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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-926

Filed 7 May 2024

Catawba County, Nos. 22CRS002595, 23CRS242172

STATE OF NORTH CAROLINA

v.

MICHELLE SIMPSON GREER

Appeal by Defendant from judgments entered 21 April 2023 by Judge R. Gregory Horne in Catawba County Superior Court. Heard in the Court of Appeals 16 April 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Wendy J. Lindberg, for the State-Appellee.

Richard Croutharmel for Defendant-Appellant.

COLLINS, Judge.

Defendant Michelle Simpson Greer appeals from judgments entered upon her guilty plea to the charge of felony possession of methamphetamine. Defendant argues that the trial court erred by concluding that Defendant's prior felony conviction in Florida for battery on an officer or firefighter was substantially similar to a North Carolina Class I felony. As Defendant's out-of-state felony conviction was classified

as a North Carolina Class I felony by default according to N.C. Gen. Stat. § 15A-1340.14(e), the trial court was not required to—and did not—find that Defendant’s prior felony conviction in Florida was substantially similar to a North Carolina Class I felony. Accordingly, we find no error.

I. Background

Defendant was indicted on 18 July 2022 on one count of felony trafficking in methamphetamine by possession and one count of felony trafficking in methamphetamine by transportation. On 3 January 2023, the State filed a superseding indictment against Defendant for the same charges. Defendant entered into a plea arrangement with the State wherein she pled guilty on 18 January 2023 to one count of attempted trafficking of methamphetamine. Defendant was sentenced as a Level I felony offender and received a sentence of 16-29 months of imprisonment, which the trial court then suspended and placed Defendant on 30 months of supervised probation.

About one month later, on 23 February 2023, Defendant was arrested and charged with one count of felony possession of methamphetamine. The next day, Defendant’s probation officer served her with a violation report for committing a new criminal offense while on probation. Defendant was then served with a second probation violation report on 11 April 2023 for failure to pay court fees and probation supervision fees.

On 21 April 2023, Defendant appeared in court with counsel and pled guilty to

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the charge of felony possession of methamphetamine; Defendant also admitted to the two probation violations of committing a new criminal offense while on probation and failing to pay her court-ordered fees. The trial court found there to be a factual basis for the entry of Defendant's plea, which included Defendant admitting to an additional sentencing point for being on probation at the time the new offense was committed. On her prior record level worksheet, Defendant stipulated to being a Level IV felony offender for sentencing purposes; Defendant also stipulated to having misdemeanor convictions in North Carolina and Florida, and she stipulated to having a felony conviction in Florida. The trial court revoked Defendant's probation and activated the underlying suspended sentence of 16-29 months of imprisonment. The trial court then sentenced Defendant as a Level IV offender on the charge of felony possession of methamphetamine; the trial court sentenced Defendant to 8-19 months of imprisonment and ordered it to run concurrent with her other sentence of 16-29 months of imprisonment.

Defendant attempted to appeal by filing an Inmate Grievance Record with the clerk's office on 24 April 2023.

II. Discussion

Defendant argues that "the trial court reversibly erred in concluding that [Defendant's] prior Florida conviction for battery on [an] officer or firefighter was substantially similar to a North Carolina Class I felony."

A. Petition for Writ of Certiorari

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We must first address this Court’s jurisdiction to hear Defendant’s appeal. A written notice of appeal in a criminal proceeding must be filed with “the clerk of superior court and serv[ed] . . . upon all adverse parties within fourteen days after entry of the judgment or order[.]” N.C. R. App. P. 4(a)(2). The notice “shall designate the judgment or order from which appeal is taken and the court to which appeal is taken[.]” N.C. R. App. P. 4(b). Notice of appeal “shall . . . be served on all other parties to the appeal.” N.C. R. App. P. 26(b). Compliance with these requirements for giving notice of appeal is jurisdictional. *State v. Oates*, 366 N.C. 264, 266, 732 S.E.2d 571, 573 (2012).

