IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-526

Filed: 20 December 2016

Iredell County, No. 13 CRS 051208-15

STATE OF NORTH CAROLINA

v.

ASKIA NURIDDIN SHABAZZ

Appeal by Defendant from judgments entered 7 December 2015 by Judge Christopher W. Bragg in Superior Court, Iredell County. Heard in the Court of Appeals 12 December 2016.

Attorney General Roy Cooper, by Assistant Attorney General Andrew O. Furuseth, for the State.

The Law Office of Sterling Rozear, PLLC, by Sterling Rozear, for Defendant-Appellant.

McGEE, Chief Judge.

Askia Nuriddin Shabazz ("Defendant") agreed to plead guilty pursuant to a plea agreement to eight counts of identity theft on 6 October 2015. Judgment was continued. The court consolidated the convictions into two judgments and sentenced Defendant to two consecutive terms of 25 to 39 months of imprisonment on 7 December 2015. Defendant filed written notice of appeal, and filed a petition for writ of certiorari.

In his petition for writ of certiorari, Defendant acknowledges his written notice of appeal was not accompanied by a certificate of service in violation of N.C. R. App. P. 4 and N.C. R. App. P. 26. Defendant asks this Court to review his judgments under N.C. R. App. P. 21(a) (writ of certiorari may be issued in appropriate circumstances when the right to prosecute an appeal has been lost by failure to take timely action). Defendant additionally seeks review of whether the trial court erred by accepting his guilty plea. In our discretion, we grant Defendant's petition for writ of certiorari in order to reach the merits of his appeal.

Defendant contends there was an insufficient factual basis to support the plea. We are not persuaded.

Pursuant to N.C. Gen. Stat. § 15A–1022(c), a trial court "may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea." N.C. Gen. Stat. § 15A–1022(c) (2015). There must be an independent determination by the trial judge that some substantive material independent of the plea itself exists before a trial court can accept a guilty plea. *State v. Agnew*, 361 N.C. 333, 336, 643 S.E.2d 581, 583 (2007) (citation omitted). In determining whether there is a factual basis for the plea, N.C. Gen. Stat. § 15A-1022(c) provides:

> (c) *The judge may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea.* This determination may be based upon information including but not limited to:
>
> (1) A statement of the facts by the prosecutor.

> (2) A written statement of the defendant.
>
> (3) An examination of the presentence report.
>
> (4) Sworn testimony, which may include reliable hearsay.
>
> (5) A statement of facts by the defense counsel.
>
> (Emphasis supplied.)
>
> The statute "does not require the trial judge to elicit evidence from each, any or all of the enumerated sources . . . . The trial judge may consider any information properly brought to his attention in determining whether there is a factual basis for a plea of guilty or no contest." That which he does consider, however, must appear in the record, so that an appellate court can determine whether the plea has been properly accepted.

State v. Sinclair, 301 N.C. 193, 198, 270 S.E.2d 418, 421 (1980) (citations and quotation marks omitted).

In this case, Defendant contends the factual basis failed to demonstrate that any of the alleged criminal activity occurred within Iredell County. We disagree. The prosecutor stated that the victim had a "Mooresville address" but lived outside of city limits, and thus the matter was referred to the Iredell County Sheriff's Department. We take judicial notice of the fact that Mooresville is located in Iredell County. *See State v. Darroch*, 305 N.C. 196, 210–11, 287 S.E.2d 856, 865 (1982) (taking "judicial notice of the fact that Bunnlevel is in Harnett County"). The crime of identity theft "*is considered to be committed in the county where the victim resides*, where the

perpetrator resides, where any part of the identity theft took place, or in any other county instrumental to the completion of the offense, regardless of whether the defendant was ever actually present in that county." N.C. Gen. Stat. § 14-113.21 (2015) (emphasis added). Thus, there was sufficient information in the record for the Court to determine that the offense occurred in Iredell County.

Defendant additionally argues there was insufficient information presented regarding the dates the offenses were committed. However, the prosecutor stated that Defendant's offenses "date back in and around January of 2013 through February of 2013," and this time period lines up with the dates on the indictments, which were before the trial court. We further note that Defendant stipulated there was a factual basis for the plea. The trial court had before it sufficient information to determine there was a factual basis for the guilty plea. Accordingly, we conclude the trial court did not err in accepting Defendant's plea.

Counsel appointed to represent Defendant on appeal has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967), indicating that he has been unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal. He asks this Court to conduct its own review of the record for possible prejudicial error. Counsel has filed documentation with the Court showing that he has complied with the requirements of *Anders* and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising Defendant of his right to file written

arguments with the Court and providing him with a copy of the documents pertinent to his appeal.

Defendant has not filed any written arguments on his own behalf with this Court and a reasonable time in which he could have done so has passed. In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. We have been unable to find any possible prejudicial error and conclude that the appeal is wholly frivolous.

AFFIRMED.

Judges CALABRIA and DILLON concur.

Report per Rule 30(e).