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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-442

Filed 7 October 2026

Alamance County, Nos. 22CR050591-000, 22CR050594-000, 23CR000412-000

STATE OF NORTH CAROLINA

v.

ANTAVIOUS KINTWON JONES

Appeal by Defendant from consolidated judgment entered 16 May 2024 by Judge Andrew Hanford in Alamance County Superior Court. Heard in the Court of Appeals 10 February 2026.

Attorney General Jeff Jackson, by Deputy Solicitor General James Doggett, for the State.

Appellant Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for Defendant-Appellant.

CARPENTER, Judge.

Defendant appeals from a consolidated judgment entered after a jury found him guilty of disclosing private images, failing to report a new address as a sex offender, and failing to report changes to online identifiers. On appeal, he argues that: (1) the trial court erred by denying his motion to dismiss the charge of disclosing

private images; (2) North Carolina’s requirement that sex offenders report their online identifiers violates his First Amendment rights; and (3) the trial court erred by treating his habitual felon admission as a guilty plea. Recognizing that his notice of appeal did not comply with Rule 4, Defendant filed a petition for writ of certiorari (“PWC”). In our discretion, we allow Defendant’s PWC in part to review the habitual felon admission and dismiss Defendant’s unpreserved constitutional issues. After careful review of Defendant’s habitual felon admission, we vacate the consolidated judgment and remand for resentencing.

I. Factual & Procedural Background

On 3 July 2023, an Alamance County grand jury indicted Defendant for one count each of disclosing private images of an adult, failing to report a new address as a sex offender, and failing to report a new online identifier or changes to existing online identifiers. On 7 August 2023, a grand jury returned a superseding indictment for attaining the status of habitual felon. Defendant’s trial began on 13 May 2024, and the evidence tended to show the following.

In 2019, Defendant was convicted of engaging in sexual conduct with another person against that person’s will. Thereafter, Defendant was required to register as a sex offender and disclose his online accounts, such as social media profiles. Defendant disclosed no online identifiers.

In February 2022, Defendant sent an image and graphic videos of his ex-

girlfriend, Lori,¹ through Facebook Messenger to Lori's new boyfriend. The image and videos depicted Lori, her intimate parts, and her engaging in sexual conduct with Defendant. Defendant did not have Lori's consent to share the image and graphic videos. Lori reported the messages to the Alamance County Sheriff's Office, leading to Defendant's indictment and trial.

After the State presented its case-in-chief, Defendant moved to dismiss, arguing the State presented insufficient evidence that the Facebook account belonged to him. The trial court denied Defendant's motion to dismiss. Defendant rested without presenting evidence and renewed his motion to dismiss, which the trial court again denied. The jury convicted Defendant on all counts.

After excusing the jury, the trial court addressed Defendant's habitual-felon charge and engaged in the following colloquy:

THE COURT: [Defense counsel], how does your client plead to the charge of habitual felon?

DEFENSE COUNSEL: He admits he's an habitual felon, Your Honor.

THE COURT: All right. Thank you.

The State then offered the factual basis of Defendant's habitual felon charge, including a drug felony in 1999, attempted arson in 2008, and malicious conduct by a prisoner in 2016. The trial court continued its colloquy with Defendant:

¹ A pseudonym is used to protect the identity of the complaining witness.

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THE COURT: [Defendant], your lawyer has represented to the Court that you're admitting your status as an habitual felon; is that correct?

DEFENDANT: Yes, sir.

THE COURT: [H]as anybody promised you anything or threatened you in any way to cause you to do that?

DEFENDANT: Sir, no, sir.

THE COURT: So, you're admitting those prior convictions based on your own free will, fully understanding what you're doing?

DEFENDANT: Yes, sir. Yes, sir.

THE COURT: All right; thank you. You may have a seat.

At sentencing, Defendant requested the trial court consider mitigating factors. Defense counsel did not object during the colloquy or sentencing. On 16 May 2024, the trial court consolidated Defendant's convictions and sentenced Defendant as a habitual felon to a mitigated term of fifty-eight to eighty-two months of imprisonment.

