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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-83

Filed: 20 September 2016

Wake County, No. 13 CRS 225960

STATE OF NORTH CAROLINA

v.

JAMES MILLER GOODE

Appeal by defendant from judgment entered 11 March 2015 by Judge Donald W. Stephens in Wake County Superior Court. Heard in the Court of Appeals 22 August 2016.

Roy Cooper, Attorney General, by Lee J. Miller, Assistant Attorney General, for the State.

James N. Freeman, Jr. for defendant-appellant.

DAVIS, Judge.

James Miller Goode (“Defendant”) appeals from his conviction for misdemeanor possession of marijuana. On appeal, he contends that the trial court improperly calculated his prior record level. After careful review, we conclude that Defendant received a fair trial free from error.

Factual Background

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On 10 March 2015, Defendant was convicted of misdemeanor possession of marijuana. Defendant does not contest his conviction and we therefore need not recount the factual details surrounding it.

At the sentencing phase of Defendant's trial, the State tendered a prior record level worksheet to the trial court indicating that for sentencing purposes Defendant was a prior record level III. The following colloquy then took place:

[PROSECUTOR]: Having been found guilty by a jury [sic] possession of marijuana, at this time the [S]tate would pray [sic] judgment. If I may approach.

THE COURT: Sure.

[DEFENSE COUNSEL]: Your Honor, we'd stipulate to prior record level three.

THE COURT: Okay. All right. The Court having examined the tendered Court sheet, is advised the defendant has more than five prior convictions and is therefore a record level three for sentencing purpose[s]. As I understand, this is for misdemeanor.

Without any objection, Defendant's trial counsel proceeded to present mitigating factors to the trial court.

The trial court sentenced Defendant to 20 days imprisonment, suspended the sentence, and placed Defendant on 18 months supervised probation. Defendant filed a timely notice of appeal.

Analysis

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Defendant's sole argument on appeal is that he is entitled to a new sentencing hearing because the State failed to provide sufficient evidence to prove his prior conviction level. We disagree.

"The standard of review relating to the sentence imposed by the trial court is whether the sentence is supported by evidence introduced at the trial and sentencing hearing." *State v. Sanders*, 225 N.C. App. 227, 228, 736 S.E.2d 238, 239 (2013) (citation and quotation marks omitted). Pursuant to N.C. Gen. Stat. § 15A-1340.21(c), prior convictions may be proved by any of the following methods for misdemeanor sentencing purposes:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior conviction.
- (3) A copy of records maintained by the Department of Public Safety, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
- (4) Any other method found by the court to be reliable.

N.C. Gen. Stat. § 15A-1340.21(c) (2015). The State bears the burden of proving the existence of prior convictions. *Id.*

Here, the State submitted a prior record level worksheet to the trial court, which shows that Defendant had at least five prior convictions and was therefore a Level III offender for misdemeanor sentencing purposes. However, it is well established that "[t]he State does not satisfy its burden of proving defendant's prior

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record level merely by submitting a prior record level worksheet to the trial court. The law requires more than the State's unverified assertion that a defendant was convicted of the prior crimes listed on a prior record level worksheet." *State v. Jeffery*, 167 N.C. App. 575, 579, 605 S.E.2d 672, 675 (2004) (internal citations, quotation marks, and brackets omitted).

In the present case, neither Defendant nor his trial counsel signed the stipulation section of the prior record level worksheet. However, our Supreme Court has held that "[w]hile a stipulation need not follow any particular form, its terms must be definite and certain in order to afford a basis for judicial decision, and it is essential that they be assented to by the parties or those representing them. Silence, under some circumstances, may be deemed assent. . . ." *State v. Alexander*, 359 N.C. 824, 828, 616 S.E.2d 914, 917 (2005) (citation and quotation marks omitted).

Here, as noted above, after the State prayed for judgment, Defendant's trial counsel and the trial court had the following exchange:

[DEFENSE COUNSEL]: Your Honor, we'd stipulate to prior record level three.

THE COURT: Okay. All right. The Court having examined the tendered Court sheet, is advised the defendant has more than five prior convictions and is therefore a record level three for sentencing purpose[s]. As I understand, this is for misdemeanor.

Defendant argues that the above-quoted oral stipulation was ineffective because it was a stipulation concerning his prior record level rather than as to his

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prior convictions. The State, however, asserts that defense counsel's affirmative statement that "we'd stipulate to prior record level three" and failure to object at any point during the proceedings to Defendant's prior record level constituted a valid stipulation that Defendant was, in fact, a prior record level III offender.

We agree with the State and find that this case is controlled by *State v. Crawford*, 179 N.C. App. 613, 634 S.E.2d 909 (2006), *disc. review denied*, 361 N.C. 360, 644 S.E.2d 363 (2007). In *Crawford*, prior to the commencement of the trial, defense counsel "volunteered to the trial court that '[defendant] is a Level IV[.]'" *Id.* at 620, 634 S.E.2d at 914. Later, during sentencing, the trial court again asked if the defendant had a prior record level of IV, "which the State confirmed without objection by defendant." *Id.*

On appeal, we held that the defendant's "affirmative statement as to his prior record level constitutes a stipulation for purposes of N.C. Gen. Stat. § 15A-1340.14(f)." *Id.*; *see also State v. Mack*, 188 N.C. App. 365, 379, 656 S.E.2d 1, 12 (2008) (holding defendant stipulated to prior record level of IV where defense counsel stated "IV" following State's assertion that defendant had prior record level of IV and did not otherwise object to State's assertion).

As in *Crawford*, Defendant's trial counsel in the present case affirmatively stated that Defendant was a Level III offender and lodged no objection when the trial court reviewed the tendered prior record level worksheet and stated that he had five

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or more prior convictions. *See State v. Wade*, 181 N.C. App. 295, 298-99, 639 S.E.2d 82, 86 (2007) (holding defendant stipulated to convictions where he had opportunity to object to State's assertion that he was a Level II offender and instead began describing mitigating factors to trial court). We therefore conclude that defendant's affirmative statement as to his prior conviction level constitutes a stipulation for purposes of N.C. Gen. Stat. § 15A-1340.21(c).

Conclusion

For the reasons stated above, we conclude that Defendant received a fair trial free from error.

NO ERROR.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).