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NO. COA13-231
NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2013

STATE OF NORTH CAROLINA

v. Burke County
Nos. 10 CRS 1059; 11 CRS 1164;
KENNETH RAY PHILLIPS 51557; 12 CRS 14-15

On writ of certiorari to review judgment entered 16 October 2012 by Judge Nathaniel J. Poovey in Burke County Superior Court. Heard in the Court of Appeals 9 September 2013.

Attorney General Roy Cooper, by Assistant Attorney General Katherine A. Murphy, for the State.

William B. Gibson for defendant-appellant.

McCULLOUGH, Judge.

On 7 February 2011, defendant Kenneth Ray Phillips was indicted for larceny and possession of stolen goods, namely, a 1989 Dodge Ram truck belonging to Janice Wright (10 CRS 1059). On 2 May 2011, defendant was indicted on charges of felonious breaking or entering, felonious larceny after breaking or entering, and possession of stolen goods (11 CRS 1164). These charges related to defendant's theft and possession of a

Craftsman toolbox with assorted tools and a Honda pressure washer belonging to Joseph Beam. On 26 May 2011, defendant was arrested and charged with possession of a schedule III controlled substance. On 20 September 2011, defendant was convicted in district court of simple possession of a schedule III controlled substance. Defendant gave notice of appeal to superior court. On 3 January 2012, defendant was indicted on charges of felonious breaking or entering, felonious larceny, and having attained the status of an habitual felon.

On 16 October 2012, defendant pled guilty pursuant to a plea agreement to all charges. The terms of the plea agreement provided that all of the charges would be consolidated for judgment and sentencing would be left to the discretion of the trial court. The trial court sentenced defendant to a single term of 117 to 150 months' imprisonment.

On 25 October 2012, defendant gave written notice of appeal. On 2 April 2013, pursuant to a motion to dismiss filed by the State, this Court dismissed defendant's appeal. On 8 April 2013, we granted defendant's petition for writ of certiorari for the purpose of reviewing the judgment and commitment.

Defendant's sole argument is that the trial court erred by entering judgment for both felony larceny and felony possession of the same stolen goods in violation of *State v. Perry*, 305 N.C. 225, 287 S.E.2d 810 (1982) (*overruled on other grounds by State v. Munford*, 364 N.C. 394, 699 S.E.2d 911 (2010)). We agree.

In *Perry*, our Supreme Court held that although a defendant may be indicted and tried on charges of larceny and possession of the same property, he may be convicted of only one of the two offenses. *Id.* at 236-37, 287 S.E.2d at 817. Although they are separate and distinct offenses, the "[l]egislature did not intend to punish an individual for larceny of property and the possession of the same property which he stole." *Id.* at 235, 287 S.E.2d at 816. The fact that the charges were consolidated into one judgment for purposes of sentencing does not cure the error. *State v. Owens*, 160 N.C. App. 494, 499, 586 S.E.2d 519, 523 (2003).

Here, because the Dodge Ram truck was the same item involved in both the charges for larceny and possession of stolen goods in 10 CRS 1059, and the Craftsman tool box with assorted tools and Honda pressure washer were the same goods involved in both the charges for larceny and possession of

stolen goods in 11 CRS 1164, we conclude that the trial court erred in failing to arrest judgment for defendant's convictions of felonious possession of stolen goods in each case. Accordingly, we arrest judgment on defendant's convictions for felonious possession of stolen goods in cases 10 CRS 1059 and 11 CRS 1164, and remand for entry of judgment and resentencing on the remaining convictions.

Judgment arrested in part and remanded for resentencing.

Judges HUNTER (Robert C.) and BRYANT concur.

Report per Rule 30(e).