

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1302

NORTH CAROLINA COURT OF APPEALS

Filed: 01 May 2007

STATE OF NORTH CAROLINA

v.

ROBERT MULDER

Harnett County
Nos. 04 CRS 3228-29
04 CRS5 0738

Appeal by defendant from judgments entered 12 July 2006 by Judge Edwin G. Wilson, Jr., in Harnett County Superior Court. Heard in the Court of Appeals 09 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General Janette Soles Nelson, for the State.

D. Tucker Charns for defendant-appellant.

STEELMAN, Judge.

Robert Mulder ("defendant") appeals from judgments entered 12 July 2006 after defendant pled guilty to obtaining property by false pretenses, no operator's license and giving fictitious information to an officer. Defendant argues on appeal that the trial court erred in sentencing defendant as a record level III offender where his prior record level points demonstrated that he was a record level II offender. We agree, and remand for the correction of this clerical error.

On 12 July 2006, defendant entered into a plea agreement whereby defendant would be sentenced in the presumptive range in the discretion of the court for a charge of obtaining property by false pretenses. The plea agreement also provided that two misdemeanor charges of no operator's license and giving fictitious information to an officer would be consolidated for judgment, and he would be sentenced in the discretion of the court. Pursuant to the plea arrangement, the State dismissed the charge of driving while licensed revoked. The trial court found a factual basis for the pleas and accepted defendant's guilty pleas. The trial court found that defendant had two prior record level points and therefore was a Prior Record Level II for felony sentencing, and that defendant was a Prior Conviction Level III for misdemeanor sentencing. Defendant received two consecutive active sentences, eight to ten months for the felony charge, and sixty days for the misdemeanor charges. Defendant appeals.

In his sole argument on appeal, defendant contends the trial court erred in sentencing him as a Level III felon instead of as a Level II. The judgment shows that defendant had five prior record points and was sentenced as a prior felony record level III. Careful review of the hearing transcript and the sentencing worksheet entered by the trial judge reflects that the court found defendant to be a felony level II with two prior record points. The trial court correctly sentenced defendant within the presumptive range for a Class H felon as a prior record level II. It is clear that the notation of a felony record III is merely a

clerical error and does not require resentencing. See *State v. Hammond*, 307 N.C. 662, 300 S.E.2d 361 (1983) (clerical error existed where the felony judgment and commitment form listed the crime of robbery with a deadly weapon as a Class C felony; whereas, in fact, it was a Class D felony). Accordingly, we remand the case to the trial court for correction of the written judgment as to the prior record level.

Defendant has failed to argue the remaining assignments of error in his brief and they are deemed abandoned.

No error in the trial. Remanded for correction of clerical error in the judgment.

Judges MCCULLOUGH and LEVINSON concur.

Report per Rule 30(e).