NO. COA12-620
NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2013

STATE OF NORTH CAROLINA

v. Hertford County
Nos. 10 CRS 50153-54

DENNIE LEE RANKINS,
Defendant.

Appeal by defendant from judgments entered 7 September 2010 by Judge Cy A. Grant in Hertford County Superior Court. Heard in the Court of Appeals 26 November 2012.

Roy Cooper, Attorney General, by Sherri G. Horner, Assistant Attorney General, for the State.

Staples Hughes, Appellate Defender, by Kathleen M. Joyce, Assistant Appellate Defender, for defendant-appellant.

MARTIN, Chief Judge.

Defendant appeals from the trial court's denial of his motion to withdraw his plea of no contest to charges of first-degree kidnapping and attempted second-degree sexual offense. We affirm.

On 8 February 2010, the Hertford County Grand Jury returned indictments charging defendant with first-degree rape, first-

degree sexual offense, first-degree kidnapping, and possession of a firearm by a felon. Defendant had been convicted of second-degree murder in 1990 and received a life-sentence, but had been released on parole when he committed the instant offenses. Defendant entered a plea of no contest to first-degree kidnapping and attempted second-degree sexual offense, and the State dismissed the remaining charges. Defendant's plea arrangement called for him to receive a sentence of 96 to 125 months imprisonment for his kidnapping conviction and a consecutive sentence of 84 to 110 months imprisonment for his sex offense conviction, both to run concurrent with any sentence he would have to serve for any violation of his parole from his second-degree murder conviction. The trial court entered its judgments on 7 September 2010 and sentenced defendant in accordance with the terms of his plea.

Approximately seven days after entry of the court's judgments, defendant filed a motion to withdraw his plea. In the motion defendant argued he should be allowed to withdraw his plea because: (1) the charge for possession of a firearm by a felon "was put on the transcript of plea, and plea arrangement behind [his] back once he left the court room"; (2) the trial court erred in setting his sentence for his sex offense

conviction to run at the expiration of his sentence for second-degree murder; and (3) the maximum possible sentence that he could have received for the offenses to which he was pleading was never discussed or mentioned at the plea hearing. By order entered 24 February 2012, the trial court denied defendant's motion to withdraw his plea. Defendant appeals.

We first address the State's motion to dismiss defendant's appeal. The State argues that because defendant's motion to withdraw his plea was made less than ten days after entry of judgment against him, it is a motion for appropriate relief made pursuant to N.C. Gen. Stat. § 15A-1414, which is only reviewable in an appeal regularly taken. N.C. Gen. Stat. § 15A-1422(b) (2011) ("The grant or denial of relief sought pursuant to G.S. 15A-1414 is subject to appellate review only in an appeal regularly taken."); *State v. Handy*, 326 N.C. 532, 535, 391 S.E.2d 159, 160-61 (1990) ("A motion for appropriate relief is a *post-verdict* motion (or a post-sentencing motion where there is no verdict) made to correct errors occurring prior to, during, and after a criminal trial."). The State argues defendant has no appeal of right from the judgments entered against him pursuant to his plea because his sentence is in the presumptive

range, and he is not raising an issue regarding his prior record level, type of sentence, or term of imprisonment. N.C. Gen. Stat. § 15A-1444(a1), (a2) (2011). The State contends defendant's appeal is not regularly taken, and he can only get review of the order denying his motion to withdraw his plea through issuance of a writ of certiorari. Thus, out of an abundance of caution, after the State filed its motion to dismiss defendant's appeal, defendant filed a petition for writ of certiorari. Nevertheless, our Supreme Court has held that N.C. Gen. Stat. § 15A-1444(e) "provides that when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court." *State v. Dickens*, 299 N.C. 76, 79, 261 S.E.2d 183, 185 (1980). Accordingly, we deny the State's motion to dismiss defendant's appeal and defendant's petition for writ of certiorari.[1]

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[1] In his petition for writ of certiorari defendant also asked this Court to directly review the trial court's acceptance of his plea and the judgments entered against him. Defendant's arguments in his brief on appeal, however, are set forth entirely within his claim that the trial court erred in denying his motion to withdraw his plea. Accordingly, we decline to review the judgments directly and address defendant's arguments only as they relate to the trial court's denial of his motion to withdraw his plea.

