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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-306

Filed: 20 November 2018

Randolph County, Nos. 14 CRS 56200, 14 CRS 710389, 15 CRS 116

STATE OF NORTH CAROLINA

v.

CHRISTOPHER MARSHALL GAME, Defendant.

Appeal by Defendant from judgment entered 5 September 2017 by Judge Lindsay R. Davis in Randolph County Superior Court. Heard in the Court of Appeals 9 November 2018.

*Attorney General Joshua H. Stein, by Senior Deputy Attorney General Amar Majmundar, for the State.*

*Mary McCullers Reece, for defendant-appellant.*

MURPHY, Judge.

Defendant appeals from the trial court's judgment entered upon jury verdicts finding him guilty of felony hit and run resulting in death, involuntary manslaughter, and Class 3 misdemeanor driving while license revoked. Because our review of the sentencing hearing reveals a discrepancy between the legally correct sentence

STATE V. GAME

*Opinion of the Court*

announced in open court and that which appears in the written judgment, we remand for correction of this clerical error.

The jury found Defendant guilty of felony hit and run resulting in death, involuntary manslaughter, and driving while license revoked, but not guilty of failure to keep right of center and misdemeanor death by motor vehicle. At the sentencing hearing held 5 September 2017, the trial court found Defendant to be a prior record Level VI offender, and stated that it was consolidating the convictions for judgment and sentencing Defendant to an active sentence in the presumptive range of 33 months to 49 months. That same day, the trial court entered a written judgment sentencing Defendant to an active sentence of 33 months to 59 months. Defendant timely appealed.

Defendant's sole issue on appeal is that the trial court committed a clerical error in entering a written judgment with a maximum sentence of 59 months instead of the legally correct maximum sentence of 49 months rendered in open court. The State concedes this error, and we agree.

“When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record ‘speak the truth.’” *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (citations omitted). A clerical error is “ [a]n error resulting from a minor mistake or inadvertence, [especially] in writing or copying

STATE V. GAME

*Opinion of the Court*

something on the record, and not from judicial reasoning or determination.’ ” *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000).

Here, the trial court orally rendered a sentence of 33 months to 49 months of imprisonment at the conclusion of the sentencing hearing. The written judgment, however, imposed a sentence of a minimum of 33 months and a maximum of 59 months. The original sentence announced in open court contained a valid presumptive sentence for a prior record Level VI, Class F felony under N.C.G.S. § 15A-1340.17(c), (d) (2017). The sentence imposed in the written judgment is an invalid sentence under the sentencing guidelines in that the maximum sentence exceeds the corresponding statutory maximum for a minimum sentence of 33 months. *See* N.C.G.S. § 15A-1340.17(d). Further, the transcript reveals, that at the conclusion of the sentencing hearing, the trial court unambiguously intended to sentence Defendant “in the presumptive range” to “a minimum of 33 and a maximum of 49 months in the custody of the Division of Adult Correction.” Finally, the written judgment checked the box indicating that the imposed sentence was within the presumptive range. The minimum sentence of 33 months falls at the very top of the presumptive range for a Class F felony. Therefore, we conclude that the trial court committed a clerical error by including a maximum sentence of 59 months rather than the orally rendered and legally correct maximum sentence of 49 months.

STATE V. GAME

*Opinion of the Court*

Accordingly, we remand the judgment to the trial court for correction of this clerical error.

REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges STROUD and DIETZ concur.

Report per Rule 30(e).