

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-214
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA,

v.

Sampson County
Nos. 08CRS51113

DEANGELO D. JACOBS

Appeal by defendant from judgment entered on or about 9 September 2010 by Judge Russell J. Lanier, Jr. in Superior Court, Sampson County. Heard in the Court of Appeals 29 August 2011.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Brent D. Kiziah, for the State.

James W. Carter, for defendant-appellant.

STROUD, Judge.

Deangelo Donnell Jacobs ("defendant") appeals from the trial court's judgment entered pursuant to his *Alford* plea to one count of felony conspiracy to commit assault with a deadly weapon with intent to kill inflicting serious injury. Defendant's sole contention on appeal is that the State failed to present sufficient evidence of his prior convictions to

support the trial court's calculation of his prior record level. Because the record indicates that defense counsel stipulated to defendant's prior convictions and prior record level, we conclude that the State presented sufficient evidence to support the trial court's calculation. Accordingly, we affirm.

On 9 September 2010, defendant entered an *Alford* plea pursuant to a plea agreement to felony conspiracy to commit assault with a deadly weapon with intent to kill inflicting serious injury. In exchange for defendant's plea, the State agreed to dismiss other related charges against him. At sentencing, the trial court determined that defendant had a prior record level of "V". The trial court sentenced defendant to a term of 110 to 141 months imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that the State failed to present sufficient evidence of his prior convictions to support the trial court's calculation of his prior record level. N.C. Gen. Stat. § 15A-1340.14(f) provides four "methods" through which a prior conviction may be proven:

- (1) *Stipulation* of the parties.
- (2) An original or copy of the court record of the prior conviction.
- (3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

N.C. Gen. Stat. § 15A-1340.14(f) (2009) (emphasis added).

"While a stipulation need not follow any particular form, its terms must be definite and certain in order to afford a basis for judicial decision, and it is essential that they be assented to by the parties or those representing them." *State v. Alexander*, 359 N.C. 824, 828, 616 S.E.2d 914, 917 (2005) (citations and quotation marks omitted). "[D]uring sentencing, a defendant need not make an affirmative statement to stipulate to his or her prior record level[,] . . . particularly if defense counsel had an opportunity to object to the stipulation in question but failed to do so." *Id.* at 829, 616 S.E.2d at 918.

Here, although defendant contends there is no evidence that the State submitted a prior record level worksheet to the trial court, the State's prior record level worksheet shows that defense counsel unequivocally stipulated to defendant's prior convictions. The last page of the worksheet reads:

The prosecutor and defense counsel, or the defendant, if not represented by counsel, stipulate to the information set out in Sections I and IV of this form, and agree with the defendant's prior record level or prior conviction level as set out in Section II based on the information herein.

The date, the prosecutor's signature, and defense counsel's signature appear below this paragraph. Section IV of the worksheet lists seven prior convictions for defendant. Section I of the worksheet shows that defendant had fifteen total prior record level points and a prior record level of V, based on his prior offenses. The trial court then found at the sentencing hearing that defendant had a prior record level of V, to which defendant did not object. Therefore, we conclude that the trial court properly calculated defendant's prior record level based on defense counsel's stipulation. Accordingly, we affirm.

AFFIRMED.

Judges CALABRIA STEELMAN concur.

Report per Rule 30(e).