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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-767

Filed 21 May 2025

Davidson County, Nos. 21CRS055431-280, 21CRS055435-280, 22CRS354557-280.

STATE OF NORTH CAROLINA

v.

ANTONIO ROUSE

Appeal by Defendant from Judgments entered 14 February 2024 by Judge David Hall in Davidson County Superior Court. Heard in the Court of Appeals 9 April 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Jodi L. Regina, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katherine Jane Allen, for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Antonio Rouse (Defendant) appeals from Judgments Upon Revocation for Larceny and Breaking and Entering, and a Judgment for Assault on a Female, all of which were entered pursuant to guilty pleas. The Record before us tends to reflect

the following:

On 15 November 2022, Defendant pleaded guilty to Larceny in 21 CRS 55431; Breaking and Entering in 21 CRS 55435; and Assault on a Female in 21 CRS 55435. The trial court sentenced him to 10 to 21 months of imprisonment each for Larceny and Breaking and Entering, and to 150 days of imprisonment for Assault on a Female. Each sentence was to run consecutively. The trial court suspended these sentences and placed Defendant on supervised probation for 24 months.

On 2 December 2022, Defendant committed certain offenses that resulted in the filing of an Information charging him with Assault by Strangulation, Felony Larceny, Assault on a Female pursuant to Habitual Misdemeanor Assault, and Violation of a Domestic Violence Protective Order in 22 CRS 354557. Probation violation reports were filed on 21 December 2022, 13 January 2023, and 5 December 2023 alleging Defendant had violated his probation by: (1) failing to get a mental health evaluation; (2) failing to report to his probation officer; (3) failing to pay his costs and fees; (4) failing to complete anger management classes; (5) committing a new offense; and (6) absconding.

Defendant appeared before the trial court on 31 January 2024. Defendant entered into a plea agreement with the State whereby Defendant agreed to plead guilty to Assault by Strangulation and Habitual Misdemeanor Assault in 22 CRS 354557. In exchange, “[t]he two counts will be consolidated for sentencing. Defendant will serve an active sentence in the presumptive range. That sentence will

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run concurrently with the defendant's contemporaneously revoked probationary sentences in 21 CRS 55431 and 21 CRS 55435 (which are themselves to remain consecutive).”

Defendant also stipulated to having 14 prior record points, including 1 point for being on probation at the time of the offense. The trial court then began going through the colloquy set out in N.C. Gen. Stat. § 15A-1022.1(b), including questions to confirm Defendant's knowledge and understanding of the charges to which he was pleading guilty and the rights associated with a trial by jury which he was waiving.

The trial court entered Judgments Upon Revocation of Probation in 21 CRS 55431 for Larceny and 21 CRS 55435 for Breaking and Entering, and sentenced Defendant to 10 to 21 months of imprisonment for each offense, to run consecutively with each other but concurrently with the sentence for the consolidated charges in 22 CRS 354557. The trial court also entered Judgment for Assault on a Female in 22 CRS 354557 and sentenced Defendant to 150 days of imprisonment to run consecutively to the sentence for the consolidated offenses. Defendant gave Notice of Appeal via inmate request on 8 February 2024, alleging he was misled with respect to his plea and the time he would be required to serve.

Appellate Jurisdiction

Rule 4 of the North Carolina Rules of Appellate Procedure provides: “The notice of appeal required to be filed and served by subdivision (a)(2) of this rule shall specify the party or parties taking the appeal; shall designate the judgment or order from

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which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.” N.C.R. App. P. 4(b) (2024). Here, Defendant’s Notice of Appeal did not identify the court to which the appeal was taken and was not served on the State. Recognizing these defects, Defendant filed a Petition for Writ of Certiorari to allow us to review the merits of his appeal.

