NO. COA05-508

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

STATE OF NORTH CAROLINA

v.

REGINALD GENE CLINTON,
Defendant.

Gaston County
Nos. 00 CRS 19808-09
00 CRS 60829
00 CRS 60854
00 CRS 60856
00 CRS 60858-60

On writ of certiorari to review the judgment entered 4 June 2001 by Judge Timothy L. Patti in Gaston County Superior Court. Heard in the Court of Appeals 22 May 2006.

Attorney General Roy Cooper, by Assistant Attorney General Clinton C. Hicks, for the State.

Brannon Strickland, PLLC, by Marlet M. Edwards, for defendant-appellant.

GEER, Judge.

On 4 June 2001, defendant Reginald Gene Clinton pled guilty pursuant to a plea agreement to three counts of robbery with a dangerous weapon, six counts of second degree kidnapping, and one count of possession of a firearm by a felon. The terms of the plea agreement stated that the State would not indict defendant as a habitual felon and that "the State does not oppose consolidation into one count for judgment, with the defendant receiving a 127 month — 162 mos. sentence in the aggravated range."

At the plea hearing, the trial court found as an aggravating

factor that defendant "knowingly created a great risk of death to more than one person by means of a weapon device which would normally be hazardous to the lives of more than one person." *See* N.C. Gen. Stat. § 15A-1340.16(d)(8) (2005). The court then entered judgment against defendant, consolidating all charges and sentencing defendant from the aggravated range to a term of 127 to 162 months imprisonment. On 25 October 2004, this Court allowed defendant's petition for writ of certiorari granting him a belated appeal.

Defendant argues that the trial court erred in sentencing him in the aggravated range because he did not stipulate to the aggravating factor and a jury did not find it beyond a reasonable doubt. We agree.

In *State v. Allen*, 359 N.C. 425, 615 S.E.2d 256 (2005), our Supreme Court concluded, pursuant to *Apprendi v. New Jersey*, 530 U.S. 466, 490, 147 L. Ed. 2d 435, 455, 120 S. Ct. 2348, 2362-63 (2000), and *Blakely v. Washington*, 542 U.S. 296, 301, 159 L. Ed. 2d 403, 412, 124 S. Ct. 2531, 2536 (2004): "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." *Allen*, 359 N.C. at 437, 615 S.E.2d at 265. In *Allen*, the Court did provide an exception where a defendant stipulates to a specific aggravating factor. *See id.* at 439, 615 S.E.2d at 265 ("[U]nder *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).").

In this case, however, defendant did not specifically admit to any particular aggravating factor. At most, the record indicates that defendant agreed to a particular sentence and stipulated to a factual basis for the plea. The case is controlled by *State v. Meynardie*, __ N.C. App. __, 616 S.E.2d 21, *stay granted by* __ N.C. __, 620 S.E.2d 199 (2005). Because the record does not contain any indication that defendant was aware of his right to have a jury decide the existence of any aggravating factor, any stipulation could not be a "'knowing [and] intelligent act.'" *Id.* at __, 616 S.E.2d at 24 (quoting *Brady v. United States*, 397 U.S. 742, 748, 25 L. Ed. 2d 747, 756, 90 S. Ct. 1463, 1469 (1970)). Accordingly, in light of *Allen* and *Meynardie*, this case is reversed and remanded for a new sentencing hearing.

Remanded for resentencing.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).