NO. COA01-851

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

STATE OF NORTH CAROLINA

    v.

HARLEY EUGENE DUNN

Haywood County
No. 99 CRS 6563

Appeal by defendant from judgment dated 12 February 2001 by Judge Charles C. Lamm, Jr. and from order filed 12 March 2001 by Judge J. Marlene Hyatt in Haywood County Superior Court. Heard in the Court of Appeals 26 March 2002.

> *Attorney General Roy Cooper, by Assistant Attorney General Deborrah L. Newton, for the State.*

> *Powell & Deutsch, by Robert J. Deutsch, and Jack W. Stewart, Jr., P.A., for defendant-appellant.*

GREENE, Judge.

Harley Eugene Dunn (Defendant) appeals a judgment dated 12 February 2001 entered consistent with his guilty plea of one count of common law forgery and an order by the trial court filed 12 March 2001 denying his motion for appropriate relief.

Defendant pled guilty pursuant to a plea agreement to one count of common law forgery on 12 February 2001. Under the terms of the agreement, the State agreed to reduce the charge from felonious forgery and uttering to misdemeanor common law forgery. Defendant agreed to plead guilty pursuant to *North Carolina v.*

Alford, 400 U.S. 25, 27 L. Ed. 2d 162 (1970), and to pay full restitution in the amount of $497.82. The trial court accepted the plea and sentenced Defendant to a term of 120 days. The trial court suspended the sentence and placed Defendant on supervised probation for 24 months, including intensive supervision for six months.

Defendant filed his notice of appeal from the judgment on 20 February 2001. On the same date, Defendant filed a motion for appropriate relief, contending the trial court imposed a sentence at variance with the plea agreement without informing him of its intent to deviate from the sentencing agreement and allowing him to withdraw the plea pursuant to N.C. Gen. Stat. § 15A-1024. The trial court denied the motion for appropriate relief by order filed 12 March 2001.

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The issue is whether the trial court erred in denying Defendant's motion for appropriate relief without holding a hearing.

A judge may rule upon a motion for appropriate relief without a hearing if the motion presents only questions of law and the taking of evidence is unnecessary. N.C.G.S. § 15A-1420(c)(3) (1999). Generally, a verbatim record of the guilty plea proceedings conclusively resolves all questions of fact raised by a motion to withdraw a plea of guilty and permits the trial court to dispose of the motion without holding an evidentiary hearing. *State v. Dickens*, 299 N.C. 76, 84, 261 S.E.2d 183, 188 (1980).

In this case, Defendant swore under oath in open court that the provisions contained in the plea agreement constituted the full agreement. His sole argument in the motion for appropriate relief is that the trial court committed an error of law because the agreement recorded in the transcript of plea required the trial court to comply with N.C. Gen. Stat. § 15A-1024. As the motion presented solely a question of law based on undisputed facts, the trial court did not err by failing to hold a hearing.[1]

Affirmed.

Judges HUDSON and TYSON concur.

Report per Rule 30(e).

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[1]Defendant also assigned as error the entry of a "judgment substantially different than the terms of the negotiated plea." Since Defendant did not argue this assignment of error in his brief to this Court, it is deemed abandoned. N.C.R. App. P. 28(a). In addition, Defendant assigned as error the denial of his "motion to set aside his *Alford* guilty plea pursuant to N.C.G.S. 15A-1024." Defendant states in his brief that the trial court denied his motion to withdraw his plea on 14 February 2001. Defendant, however, has not included in the record on appeal any order or ruling of the trial court upon this motion. Thus, this issue is not properly before us. N.C.R. App. P. 10(b)(1).