

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-1139

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

STATE OF NORTH CAROLINA

v.

Forsyth County  
Nos. 05CRS026421, 061026

JERAMIE LEE McSWEENEY

# Court of Appeals

Appeal by defendant from judgment entered 4 April 2007 by Judge Ronald E. Spivey in Forsyth County Superior Court. Heard in the Court of Appeals 21 April 2008.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Tracy C. Costner, for the State.*

# Slip Opinion

*Russell J. Hollers, III for defendant-appellant.*

HUNTER, Judge.

Jeramie Lee McSweeney ("defendant") appeals from judgment consistent with a jury verdict finding him guilty of aiding and abetting felony larceny and his plea of guilty to attaining habitual felon status. After careful review, we find no error.

In January 2006, defendant was charged with aiding and abetting larceny. By a separate bill of indictment, defendant was charged with attaining habitual felon status based upon the following underlying felonies: (1) 1999 felony larceny conviction in file number 98CRS21106, offense committed on 5 September 1998 in

Iredell County; (2) 2001 felony larceny conviction in file number 00CRS53535, offense committed on 12 June 2000 in Iredell County; and (3) 2003 felony break/enter a motor vehicle conviction in file number 02CRS205837, offense committed on 7 February 2002 in Mecklenburg County. After a jury found defendant guilty of aiding and abetting felony larceny, defendant pled guilty to his habitual felon status, stipulating to the three underlying convictions alleged in the habitual felon indictment and to the factual basis for the plea. The trial court found a factual basis for defendant's plea of guilty to habitual felon status and sentenced defendant as a Class C felon to 151 to 191 months in prison.

Defendant contends the trial court erred in sentencing him as a habitual felon because one of the three underlying felonies was in actuality a misdemeanor and cannot be used to support his habitual felon indictment. Defendant points out that the indictment for the felonious larceny committed in 2000 failed to allege larceny of property of more than \$1,000.00. Although the indictment lists the offense as "felonious larceny," it alleges defendant stole personal property "having a total value of \$1,000.00[.]" Defendant asserts that the indictment for the larceny committed in 2000 was an indictment for a misdemeanor and the resulting 2001 felony larceny conviction cannot count toward the three underlying convictions for his habitual felon indictment. Defendant therefore claims: (1) the trial court lacked jurisdiction over defendant's status as a habitual felon; and (2)

the trial court erred in accepting his guilty plea to attaining habitual felon status.

With respect to the legitimacy of the 2001 felony larceny conviction, which resulted from a guilty plea, defendant's argument constitutes an improper collateral attack on the conviction that may not properly be considered in connection with the habitual felon charge. *State v. Flemming*, 171 N.C. App. 413, 417, 615 S.E.2d 310, 313 (2005) ("[q]uestioning the validity of the original conviction is an impermissible collateral attack. A defendant may not collaterally attack a prior conviction which is the basis of an habitual felon charge") (citation omitted); see also *State v. Dammons*, 128 N.C. App. 16, 26, 493 S.E.2d 480, 486 (1997).

As to the sufficiency of defendant's habitual felon indictment, this Court has previously stated:

By knowingly and voluntarily pleading guilty, an accused waives all defenses other than the sufficiency of the indictment. Nevertheless, when an indictment is alleged to be facially invalid, thereby depriving the trial court of jurisdiction, the indictment may be challenged at any time. "Our Supreme Court has stated that an indictment is fatally defective when the indictment fails on the face of the record to charge an essential element of the offense."

*State v. McGee*, 175 N.C. App. 586, 587-88, 623 S.E.2d 782, 784 (citations omitted), *disc. review denied and appeal dismissed*, 360 N.C. 542, 634 S.E.2d 891 (2006). Further, N.C. Gen. Stat. § 14-7.3 (2007) states in pertinent part:

An indictment which charges a person with being an habitual felon must set forth the date that prior felony offenses were committed, the name of the state or other

sovereign against whom said felony offenses were committed, the dates that pleas of guilty were entered to or convictions returned in said felony offenses, and the identity of the court wherein said pleas or convictions took place.

This Court, however, has also held that "[i]t is well established that an indictment is sufficient under the Habitual Felons Act if it provides notice to a defendant that he is being tried as a recidivist." *State v. Williams*, 99 N.C. App. 333, 335, 393 S.E.2d 156, 157 (1990).

Here, defendant's habitual indictment correctly stated the type of offense for which defendant was convicted, the county in which he was convicted, and the date of the offense. See *State v. Lewis*, 162 N.C. App. 277, 284-85, 590 S.E.2d 318, 324 (2004) (finding a habitual felon indictment sufficient where it stated the type of offense for which the defendant was convicted and the date of the offense). Defendant, therefore, had sufficient notice of the particular convictions being used to support his status as a habitual felon. Accordingly, this assignment of error is without merit.

Finally, we address defendant's assignment of error regarding the lack of evidence supporting his guilty plea to attaining habitual felon status. We note that defendant's counsel stipulated to the existence of a factual basis for his guilty plea. Afterwards, the prosecutor set forth defendant's three prior felony convictions, as alleged in defendant's habitual felon indictment. By stipulating to the existence of a factual basis for his guilty plea and offering no objection to the prosecutor's evidence or the

trial court's finding of a factual basis, defendant waived appellate review of this issue. See *State v. Canady*, 153 N.C. App. 455, 458, 570 S.E.2d 262, 264-65 (2002). Finally, inasmuch as the trial court did find a factual basis for the plea as required by N.C. Gen. Stat. § 15A-1022(c), defendant cannot show any procedural error by the court. See generally *State v. Rhodes*, 163 N.C. App. 191, 193-94, 592 S.E.2d 731, 733 (2004) (allowing a defendant to challenge procedural errors under Article 58 by petition for writ of certiorari, pursuant to N.C. Gen. Stat. § 15A-1027 (2003)).

No error.

Judges McCULLOUGH and STEELMAN concur.

Report per Rule 30(e).