

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-15

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 08 CRS 204997-99, 71595

JOE NATHAN BROWN

Appeal by defendant from judgment entered 17 June 2009 by Judge Forrest D. Bridges in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 August 2010.

Attorney General Roy Cooper, by Assistant Attorney General Karen A. Blum, for the State.

Winifred H. Dillon for defendant-appellant.

BRYANT, Judge.

Defendant Joe Nathan Brown appeals from the judgment entered after a jury found him guilty of felonious breaking or entering, larceny after breaking or entering, possession of drug paraphernalia, and having attained habitual felon status. Defendant contends that the sentence imposed is disproportionate to the crimes he committed, and violates the Eighth Amendment to the United States Constitution. We disagree.

On 30 January 2008, at about midnight, Antoine Morehead was smoking a cigarette on his front porch when he saw a man walking on the opposite side of the street. The man crossed the street and

stood on the porch of the house next door, which was being renovated at the time. The man turned his back to the front door, and kicked the door with his heel three or four times. After kicking the door, the man looked around before he broke a pane of glass in the door. The man then wrapped a white towel or rag around his hand, reached through the broken glass in the door to unlock the door, and entered the house.

After witnessing the break in, Mr. Morehead went back inside his own house and continued to watch the neighbor's house while he called 911. Mr. Morehead described the man to the 911 operator as a "black male, about mid build [sic], gray-hooded sweatshirt, camouflage pants and a book bag on his back." As he waited about ten or fifteen minutes for police to respond, Mr. Morehead could see a flashlight illuminating the interior of the house. Mr. Morehead never saw the man leave the house.

The first officer who arrived believed that Mr. Morehead was the suspect. After they resolved the initial confusion, officers who were stationed about a block away took a suspect into custody, and the officer took Mr. Morehead to identify the suspect. Mr. Morehead was able to identify defendant as the man who broke into the house because he was able to see defendant clearly in the street lights. Defendant was also still wearing the same sweatshirt, camouflage pants, and book bag when Mr. Morehead identified him.

When officers apprehended defendant, they found a metal painter's tool sticking out of his right-front pants pocket.

Searching defendant, officers found a crack pipe in his left-front pocket and a box of razor blades in his rear pocket. Officers found a utility light and two bottles of paint thinner in defendant's backpack. The property owners, who were renovating the house, identified the items taken from their property.

The jury found defendant guilty of felonious breaking or entering, larceny after breaking or entering, possession of drug paraphernalia, and having attained habitual felon status. The trial court found defendant to have a prior record level of VI, and defendant's prior record included felonious breaking and entering convictions dating back to 1993. The trial court consolidated the convictions into one judgment and imposed a presumptive-range term of 135 to 171 months imprisonment, based on defendant's habitual felon status. Defendant appeals.

Defendant's sole argument on appeal is that the sentence imposed based on his habitual felon status is so disproportionate to the crimes he committed as to violate the Eighth Amendment's prohibition against cruel and unusual punishment. Defendant, however, acknowledges in his brief that our Supreme Court has held that enhanced sentences properly imposed pursuant to recidivist statutes, including the Habitual Felon Act, are not so grossly disproportionate as to violate the Eighth Amendment. *State v. Todd*, 313 N.C. 110, 119, 326 S.E.2d 249, 254 (1985). Defendant cites no authority to the contrary, and identifies no irregularity in the sentence imposed in this case. Defendant was not, as he argues, sentenced to 135 to 171 months imprisonment merely because

he broke into a house, stole various construction implements, and possessed a crack pipe. Instead, as this Court has previously held, "[d]efendant was sentenced to that term because he committed multiple felonies over a span of almost twenty years and is a habitual felon." *State v. Hensley*, 156 N.C. App. 634, 639, 577 S.E.2d 417, 421 (2003). Accordingly, we find no error in defendant's conviction or sentence.

No error.

Judges HUNTER, Robert C., and STEELMAN concur.

Reported per Rule 30(e).