On appeal, defendant argues the trial court erred in denying his motion to withdraw his plea because his plea was not knowingly and voluntarily made. Defendant argues he did not understand the plea and was reluctant to enter it, as shown by the fact that the written transcript of plea form was still being filled out while the trial court was inquiring of him regarding his acceptance of the plea and his confusion concerning the dismissal of some of the charges against him. Defendant also argues that errors on the written transcript of plea form show the confusion and haste surrounding the plea and necessitate the withdrawal of the plea. However, defendant failed to raise these arguments before the trial court and they are not properly before us. *State v. Alston*, 139 N.C. App. 787, 791, 534 S.E.2d 666, 668 (2000). Moreover, we note that the trial court sentenced defendant pursuant to his plea arrangement, and while defendant's current sentences are consecutive to each other they are not consecutive to any sentence he may have to serve for violating his parole from his conviction for second-degree murder. Additionally, the charge for possession of a firearm by a felon does not appear on the transcript of plea form, and the transcript of defendant's plea hearing indicates that the charge was dismissed.

Defendant further argues the trial court erred in denying his motion to withdraw his plea because the court did not properly inform him of the maximum possible sentence he could have received for the offenses to which he was pleading no contest. Defendant's argument is misplaced.

Prior to accepting a plea of guilty or no contest a trial court must personally address the defendant and inform him of the maximum possible sentence he could receive for the offenses for which he will be sentenced. N.C. Gen. Stat. § 15A-1022(a)(6) (2011). In reviewing the acceptance of a defendant's plea, we do not impose a "technical, ritualistic approach," but rather look at 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." *State v. Szucs*, 207 N.C. App. 694, 701-02, 701 S.E.2d 362, 367-68 (2010) (citations and internal quotation marks omitted). This Court has held that a trial court's failure to comply with the mandate of N.C.G.S. § 15A-1022(a)(6) may constitute error when it calls into question the voluntariness of his plea. *See State v. Reynolds*, __ N.C. App. __, __, 721 S.E.2d 333, 336 (vacating the defendant's convictions where the trial court informed the defendant that

the maximum sentence he could receive upon his guilty plea was 168 months, when the actual maximum sentence was 171 months), *cert. denied and disc. review denied*, __ N.C. __, 727 S.E.2d 285 (2012).

Defendant's transcript of plea form correctly states that the maximum sentence defendant could receive for the offenses to which he was pleading was 429 months imprisonment. The trial court did not inform defendant of this maximum during its plea colloquy with defendant, and defendant asserts that this error invalidates his plea because it was not knowingly and voluntarily entered. However, at the plea hearing, the trial court made the following inquiry of defendant:

> Q. Now have you agreed to plead no contest as part of a plea bargain arrangement?
>
> A. Yes, sir.
>
> Q. Your plea bargain arrangement is as follows: That upon your plea of no contest to first-degree kidnapping and attempted second-degree sex offense you shall receive a minimum of 96 to 125 months on the kidnapping and a minimum of 84 to a maximum of 110 months on the sex offense for a total sentence of a minimum of 180 months to a maximum of 235 months in prison. And that these two sentences shall run at the expiration of each other but that these two sentences shall run concurrent with any sentence you may have to serve on the second-degree murder charge.

A. Yes, sir.

Q. Is this your full plea arrangement?

A. Yes, sir.

Q. Do you accept this arrangement?

A. Yes, sir.

Q. Other than this arrangement has anyone made you any promises or threatened you in any way to cause you to enter this plea against your wishes?

A. No, sir.

Q. Do you enter this plea of your own free will, sir, fully understanding and knowing what you are doing?

A. Yes, sir.

Thus, while the trial court did not inform defendant of the highest maximum sentence he could have received under the law, the court fully informed defendant of the maximum sentences he would actually receive under his plea arrangement. Defendant stated his plea was entered knowingly and intelligently and of his own free will, and we cannot say the trial court's error affected defendant's decision to enter his plea or otherwise undermined his plea's validity. Accordingly, we hold the trial court did not err in accepting defendant's plea and properly denied defendant's motion to withdraw his plea.

Affirmed.

Judges STROUD and HUNTER, JR. concur.

Report per Rule 30(e).