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NO. COA01-1136

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

IN THE MATTER OF:  
JARVIL M. WESTBROOK

Mecklenburg County  
No. 00 J 579

Appeal by juvenile from orders filed 22 February 2001 and 14 May 2001 by Judge Yvonne M. Evans in Mecklenburg County District Court. Heard in the Court of Appeals 20 August 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Harriet F. Worley, for the State.*

*The Children's Law Center, by Susan Nye Surlles, for juvenile appellant.*

GREENE, Judge.

Jarvil M. Westbrook (Juvenile) appeals from an order filed 22 February 2001 adjudicating him a delinquent juvenile on a petition alleging attempted robbery with a deadly weapon and breaking and entering of a dwelling and a dispositional order dated 14 May 2001.

The evidence presented at the hearing tends to show on 31 December 2000 Tecora Graig and her granddaughter were taking care of a house belonging to Eugenia Leach, who was away at a funeral, when a male person they identified both on the day of the incident and at the hearing as Juvenile who kicked in the front door and entered the house. Juvenile then held a gun to Ms. Graig's head

and said, "this is a stick-up," but he ran out of the house when Ms. Graig began to shout.

Juvenile's attorney notes in her brief to this Court that she is "convinced that any error that may have been committed during the course of [Juvenile's] trial was at most[] harmless" and requested this Court review this case pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 738 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). Juvenile's attorney included a certificate in her brief certifying service of the brief, the record on appeal, and the transcript on Juvenile. She also included a copy of a letter she had provided Juvenile informing him of his right to file a brief or other paper writing in this Court in support of the appeal. In response, Juvenile provided this Court with a letter stating why he thought the evidence at trial was not sufficient to justify an adjudication of delinquency. On 16 September 2002, this Court entered an order requiring Juvenile's attorney to comply with this Court's decision in *In re May*, --- N.C. App. ---, 569 S.E.2d 704 (2002), mandating service of the documents necessary to pursue an appeal on a juvenile's parents, guardian, or appropriate custodian when an attorney chooses to file an *Anders* brief in an appeal from a delinquency proceeding. The Court's order required service of the necessary documents within 15 days of the order, and provided Juvenile's parents, guardian, or custodian 45 days from the date of service of the documents to file any response. Juvenile's attorney has fully complied with this order, and the time provided to

Juvenile's parents, guardian, or custodian for filing any response under the order has passed without any such response being received in this Court.

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The issue is whether there is sufficient evidence of the offenses of breaking or entering a building and robbery with a firearm to support an adjudication of delinquency.

Both the *Anders* brief filed on behalf of Juvenile and Juvenile's letter to this Court raise the argument of insufficient evidence to support the adjudication of delinquency based on the charges of "felonious house breaking" and "attempted robbery with a deadly weapon."<sup>1</sup> We disagree.

In conducting an *Anders* review, this Court is to examine the entire record on appeal and determine whether the appeal is wholly frivolous or has some merit. See *Kinch*, 314 N.C. at 102-03, 331 S.E.2d at 667. If an appeal is determined to have some merit, this Court is required to either reverse the decision of the trial court, see, e.g., *State v. Wells*, 78 N.C. App. 769, 773-74, 338 S.E.2d 573, 575 (1986), or remand the case for the appointment of new counsel to further pursue the appeal, *Anders*, 386 U.S. at 744, 18 L. Ed. 2d at 498. In determining whether evidence is sufficient to support an adjudication of delinquency, the evidence must be viewed in the light most favorable to the State. *In re Heil*, 145

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<sup>1</sup>Juvenile was charged and adjudicated under section 14-54(a), which codifies the offense of breaking or entering buildings and section 14-87, codifying robbery, including attempted robbery, with a firearm or other dangerous weapon. N.C.G.S. §§ 14-54(a), -87 (2001).

N.C. App. 24, 29, 550 S.E.2d 815, 819 (2001). If there is substantial evidence of all the elements of the offenses alleged in the petition and of the juvenile being the offender, the evidence is sufficient to support the adjudication. *Id.* at 28, 550 S.E.2d at 819. A person commits felonious breaking or entering by breaking into a building with the intent to commit a felony, such as robbery with a firearm. See N.C.G.S. § 14-54(a). A person who, while in possession of a firearm, attempts to take property away from another has committed robbery with a firearm. See N.C.G.S. § 14-87.

In this case, the evidence taken in the light most favorable to the State reveals Juvenile kicked in the door of Ms. Leach's house and held a gun to Ms. Graig's head while stating, "this is a stickup." Both Ms. Graig and her granddaughter identified Juvenile as the offender both on the day of the incident and at the hearing. As this is substantial evidence Juvenile broke into the house, see *State v. Myrick*, 306 N.C. 110, 114-15, 291 S.E.2d 577, 579-80 (1982), and attempted to rob Ms. Graig using a firearm, see *State v. Whitaker*, 307 N.C. 115, 119, 296 S.E.2d 273, 275 (1982), there is no merit to the contention there was insufficient evidence to support an adjudication of delinquency on the offenses charged.

Further, we have reviewed the entire record and considered the arguments raised in Juvenile's letter to this Court and find no prejudicial error. Thus, it is unnecessary to remand this case for appointment of new counsel to pursue this appeal. Accordingly, the order adjudicating Juvenile delinquent and the dispositional order

were proper.

Affirmed.

Judges TIMMONS-GOODSON and HUNTER concur.

Report per Rule 30(e).