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NO. COA05-1145

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

STATE OF NORTH CAROLINA

v. Cabarrus County
Nos. 02 CRS 18188-89

ALFRED JEROME GLASCOE

Appeal by defendant from judgment dated 20 September 2004 by Judge Larry G. Ford in Superior Court, Cabarrus County. Heard in the Court of Appeals 29 March 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Joseph E. Herrin, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Matthew D. Wunsche, for defendant-appellant.

McGEE, Judge.

Alfred Jerome Glascoe (defendant) pleaded guilty on 1 March 2004 to two counts of common law robbery and one count of driving while license revoked. Defendant agreed to be sentenced in the aggravated range "based upon one aggravating factor (§ 15A-1340.16(d)(1))[.]" The trial court found the existence of the pertinent aggravating factor and sentenced defendant to a term of twenty-four months to twenty-nine months in prison. The trial court suspended the sentence and placed defendant on supervised probation for a period of thirty-six months in an order signed 1 March 2004.

In a probation violation report filed 10 August 2004, defendant's probation officer alleged that defendant violated five conditions of his probation. Following a probation violation hearing, the trial court found that defendant had violated three conditions of his probation. In an order dated 20 September 2004, the trial court revoked defendant's probation and activated his suspended sentence. Defendant appeals.

Defendant does not challenge the sufficiency of the evidence presented at the probation violation hearing. Defendant's only argument is that the trial court erred by imposing an aggravated sentence upon revocation of defendant's probation where the existence of the aggravating factor was found by the trial court and not by a jury, in violation of *Blakely v. Washington*, 542 U.S. 296, 159 L. Ed. 2d 403, *reh'g denied*, 542 U.S. 961, 159 L. Ed. 2d 851 (2004). However, we do not reach defendant's argument because defendant stipulated to the existence of the aggravating factor.

In *Blakely*, the United States Supreme Court held that "'[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.'" *Id.* at 301, 159 L. Ed. 2d at 412 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490, 147 L. Ed. 2d 435, 455 (2000)). In *State v. Allen*, 359 N.C. 425, 615 S.E.2d 256 (2005), our Supreme Court applied *Blakely* to North Carolina's structured sentencing scheme, holding as follows: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond

the prescribed presumptive range must be submitted to a jury and proved beyond a reasonable doubt." *Id.* at 437, 615 S.E.2d at 265. However, in *Allen*, our Supreme Court also held that "under *Blakely* the judge may still sentence a defendant in the aggravated range based upon the defendant's admission to an aggravating factor enumerated in N.C.G.S. § 15A-1340.16(d)." *Id.* at 439, 615 S.E.2d at 265. N.C. Gen. Stat. § 15A-1340.16(d)(1) (2005) provides that the following factor is an aggravating factor: "The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants."

In *State v. Dierdorf*, ___ N.C. App. ___, 620 S.E.2d 305 (2005), the defendant pleaded guilty to two counts of taking indecent liberties with a child and one count of second degree sex offense. *Id.* at ___, 620 S.E.2d at 306. At the plea hearing, the defendant orally stipulated that he would be sentenced within the aggravated range for each of the three convictions. *Id.* at ___, 620 S.E.2d at 306. In the defendant's written plea agreement with the State, the defendant stipulated that he would be sentenced within the aggravated range for each of the three convictions. *Id.* at ___, 620 S.E.2d at 306. The trial court found an aggravating factor at sentencing and the defendant did not object. *Id.* at ___, 620 S.E.2d at 306. Our Court held as follows: "Because [the] defendant agreed to be sentenced in the aggravated range and did not object to the trial court's finding of an aggravating factor, we conclude that [the] defendant stipulated to the existence of the

aggravating factor." *Id.* at ___, 620 S.E.2d at 306. Our Court held the trial court did not err by entering an aggravated sentence. *Id.* at ___, 620 S.E.2d at 306.

In the present case, defendant agreed to plead guilty as part of a plea arrangement. The written plea arrangement states in pertinent part: "[Defendant] shall receive a sentence of 24-29 months based upon one aggravating factor (§ 15A-1340.16(d)(1))[.]" Defendant indicated that the written plea arrangement was the full plea arrangement and that he accepted the plea arrangement. At sentencing, the following exchange occurred:

> THE COURT: All right. . . . With respect to findings of aggravating and mitigating factors I find that the -- now, is this the aggravating factor that [defendant] induced others to participate?
>
> [DEFENSE COUNSEL]: That's what we agreed, Your Honor.
>
> [THE STATE]: And that was in regard to particularly the first robbery in which there was a co-defendant and we have dismissed charges, but there was no question there was a second person involved.

The trial court then found the following aggravating factor: "I'm going to find with respect to that first robbery that [defendant] induced others to participate in the commission of that offense." Defendant did not object. Defendant agreed to be sentenced in the aggravated range and did not object when the trial court found the aggravating factor to which he had agreed. Defendant therefore stipulated to the existence of the aggravating factor. *See Dierdorf*, ___ N.C. App. at ___, 620 S.E.2d at 306. We hold the trial court did not err by imposing an aggravated sentence upon

revocation of defendant's probation. *See Id.* at ___, 620 S.E.2d at 306.

Defendant did not set forth arguments pertaining to his remaining assignments of error. We therefore deem those assignments of error abandoned pursuant to N.C.R. App. P. 28(b)(6).

No error.

Judges HUNTER and STEPHENS concur.

Report per Rule 30(e).