

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-527

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2009

STATE OF NORTH CAROLINA

v.

Wake County
No. 06 CRS 81156

MILFORD GEORGE COOPER

Appeal by Defendant from judgment entered 21 August 2007 by Judge Stafford G. Bullock in Superior Court, Wake County. Heard in the Court of Appeals 30 December 2008.

Attorney General Roy Cooper, by Assistant Attorney General Brandon L. Truman, for the State.
Don Willey for Defendant-Appellant.

McGEE, Judge.

Milford George Cooper (Defendant) was charged with misdemeanor communicating threats on 25 September 2006 and was found guilty by a jury on 21 August 2007. Defendant proceeded *pro se* at trial and during sentencing, with the assistance of standby counsel. At the sentencing hearing, the State requested that Defendant be sentenced as a prior conviction level III for misdemeanor sentencing. The State submitted a prior conviction level worksheet listing the following convictions: (1) assault with a deadly weapon, (2) simple assault, (3) reckless driving, (4) operating a vehicle without insurance, (5) worthless checks, (6)

disorderly conduct, (7) trespassing, and (8) communicating threats. Upon reviewing the worksheet, Defendant advised the trial court that there was a discrepancy on the worksheet. Subsequently, the trial court asked the State how it arrived at Defendant's being a prior conviction level III. The State responded that it used Defendant's information contained in the "AFIS database" and cross-referenced Defendant's full name, date of birth, race, and gender with the Wake County Clerk's court system. The State did not cross reference Defendant's Social Security number. However, the State indicated that Defendant's Social Security number appeared on the records for an individual with Defendant's name living at Defendant's home address. The trial court then asked Defendant if the name, date of birth, and Social Security number used by the State to retrieve the information from the Clerk's court system matched Defendant's name, date of birth, and Social Security number. Defendant answered that they did match. The trial court found Defendant to be a prior conviction level III for misdemeanor sentencing and sentenced Defendant to 120 days in the custody of the Sheriff of Wake County; however, the sentence was suspended for eighteen months and Defendant was placed on supervised probation. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by sentencing him as a prior conviction level III when the State established only a prior conviction level II. Defendant contends that the State failed to satisfy the requirements set forth in N.C. Gen. Stat. § 15A-1340.21(c), which provides, in

pertinent part:

(c) Proof of Prior Convictions. - A prior conviction shall be proved by any of the following methods:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior conviction.
- (3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
- (4) Any other method found by the court to be reliable.

N.C. Gen. Stat. § 15A-1340.21(c) (2007).

"The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction." *State v. Eubanks*, 151 N.C. App. 499, 505, 565 S.E.2d 738, 742 (2002). In this case, the record indicates the only evidence submitted by the State of Defendant's prior convictions was the prior conviction level worksheet. "There is no question that a worksheet, prepared and submitted by the State, purporting to list a defendant's prior convictions is, without more, insufficient to satisfy the State's burden in establishing proof of prior convictions." *Id.* "Therefore, we must review the dialogue between [the defendant] and the trial court to determine whether there was a stipulation of the prior convictions listed on the worksheet the State presented." *State v. Cromartie*, 177 N.C. App. 73, 80, 627 S.E.2d 677, 682, *disc. review denied*, 634 S.E.2d

538 (2006).

After the State recited how it arrived at Defendant's prior conviction level in this case, the following exchange occurred between Defendant and the trial court:

THE COURT: Mr. Cooper, you have heard the statement from the assistant district attorney that the record that he had retrieved from the clerk's office carries the name Milford George Cooper.

MR. COOPER: Yes, Your Honor.

THE COURT: With date of birth of October 18, 1957.

MR. COOPER: Yes, Your Honor.

THE COURT: And with a Social Security number. Now, the Social Security number and date of birth and name, does all of that fit you? By that I mean, the date of birth that he is alleging, is that your date of birth?

MR. COOPER: Yes, Your Honor.

THE COURT: The Social Security number that he is alleging, is that your Social Security number?

. . .

MR. COOPER: Yes, that is it, Your Honor.

THE COURT: And the name of Milford George Cooper, that is your name?

MR. COOPER: Yes, Your Honor.

THE COURT: Thank you. But you're disputing the conviction --

MR. COOPER: Yes, Your Honor.

THE COURT: -- these charges?

. . .

MR. COOPER: I have been found guilty of the

one above.

THE COURT: Assault with a deadly weapon?

MR. COOPER: Correct. I followed someone in a vehicle too closely, actually chasing them.

At no time was there a stipulation by Defendant to the prior convictions listed on the worksheet presented by the State. Although the State recited how it arrived at Defendant's prior conviction level, the State did not present any documentation supporting the prior convictions listed on the worksheet. Even after the trial court found Defendant was a level III for misdemeanor sentencing, Defendant continued to maintain that the convictions listed on the worksheet were not his convictions. Defendant stated to the trial court that "the charges that are listed on the form that I was shown, I still contend that they are -- do not belong to me, Your Honor."

We find that Defendant admitted only that he had been convicted of assault with a deadly weapon. The State did not prove, by a preponderance of the evidence, that Defendant was a prior conviction level III for misdemeanor sentencing. We conclude that the evidence supports a finding that Defendant was a prior conviction level II for misdemeanor sentencing; therefore, it was error for the trial court to find that Defendant was a prior conviction level III. Accordingly, we remand to the trial court for resentencing.

Remanded for resentencing.

Judges HUNTER and JACKSON concur.

Report per Rule 30(e).