This Court has previously noted “failure to serve the State and identify the court to which appeal is taken ‘are not the sorts of defects requiring dismissal of an appeal on a jurisdictional basis.’ ” *State v. Hammond*, 288 N.C. App. 58, 62, 884 S.E.2d 767, 770 (2023) (quoting *State v. Baungartner*, 273 N.C. App. 580, 583, 850 S.E.2d 549, 551 (2020) (citation omitted)). Indeed, we have consistently held “a defendant’s failure to designate this Court in a notice of appeal does not warrant dismissal of the appeal where this Court is the only court possessing jurisdiction to hear the matter and the State has not suggested that it was misled by the defendant’s flawed notice of appeal.” *State v. Sitosky*, 238 N.C. App. 558, 560, 767 S.E.2d 623, 624 (2014) (citing *State v. Ragland*, 226 N.C. App. 547, 552, 739 S.E.2d 616, 620 (2013), *disc. rev. denied*, 367 N.C. 220, 747 S.E.2d 548 (2013)).

Likewise, this Court has previously granted certiorari where a defendant failed to serve notice of appeal on the State. *E.g.*, *State v. Thorne*, 279 N.C. App. 655, 659, 865 S.E.2d 768, 771 (2021) (granting certiorari where defendant’s notice of appeal did not designate the judgment from which appeal was taken or the court to which appeal

was taken and was not served on the State); *State v. Golder*, 257 N.C. App. 803, 804, 809 S.E.2d 502, 504 (2018) (granting certiorari where there were defects in defendant's service of the State and noting "[i]t is the *filing* of the notice of appeal that confers jurisdiction upon this Court, not the *service* of the notice of appeal." (emphasis in original) (citation omitted)). For its part, the State acknowledges issuance of the writ is within our discretion. In our discretion, we allow Defendant's Petition for Writ of Certiorari to ensure appellate jurisdiction over this matter.

Issues

The issues on appeal are whether the trial court: (I) erred by omitting a question from its sentencing colloquy with Defendant; and (II) made a clerical error in imposing its Judgment for Assault on a Female.

Analysis

I. Sentencing Colloquy

"Alleged statutory errors are questions of law and, as such, are reviewed *de novo*." *State v. Mackey*, 209 N.C. App. 116, 120, 708 S.E.2d 719, 721 (2011) (citations omitted). "Under a *de novo* review, the 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) (citation and quotation marks omitted). To prove a statutory violation, a "defendant would have to be able to show both that the trial court violated the statute and that such violation prejudiced him." *State v. Swink*, 252 N.C. App. 218, 221, 797 S.E.2d 330, 332 (2017) (citing *State v. Ashe*, 314

N.C. 28, 39, 331 S.E.2d 652, 659 (1985) (“[W]hen a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court’s action is preserved, notwithstanding [the] defendant’s failure to object at trial.”)).

Defendant stipulated to having fourteen prior record points, including one point for committing an offense while on probation, resulting in determination of a Prior Record Level 5. The trial court then began going through the colloquy set out in our statutes:

(b) In all cases in which a defendant admits to the existence of an aggravating factor or to a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7), the court shall comply with the provisions of G.S. 15A-1022(a). In addition, the court shall address the defendant personally and advise the defendant that:

(1) He or she is entitled to have a jury determine the existence of any aggravating factors or points under G.S. 15A-1340.14(b)(7)[.]

N.C. Gen. Stat. § 15A-1022.1(b)(1) (2023).

Defendant contends the trial court erred by omitting Question 17 in the Transcript of Plea. We disagree.

Question 17 provides: “Do you understand that at a jury trial you have the right to have a jury determine the existence of any aggravating factors and any additional sentencing points *not related to prior convictions* that may apply to your case beyond a reasonable doubt, and that by your plea(s) you give up this

constitutional right to a jury determination?” (emphasis added). Similarly, the case to which Defendant cites—*Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)—makes the same distinction. In *Blakely*, the United States Supreme Court reiterated its holding in *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 2362-63, 147 L. Ed. 2d 435 (2000): “*Other than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” 542 U.S. at 301, 124 S. Ct. at 2536 (emphasis added).

