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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1137

Filed: 20 October 2020

Onslow County, No. 17 CRS 53172

STATE OF NORTH CAROLINA

v.

WILBUR LEON FARRIOR

Appeal by Defendant from judgments entered 6 May 2019 by Judge Phyllis M. Gorham in Onslow County Superior Court. Heard in the Court of Appeals 6 October 2020.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General G. Mark Teague, for the State-Appellee.*

*Appellate Defender Glenn Gerdung, by Assistant Appellate Defender Emily Holmes Davis, for Defendant-Appellant.*

COLLINS, Judge.

Defendant Wilbur Leon Farrior appeals from judgments entered upon guilty verdicts for multiple drug offenses, for which he was sentenced as an habitual felon. Defendant argues, and the State concedes, that the trial court erred by accepting his guilty plea to habitual felon status without conducting the required colloquy with

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Defendant. We vacate Defendant's habitual felon conviction, and remand for a new habitual felon hearing and resentencing.

**I. Procedural History**

Defendant was indicted for various drug offenses and having attained habitual felon status. After a trial, the jury found Defendant guilty of all the drug offenses. Defendant then pled guilty through his defense counsel to having attained habitual felon status, as follows:

[THE STATE]: Judge, as to the habitual status, at this point, does the defendant stipulate to being habitual?

[DEFENSE COUNSEL]: He does, Judge. He admits those three prior convictions . . . .

THE COURT: All right.

[THE STATE]: Judge, if I may correct that. Does the defendant plead guilty to habitual felon status?

[DEFENSE COUNSEL]: He pleads guilty to habitual felon status.

THE COURT: All right.

The State did not recite a factual basis to support the habitual felon plea but presented the following documents to the trial court: Defendant's criminal record showing two prior felony convictions; a certified judgment against Defendant showing that he pled guilty to a prior felony conviction; and a prior record level worksheet signed by the State and defense counsel, wherein Defendant stipulated to the three predicate felonies alleged by the State. The trial court arrested judgment on four of the drug convictions. The trial court determined Defendant to be an habitual felon

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and sentenced Defendant on the remaining convictions as an habitual felon. Defendant gave notice of appeal in open court.

**II. Discussion**

Defendant argues that the trial court erred by failing to advise him personally as required by N.C. Gen. Stat. § 15A-1022(a) before accepting his plea to habitual felon status, and that this error was prejudicial because the record failed to otherwise establish that the plea was knowing and voluntary.

“Alleged statutory errors are questions of law and, as such, are reviewed *de novo*. Under *de novo* review, the appellate court considers the matter anew and freely substitutes its own judgment for that of the lower court.” *State v. Hughes*, 265 N.C. App. 80, 81-82, 827 S.E.2d 318, 320 (2019) (citations omitted).

A defendant can only be convicted of attaining habitual felon status if a jury convicts him of the charge or he pleads guilty to being an habitual felon. *State v. Gilmore*, 142 N.C. App. 465, 471, 542 S.E.2d 694, 699 (2001) (citing N.C. Gen. Stat. § 14-7.5 (1999)) (other citation omitted). A defendant’s stipulation to guilt, “in the absence of an inquiry by the trial court to establish a record of a guilty plea, is not tantamount to a guilty plea.” *Id.* (citations omitted). “A court may accept a guilty plea only if it is made knowingly and voluntarily.” *State v. Jester*, 249 N.C. App. 101, 103, 790 S.E.2d 368, 371 (2016) (internal quotation marks and citation omitted). “A plea is voluntarily and knowingly made if the defendant is made fully aware of the

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direct consequences of his plea.” *Id.* at 103, 790 S.E.2d at 371-72 (citation omitted).

This requirement is codified in N.C. Gen. Stat. § 15A-1022, which provides in relevant part that a trial judge “may not accept a plea of guilty or no contest from the defendant without first addressing him personally” and:

- (1) Informing him that he has a right to remain silent and that any statement he makes may be used against him;
- (2) Determining that he understands the nature of the charge;
- (3) Informing him that he has a right to plead not guilty;
- (4) Informing him that by his plea he waives his right to trial by jury and his right to be confronted by the witnesses against him;
- (5) Determining that the defendant, if represented by counsel, is satisfied with his representation;
- (6) Informing him of the maximum possible sentence on the charge for the class of offense for which the defendant is being sentenced, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge; . . .

N.C. Gen. Stat. § 15A-1022(a) (2019). “[A] trial court may not accept a defendant’s plea of guilty to having the status of an habitual felon without complying with the requirements of N.C. Gen. Stat. § 15A-1022.” *Jester*, 249 N.C. App. at 104, 790 S.E.2d at 372 (citation omitted).

In this case, the trial court did not personally address Defendant to make any of the inquiries required by N.C. Gen. Stat. § 15A-1022 or to inform him of his rights. *See id.* Absent this necessary colloquy, the plea of guilty through defense counsel was

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“not tantamount to a guilty plea.” *Gilmore*, 142 N.C. App. at 471, 542 S.E.2d at 699.

Additionally, there is no plea agreement or plea transcript in the record on appeal showing that Defendant pled guilty to habitual felon status. Thus, the record fails to establish that Defendant knowingly and voluntarily pled guilty to habitual felon status. *See Jester*, 249 N.C. App. at 103, 790 S.E.2d at 371.

We vacate Defendant’s habitual felon conviction, and remand for a new habitual felon hearing and resentencing.

**VACATED AND REMANDED.**

Judges BRYANT and TYSON concur.

Report per Rule 30(e).