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NO. COA13-514
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v.

Durham County
Nos. 10 CRS 056171; 11 CRS
003849

VICTOR LAMONT BULLOCK,
Defendant.

Appeal by defendant from judgments entered 2 October 2012
by Judge M. R. Morgan in Durham County Superior Court. Heard in
the Court of Appeals 18 November 2013.

*Roy Cooper, Attorney General, by Scott K. Beaver, Assistant
Attorney General, for the State.*

*Staples Hughes, Appellate Defender, by Jon H. Hunt,
Assistant Appellate Defender, for defendant-appellant.*

MARTIN, Chief Judge.

On 2 October 2012, defendant Victor Lamont Bullock was
convicted by a jury of malicious conduct by a prisoner and
resisting a public officer. Defendant then admitted through his
counsel to being a habitual felon. The trial court sentenced
defendant to a term of 127 to 162 months imprisonment for
malicious conduct by a prisoner and being a habitual felon, as

well as a concurrent term of 60 days imprisonment for resisting a public officer. Defendant appeals.

Defendant argues, and the State concedes, that the trial court erred in sentencing him for attaining the status of a habitual felon when the charge was not submitted to the jury and defendant did not enter a guilty plea to the charge. We agree.

A trial court must meet the requirements of N.C.G.S. § 15A-1022 before accepting a defendant's plea of guilty to attaining habitual felon status. See *State v. Bailey*, 157 N.C. App. 80, 88-89, 577 S.E.2d 683, 689 (2003). Here, after defendant was convicted by a jury of the principal felony, the following exchange took place with the court:

THE COURT: Madam D.A. and [defense counsel] Mr. Harris, there is a habitual felon component of this case. Now that there has been the jury verdict of guilty of malicious conduct by a prisoner, there's now a need to go into that habitual felon phase.

Is there a contest, Mr. Harris, concerning the elements concerning an habitual felon status being obtained, or attained, by your client, such that there is a need to have the jury to be involved in this phase?

MR. HARRIS: Can I have one quick moment, please, Your Honor?

THE COURT: Yes.

MR. HARRIS: No, Your Honor, Mr. Bullock is going to admit the status of being an habitual felon.

THE COURT: Thank you.

MR. HARRIS: Yes, Your Honor, Mr. Bullock has authorized me to admit to the status of being an habitual felon.

THE COURT: Thank you. Madam D.A., I'll hear from the State as to the presentation now concerning the habitual felon aspect and how it affects the sentencing phase, which we'll now enter, upon the defendant's admission, through his counsel, as to the acknowledgment of habitual felon status being attained.

The State then presented a factual basis for the habitual felon charge, and arguments were heard concerning defendant's sentence. Finally, the court addressed defendant as follows:

[THE COURT:] Mr. Bullock, the jury has found you to be guilty of the offense of malicious conduct by a prisoner, and you have also through counsel admitted and pleaded that you have attained the status of being an habitual felon. Is there anything you would like to say, sir, before I enter judgment in your case?

THE DEFENDANT: (Moving head in the negative.)

. . . .

[THE COURT:] As to the habitual felon matter, as relates to the malicious conduct by a prisoner matter, these two matters were joined for resolution in this case for Mr.

Bullock, and with the habitual felon matter being considered, the malicious conduct by a prisoner offense is elevated now, pursuant to the habitual felon status being admitted, to a Class C punishment, and Mr. Bullock is a prior record Level 5 with 16 points attained.

In *State v. Gilmore*, 142 N.C. App. 465, 542 S.E.2d 694 (2001), the defendant stipulated to three prior convictions; however, he did not plead guilty to attaining the status of a habitual felon, and the issue of whether he was a habitual felon was never submitted to the jury. See *id.* at 471, 542 S.E.2d at 699. This Court held that defendant's stipulation "in the absence of an inquiry by the trial court to establish a record of a guilty plea" was "not tantamount to a guilty plea." See *id.* Accordingly, defendant's habitual felon conviction was reversed and remanded. See *id.* at 472, 542 S.E.2d at 699.

We conclude that *Gilmore* is indistinguishable from the present case. As in *Gilmore*, the trial court below failed to establish a record that defendant's admission was a guilty plea. Accordingly, while we find no error in defendant's conviction for malicious conduct by a prisoner, we reverse defendant's conviction as a habitual felon and therefore order a new trial in File No. 11 CRS 3849. Defendant must thereafter be resentenced if found to have attained habitual felon status.

No error in part; reversed and remanded in part.

Judges HUNTER, JR. and DILLON concur.

Report per Rule 30(e).