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NO. COA06-240

NORTH CAROLINA COURT OF APPEALS

Filed: 5 December 2006

STATE OF NORTH CAROLINA

v.

STANLEY LORENZO WILLIAMS,
Defendant.

Cabarrus County
Nos. 97 CRS 9849-50,
97 CRS 10872

On writ of certiorari to review judgments dated 26 May 1999 by Judge W. Erwin Spainhour in Cabarrus County Superior Court. Heard in the Court of Appeals 30 October 2006.

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

Haakon Thorsen for defendant-appellant.

BRYANT, Judge.

Pursuant to a plea arrangement, Stanley Lorenzo Williams (defendant) originally pled guilty on 24 March 1998 to three offenses (97 CRS 9849, 97 CRS 10692 and 98 CRS 2037) and admitted his habitual felon status (98 CRS 2930). The State then dismissed eight charges (97 CRS 9609-13, 97 CRS 9850, 97 CRS 10693 and 98 CR 2023) and two habitual felon indictments (97 CRS 10872-73). The trial court consolidated the offenses for judgment and sentenced defendant as an habitual felon to a mitigated term of 84 to 110 months imprisonment. Defendant subsequently filed a motion for appropriate relief seeking to have his guilty plea vacated as

involuntary. In an order entered 19 November 1998, the trial court vacated the guilty plea and reinstated all charges pending against defendant including those which had been dismissed as a consequence of the guilty plea.

Following a jury trial, defendant was convicted on 26 May 1999 of two offenses (97 CRS 9849-50) and found to be an habitual felon (97 CRS 10872). In 97 CRS 9849, the trial court sentenced defendant as an habitual felon to a term of 116 to 149 months imprisonment. The trial court also sentenced defendant as an habitual felon in 97 CRS 9850 to a second consecutive term of 116 to 149 months imprisonment. Defendant appealed, and this Court found no error on appeal. *State v. Williams*, 143 N.C. App. 570, 547 S.E.2d 860 (2001) (unpublished).

On 17 August 2005, defendant filed a motion for appropriate relief with the trial court, which was denied on 21 September 2005. Defendant then filed a petition for writ of certiorari with this Court on 28 September 2005. On 18 October 2005, this Court granted defendant's petition for writ of certiorari, allowing defendant to present the issue as to whether his sentences are in violation of N.C. Gen. Stat. § 15A-1335.

Defendant contends his sentences in 97 CRS 9849-50 are in violation of N.C. Gen. Stat. § 15A-1335. He argues neither the individual sentences nor the aggregate sentence can exceed the sentence imposed at the original sentencing hearing in 1998.

Pursuant to N.C. Gen. Stat. § 15A-1335, "a defendant whose

sentence has been successfully challenged cannot receive a more severe sentence for the same offense or conduct on remand." *State v. Wagner*, 356 N.C. 599, 602, 572 S.E.2d 777, 779 (2002). Defendant's original sentence as a result of his guilty plea in 97 CRS 9849 was for a mitigated term of 84 to 110 months imprisonment. After defendant's guilty plea and sentence were set aside in 1998, a jury convicted defendant of the offense in 1999. The trial court then erred by imposing a more severe sentence of 116 to 149 months imprisonment in 97 CRS 9849. This judgment is therefore remanded to the trial court for resentencing.

The charge in 97 CRS 9850 was originally dismissed by the State pursuant to the plea arrangement in 1998. Because no "conviction or sentence imposed in superior court ha[d] been set aside on direct review or collateral attack" for that charge, the statute was not applicable. N.C. Gen. Stat. § 15A-1335 (1999). Accordingly, the trial court was not prohibited from imposing a sentence of 116 to 149 months in 97 CRS 9850. Furthermore, the trial court's decision to impose a consecutive sentence in 97 CRS 9850 was not discretionary, but was mandated by N.C. Gen. Stat. § 14-7.6. N.C. Gen. Stat. § 14-7.6 (1999) ("Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."); see also *State v. Kirkpatrick*, 89 N.C. App. 353, 355, 365 S.E.2d 640, 641 (1988) (when required by statute to impose a particular sentence, N.C. Gen. Stat. § 15A-1335 does not apply to prevent imposition of a more severe sentence).

Affirmed in part; remanded in part for resentencing in 97 CRS 9849.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).