IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-361

Filed: 18 October 2016

Cleveland County, No. 12CRS3538

STATE OF NORTH CAROLINA

v.

DAVID ANTHONY MANNO, Defendant.

Appeal by Defendant from judgment entered 2 December 2015 by Judge William Todd Pomeroy in Cleveland County Superior Court. Heard in the Court of Appeals 6 September 2016.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Joseph L. Hyde, for the State.

Appellate Defender G. Glenn Gerding, by Assistant Appellate Defender Paul M. Green, for the Defendant.

DILLON, Judge.

Defendant David Anthony Manno ("Defendant") appeals from the trial court's judgment, which resentenced him, in relevant part, on the basis of one out-of-state conviction. For the following reasons, we affirm.

I. Background

Defendant was convicted of a number of sex crimes. On appeal, this Court remanded for resentencing, concluding that the State had failed to establish that

"Defendant's South Carolina convictions for receiving stolen goods and failure to pay for gasoline were substantially similar to the North Carolina offenses of receiving stolen goods and larceny of motor fuel." *State v. Manno*, No. COA15-33, 2015 WL 6703478, at *10 (N.C. Ct. App. Nov. 3, 2015). On 2 December 2015, Defendant was resentenced to a minimum of twenty-one months imprisonment after the trial court concluded that his South Carolina convictions were substantially similar to the North Carolina offenses. Defendant gave oral notice of appeal.

II. Standard of Review

A trial court's determination regarding the use of out-of-state convictions for sentencing is reviewed *de novo*. *State v. Fortney*, 201 N.C. App. 662, 669, 687 S.E.2d, 518, 524 (2010).

III. Analysis

Defendant's sole argument on appeal is that the trial court erred in awarding one point for Defendant's South Carolina conviction for failure to pay for gasoline. Specifically, Defendant contends that this conviction is not substantially similar to North Carolina's law which criminalizes larceny of motor fuel.

Whether an out-of-state conviction is substantially similar for purposes of N.C. Gen. Stat. § 15A-1340.14(e) "is a question of law involving comparison of the elements of the out-of-state offense to those of the North Carolina offense." *Fortney*, 201 N.C. App. at 671, 687 S.E.2d at 525.

Defendant argues that the South Carolina offense which was used to enhance his sentence is not substantially similar to the North Carolina offense as only the North Carolina offense contains an "intent" element. We disagree.

The relevant North Carolina statute, N.C. Gen. Stat. § 14-72.5, does contain an "intent" element, providing that "[i]f any person shall take and carry away motor fuel valued at less than one thousand dollars ($1,000) from an establishment where motor fuel is offered for retail sale *with the intent* to steal the motor fuel, that person shall be guilty of a Class 1 misdemeanor." N.C. Gen. Stat. § 14-72.5(a) (2013) (emphasis added).

The relevant South Carolina criminal statute, S.C. CODE ANN. § 16-13-185, also contains an "intent" element, providing in pertinent part as follows:

> (A) No person shall drive a motor vehicle so as to cause it to leave the premises of an establishment at which gasoline offered for retail sale was dispensed into the fuel tank of the motor vehicle unless due payment or authorized charge for the gasoline so dispensed has been made.
>
> (B) A person who *intentionally* violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both . . . .

S.C. CODE ANN. § 16-13-185 (2016) (emphasis added).

As evidenced by the plain statutory language, Defendant's argument that the South Carolina statute does not contain an intent element fails. The "requirement

set forth in N.C. Gen. Stat. § 15A–1340.14(e) is not that the statutory wording precisely match, but rather that the offense be substantially similar." *State v. Sanders*, 225 N.C. App. 227, 229–30, 736 S.E.2d 238, 240 (2013) (internal quotation marks omitted), *aff'd*, 367 N.C. 716, 766 S.E.2d 331 (2014). As proper statutory interpretation requires that we "give effect to the plain meaning of the words" of a clear and unambiguous statute, *State v. Byrd*, 363 N.C. 214, 219, 675 S.E.2d 323, 325 (2009), we hold that the South Carolina conviction and North Carolina offense are substantially similar.

IV. Conclusion

As the South Carolina conviction for failure to pay for gasoline is substantially similar to the North Carolina offense of larceny of motor fuel, we affirm the trial court's judgment resentencing Defendant.

AFFIRMED.

Judges BRYANT and STEPHENS concur.

Report per Rule 30(e).