On 20 May 2024, Defendant attempted to file written notice of appeal, however, it was not accepted by the new Odyssey system due to a technical issue. On 2 July 2024, Defendant became aware of the faulty notice and filed notice of appeal the following day.

II. Jurisdiction

Following his belated notice of appeal, Defendant petitions for writ of certiorari, requesting full review of his issues on appeal, including his habitual felon plea, which he has no statutory right to appeal.

It is well settled that “when a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal.” *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 321 (2005) (citations omitted). Nonetheless, this Court may exercise its discretion “to consider the matter by granting a petition for writ of certiorari.” *Id.* at 638, 615 S.E.2d at 321; N.C. R. App. P. 21(a)(1) (2025). Additionally, a defendant seeking review after a guilty plea has a limited right to appeal but “may petition the appellate division for review by writ of certiorari.” N.C. Gen. Stat. § 15A-1444(a), (e) (2025).

A writ of certiorari is a “prerogative writ” which we may issue to aid our jurisdiction. N.C. Gen. Stat. § 7A-32(c) (2025). Because issuing a writ of certiorari is an extraordinary measure, a petitioner must first satisfy a two-part test. *Cryan v. Nat’l Council of YMCAs*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023). The appellant must show (1) either “merit or that error was probably committed below,” and (2) that “extraordinary circumstances” justify appellate review. *Id.* at 572–73, 887 S.E.2d at 851. “There is no fixed list of ‘extraordinary circumstances’ that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or wide-reaching issues of justice and liberty at stake.” *State v. Martinez*, 390 N.C. ___, ___, 933 S.E.2d 759, ___ (2026) (quoting *Cryan*, 384

N.C. at 572–73, 887 S.E.2d at 851). “We require extraordinary circumstances because a writ of certiorari ‘is not intended as a substitute for a notice of appeal.’” *Id.* at ___, 933 S.E.2d at ___ (quoting *Cryan*, 384 N.C. at 572–73, 887 S.E.2d at 851).

A. Disclosing Private Images

On appeal, Defendant argues that the trial court erred in denying his motion to dismiss the charge of disclosing private images. He argues that section 14-190.5A is “facially unconstitutional” and must be restricted to “obscene” material or “child pornography.” He contends that his argument was properly preserved by his motion to dismiss for insufficient evidence. We disagree.

“[T]o preserve an issue for appellate review,” an objection must state “the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10(a)(1) (2025). “‘It is well settled that an error, even one of constitutional magnitude, that [the] defendant does not bring to the trial court’s attention is waived and will not be considered on appeal.’” *State v. Ricks*, 378 N.C. 737, 740, 862 S.E.2d 835, 838 (2021) (quoting *State v. Bursell*, 372 N.C. 196, 199, 827 S.E.2d 302, 305 (2019)).

Yet, “[a] properly made motion to dismiss for insufficiency of the evidence under Appellate Rule 10(a)(3) ‘preserves *all* insufficiency of the evidence issues for appellate review.’” *State v. Bowen*, 282 N.C. App. 631, 635, 871 S.E.2d 547, 551–52 (2022) (emphasis in original) (quoting *State v. Golder*, 374 N.C. 238, 246, 839 S.E.2d 782, 788 (2020)).

Here, we reject Defendant’s attempt to recast an unpreserved constitutional challenge as an insufficiency argument. Defendant argues that section 14-190.5A is facially unconstitutional—an argument he did not raise below. *See Ricks*, 378 N.C. at 740, 862 S.E.2d at 838. Accordingly, the issue is waived and will not be considered on appeal. *See id.* at 740, 862 S.E.2d at 838.

B. Online Identifiers

Defendant also requests that we grant certiorari to review whether the online-identifiers reporting requirement is facially unconstitutional. Defendant concedes, however, that he did not raise this constitutional challenge in the trial court and asks this Court to invoke Rule 2 and review the issue notwithstanding that failure. We decline to invoke Rule 2, and we dismiss Defendant’s argument.

