

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-1177

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

STATE OF NORTH CAROLINA

v.

FARONTE McDUFFIE

Moore County  
Nos. 06CRS052423-24  
06CRS008543

Appeal by defendant from judgment entered 11 April 2007 by Judge V. Bradford Long in Moore County Superior Court. Heard in the Court of Appeals 21 April 2008.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General J. Phillip Allen for the State.*  
*Mercedes O. Chitt for defendant-appellant.*

HUNTER, Judge.

On 11 September 2006, Faronte McDuffie ("defendant") was charged with two counts of felony larceny and two counts of possession of stolen goods. An additional indictment charging defendant with having attained the status of a habitual felon was filed on 27 November 2006. Pursuant to a plea agreement with the State, defendant pled guilty on 11 April 2007 to two counts of possession of stolen property and having attained the status of a habitual felon. In return, the State dismissed the two felony larceny charges and defendant was to be sentenced to a mitigated term of 80 to 105 months' imprisonment. The trial court accepted

defendant's guilty plea and sentenced him as a habitual felon to the agreed upon mitigated term. Defendant appeals. After careful review, we find no prejudicial error in the judgment of the trial court.

Defendant's sole argument on appeal is that the trial court erred in finding his out-of-state convictions were substantially similar to North Carolina convictions for sentencing purposes. The trial court found, pursuant to a prior record level worksheet, that defendant had a prior record level of IV. The worksheet lists two Virginia convictions, one for assault and one for obtaining property by false pretenses, both misdemeanors. For sentencing purposes, the Virginia assault conviction is listed as a Class 2 misdemeanor and the conviction for obtaining property by false pretenses is listed as a Class 1 misdemeanor. Defendant was assigned one point for the Virginia conviction for obtaining property by false pretenses and found to have a total of thirteen points for sentencing purposes. No points were assigned for the Virginia conviction for assault. A defendant having between nine and fourteen points has a prior record level of IV for felony sentencing. N.C. Gen. Stat. § 15A-1340.14(c)(4) (2007).

Assuming the trial court erred in assessing one point for defendant's Virginia conviction for obtaining property by false pretenses, his prior record level remains unchanged at IV because he would have had twelve points for sentencing purposes. N.C. Gen. Stat. § 15A-1340.14(c)(4) (a defendant with nine to fourteen points is given a prior record level of IV). Thus any error is deemed

harmless. *State v. Allah*, 168 N.C. App. 190, 196, 607 S.E.2d 311, 315 (citing *State v. Adams*, 156 N.C. App. 318, 324, 576 S.E.2d 377, 381-82 (2003)), *disc. review denied*, 359 N.C. 636, 618 S.E.2d 232 (2005).

No prejudicial error.

Judges McCULLOUGH and STEELMAN concur.

Report per Rule 30(e).