

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-280

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

STATE OF NORTH CAROLINA

v.

TREMAINE LAMONT LEWIS,  
Defendant.

Nash County

Nos. 08 CRS 57966-67

09 CRS 50763-64

Appeal by defendant from judgments entered 1 October 2009 by Judge Quentin T. Sumner in Nash County Superior Court. Heard in the Court of Appeals 24 August 2010.

*Attorney General Roy Cooper, by Assistant Attorney General James C. Holloway, for the State.*

*Lisa Skinner Lefler for defendant-appellant.*

HUNTER, Robert C., Judge.

Defendant Tremaine Lamont Lewis appeals from the trial court's judgments entered pursuant to his *Alford* plea to three counts of larceny after breaking and entering and one count of possession of stolen goods. Defendant's sole contention on appeal is that the State failed to present sufficient evidence of his prior convictions to support the trial court's calculation of his prior record level. As the record indicates that defense counsel stipulated to defendant's prior convictions and prior record level, we conclude that the State presented sufficient evidence to support the trial court's calculation. Accordingly, we affirm.

On 1 October 2009, defendant entered an *Alford* plea to three counts of larceny after breaking and entering and one count of possession of stolen goods. Defendant also agreed to testify truthfully against his co-defendants. In exchange for defendant's plea, the State agreed to dismiss other felony charges against defendant and recommend that defendant receive probation. The trial court reviewed the plea with defendant and accepted his plea. The State's prior record level worksheet shows that defendant had seven prior record level points and a prior record level of III. At sentencing, the trial court found that defendant had a prior record level of III, based on seven prior record level points. The trial court imposed four consecutive presumptive-range terms of eight to 10 months imprisonment, but suspended the fourth term and imposed 36 months of supervised probation. Defendant gave oral notice of appeal in open court.

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Defendant's sole argument on appeal is that the State failed to present sufficient evidence of his prior convictions to support the trial court's calculation of his prior record level. N.C. Gen. Stat. § 15A-1340.14(f) (2009), provides four "methods" through which a prior conviction may be proven:

- (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.

(Emphasis added.) A defendant's trial counsel may stipulate to the defendant's prior convictions. *State v. Scott*, 180 N.C. App. 462, 465-66, 637 S.E.2d 292, 294 (2006), *disc. review denied*, 361 N.C. 367, 644 S.E.2d 560 (2007). "'While a stipulation need not follow any particular form, its terms must be definite and certain in order to afford a basis for judicial decision, and it is essential that they be assented to by the parties or those representing them.'" *State v. Alexander*, 359 N.C. 824, 828, 616 S.E.2d 914, 917 (2005) (quoting *State v. Powell*, 254 N.C. 231, 234, 118 S.E.2d 617, 619 (1961)).

Although defendant contends that "there is no evidence [in] the record that the State offered any evidence at all about [defendant]'s prior record level[,] " the State's prior record level worksheet shows that defense counsel unequivocally stipulated to defendant's prior convictions. The last page of the worksheet reads:

The prosecutor and defense counsel, or the defendant, if not represented by counsel, stipulate to the information set out in Sections I and IV of this form, and agree with the defendant's prior record level or prior conviction level as set out in Section II based on the information herein.

The date and defense counsel's signature appear underneath this paragraph. Section IV of the worksheet lists four prior convictions for defendant: three Class H felonies and one Class 1

misdemeanor. Section I of the worksheet shows that defendant had seven total prior record level points and a prior record level of III, based on his prior offenses – the same calculation made by the trial court. Defendant also did not object to the trial court's prior record level calculation during sentencing. See *id.* at 829, 616 S.E.2d at 918 ("[D]uring sentencing, a defendant need not make an affirmative statement to stipulate to his or her prior record level[,] . . . particularly if defense counsel had an opportunity to object to the stipulation in question but failed to do so."). Accordingly, we conclude that the trial court properly calculated defendant's prior record level based on defense counsel's stipulation. We, therefore, affirm.

Affirmed.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).