Under Rule 2, we may “suspend or vary the requirements” of the appellate rules, including the rules that govern the preservation of “issue[s] for appellate review.” N.C. R. App. P. 2 (2025). Yet, “[a]n invocation of Rule 2 and writ of certiorari cannot substitute for a timely objection and notice of appeal.” *Ricks*, 378 N.C. at 743, 862 S.E.2d at 840. Thus, Rule 2 relief is only appropriate in “exceptional circumstances,” such as where injustice “appears manifest.” *Id.* at 740, 862 S.E.2d at 838.

Here, Defendant did not raise the issue at trial, so it is waived. *See id.* at 740, 862 S.E.2d at 838. Further, Defendant has not shown exceptional circumstances

warranting suspension of our appellate rules. *Id.* at 740, 862 S.E.2d at 838. Accordingly, we decline to invoke Rule 2 and dismiss the issue.

C. Habitual Felon Admission

Defendant last argues that the trial court erred by accepting his admission to attaining the status of habitual felon where the trial court did not engage in a plea colloquy and where there was no transcript of plea.

Defendant's contention has merit. *See* at 572–73, 887 S.E.2d at 851. As discussed below, the trial court accepted Defendant's habitual felon admission without engaging in the required plea colloquy and without accepting a transcript of plea. Defendant has also shown extraordinary circumstances. *See id.* at 43, 922 S.E.2d at 181. Defendant would face substantial harm if his right to appeal were forfeited solely because of an arbitrary technological issue. *See Martinez*, 390 N.C. at ___, 933 S.E.2d at ___. Defendant would also face substantial harm if his habitual felon judgment was upheld where the record does not indicate a knowing and voluntary plea. *See id.* at ___, 933 S.E.2d at ___. Accordingly, Defendant has satisfied *Cryan's* two-part test. *See Cryan*, 384 N.C. at 572, 887 S.E.2d at 851. Thus, in our discretion, we grant Defendant's PWC in part to review his habitual felon admission. *See McCoy*, 171 N.C. App. at 638, 615 S.E.2d at 321; N.C. R. App. P. 21(a)(1).

III. Issue

The issue on appeal is whether the trial court erred in accepting Defendant's admission to attaining habitual felon status.

IV. Analysis

A. Habitual Felon Admission

Defendant contends that the trial court erred in treating his admission as a guilty plea without first conducting the proper colloquy to ensure his admission was made knowingly and voluntarily. We agree.

Whether a criminal defendant's guilty plea is the product of an informed choice "is a question of law subject to *de novo* review." *State v. Tinney*, 229 N.C. App. 616, 621–22, 748 S.E.2d 730, 734 (2013) (citation 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)).

Being a habitual felon "is not a crime but is a status" used to "enhance the punishment which would otherwise be appropriate for the substantive felony which he has allegedly committed while in such a status." *State v. Allen*, 292 N.C. 431, 435, 233 S.E.2d 585, 588 (1977). Habitual felon proceedings "shall be as if the issue of habitual felon were a principal charge." *State v. Gilmore*, 142 N.C. App. 465, 471, 542 S.E.2d 694, 698–99 (2001) (quoting N.C. Gen. Stat. § 14-7.5 (1999)). "A stipulation by defendant to being a habitual felon amounts to a guilty plea where the trial court establishes a record of defendant's plea of guilty on the habitual felon charge." *State v. Edwards*, 150 N.C. App. 544, 549–50, 563 S.E.2d 288, 291 (2002) (cleaned up).

“A guilty plea must be made knowingly and voluntarily and the record must affirmatively show it on its face.” *State v. Wilkins*, 131 N.C. App. 220, 224, 506 S.E.2d 274, 277 (1998) (citation omitted). Thus, the trial court “may not accept a plea of guilty or no contest from a defendant without first determining that the plea is a product of informed choice.” N.C. Gen. Stat. § 15A-1022(b) (2025). Section 15A-1022 imposes a mandatory plea-colloquy requirement. *See* N.C. Gen. Stat. § 15A-1022(a); *State v. Barnett*, 113 N.C. App. 69, 77, 437 S.E.2d 711, 716 (1993). Specifically, a trial court

may not accept a plea of guilty . . . from the defendant without first addressing him personally and:

- (1) Informing him that he has a right to remain silent and that any statement he makes may be used against him;
- (2) Determining that he understands the nature of the charge;
- (3) Informing him that he has a right to plead not guilty;
- (4) Informing him that by his plea he waives his right to trial by jury and his right to be confronted by the witnesses against him;
- (5) Determining that the defendant, if represented by counsel, is satisfied with his representation;
- (6) Informing him of the maximum possible sentence on the charge for the class of offense for which the defendant is being sentenced, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge; and
- (7) Informing him that if he is not a citizen of the United States of America, a plea of guilty or no contest may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law.

