, 235, 616 S.E.2d 306, 316 (2005). As we discussed in *State v. Friend*, there are competing interests between court-appointed attorneys and the defendants they represent. 257 N.C. App. 516, 517–18, 809 S.E.2d 902, 904 (2018). Thus, “trial courts should ask defendants—personally, not through counsel—whether they wish to be heard on the issue” of attorneys' fees. *Id.* at 523, 809 S.E.2d at 907. In other words, the trial court must have a “direct colloquy” with the defendant to provide the defendant sufficient notice and an opportunity to be heard. *Id.* at 523, 809 S.E.2d at 907.

Here, Defendant was indigent and represented by a court-appointed attorney. After the jury found Defendant guilty of possession of methamphetamine and attaining habitual felon status, the trial court required Defendant to pay \$1,001 for attorneys' fees and expenses. The colloquy began when defense counsel informed the trial court, in Defendant's presence, that his time for Defendant's case was “15.4 hours for \$1,001.” The trial court addressed Defendant by name and asked him, not his court-appointed attorney, “is there anything you want to say about the attorney's fees in this case or the appointment fee?” Defendant responded: “He's put in his work.” Because the trial court addressed Defendant directly, and allowed him to be heard, the trial court's colloquy with Defendant meets the requirements of *Friend*.

See 257 N.C. App. at 523, 809 S.E.2d at 907. Accordingly, the trial court provided Defendant sufficient notice and opportunity to be heard on the issue of attorneys' fees.

Nevertheless, Defendant contends the trial court should have provided more explanation because he did not understand what was being asked of him regarding attorneys' fees. Defendant's statements to the trial court, however, undermine this argument. During the colloquy, the trial court notified Defendant that he would be personally responsible for the attorneys' fees. When given the opportunity to be heard, Defendant stated that his attorney "put in the work." Defendant's statement indicates he understood: the trial court was discussing attorneys' fees; the trial court was addressing him and not his court-appointed attorney; and that he had the opportunity to address the trial court directly on the matter. Furthermore, Defendant's statement demonstrates he had no objection to the number of hours worked by his court-appointed attorney or with the quality of his work.

Because Defendant failed to show merit or that error was probably committed below, we deny Defendant's PWC. *See Cryan*, 384 N.C. at 572, 887 S.E.2d at 851.

III. Conclusion

Absent a showing of merit or that error was probably committed below, we deny Defendant's PWC and dismiss.

DISMISSED.

Judges STROUD and GRIFFIN concur.

Report per Rule 30(e).