

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-211
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v. Wayne County
Nos. 00 CRS 6696
00 CRS 55293

DENNIS EARL YELVERTON,
Defendant.

Appeal by defendant from judgment entered 30 January 2012 by Judge W. Allen Cobb, Jr. in Wayne County Superior Court. Heard in the Court of Appeals 29 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General Christopher H. Wilson, for the State.

Reece & Reece, by Michael J. Reece, for defendant-appellant.

GEER, Judge.

Defendant appeals from a judgment imposing an active sentence of 100 to 129 months imprisonment upon jury convictions of possession of a firearm by a convicted felon and being a habitual felon. His sole contention on appeal is that the trial court erred by sentencing him as a Level II offender when the only evidence offered to prove his prior record level consisted

of unsworn statements by the prosecutor and a prior record level worksheet not signed by defendant or his counsel.

We review a court's sentence to determine whether the sentence is supported by the evidence at the trial and sentencing hearing. *State v. Deese*, 127 N.C. App. 536, 540, 491 S.E.2d 682, 685 (1997). "The trial court's assignment of a prior record level is a conclusion of law which we review *de novo*." *State v. Goodwin*, 190 N.C. App. 570, 576, 661 S.E.2d 46, 50 (2008).

"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." N.C. Gen. Stat. § 15A-1340.14(f) (2011). Proof may be by: "(1) [s]tipulation of the parties[;] (2) [a]n original or copy of the court record of the 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[; or] (4) [a]ny other method found by the court to be reliable." *Id.* Generally, "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." *State v. Eubanks*, 151 N.C. App. 499,

505, 565 S.E.2d 738, 742 (2002). However, under certain circumstances, defendant may be deemed to have stipulated to the worksheet by failing to object or contest the accuracy of the worksheet. *State v. Hurley*, 180 N.C. App. 680, 685, 637 S.E.2d 919, 923 (2006).

In *Hurley*, the prosecutor called the court's attention to the convictions listed in the prior record level worksheet and asked the trial court to impose a certain sentence. *Id.* at 684, 637 S.E.2d at 923. The trial court asked defendant's counsel whether he had anything to say, and counsel responded: "'Your Honor, I request whatever sentence the Court gives him he be granted work release.'" *Id.* This Court noted that "[i]n the instant case, defendant had an opportunity to object and rather than doing so, asked for work release. Defendant did not object to any of the convictions shown on the worksheet at any time during the hearing." *Id.* at 685, 637 S.E.2d at 923. The Court then concluded: "While the sentencing worksheet submitted by the State was alone insufficient to establish defendant's prior record level, the conduct of defendant's counsel during the course of the sentencing hearing constituted a stipulation of defendant's prior convictions sufficient to meet the requirements of N.C. Gen. Stat. § 15A-1340.14(f)." *Id.*

This case is materially indistinguishable from *Hurley*. Here, the prosecutor handed the prior record level worksheet to the trial court. Upon receiving the document, the court asked defendant's counsel, "Do you want to be heard regarding sentence?" Much like the attorney in *Hurley*, defendant's counsel responded by asking the court to impose the most lenient sentence possible and to grant work release. At no point did counsel object to the prior record level worksheet. Counsel did not make any further arguments concerning sentencing.

We conclude counsel's conduct constituted a stipulation to the convictions listed in the prior record level worksheet and that the worksheet, in turn, supports the court's determination of prior record points and prior record level. See *id.* Since defendant makes no further arguments regarding his trial, we hold defendant received a trial free of prejudicial error.

No error.

Judges ERVIN and DILLON concur.

Report per Rule 30(e).