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NO. COA10-380

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 2010

STATE OF NORTH CAROLINA

v.

Brunswick County  
Nos. 08 CRS 6058, 55236

JOHN HENEREY FREEMAN, Jr.

Appeal by defendant from judgments entered 18 November 2009 by Judge Franklin F. Lanier in Brunswick County Superior Court. Heard in the Court of Appeals 25 October 2010.

*Attorney General Roy Cooper, by Associate Attorney General Eryn E. Linkous, for the State.*

*Winifred H. Dillon for defendant-appellant.*

MARTIN, Chief Judge.

Defendant appeals from judgments entered pursuant to defendant's guilty plea to driving while license revoked and a jury verdict finding him guilty of possession of cocaine, possession of drug paraphernalia, and operating a motor vehicle on a street or highway at a speed greater than the posted speed limit of twenty miles-per-hour. The trial court sentenced defendant to a term of 120 days imprisonment for the speeding and possession of drug paraphernalia convictions and a consecutive term of 120 days imprisonment for driving while licensed revoked. The court further sentenced defendant to a suspended term of six to eight months

imprisonment for possession of cocaine and placed defendant on supervised probation for thirty-six months, to begin upon his completion of his active sentences. Defendant gave oral notice of appeal in open court.

On appeal, defendant's sole argument is that the trial court erred in accepting his guilty plea to driving while license revoked because the court failed to comply with the provisions of N.C.G.S. § 15A-1022 (2009). We agree.

Pursuant to N.C.G.S. § 15A-1022, the trial court may not accept a guilty plea from a defendant without personally addressing the defendant and:

- (1) Informing him that he has a right to remain silent and that any statement he makes may be used against him;
- (2) Determining that he understands the nature of the charge;
- (3) Informing him that he has a right to plead not guilty;
- (4) Informing him that by his plea he waives his right to trial by jury and his right to be confronted by the witnesses against him;
- (5) Determining that the defendant, if represented by counsel, is satisfied with his representation;
- (6) Informing him of the maximum possible sentence on the charge for the class of offense for which the defendant is being sentenced, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge; and
- (7) Informing him that if he is not a citizen of the United States of America, a plea of guilty or no contest may result in deportation, the exclusion from admission to

this country, or the denial of naturalization under federal law.

N.C. Gen. Stat. § 15A-1022(a) (2009). Additionally, the trial court "may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea." N.C. Gen. Stat. § 15A-1022(c) (2009). Further, a record of the plea proceedings must be made and preserved:

A verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest and of any preliminary consideration of a plea arrangement by the judge pursuant to G.S. 15A-1021(c) must be made and preserved. This record must include the judge's advice to the defendant, and his inquiries of the defendant, defense counsel, and the prosecutor, and any responses. If the plea arrangement has been reduced to writing, it must be made a part of the record; otherwise the judge must require that the terms of the arrangement be stated for the record and that the assent of the defendant, his counsel, and the prosecutor be recorded.

N.C. Gen. Stat. § 15A-1026 (2009).

The trial court's failure to comply with the mandate of N.C.G.S. § 15A-1022 constitutes reversible error only where a defendant can show he was prejudiced as a result of the trial court's lack of compliance. *State v. Hendricks*, 138 N.C. App. 668, 670, 531 S.E.2d 896, 898 (2000). In determining whether a defendant has shown prejudice, "we must look to the totality of the circumstances and determine whether non-compliance with the statute either affected defendant's decision to plead or undermined the plea's validity." *Id.* Where there is a signed transcript of plea, which includes defendant's responses to the inquiries mandated by N.C.G.S. § 15A-1022, the trial court's failure to strictly follow

the statute does not result in prejudice to the defendant. *Id.* at 670-71, 531 S.E.2d at 898-99; *see also State v. Crain*, 73 N.C. App. 269, 271-72, 326 S.E.2d 120, 122 (1985) ("The State's evidence from the plea transcript, the court's questions to defendant and the testimony of defendant's attorney all tend to support the State's contention that defendant was properly and adequately informed of the consequence of his plea and that he entered into the plea arrangement freely, knowingly and voluntarily."); *State v. Thompson*, 16 N.C. App. 62, 63, 190 S.E.2d 877, 878 ("The record reveals that the defendant signed the 'transcript of plea' contained in the record and that the trial judge, after the defendant was sworn to tell the truth, made careful inquiry of the defendant regarding his pleas of guilty. The record is replete with evidence to support the adjudication that the defendant's pleas of guilty were in fact freely, understandingly, and voluntarily given."), *cert. denied*, 282 N.C. 155, 191 S.E.2d 604 (1972). However, a defendant is prejudiced where "there is no indication in the record of compliance, even in part, with G.S. § 15A-1022 or 15A-1026, nor does the record contain any transcript of plea or indicate any factual basis for the plea from which this Court may evaluate whether it was properly accepted." *State v. Glover*, 156 N.C. App. 139, 147, 575 S.E.2d 835, 840 (2003).

In the instant case, defendant initially entered pleas of not guilty to all of the charges against him. However, after the jury had been selected, defendant informed the trial court that he was prepared to enter a guilty plea to driving while license revoked.

The trial court then stated it did not "do" transcripts of plea for misdemeanors and made the following inquiry of defendant:

Q. Mr. Freeman, how do you plead to driving while your license was revoked, sir?

A. Guilty, sir.

Q. All right. Have you entered this plea of your own free will, fully understanding what you're doing?

A. Yes, sir.

Q. It's my understanding there is no plea arrangement in place. This plea is just an open plea, prior to the trial starting. Is that correct?

A. Yes, sir.

Q. Do you have any questions about anything, Mr. Freeman?

A. No, sir.

Q. All right. The Court accepts your plea. It was recorded and I will reserve sentencing.

This inquiry is wholly insufficient to meet the mandate of N.C.G.S. § 15A-1022. The trial court found no factual basis for the plea, and made none of the inquiries set forth in N.C.G.S. § 15A-1022(a). As no transcript of plea was submitted to the trial court, we must hold the trial court's substantial non-compliance with N.C.G.S. § 15A-1022 prejudiced defendant. Accordingly, we vacate the judgment and sentence in 08 CRS 555236 for driving while license revoked.

Vacated and remanded.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).