NO. COA03-1543-2

NORTH CAROLINA COURT OF APPEALS

Filed: 06 May 2008

STATE OF NORTH CAROLINA

v. Craven County
No. 03 CRS 2594
CHRISTOPHER DALE RIDLEY 03 CRS 51405-09



On remand to the Court of Appeals from an order of the Supreme Court of North Carolina remanding the decision of this Court in *State v. Ridley*, 177 N.C. App. 463, 628 S.E.2d 867 (2006) for reconsideration in light of the decisions of *State v. Blackwell*, 361 N.C. 41, 638 S.E.2d 452 (2006) and *State v. Hurt*, 361 N.C. 325, 643 S.E.2d 915 (2007). Appeal by defendant from judgment entered 18 July 2003 by Judge Benjamin G. Alford in Craven County Superior Court. Originally heard in the Court of Appeals 14 April 2006.



*Attorney General Roy A. Cooper, III, by Assistant Attorney General Benjamin M. Turnage, for the State.*

*John T. Hall, for defendant-appellant.*

STEELMAN, Judge.

Where evidence of the facts supporting the aggravating factor found by the trial court was overwhelming and uncontroverted, defendant is not entitled to a new sentencing hearing. Where defendant's plea bargain did not limit the trial court's exercise of its discretion in finding aggravating factors, the trial court

did not violate the terms of the plea bargain by finding a non-statutory aggravating factor.

On 14 July 2003, Christopher Dale Ridley (defendant) entered pleas of guilty to five counts of first-degree sex offense and one count of first-degree kidnapping. Pursuant to a plea arrangement, all counts were consolidated for sentencing. The trial court found one aggravating factor, five mitigating factors, found that the aggravating factor outweighed the mitigating factors, and imposed a sentence from the aggravated range. Defendant was sentenced as a prior felony record level I to an active sentence of 300-369 months imprisonment. Defendant appeals.

In his first argument, defendant contends that the trial court erred in finding an aggravating factor without submitting the factor to a jury, and that he is entitled to a new sentencing hearing. We disagree.

Judge Alford found the following non-statutory aggravating factor:

> The defendant transported a minor across state lines for the perpetration of this crime and is not being prosecuted federally for this crime.

This aggravating factor was not submitted to a jury as required by *Blakely v. Washington*, 542 U.S. 296, 159 L. Ed. 2d 403 (2004).

Under the rationale of *State v. Blackwell*, 361 N.C. 41, 638 S.E.2d 452 (2006), we must determine:

> whether the trial court's failure to submit the challenged aggravating factor to the jury in the present case was harmless beyond a reasonable doubt. In conducting harmless error review, we must determine from the

> record whether the evidence against the defendant was so "overwhelming" and "uncontroverted" that any rational fact-finder would have found the disputed aggravating factor beyond a reasonable doubt.

*Id.* at 49, 638 S.E.2d at 458 (citing *Neder v. United States*, 527 U.S. 1, 9, 144 L. Ed. 2d 35, 47 (1999)).

The aggravating factor found by the trial court consists of two parts: (1) the defendant transported a minor across state lines in the perpetration of the crimes; and (2) the defendant was not federally prosecuted.

The evidence presented at the 14 July 2003 sentencing hearing showed that defendant picked up a thirteen-year-old boy in Danville, Virginia and transported him to New Bern, North Carolina, where the sex offenses took place. The record in this matter contains a letter from the office of the United States Attorney for the Eastern District of North Carolina stating that: "[t]he United States Attorney's office will not prosecute Christopher Ridley for violations of federal law arising out of the events of March, 2003."

We hold that under the rationale of *Blackwell*, evidence of the facts supporting the aggravating factor found by the trial court was so overwhelming and uncontroverted that any rational fact-finder would have found the aggravating factor beyond a reasonable doubt. This argument is without merit.

In his second argument, defendant contends that the trial court erred in finding the aggravating factor. We disagree.

Specifically, defendant contends that Judge Alford violated the terms of the defendant's plea bargain by using the lack of federal prosecution as an aggravating factor.

The terms and conditions set forth in defendant's plea were: (1) "consolidate cases for judgment" and (2) "not prosecute federally for any crimes arising out of this incident." Notably, there was no plea arrangement as to sentence pursuant to the provisions of N.C. Gen. Stat. § 15A-1023. Sentencing was thus left to the discretion of the trial court in accordance with the provisions of Article 81B of Chapter 15A of the General Statutes. The trial judge was authorized to find aggravating and mitigating factors, and to impose an appropriate sentence.

The trial court consolidated all of the offenses into one judgment, in accordance with the terms of the plea bargain. We note that the trial court had no authority to comply with the second condition of the plea bargain. However, the condition was satisfied when the 14 July 2003 letter from the office of the United States Attorney was received. The plea bargain was devoid of any mention of aggravating or mitigating factors, and in no way restricted the trial court's exercise of its discretion in using the lack of prosecution for the federal offense as an aggravating factor. This argument is without merit.

AFFIRMED.

Judges JACKSON and STROUD concur.

Report per Rule 30(e).