An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-133

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

STATE OF NORTH CAROLINA

v.

KEVIN DESHAUN BUTLER

Guilford County
Nos. 01 CRS 107209-10
01 CRS 107213-14
02 CRS 78671, 78764

Appeal by defendant from judgment entered 25 July 2002 by Judge Henry E. Frye, Jr., in Guilford 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.

Duncan B. McCormick for defendant-appellant.

MARTIN, Chief Judge.

Defendant entered guilty pleas to two counts of robbery with a dangerous weapon and single counts of possession of a firearm by a felon, possession with intent to sell or deliver a Schedule I controlled substance, sale of cocaine, and possession of a stolen motor vehicle. After reviewing the sentencing worksheet, defendant's counsel advised the trial court, "He's a Level IV[.]" The court consolidated the offenses for judgment and sentenced defendant as a record level IV to a presumptive prison term of 94 to 122 months.

In three related arguments on appeal, defendant contends the trial court erred by assigning him a prior record level IV based upon the ten record points reflected on the sentencing worksheet. Because the worksheet mistakenly assesses one point for the Class 2 misdemeanor of resisting a law-enforcement officer, *see* N.C. Gen. Stat. §§ 14-223, 15A-1340.14(b)(5) (2006), defendant claims that his counsel's stipulation to his record level IV "is tainted by a mistake of law" and is insufficient to support the court's finding. Moreover, absent a valid stipulation, he avers the State adduced no evidence to prove the 2001 conviction for communicating threats listed on the worksheet. Without proof of his prior convictions as required by N.C.G.S. § 15A-1340.14(f), defendant asserts "that a mere worksheet, standing alone, is insufficient to adequately establish [his] prior record level." *State v. Alexander*, 359 N.C. 824, 827, 616 S.E.2d 914, 917 (2005).

For sentencing purposes, the fact of a defendant's prior convictions may be proved, *inter alia*, by "[s]tipulation of the parties." N.C. Gen. Stat. § 15A-1340.14(f)(1). As defendant notes, however, an erroneous stipulation on an issue of law is invalid and non-binding. *See State v. Hanton*, __ N.C. App. __, __, 623 S.E.2d 600, 603 (2006).

Pursuant to N.C.G.S. § 15A-1340.14(c)(4), a defendant is assigned a prior record level IV if he has at least nine but not more than fourteen record points. Defendant's sentencing worksheet reflects a total of ten record points as follows: (1) six points for a Class D felony conviction of robbery with a dangerous weapon;

(2) two points for a Class I felony conviction of possession of cocaine; (3) one point for the Class 1 misdemeanor conviction of communicating threats; and (4) one point for a conviction of resisting a law enforcement officer, identified on the worksheet as a Class A1 misdemeanor. Assuming *arguendo* that the tenth point was erroneously assessed, defendant's remaining convictions leave him with nine prior record points and a prior record level IV. Therefore, any error was harmless. *See State v. Allah*, 168 N.C. App. 190, 195-96, 607 S.E.2d 311, 315 (2005); *State v. Adams*, 156 N.C. App. 318, 324, 576 S.E.2d 377, 381-82 (2003). Because the removal of the contested tenth point does not alter defendant's prior record level, his counsel's stipulation to a "Level IV" was correct as to the legal effect of the prior convictions listed on the worksheet. Counsel's stipulation was thus sufficient to establish defendant's record level under N.C.G.S. § 15A-1340.14(f). *See generally Alexander*, 359 N.C. at 829-30, 616 S.E.2d at 918.

Affirmed.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).