

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-1148

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v.

SALVATORE SIRACUSA

Lincoln County
Nos. 99 CRS 5647, 6052,
00 CRS 690

On writ of certiorari to review the judgment entered 24 March 2000 by Judge Forrest Donald Bridges in Lincoln County Superior Court. Heard in the Court of Appeals 29 April 2002.

Attorney General Roy Cooper, by Assistant Attorney General Christopher W. Brooks, for the State

W. Todd Pomeroy for defendant-appellant.

MARTIN, Judge.

Defendant was indicted on charges of first degree burglary, felonious larceny and financial transaction card fraud. Defendant pled guilty, pursuant to a plea agreement, to one count of first degree burglary and two counts of obtaining property by false pretenses. Pursuant to the terms of the plea agreement, the convictions were consolidated for judgment and defendant was sentenced to 132 to 168 months imprisonment. All other charges pending against defendant were dismissed. On 7 March 2001, this Court granted defendant's petition for writ of certiorari.

Defendant's sole argument on appeal is that the trial court erroneously calculated his prior record level of VI based on the use of out-of-state convictions. Specifically, defendant contends that the State failed to abide by the guidelines set forth in G.S. 15A-1340.14(e) and (f) for utilizing out-of-state convictions. Instead, defendant states that the State merely submitted a worksheet which contained a summary of his convictions. Thus, defendant argues, the State failed to present sufficient evidence of any out-of-state convictions to support the finding of his prior record level. Defendant additionally argues that to the extent the State claims the existence of a stipulation between the parties, there is a lack of clarity regarding the terms of the stipulation, and did not include any agreement as to the out-of-state convictions. Accordingly, defendant argues he is entitled to a re-sentencing hearing.

After careful review of the record, briefs and contentions of the parties, we affirm. G.S. § 15A-1340.14(f)(1) provides that prior convictions may be proven by stipulation of the parties. Here, during sentencing, the State informed the trial court: "If I may, the defendant's criminal history I will tender to the Court. We will stipulate as to prior record level 6." Defendant interposed no objection to the State's proffered stipulation, nor did defendant object to the admission of the summary of defendant's criminal history. Additionally, the Court asked the parties if they "certif[ied]" that they had "done it right." Defendant responded that he believed it was correct. Furthermore, in the

plea agreement, defendant agreed to a specific sentence based on a prior record level of VI. Accordingly, under the totality of the circumstances on the record, defendant's actions were tantamount to an agreement to the State's offer to stipulate to his prior record level.

Affirmed.

Judges HUNTER and BRYANT concur.

Report per Rule 30(e).