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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-67

Filed: 19 November 2019

Burke County, No. 18 CRS 50062

STATE OF NORTH CAROLINA

v.

NOLAN LAMAR WEAVER

Appeal by defendant from the judgments and order entered 2 May 2018 by Judge Daniel A. Kuehnert in Burke County Superior Court. Heard in the Court of Appeals 3 October 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Brittany Edwards, for the State.

Yoder Law PLLC, by Jason Christopher Yoder, for defendant.

DIETZ, Judge.

Defendant Nolan Lamar Weaver entered into a plea agreement with the State. After accepting the plea agreement and Weaver's guilty plea, the trial court sentenced Weaver in a way that conflicted with the terms of the plea agreement. At the time, the trial court did not inform Weaver that, because the court imposed a sentence

different from that provided in the plea agreement, the law permitted Weaver to choose to withdraw his plea.

The State concedes that the trial court erred and both parties ask this Court to vacate the trial court's judgments and remand this matter. We agree with the parties' arguments on appeal and therefore vacate and remand this matter for further proceedings.

Facts and Procedural History

In January 2018, law enforcement officers arrested Nolan Lamar Weaver and charged him with second degree kidnapping, felonious restraint, larceny of motor vehicle, and possession of a stolen motor vehicle. Weaver entered into a plea agreement in which he agreed to plead guilty to felonious restraint and larceny of a motor vehicle and to be sentenced in a single, consolidated judgment. In exchange, the State agreed to dismiss the remaining charges.

At the hearing on his guilty plea, the trial court read the terms of the agreement out loud, then accepted it and ordered that it be recorded. When the trial court sentenced Weaver, it imposed two consecutive sentences, one for 15 to 27 months in prison for felonious restraint and another for 8 to 19 months in prison for larceny. The court suspended the sentences and placed Weaver on supervised probation for 36 months. As part of the guilty plea for felonious restraint, the trial court ordered Weaver to register as a sex offender for thirty years.

Weaver petitioned for a writ of certiorari, which the applicable statute provides as the appropriate means to pursue appellate review in this circumstance. *See* N.C. Gen. Stat. § 15A-1444(e). The State did not oppose the petition. In our discretion, we allow the petition, and a separate petition addressing the order for sex offender registration, and issue writs of certiorari in order to reach the merits of the issues Weaver raises on appeal. *State v. Ledbetter*, __ N.C. __, __, 814 S.E.2d 39, 42 (2018).

Analysis

When a defendant enters into a plea agreement with the State that includes a sentencing arrangement, the trial court is not bound to accept it. But, if the court chooses not to adhere to the sentence to which the parties agreed, the law requires the court to inform the defendant that he may withdraw his plea:

If at the time of sentencing, the judge for any reason determines to impose a sentence other than provided for in a plea arrangement between the parties, the judge must inform the defendant of that fact and inform the defendant that he may withdraw his plea. Upon withdrawal, the defendant is entitled to a continuance until the next session of court.

N.C. Gen. Stat. § 15A-1024.

Here, the plea agreement between Weaver and the State provided that the two charges to which Weaver would plead guilty would be “consolidated for judgment”:

PLEA ARRANGEMENT

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The Defendant shall plead guilty to larceny of a motor vehicle and felonious restraint. Charges shall be consolidated for 1 judgment. The State will dismiss the remaining charges and not indict for additional crimes related to this [incident].

The trial court reviewed and accepted this plea agreement. But the court then sentenced Weaver—without objection—to consecutive, suspended sentences on these two charges in two separate judgments.

This case is an example of why the law ordinarily expects litigants to inform the trial court of errors at the time, rather than waiting to assert those issues on appeal. The parties agree that there is no indication that the trial court *intended* to depart from the plea agreement. It is likely that, had either Weaver or the State pointed out that the trial court's sentence conflicted with the plea agreement, the court would have addressed the issue at the time.

Nevertheless, because N.C. Gen. Stat. § 15A-1024 is mandatory and the trial court did not provide Weaver with the notice the law requires, we agree with the parties that this case must be vacated and remanded for further proceedings. And, because we vacate Weaver's criminal judgments, we likewise vacate the order for sex offender registration.

Conclusion

We vacate the trial court's judgments and the order for sex offender registration and remand for further proceedings.

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VACATED AND REMANDED.

Judges INMAN and BROOK concur.

Report per Rule 30(e).