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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1380

Filed: 4 December 2018

Alamance County, No. 13 CRS 52081

STATE OF NORTH CAROLINA

v.

CAMERON ROMERO GRAVES

Appeal by defendant from judgment entered 17 April 2017 by Judge Paul C. Ridgeway in Alamance County Superior Court. Heard in the Court of Appeals 7 August 2018.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Kimberly D. Potter, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for defendant-appellant.*

CALABRIA, Judge.

Where defendant fails to show that the trial court's finding of two aggravating factors prejudiced him, we find no prejudicial error.

I. Factual and Procedural Background

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On 29 March 2013, the body of Kenneth Joel Clapp (“Clapp”) was found burned in a small clearing near Louis Graham Road. The body was found by the property owner, who contacted the Alamance County Sheriff’s Department. Evidence found on the scene, together with witness statements, showed that a vehicle backed onto the property sometime between 10:00 p.m. the night before, and 8:30 a.m. the morning of, 29 March 2013. The perpetrator placed Clapp’s body in a grassy area, covered it with accelerant, and set it on fire. The only physical evidence discovered at the scene was a baseball bat with what appeared to be blood on it, found just beyond the treeline nearby. Forensic analysis revealed that the bloodstains contained Clapp’s DNA. An autopsy revealed that Clapp died from two gunshot wounds, one to the back and one to the abdomen, both at close range, and that the immolation was post mortem.

Investigators learned that Clapp spent the early part of 28 March 2013 with his nephew, AJ Hines (“Hines”), at Hines’ home in Burlington. Sometime after 10:00 p.m. on 28 March 2013, Christopher Breshears (“Breshears”) contacted Clapp seeking Clapp’s help in purchasing crack cocaine. Breshears picked Clapp up from Hines’ home and drove him to North Church Street where Clapp purchased crack cocaine, and the two parted ways. Clapp then walked towards Hall Avenue in Burlington.

Marteese Martin (“Martin”), a close associate of Cameron Graves (“defendant”), saw Clapp on Hall Avenue. Martin knew that defendant was looking

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for Clapp to address an unsettled drug debt. Martin contacted defendant and informed him that Clapp was in the area. Martin then brought Clapp to defendant's home. Defendant, brandishing a 12 gauge shotgun, shot Clapp twice at close range, killing him.

Defendant and Martin then set about covering up the murder. They informed various people on Hall Avenue that they had seen Clapp that evening, and he had run away from them. Defendant then wrapped Clapp's body in plastic bags, cleaned Clapp's blood from the floor of his home, loaded the body into the trunk of his girlfriend's car, and drove to Louis Graham Road to dispose of it.

Cellular phone records substantiated this timeline, placing defendant's cell phone in the vicinity of Clapp's body during this time period. Investigators found high concentrations of chlorine bleach on the floor where Clapp was killed. After discovering he was a suspect, defendant called law enforcement, offering a fabricated story. He encouraged a friend to bury the gun, where it was discovered by investigators. Ultimately, however, he cooperated with the investigation.

Defendant was indicted for first-degree murder. He was subsequently also indicted for possession of a firearm by a convicted felon and concealment of death and destroying human remains.

On 17 April 2017, defendant pleaded guilty to second-degree murder. In exchange, the State dismissed the remaining charges of possession of a firearm by a

convicted felon and concealment of death and destroying human remains. At the plea colloquy, the State offered a statement of facts, the relevant portions of which have been laid out above, to which defendant stipulated. Additionally, defendant admitted to the existence of three aggravating factors: (1) that he induced others to participate in the murder or occupied a position of leadership or dominance of other participants; (2) that he joined with more than one person in committing the murder but was not charged with conspiracy; and (3) that he took advantage of a position of trust or confidence, including a domestic relationship, to commit the murder. Defendant stipulated that there was evidence to support these aggravating factors beyond a reasonable doubt.

Pursuant to the plea agreement and stipulations, the trial court found the existence of the aggravating factors admitted by defendant. The trial court then found defendant guilty of second-degree murder, and sentenced defendant to a minimum of 397 and a maximum of 489 months, in the aggravated range, in the custody of the North Carolina Department of Adult Correction.

Defendant appeals.

