

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-573

NORTH CAROLINA COURT OF APPEALS

Filed: 21 February 2006

STATE OF NORTH CAROLINA

v.

Wake County
No. 04 CRS 55431

BENJAMIN LAMONT BRADSHAW

Appeal by defendant from judgment entered 1 November 2004 by Judge Henry Hight in Wake County Superior Court. Heard in the Court of Appeals 23 January 2006.

Attorney General Roy Cooper, by Assistant Attorney General P. Bly Hall, for the State.

Kevin P. Bradley for defendant-appellant.

STEELMAN, Judge.

Defendant, Benjamin Lamont Bradshaw, appeals the trial court's determination of his felony sentencing level. For the reason discussed herein, we remand this matter for a new sentencing hearing.

On 1 November 2004, defendant pled guilty to four counts of felonious violation of a domestic violence protective order and to being an habitual felon. The judge reviewed the transcript of plea with defendant, including the terms of the plea agreement between defendant and the State, and accepted defendant's plea. The trial judge found one factor in mitigation, found no factors in

aggravation, and determined a mitigated sentence was appropriate. The trial court consolidated the offenses for judgment and sentenced defendant to seventy to ninety-three months imprisonment. Defendant appeals.

In defendant's sole argument on appeal, he contends the trial court's findings regarding his prior record points and prior record level were unsupported by the evidence; therefore, he is entitled to a new sentencing hearing. We agree.

Defendant contends the State failed to meet the requirements to prove a defendant's prior conviction as set forth in N.C. Gen. Stat. § 15A-1340.14(f). Proof of a defendant's prior conviction may be done in one of four ways: "(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). The State bears the burden of proving by a preponderance of the evidence that a prior conviction exists and that the person before the court is the same person named in the prior convictions. *State v. Eubanks*, 151 N.C. App. 499, 505, 565 S.E.2d 738, 743 (2002).

There is no evidence in the record to indicate that the State carried its burden of proving each prior conviction by a preponderance of the evidence. The State submitted no records of conviction nor any records from the agencies listed in N.C. Gen.

Stat. § 15A-1340.14(f)(3). The State only presented a prior record level worksheet, which listed sixteen prior convictions. This worksheet was not signed or dated by the presiding judge, nor was it stipulated to by the parties. "There is no question that a worksheet, prepared and submitted by the State, purporting to list a defendant's prior convictions is, without more, insufficient to satisfy the State's burden in establishing proof of prior convictions." *Id.*

At sentencing, the prosecutor recited seven of the sixteen convictions as constituting elements of the offenses of felonious violation of a domestic violence protective order and being an habitual felon. The State did not recite any of defendant's other prior convictions.

Since the only evidence the State introduced regarding defendant's prior record level was the worksheet and defendant did not stipulate to his prior record level, he is entitled to a new sentencing hearing for a determination of his prior record points and level.

REMANDED FOR RESENTENCING.

Chief Judge MARTIN and Judge MCGEE concur.

Report per Rule 30(e).