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NO. COA05-1577

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 04 CRS 201402-03

EDWIN FITZGERALD FRANKLIN

Appeal by defendant from judgments entered 10 May 2005 by Judge J. Gentry Caudill in Mecklenburg County Superior Court. Heard in the Court of Appeals 24 July 2006.

Attorney General Roy Cooper, by Assistant Attorney General Christopher W. Brooks, for the State.

David Childers for defendant-appellant.

MARTIN, Chief Judge.

On 10 May 2005, defendant was convicted of felonious breaking and entering and felonious larceny after breaking and entering. At sentencing, the State contended defendant had a prior record level of V. Defendant argued that based on the prior record level worksheet, he only had fourteen points, making him a Level IV. In response, the State admitted there was an error on the worksheet, noting that a misdemeanor conviction for possession of drug paraphernalia, which had been listed on the worksheet, had not been included in the total. Defendant argued that he was misled by the

error, and requested that the court sentence him as a prior record level IV. Defendant stipulated to the "felony convictions" listed on the worksheet. The State then provided records from the Division of Criminal Information ("DCI") and the Administrative Office of the Courts ["AOC"] as evidence of defendant's misdemeanor conviction for possession of drug paraphernalia. The trial court found defendant had fifteen points for a prior record level of V, and sentenced him to consecutive terms of fourteen to seventeen months imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred in sentencing him as a prior record level V. Defendant argues that the State failed to prove the existence of the convictions listed in his prior record level worksheet. Defendant claims that the records used to establish his prior record level were not reliable.

After careful review of the record, briefs, and contentions of the parties, we find no error. N.C.G.S. § 15A-1340.14 provides that the State bears the burden of proving by the preponderance of the evidence that "a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction." N.C. Gen. Stat. § 15A-1340.14 (2005). A defendant's prior convictions may 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) (emphasis added). *See also State v. Riley*, 159 N.C. App. 546, 555-56, 583 S.E.2d 379, 386 (2003).

The trial court found that defendant had fifteen prior record points for a Prior Record Level of V. Of the fifteen points, defendant stipulated to fourteen points, agreeing that the felonies listed in the record were accurate. Thus, the sole issue left for the Court is to determine whether the State proved the existence of the misdemeanor conviction for possession of drug paraphernalia.

Included in the record is an AOC printout listing a prior conviction for Edwin F. Fitzgerald for possession of drug paraphernalia on 28 September 2001. The printout describes Fitzgerald as a black male, born on 31 October 1971, information similarly reflected on the judgments. Additionally, included in the record is a DCI printout including a prior conviction for a Edwin F. Franklin for possession of drug paraphernalia on 28 September 2001. At sentencing, defendant did not dispute the existence of this conviction, arguing only that he had been misled by the State's inclusion of the conviction in its prior record level calculation, and that he had relied on this error. Thus, we conclude that the State carried its burden of proving by the preponderance of the evidence that defendant had committed the misdemeanor offense. *See* N.C. Gen. Stat. § 15A-1340.14(f).

No error.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).