IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-749

Filed: 19 December 2017

Hyde County, No. 16CRS000085

STATE OF NORTH CAROLINA

v.

LANCE DEVANEY MARSHALL, Defendant.

Appeal by Defendant from judgment entered 14 February 2017 by Judge Jeffery B. Foster in Hyde County Superior Court. Heard in the Court of Appeals 7 December 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Derrick C. Mertz, for the State.

Charlotte Gail Blake for the Defendant.

DILLON, Judge.

Lance Devaney Marshall ("Defendant") appeals from the trial court's judgment convicting him of misdemeanor assault, following his no contest plea. After careful review of the records and briefs, we affirm.

I. Background

On 14 February 2017, Defendant pleaded no contest pursuant to a plea agreement to habitual misdemeanor assault. The plea agreement provided that pending charges of assault inflicting serious bodily injury and attaining habitual felon status would be dismissed, and that defendant's sentence would run concurrent with any sentence he was presently serving. The trial court sentenced defendant to a term of 20 to 33 months of imprisonment. Defendant appeals.

II. Analysis

Counsel appointed to represent defendant has been unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has also shown to the satisfaction of this Court that she has complied with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising defendant of his right to file written arguments with this Court and providing him with the documents necessary for him to do so.

The State moved to dismiss Defendant's appeal on the basis that, because Defendant pleaded guilty, he only has a limited right to appeal. We note, however, that even in guilty plea cases, a Defendant convicted of a felony has a statutory right to appellate review of certain aspects of the judgment. *See* N.C. Gen. Stat. § 15A-1444(a1)-(a2) (2015); *see also State v. Hamby*, 129 N.C. App. 366, 369-70, 499 S.E.2d

195, 196-97 (1998) (conducting *Anders* review although the defendant pleaded guilty and "brought forward no issues on appeal"). Accordingly, we deny the State's motion.

On 2 October 2017, Defendant filed a *pro se* brief in which he argues: (1) he is innocent of the charges because he acted in self-defense; (2) abuse of prosecutorial discretion; and (3) his guilty plea was not freely, knowingly, and voluntarily entered. However, Defendant's arguments are not issues from which Defendant has an appeal of right as enumerated by N.C. Gen. Stat. § 15A-1444, and we decline to review these arguments on appeal. Defendant may seek relief by filing a motion for appropriate relief with the trial court.

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. By virtue of his guilty plea, Defendant's right of appeal was limited to the sentencing issues set forth in N.C. Gen. Stat. § 15A-1444(a1)-(a2). Here, Defendant stipulated to his prior convictions and prior record level. It appears that Defendant was assessed 6 points for a Class D felony. The only Class D felony listed on his prior record level worksheet is a 2016 conviction for having attained habitual felon status. However, "[o]nly the points from the underlying felony can be counted in the prior record level, not points for the punishment enhancement. This is because being an habitual felon is not a felony in and of itself." *State v. Flint*, 199 N.C. App. 709, 729, 682 S.E.2d 443, 454 (2009). Thus, six points must be subtracted from Defendant's prior record level calculation.

The result is that Defendant had 22, not 28, prior record level points. Nevertheless, the deduction of six points results in no change in his prior record level, and Defendant was correctly sentenced from the presumptive range for a Class H, Level VI felony. Accordingly, we find no prejudicial error and affirm the judgment entered.

AFFIRMED.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).