

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1451

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

STATE OF NORTH CAROLINA

v.

Pitt County
Nos. 01 CRS 5620, 53242

JOHN EUGENE WARD

On writ of certiorari to review judgment entered 16 April 2002 by Judge Clifton W. Everett, Jr., in Pitt County Superior Court. Heard in the Court of Appeals 24 July 2006.

Attorney General Roy Cooper, by Assistant Attorney General Brian C. Wilks, for the State.

McAfee Law, P.A., by Robert J. McAfee, for defendant-appellant.

MARTIN, Chief Judge.

On 16 April 2002, defendant pled guilty to three counts of obtaining property by false pretenses and one count of habitual felon status. Under the terms of his plea, defendant agreed to be sentenced as a Class C (habitual) felon for one of his three substantive felonies. See N.C. Gen. Stat. § 14-7.6 (2005). In the corresponding judgment, the trial court sentenced defendant as an habitual felon with a prior record level II to a presumptive prison

term of 90 to 117 months.¹ By order entered 16 February 2005, we allowed defendant's petition for writ of certiorari to review the judgment but further ordered that "[s]uch review shall be confined to the issues within defendant's appeal of right under N.C. Gen. Stat. § 15A-1444(a1), (a2), (2004)."

Defendant now argues that his "sentence was not supported by the evidence presented at the sentencing hearing," see N.C. Gen. Stat. § 15A-1444(a1), because he "was not called upon to admit [his] habitual felon status," and did not stipulate to the three prior felony convictions which were used to establish his status as a habitual felon. In a related argument, defendant asserts that his sentence of 90 to 117 months was not authorized for the Class H felony of obtaining property by false pretenses, see N.C. Gen. Stat. § 15A-1444(a2), inasmuch as he did not admit to habitual felon status at the plea hearing.

To the extent defendant denies that he admitted his status as a habitual felon as part of his guilty plea, the materials before this Court directly contradict his claim. The transcript of defendant's plea hearing reflects the following exchange between defendant and the hearing judge:

THE COURT: . . . You are pleading guilty to three counts of obtaining property by false pretense, the false pretense charges being Class H felonies and one of these will be elevated to a habitual felon charge being a Class C felony. Do you understand that? That could expose you to 321 months in jail if you

¹The judgments entered on the two remaining counts of obtaining property by false pretenses are not included in the record on appeal.

got the maximum?

THE DEFENDANT: Yes, sir.

THE COURT: Do you now personally plead guilty to these charges?

THE DEFENDANT: Yes, sir.

THE COURT: Are you in fact guilty?

THE DEFENDANT: Yes, sir.

Defendant's signed transcript of plea form lists his pleas of guilty to three counts of obtaining property by false pretenses in 01 CRS 53242-44, and one count of habitual felon status in 01 CRS 5620. His plea agreement expressly provides that he would be sentenced for one of his three substantive felonies "as a Class C felon[] pursuant to G.S. 14-7[.]1, et. seq. - Habitual Felon."

To the extent defendant assigns error to the lack of evidence supporting his guilty plea, this issue lies outside of his appeal of right under N.C. Gen. Stat. § 15A-1444(a1) and (a2). Section 15A-1444(a1) allows a defendant who pleads guilty to appeal "whether his or her sentence is supported by evidence introduced at the trial and sentencing hearing only if the minimum sentence of imprisonment does not fall within the presumptive range for the defendant's prior record or conviction level and class of offense." Having received a presumptive sentence for a felony committed as a habitual felon with a prior record level II, see N.C. Gen. Stat. § 15A-1340.17(c), (e) (2005), defendant has no right of appeal under N.C. Gen. Stat. § 15A-1444(a1). Defendant does not contest the evidence supporting his prior record level calculation, as authorized under N.C. Gen. Stat. § 15A-1444(a2)(1). Because his

sentence is authorized for his class of offense and record level, he has no ground for relief under N.C. Gen. Stat. § 15A-1444(a2)(2)-(3).

We note that defendant's counsel stipulated to the existence of a factual basis for his guilty plea and agreed to allow the prosecutor to present a factual statement in support thereof in lieu of a formal proffer of evidence. See N.C. Gen. Stat. § 15A-1022(c)(1) (2005). After describing the three occasions in which defendant obtained or attempted to obtain money by pawning stolen property, see N.C. Gen. Stat. § 14-100 (2005), the prosecutor set forth defendant's three prior felony convictions, as alleged in his habitual felon indictment, as follows:

Judge, for the record the defendant has been convicted of three felonies, prior felonies, breaking and entering, which he . . . committed October 4th of '89, convicted March 11, 1991 in Tyrrell County. July 25, 1995, possession of cocaine and convicted January 25, of '96 in Tyrrell County. On October 3rd of '88, he committed the offense of breaking and entering, and convicted January 18th of 1989 in Tyrrell County.

By stipulating to the existence of a factual basis for his guilty plea and offering no objection to the prosecutor's summary or the trial court's finding of a factual basis, defendant waived appellate review of this issue. See *State v. Canady*, 153 N.C. App. 455, 458, 570 S.E.2d 262, 264-65 (2002) (citation omitted). Finally, inasmuch as the trial court did find a factual basis for the plea as required by N.C. Gen. Stat. § 15A-1022(c), defendant cannot show any procedural error by the court. See generally *State v. Rhodes*, 163 N.C. App. 191, 193-94, 592 S.E.2d 731, 732-33 (2004)

(allowing a defendant to challenge procedural errors under Article 58 by petition for writ of certiorari, pursuant to N.C. Gen. Stat. § 15A-1027 (2005)) (citation omitted).

The record on appeal includes additional assignments of error not addressed by defendant in his brief to this Court. Pursuant to N.C. R. App. P. 28(b)(6), we deem them abandoned.

Because defendant's claims do not fall within the scope of review authorized by the writ of certiorari issued by this Court on 16 February 2005, we dismiss his appeal.

Dismissed.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).