## II. Preservation and Certiorari Review

As a preliminary matter, we note that where a defendant pleads guilty, his right of appeal is limited to the following:

1. Whether the sentence “is supported by the evidence.” This issue is appealable only if his minimum

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term of imprisonment does not fall within the presumptive range. N.C. Gen. Stat. § 15A-1444(a1) (2001);

2. Whether the sentence “[r]esults from an incorrect finding of the defendant’s prior record level under G.S. 15A-1340.14 or the defendant’s prior conviction level under G.S. 15A-1340.21.” N.C. Gen. Stat. § 15A-1444(a2)(1) (2001);

3. Whether the sentence “[c]ontains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant’s class of offense and prior record or conviction level.” N.C. Gen. Stat. § 15A-1444(a2)(2) (2001);

4. Whether the sentence “[c]ontains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant’s class of offense and prior record or conviction level.” N.C. Gen. Stat. § 15A-1444(a2)(3) (2001);

5. Whether the trial court improperly denied defendant’s motion to suppress. N.C. Gen. Stat. §§ 15A-979(b)(2001), 15A-1444(e) (2001);

6. Whether the trial court improperly denied defendant’s motion to withdraw his guilty plea. N.C. Gen. Stat. § 15A-1444(e).

*State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003).

In the instant case, defendant does not challenge the finding of his prior record level, the type of sentence disposition, the term of imprisonment, the denial of a motion to suppress, or the denial of a motion to withdraw a guilty plea. He does contend, however, that two of the trial court’s findings of aggravating factors are not

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supported by the evidence. We hold that this falls within one of the narrow avenues of appeal available to defendant, and that appeal to this Court is therefore proper.

Contemporaneously with this appeal, defendant filed a petition for writ of certiorari. Because we hold that defendant's appeal is proper, we deny this petition as moot.

III. Standard of Review

“Alleged statutory errors are questions of law, and as such, are reviewed *de novo*.” *State v. Mackey*, 209 N.C. App. 116, 120, 708 S.E.2d 719, 721, *disc. review denied*, \_\_\_ N.C. \_\_\_, 707 S.E.2d 246 (2011) (internal citations omitted).

IV. Aggravating Factors

In both of his arguments, defendant contends that the trial court erred in finding two of the three aggravating factors. Specifically, defendant contends that there was insufficient evidence to permit the trial court to find that defendant took advantage of a position of trust or confidence to commit the murder, or that defendant occupied a position of leadership in the commission of the murder. We disagree.

Our General Statutes provide that a trial court may not accept a guilty plea without first determining that there is a factual basis for the plea. N.C. Gen. Stat. § 15A-1022(c) (2017). However, this Court has held that it is insufficient for a defendant to simply show a violation of N.C. Gen. Stat. § 15A-1022; he must not only show that the trial court failed to comply with the statutory mandate, but that this

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violation prejudiced him. *See State v. Hendricks*, 138 N.C. App. 668, 670, 531 S.E.2d 896, 898 (2000); *see also* N.C. Gen. Stat. § 15A-1443(a) (2017).

In the instant case, defendant does not argue prejudice. He does not allege that he would have changed his plea had the court required a greater showing by the State. He does not allege that his plea and stipulations were not made knowingly and voluntarily. Nor is there any indication in the record that he has tried to withdraw his plea.

Rather, defendant merely points to two findings in aggravation – findings to which he stipulated – and alleges that they are unsupported by the evidence at trial, and that this alone is enough to overturn his guilty plea. Even assuming *arguendo* that the trial court so erred, however, we hold that defendant has failed to demonstrate that this error prejudiced him.

We dealt with a similar issue in *Hendricks*. In that case, the defendant pleaded guilty, but the trial court failed to comply with various portions of N.C. Gen. Stat. § 15A-1022, including the court's obligations to inform the defendant of his right to remain silent and the maximum sentence that could be imposed, and to inquire as to whether the defendant understood the nature of the charges against him and whether his plea was the product of threats or improper pressure. This Court acknowledged that the trial court's failure to comply with these procedures constituted a violation

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of N.C. Gen. Stat. § 15A-1022. However, this Court went on to analyze that violation under a prejudicial error standard:

Nonetheless, just because the trial court failed to comply with the strict statutory requirements does not entitle defendant to have his plea vacated. Defendant must still show that he was prejudiced as a result. N.C. Gen. Stat. § 15A-1443(a). Defendant has not met that burden here. He has not argued that he would have changed his plea had the judge complied strictly with the procedural requirements, nor has he asserted that his plea was not in fact knowingly, voluntarily, and with understanding, made. In sum, defendant simply points out the court's non-compliance and contends that he is entitled to replead as a result.

*Hendricks*, 138 N.C. App. at 670, 531 S.E.2d at 898. This Court therefore found no prejudicial error, but remanded for correction of a clerical error.

In the instant case, as in *Hendricks*, defendant has not met the burden of showing prejudice. He “simply points out the court’s non-compliance and contends that he is entitled to replead as a result.” Thus, as we did in *Hendricks*, we hold that defendant has failed to establish that the trial court’s purported error prejudiced him. Accordingly, we find no prejudicial error.

NO PREJUDICIAL ERROR.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).