NO. COA11-415
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v. Alamance County
Nos. 10 CRS 53550, 53552-53,
DAMIEN KENARD SHIPP 10 CRS 53555-57, 53589,
10 CRS 53592-93

Appeal by Defendant from judgments entered 27 September 2010 by Judge Orlando F. Hudson in Superior Court, Alamance County. Heard in the Court of Appeals 1 November 2011.

Attorney General Roy Cooper, by Special Deputy Attorney General Valerie L. Bateman, for the State.

Kimberly P. Hoppin for Defendant-Appellant.

McGEE, Judge.

Damien Kenard Shipp (Defendant) appeals from judgments entered upon his plea of guilty to multiple charges of larceny and breaking and entering, and one charge of speeding to elude arrest. Defendant contends that the trial court erred by: (1) improperly calculating his prior record level; (2) committing clerical errors on the face of the judgments; and (3) ordering Defendant to pay restitution without sufficient evidence. We

find no error in part and remand in part for the correction of clerical errors.

Defendant pleaded guilty to eight counts of breaking and entering, seven counts of larceny, and one count of speeding to elude arrest on 27 September 2010. Pursuant to the plea agreement, several other charges were dismissed by the State. The charges stemmed from a series of house break-ins perpetrated by Defendant and a co-defendant on the morning of 3 June 2010. Several items were stolen and several of the homes sustained property damage. Defendant and his accomplice led the police on a high-speed chase before being apprehended.

The trial court accepted Defendant's plea and determined Defendant to be a prior record level II offender based on four prior record level points. The trial court consolidated the charges into five judgments, and sentenced Defendant in the presumptive range to five consecutive terms of six to eight months each. Defendant was ordered to pay a total of $3,892.00 in costs, attorney's fees, and restitution. From judgments entered, Defendant appeals.

First, Defendant contends that the trial court erred by miscalculating his prior record level. He argues that two of the four misdemeanors used to calculate his prior record level

shared the same conviction date. Defendant cites to N.C. Gen. Stat. § 15A-1340.14(d), which states that "[i]f an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used" to determine the prior record level. Defendant asserts that, since only one of the two misdemeanors could have been used in determining his prior record level, he is entitled to a new sentencing hearing. N.C. Gen. Stat. § 15A-1340.14(d) (2009).

While we agree that two misdemeanors with the same conviction date cannot both be used to determine a prior record level, the error is harmless where the correct calculation does not affect the determination of a defendant's prior record level. *See State v. Smith*, 139 N.C. App. 209, 220, 533 S.E.2d 518, 524 (2000) (error in calculating a defendant's prior record level is harmless if it does not affect the determination of the prior record level). In this case, even if one point was subtracted from the point total to account for the misused misdemeanor, Defendant's prior record level would remain a level II. Therefore, Defendant is not entitled to a new sentencing hearing.

Defendant next argues that the judgments contain clerical errors which require correction. Each judgment indicates that

Defendant is a prior record level III offender based on six prior record level points, even though the prior record level worksheet shows the trial court determined Defendant to be a prior record level II with four points. Defendant notes that his sentences fall within the presumptive range for a level II offender for the corresponding class of offense.

After reviewing the record, we conclude that the judgments contain obvious clerical errors regarding the prior record level points and the prior record level. Therefore, the case must be remanded to the trial court for a correction of these clerical errors. *See State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (clerical errors must be corrected in order for the record to accurately reflect the truth).

Finally, Defendant argues the trial court erred in ordering him to pay $3,892.00 in restitution where the amount is not supported by sufficient evidence. Defendant argues that he did not agree to any amount of restitution as part of the plea agreement, and that no testimony was presented by the State regarding restitution.

The trial court may order restitution only in an amount which is supported by competent evidence. *State v. Wilson*, 340 N.C. 720, 726, 459 S.E.2d 192, 196 (1995). A prosecutor's

unsworn statement, standing alone, is insufficient to support an award of restitution. *Id.* at 727, 459 S.E.2d at 196. Evidence regarding restitution may be testimonial or documentary in nature. *State v. Mauer*, __ N.C. App. __, __, 688 S.E.2d 774, 778 (2010).

We note first that the actual amount of restitution ordered by the trial court was $3,017.00, not $3,892.00. Further, the State has included, as part of the record, documentary evidence in the form of victim impact statements regarding property loss and damage, that detail the specific amounts needed to compensate six of the victims for the unrecovered expenses related to the break-ins. The transcript of the plea hearing indicates that this documentary evidence was submitted to the trial court as part of the discussion on restitution. After reviewing the documentary evidence, we conclude that the amount of restitution is supported by the evidence submitted to the trial court, and the trial court did not err in ordering Defendant to pay restitution in the amount of $3,017.00.

No error in part; remanded in part for correction of clerical errors.

Judges ELMORE and McCULLOUGH concur.

Report per Rule 30(e).