N.C. Gen. Stat. § 15A-1022(a).

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A proper plea colloquy and a signed transcript of plea is “sufficient to demonstrate that the plea was entered into freely, understandingly, and voluntarily.” *Wilkins*, 131 N.C. App. at 224, 506 S.E.2d at 277 (citation omitted). “[W]here there is no record of a valid plea of guilty, either from the trial court’s questioning the defendant in accordance with N.C. Gen. Stat. § 15A-1022 or by means of a properly executed plea transcript, the plea must be vacated and the defendant resentenced.” *State v. Jester*, 249 N.C. App. 101, 108, 790 S.E.2d 368, 374 (2016) (emphasis omitted) (quoting *State v. Glover*, 156 N.C. App. 139, 146–47, 575 S.E.2d 835, 839–40 (2003)). Thus, a guilty plea “‘unaccompanied by evidence that the plea was entered voluntarily and understandingly, and a judgment entered thereon, must be vacated[.]’” *State v. Hannah*, 299 N.C. App. 267, 272, 917 S.E.2d 904, 910, *disc. review denied*, 388 N.C. 743, 923 S.E.2d 236 (2025) (emphasis omitted) (quoting *Tinney*, 229 N.C. App. at 621, 748 S.E.2d at 734).

Here, the record does not demonstrate that Defendant’s guilty plea was the product of informed choice because the trial court did not conduct a proper plea colloquy with Defendant. *See* N.C. Gen. Stat. § 15A-1022(a); *Wilkins*, 131 N.C. App. at 224, 506 S.E.2d at 277. Although the trial court asked Defendant whether he admitted his status as a habitual felon, whether anyone made promises or threats concerning his admission, and whether Defendant “admit[ted] those prior convictions based on [his] own free will, fully understanding what [he was] doing,” these are not the only questions required by section 15A-1022(a). *See Barnett*, 113 N.C. App. at 77,

437 S.E.2d at 716. Specifically, the trial court should have informed defendant of his right to remain silent, determined that he understood the nature of the charge, informed him that he had the right to plead not guilty, informed him that his plea waived his right to trial by jury, determined whether he was satisfied with his counsel's representation, and informed him of the maximum possible sentence after the enhancement. *See* N.C. Gen. Stat. § 15A-1022(a); *Barnett*, 113 N.C. App. at 77, 437 S.E.2d at 716.

Moreover, the record contains no transcript of plea, preventing us from otherwise confirming that Defendant's plea was the product of informed choice. *See Wilkins*, 131 N.C. App. at 224, 506 S.E.2d at 277; *Jester*, 249 N.C. App. at 108, 790 S.E.2d at 374. Because the record does not include a complete colloquy or a transcript of plea, we vacate the consolidated judgment and remand for resentencing.

V. Conclusion

In sum, we deny in part Defendant's PWC and dismiss Defendant's unpreserved constitutional arguments. Because the record does not affirmatively show that Defendant's habitual felon admission was the product of informed choice, we grant Defendant's PWC, vacate the consolidated judgment, and remand for a new sentencing hearing.

The substantive convictions from the guilt phase remain undisturbed. Our mandate simply returns Defendant to his position immediately before the trial court determined his habitual felon status. *See State v. Demaio*, 216 N.C. App. 558, 565,

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716 S.E.2d 863, 867–68 (2011). On remand, proceedings resume at the habitual-felon stage and, once that question is resolved by admission or trial, the trial court shall resentence Defendant accordingly.

DISMISSED IN PART; VACATED AND REMANDED IN PART.

Judges ARROWOOD and GORE concur.

Report per Rule 30(e).