

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1144

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

STATE OF NORTH CAROLINA

v.

Buncombe County
Nos. 04 CRS 53048-53074

THOMAS EDWARD SCOTT

Appeal by defendant from judgments entered 5 August 2004 by Judge Ronald K. Payne in Buncombe County Superior Court. Heard in the Court of Appeals 9 March 2006.

Attorney General Roy Cooper, by Assistant Attorney General Anne M. Middleton, for the State.

Linda B. Weisel for defendant appellant.

MCCULLOUGH, Judge.

Defendant appeals from judgments entered 5 August 2004 after defendant pled guilty to two counts of statutory sex offense with a child under the age of 13 years, seven counts of statutory sex offense with a person 13, 14, or 15 years old by a defendant at least six years older, nine counts of sex offense with a student, and nine counts of indecent liberties. We find no error in part and remand in part for the correction of clerical errors.

On 3 May 2004, a Buncombe County grand jury indicted defendant for the offenses of statutory sex offense with a child under the age of 13, statutory sex offense with a person 13, 14, or 15 by a

defendant at least 6 years older, sex offense with a student, and indecent liberties with a child. On 3 August 2004, defendant entered a guilty plea to two counts of statutory sex offense with a child under the age of 13, seven counts of statutory sex offense with a person 13, 14, or 15 by a defendant at least 6 years older, nine counts of sex offense with a student, and nine counts of indecent liberties with a minor. At the hearing for entry of the guilty pleas, defendant stipulated that there was a factual basis for the pleas. The following exchange took place in regard to defendant's prior record level:

[**State**]: Does the Defendant also stipulate that he has one prior record point and would be a prior record level of II for the purpose of sentencing, as reflected in the Gold Sheet?

[**Defense attorney**]: Yes.

At the conclusion of the hearing, the trial judge made findings that defendant had one prior record level and therefore was a Record Level II for Felony Sentencing. The trial judge then consolidated the judgments and sentenced defendant to 288-355 months' imprisonment.

Defendant now appeals.

ANALYSIS

I

Defendant contends on appeal that the trial court erred where there was insufficient evidence to prove defendant's prior record level for sentencing purposes. We find no merit in this contention.

Under the Structured Sentencing Act, before imposing a felony sentence, the sentencing judge must determine a defendant's prior record level pursuant to N.C. Gen. Stat. § 15A-1340.14. N.C. Gen. Stat. § 15A-1340.13(b) (2005). A prior conviction, in turn, can be proven by any of the following methods:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior conviction.
- (3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
- (4) Any other method found by the Court to be reliable.

N.C. Gen. Stat. § 15A-1340.14(f) (2005).

In the instant case, during the hearing for entry of guilty pleas, the following stipulation occurred:

[State]: Does the Defendant also stipulate that he has one prior record point and would be a prior record level of II for the purpose of sentencing, as reflected in the Gold Sheet?

[Defense counsel]: Yes.

Where defendant stipulated in open court to a prior record point and the applicable record level for sentencing, the State met its burden under the statute. See *State v. Alexander*, 359 N.C. 824, 827-28, 616 S.E.2d 914, 918 (2005) (Where defense counsel's statement to the trial court constituted a stipulation of defendant's prior record level pursuant to N.C. Gen. Stat. § 15A-1340.14(f) (1), defendant's sentence was imposed based upon a proper finding of defendant's prior record level.).

Therefore, this assignment of error is overruled.

II

We now address defendant's argument on appeal that his convictions must be vacated where the judgments are not supported by the indictments for each conviction. We determine that the case must be remanded to the trial court for a correction of clerical errors.

A review of the record by this Court reveals that the judgment contains obvious clerical errors where the offense dates on the judgments do not reflect the offense dates enumerated on the indictments. At the plea hearing, defendant stipulated that there was a factual basis for the plea and further evidence was presented by the State showing the dates on which the offenses were committed, the age of the child at the time of each offense, the age of defendant, and the relationship between the victim and defendant. Where the judgments should reflect the dates listed on the indictment and the evidence presented by the State at the guilty plea hearing we must remand for a correction of those clerical errors. *State v. Murray*, 154 N.C. App. 631, 639, 572 S.E.2d 845, 850 (2002), cert. denied, 357 N.C. 467, 586 S.E.2d 778 (2003).

Therefore, on remand the trial court must enter judgment in accordance with evidence presented in court and the indictments.

III

Further, defendant contends that the trial court violated N.C. Gen. Stat. § 14-27.7(b) and his constitutional guarantee against double jeopardy by entering judgment on the indictment for sex offenses with a student. This issue is not properly before this Court on appeal and therefore is not addressed.

A defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty to a criminal charge in superior court unless he is appealing sentencing issues or the denial of a motion to suppress. *State v. Nance*, 155 N.C. App. 773, 774, 574 S.E.2d 692, 693 (2003). N.C. Gen. Stat. § 15A-1444(a2) (2005) sets forth three specific issues which defendant may appeal as of right: (1) when the sentence imposed results from an incorrect finding of defendant's prior record or conviction level; (2) when the sentence imposed contains a sentence disposition not authorized by statute for the offense, prior record, or conviction level; and (3) when the sentence imposed contains a term of imprisonment for a duration of time which is not authorized by statute for the offense, prior record, or conviction level. Although N.C. Gen. Stat. § 15A-1444(e) does provide that a defendant may petition the appellate division for review by writ of certiorari, defendant has not done so in the instant case, and therefore, this assignment of error is not properly before this Court on appeal and is not addressed.

Accordingly, there was sufficient evidence to prove defendant's prior record level where defendant stipulated to a prior record point; however, the case must be remanded for correction of clerical errors.

No error in part; remand for correction of clerical errors.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).