Here, Defendant filed an Inmate Grievance Record which stated:

File No. 23CR242172-170 and 22CRS002595-170. I would like to appeal a judgement under Rule 11 G.S. 7A-27, and 15A-1347. I cannot perfect a motion for appeal from in here and due to allegation for ineffective couns[e], I can not use my appointed attorney. I have writ[t]en a draft motion to the clerk and D.A. office. What is the next step? Please advise.

While Defendant’s notice of appeal designates the judgments from which appeal is taken, it fails (1) to identify the court to which she appeals and (2) to show service of the notice of appeal on the State, both of which are required by our Appellate Rules. Recognizing these defects in her notice of appeal, Defendant has filed a petition for writ of certiorari seeking this Court’s review of the 21 April 2023 judgments. As this Court may issue a writ of certiorari “in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an

appeal has been lost by failure to take timely action,” N.C. R. App. P. 21(a)(1), we exercise our discretion and grant Defendant’s petition to review the merits of her appeal.

B. Stipulation to Out-of-State Felony

Defendant argues that the trial court reversibly erred in concluding that her prior felony conviction in Florida was substantially similar to a North Carolina Class I felony. However, we note that Defendant stipulated to the fact that she was convicted of a felony offense in Florida, not that her felony conviction in Florida was substantially similar to a North Carolina Class I felony.

N.C. Gen. Stat. § 15A-1340.14(e) provides:

Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony. . . . If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points.

N.C. Gen. Stat. § 15A-1340.14(e) (2023). In *State v. Hinton*, this Court differentiated between the validity of a defendant’s stipulation “to the existence of any of the convictions listed on the prior record level worksheet” versus a defendant’s stipulation “to the assignment of points to his prior convictions” from another state.

196 N.C. App. 750, 754, 675 S.E.2d 672, 675 (2009). The Court explained:

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According to [N.C. Gen. Stat. § 15A-1340.14(e)], the default classification for out-of-state felony convictions is Class I. Where the State seeks to assign an out-of-state conviction a *more serious* classification than the default Class I status, it is required to prove by the preponderance of the evidence that the conviction at issue is substantially similar to a corresponding North Carolina felony. However, where the State classifies an out-of-state conviction as a Class I felony, no such demonstration is required. Unless the State proves by a preponderance of the evidence that the out-of-state felony convictions are substantially similar to North Carolina offenses that are classified as Class I felonies or higher, the trial court must classify the out-of-state convictions as *Class I felonies* for sentencing purposes.

Id. at 755, 675 S.E.2d at 675 (quotation marks and citation omitted).

Here, Defendant stipulated to the fact that she was convicted of a prior offense of battery on an officer or firefighter in Florida and that the offense was a felony in Florida. Pursuant to N.C. Gen. Stat. § 15A-1340.14(e), Defendant's out-of-state felony conviction was classified as a North Carolina Class I felony by default for sentencing purposes. As the trial court was permitted to "accept a stipulation that the defendant in question has been convicted of a particular out-of-state offense and that this offense is either a felony or misdemeanor under the law of that jurisdiction[,]" the trial court did not err in applying the default classification of Class I to Defendant's prior felony conviction in Florida. *State v. Bohler*, 198 N.C. App. 631, 637-38, 681 S.E.2d 801, 806 (2009); *see also State v. Edgar*, 242 N.C. App. 624, 630, 777 S.E.2d 766, 770 (2015) (determining that the defendant's stipulation in the prior record level worksheet that he had been convicted of an offense in Michigan and that

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said offense was a felony in Michigan was “sufficient to support the default classification of the offense as a Class I felony” (citation omitted)).

III. Conclusion

As the trial court accepted Defendant’s stipulation to the fact of her prior felony conviction in Florida and applied the default classification to the felony conviction for sentencing purposes, the trial court did not err in accepting Defendant’s stipulation and classifying Defendant’s prior felony conviction as Class I.

NO ERROR.

Judges ZACHARY and FLOOD concur.

Report per Rule 30(e).