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NO. COA14-970  
NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2015

STATE OF NORTH CAROLINA

v. Guilford County  
No. 13 CRS 85912-14, 16  
ANTHONY DEWAUN HARDEN No. 13 CRS 85908

Appeal by defendant from judgment entered 6 May 2014 by Judge V. Bradford Long in Guilford County Superior Court. Heard in the Court of Appeals 3 February 2015.

*Attorney General Roy Cooper, by Assistant Attorney General Ann Stone, for the State.*

*Peter Wood for defendant.*

TYSON, Judge.

Defendant appeals from judgment entered following his plea of guilty, in which the trial court sentenced him to an active prison term as a Prior Record Level IV offender. We hold defendant has failed to show any prejudice from the trial court's determination of his prior record level and the sentence imposed.

I. Background

Defendant entered pleas of guilty to possession of a firearm by a felon, robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous weapon, assault with a deadly weapon, and felonious fleeing to elude arrest on 6 May 2014. Defendant's plea agreement states: "In return for not being prosecuted as a habitual felon, defendant shall plead guilty and receive an active sentence of 66-91 months. Defendant stipulates he/she is a record level IV for sentencing purposes."

The prior record level worksheet shows the trial court found defendant's record included four prior convictions, three felonies and one misdemeanor: (1) a 23 January 2004 conviction for felonious larceny, a Class H felony for which the court assigned two prior record level points; (2) a 2 August 2006 conviction for possession with intent to sell and deliver cocaine, a Class H felony for which the court assigned two prior record level points; (3) a 24 February 2005 conviction for driving while impaired, a Class 1 misdemeanor for which the court assigned one prior record level point; and, (4) a 13 October 2009 conviction for involuntary manslaughter, a Class F felony for which the court assigned four prior record level points.

The court totaled and assigned nine prior record level points for these four prior convictions. The court assigned and added

one additional point because "all the elements of the present offense are included in any prior offense," pursuant to N.C. Gen. Stat. § 15A-1340.14(b)(6) (2013). After assigning ten prior record level points, the trial court sentenced defendant as a Prior Record Level IV offender. The court consolidated the charges for judgment and sentenced defendant to an active minimum term of 66 months and a maximum term of 91 months in prison. Defendant appeals.

## II. Plea and Stipulations

Defendant argues the trial court erred in determining all the elements of one of his present offenses are included in a prior offense for which he was convicted, and adding an additional point to his prior record level calculation pursuant to N.C. Gen. Stat. § 15A-1340.14(b)(6) (2013). Because robbery with a dangerous weapon was the most serious offense included in his plea, defendant contends the trial court was required to find all the elements of that offense are included in one of his prior conviction offenses.

Pursuant to his plea agreement, defendant stipulated he was a Prior Record Level IV offender and was sentenced to an active prison term of 66-91 months. The most serious offense included in defendant's plea is robbery with a dangerous weapon, a Class D felony. N.C. Gen. Stat. § 14-87 (2013). The trial court consolidated the offenses for judgment and was required to sentence

defendant within the statutory range for a Class D felony. See N.C. Gen. Stat. § 15A-1340.15(b) (2013) (where offenses are consolidated for judgment, “[t]he judgment shall contain a sentence disposition specified for the class of offense and prior record level of the most serious offense, and its minimum sentence of imprisonment shall be within the ranges specified for that class of offense and prior record level[.]” ).

Defendant contends he should have been sentenced as a Prior Record Level III offender, because the trial court erroneously found that all the elements of robbery with a dangerous weapon are included in a prior offense for which defendant was convicted. The court added an additional point to his prior record level calculation. Defendant’s sentence is consistent with the mitigated range for a Class D felony. See N.C. Gen. Stat. § 15A-1340.17(c) and (e) (2013).

A mitigated sentence for a Class D felony as a Level IV offender could range from a minimum of 58-78 months to a maximum of 82-106 months imprisonment. *Id.* In comparison, a minimum sentence for a Class D felony as a Level III offender could range from a minimum of 51-67 months to a maximum of 74-93 months imprisonment. *Id.* The mitigated range sentence the trial court

imposed in this case was authorized for either a Prior Record Level III or a Prior Record Level IV offender.

III. Harmless Error Analysis

This Court applies a harmless error analysis to alleged errors in the calculation of prior record level points. *State v. Bethea*, 173 N.C. App. 43, 61, 617 S.E.2d 687, 698 (2005); *State v. Smith*, 139 N.C. App. 209, 219-20, 533 S.E.2d 518, 524, *appeal dismissed*, 353 N.C. 277, 546 S.E.2d 391 (2000).

Defendant argues he should have been sentenced as a Level III offender, but his sentence was within the mitigated range for a Class D felony for both Level III and Level IV offenders. Presuming *arguendo* the trial court improperly added an additional point to defendant's prior record level calculation pursuant to N.C. Gen. Stat. § 15A-1340.14(b)(6), defendant has failed to show any resulting prejudice. Any error in calculating defendant's prior record level was harmless. *See State v. Ledwell*, 171 N.C. App. 314, 321, 614 S.E.2d 562, 567 (2005), *cert. denied*, \_\_\_ N.C. \_\_\_, 702 S.E.2d 503 (2010) (although the defendant's prior record level should have been calculated as a Level V instead of a Level VI, the defendant "suffered no prejudice" because his sentence was

within the presumptive range for his conviction offense for a Level V offender). Defendant's argument is overruled.

IV. Conclusion

Defendant has failed to show prejudice when he was sentenced as a Prior Record Level IV offender instead of a Prior Record Level III offender. The sentence he received was within the mitigated range for a Class D felony for either a Level III or Level IV offender. Any error in the calculation of defendant's prior record level was not prejudicial and harmless.

No prejudicial error.

Judges ELMORE and DAVIS concur.

Report per Rule 30(e).