

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-484  
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Robeson County  
Nos. 10 CRS 55964, 55960; 11  
CRS 827

LEONARD EARL STRICKLAND

Appeal by defendant from judgment entered 30 May 2012 by Judge Richard D. Boner in Robeson County Superior Court. Heard in the Court of Appeals 14 October 2013.

*Attorney General Roy Cooper, by Assistant Attorney General Lauren Tally Earnhardt, for the State.*

*Bryan Gates, for defendant-appellant.*

CALABRIA, Judge.

Leonard Earl Strickland ("defendant") appeals from a judgment entered upon jury verdicts finding him guilty of three counts of failing to comply with the sex offender registration laws. We remand for a new sentencing hearing.

Defendant was indicted for three counts of failing to comply with the sex offender registration law. Specifically,

defendant failed to give notice of a change of address and failed to comply with the sex offender registration law by failing to return a verification notice. On 30 May 2012, in Robeson County Superior Court, the jury returned a verdict finding defendant guilty of the offenses. During sentencing, the State provided a copy of defendant's prior record level worksheet. Defendant's prior convictions included a 22 October 2007 conviction in Florida for a Sexual Offender Violation that was categorized as a Class F felony. Defendant stipulated to the convictions shown on the prior record level worksheet, and the trial court found, "based upon stipulations," that defendant was a prior record level V offender. The trial court sentenced defendant to a minimum of 28 to a maximum of 34 months in the North Carolina Division of Adult Correction. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred in sentencing him as a level V offender since the State did not offer any evidence to prove the proper classification of the Florida conviction pursuant to N.C. Gen. Stat. § 15A-1340.14. We agree, and the State concedes that it did not present evidence to show that defendant's prior conviction in Florida was substantially similar to the North Carolina equivalent.

Section 15A-1340.14 of the General Statutes addresses the classification of out-of-state convictions and provides:

Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony . . . . If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points.

N.C. Gen. Stat. § 15A-1340.14(e) (2011). This Court has found that the trial court errs where sentencing is based on a prior out-of-state conviction that has not been proved to be substantially similar to the North Carolina equivalent. *State v. Morgan*, 164 N.C. App. 298, 309, 595 S.E.2d 804, 812 (2004). “[T]he question of whether a conviction under an out-of-state statute is substantially similar to an offense under North Carolina statutes is a question of law to be resolved by the trial court.” *State v. Hanton*, 175 N.C. App. 250, 255, 623 S.E.2d 600, 604 (2006).

In this case, the State failed to present any evidence, and the trial court did not find that the Florida offense was

substantially similar to the North Carolina offense so as to support the classification listed on the prior record level worksheet. Although defendant stipulated to the existence of the Florida conviction, "a stipulation regarding out-of-state convictions is insufficient, absent a determination of substantial similarity by the trial court, to support the trial court's prior record determination." *State v. Chappelle*, 193 N.C. App. 313, 333, 667 S.E.2d 327, 339 (2008) (citing *State v. Palmateer*, 179 N.C. App. 579, 581-82, 634 S.E.2d 592, 593-94 (2006)). Thus, the trial court erred in sentencing defendant as a prior record level V offender and we remand for resentencing. See *State v. Moore*, 188 N.C. App. 416, 426, 656 S.E.2d 287, 294 (2008) (remanded for resentencing where defendant stipulated to prior record level, but the State failed to present evidence that Ohio offenses were substantially similar to North Carolina offenses).

Remanded for new sentencing hearing.

Judges STEELMAN and STROUD concur.

Report per Rule 30(e).