In the case *sub judice*, the additional sentencing point at issue was one pursuant to a prior conviction. Our statutes provide: “If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, . . . 1 point.” N.C. Gen. Stat. § 15A-1340.14(b)(7) (2023). Defendant incurred the additional sentencing point for the commission of offenses while on supervised probation for the offenses for which he pleaded guilty in 21 CRS 55431 and 21 CRS 55435. Further, under Section 15A-1340.14(f)(1), “[a] prior conviction shall be proved by . . . [s]tipulation of the parties.” *Accord State v. Marlow*, 229 N.C. App. 593, 601, 747 S.E.2d 741, 747 (2013) (“While a jury may determine the existence of prior points, subsection (f)(1) allows proof of prior convictions by stipulation of the parties.”).

“In all of the cases involving a probation point resulting from a [§ 15A-1340.14](b)(7) offense, generally a court shall first determine under N.C. Gen. Stat. §

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15A-1022(a) that the defendant is making an informed choice in admitting the existence of an aggravating sentencing factor.” *Marlow*, 229 N.C. App. at 601, 747 S.E.2d at 747 (citation omitted). “However, while a Court is usually required to follow the procedural requirements when a prior record point is found under N.C. Gen. Stat. § 15A-1340.14(b)(7), N.C. Gen. Stat. § 15A-1022.1(e) excepts such requirements when ‘the context clearly indicates that they are inappropriate.’” *Id.* at 601, 747 S.E.2d at 748 (quoting N.C. Gen. Stat. § 15A-1022.1(e)).

Here, Defendant stipulated to the additional sentencing point. That sentencing point was related to his prior convictions in 21 CRS 55431 and 55435 because he was on supervised probation for those offenses at the time he committed the offenses for which he pleaded guilty in this case. Defendant stipulated to his prior convictions under N.C. Gen. Stat. § 15A-1340.14(f)(1). Thus, Question 17—concerning the right to a jury trial for a sentencing point not related to a prior conviction—is inapplicable in this case. Therefore, under Section 15A-1022.1(e), the trial court was not required to ask this question because “the context clearly indicate[d]” it was inappropriate. Consequently, the trial court did not err in omitting Question 17 from its colloquy with Defendant.

II. Clerical Error

Defendant also contends, and the State concedes, the trial court made clerical errors in the Judgment imposing a sentence of 150 days of imprisonment for Assault on a Female. We agree.

“A clerical error is an error resulting 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, 678 S.E.2d 693, 702 (2009) (citations and quotation marks omitted) (alterations in original). “[W]hen it is apparent from the transcript that a clerical error has been committed on the written order, remand is appropriate so that the trial court can correct the clerical error.” *In re O.D.S.*, 247 N.C. App. 711, 721, 786 S.E.2d 410, 417 (2016).

In exchange for Defendant’s plea agreement, the trial court dismissed two of the charges in the Information and consolidated the remaining two charges for assault into one class H felony for sentencing in 22 CRS 354557. The 150-day sentence for Assault on a Female was imposed due to the revoked probation in 21 CRS 55435. The trial court made clear the revoked probation sentences were to mirror the sentences that had been suspended as part of Defendant’s pleas in those prior cases. Those revoked sentences included a sentence for 150 days of imprisonment for Assault on a Female to run consecutively with Defendant’s other revoked sentences. However, the “Judgment and Commitment” for Assault on a Female entered here imposed the 150-day sentence in 22 CRS 354557—the wrong case. This sentence should have been entered as a Judgment and Commitment Upon Revocation for Assault on a Female in 21 CRS 55435. Therefore, we remand this matter to the trial court for the limited purpose of correcting the clerical error in the Judgment for Assault on a Female such that it is entered as a Judgment and

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Commitment Upon Revocation for Assault on a Female in 21 CRS 55435, imposing a sentence of 150 days of imprisonment to run consecutively with Defendant's other revoked probation sentences and concurrently with the 15 to 27 month sentence in 22 CRS 354557.

Conclusion

Accordingly, for the foregoing reasons, we conclude the trial court correctly sentenced Defendant in compliance with N.C. Gen. Stat. § 15A-1022.1(b). We remand this matter for the limited purpose of correcting the clerical error in the Judgment in 22 CRS 354557 for Assault on a Female.

AFFIRMED; REMANDED FOR CORRECTION OF JUDGMENT.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).