NO. COA02-725

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

STATE OF NORTH CAROLINA

v. Wake County
Nos. 01 CRS 053590-94

GABRIEL ROMAN STALLINGS

Appeal by defendant from judgments dated 28 November 2001 by Judge Henry W. Hight, Jr. in Wake County Superior Court. Heard in the Court of Appeals 30 December 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General W. Dale Talbert for the State.

John T. Hall for defendant appellant.

GREENE, Judge.

Gabriel Roman Stallings (Defendant) appeals from sentences imposed on a 28 November 2001 judgment entered consistent with a jury verdict finding him guilty of four counts of robbery with a dangerous weapon and one count of attempted common law robbery.

The trial court determined Defendant had a prior record level of IV, made no findings of aggravation or mitigation, and sentenced Defendant to 11 to 14 months imprisonment for the attempted common law robbery conviction, a Class H felony, and 117 to 150 months for each of the robbery with a dangerous weapon convictions, Class D

felonies.

The issue is whether a trial court may impose upon a Defendant the maximum sentence within the presumptive range without making findings in aggravation.

Defendant contends he is entitled to a new sentencing hearing because the trial court failed to make findings in aggravation. Although Defendant concedes each of his sentences falls within the presumptive range, he argues because each of his sentences also falls within the lowest of the aggravated sentencing ranges, the trial court should have made findings in aggravation.[1] We disagree.

A judgment sentencing a defendant to a term of imprisonment for the commission of a felony must contain both a minimum term of imprisonment and a maximum term of imprisonment. N.C.G.S. § 15A-1340.13(c) (2001). Unless otherwise indicated, "[t]he maximum term of imprisonment applicable to each minimum term of imprisonment is . . . as specified in G.S. 15A-1340.17." *Id.* The trial court is to determine the applicable maximum term of imprisonment by utilizing the chart found in N.C. Gen. Stat. § 15A-1340.17(e). N.C.G.S. § 15A-1340.17(e) (2001). "[W]here the trial court imposes sentences within the presumptive range for all offenses of which

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[1]Defendant also contends the application of the Structured Sentencing Act in this case violated both his due process and equal protection rights. These constitutional arguments, however, were not raised in the trial court, and we do not address them here. *See State v. Benson*, 323 N.C. 318, 321-22, 372 S.E.2d 517, 519 (1988) (constitutional questions cannot be raised for the first time on appeal).

defendant was convicted, he is not obligated to make findings regarding aggravating and mitigating factors." *State v. Rich,* 132 N.C. App. 440, 452-53, 512 S.E.2d 441, 450 (1999), *aff'd.* 351 N.C. 386, 527 S.E.2d 299 (2000).

Defendant, with a prior record level of IV, was sentenced to a minimum term of 117 months and a maximum term of 150 months for each Class D felony of robbery with a dangerous weapon and a minimum of 11 months and a maximum of 14 months for the Class H felony of attempted common law robbery. The maximum sentence specified under section 15A-1340.17(e) for a minimum term of 117 months is 150 months and for a minimum term of 11 months is 14 months. N.C.G.S. § 15A-1340.17(e). The charts contained in 15A-1340.17(c) and (e) show the trial court, as required by the statutes, sentenced Defendant within the presumptive range of sentences for Class D felonies with prior record level IV; and, therefore, the trial court was not required to make findings in aggravation. *See State v. Streeter,* 146 N.C. App. 594, 598, 553 S.E.2d 240, 243 (2001). Accordingly, the trial court did not err in sentencing Defendant.

Affirmed.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).