IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-750

Filed: 21 July 2020

Forsyth County, Nos. 15 CRS 59260-61

STATE OF NORTH CAROLINA

v.

LINDSEY LEE ROBINSON, JR.

Appeal by defendant from amended judgment entered 28 March 2019 by Judge L. Todd Burke in Forsyth County Superior Court. Heard in the Court of Appeals 27 May 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert C. Ennis, for the State.

Winifred H. Dillon for defendant-appellant.

ZACHARY, Judge.

In 2017, Defendant Lindsey Lee Robinson, Jr., was convicted of first-degree burglary; discharging a weapon into an occupied dwelling inflicting serious bodily injury; discharging a firearm within an enclosure with the intent to incite fear; assault with a deadly weapon inflicting serious injury; and robbery with a dangerous weapon. The trial court consolidated the two offenses involving the discharge of a

firearm for judgment and sentenced Defendant to 96-128 months in the custody of the North Carolina Division of Adult Correction. The trial court imposed consecutive sentences of 72-99 months' imprisonment for each of the remaining judgments.

Defendant appealed his convictions on multiple grounds. In a unanimous, unpublished opinion filed 16 October 2018, this Court held, *inter alia*, that the trial court erred by entering judgment against him for both discharging a firearm within an enclosure with the intent to incite fear, and assault with a deadly weapon inflicting serious injury, based on the same underlying conduct. *State v. Robinson*, 262 N.C. App. 155, 819 S.E.2d 415 (2018) (unpublished). We vacated Defendant's conviction for discharging a firearm within an enclosure with the intent to incite fear, and remanded to the trial court for resentencing. *Id.*

On remand, the trial court ultimately imposed the same sentences as before. Because the trial court had originally consolidated the two offenses involving the discharge of a firearm, there was no change in the number of months that Defendant would serve in custody. Defendant again gave notice of appeal to this Court.

Analysis

Defendant's counsel has been unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal, and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has also shown to the satisfaction of this Court that she has complied with the requirements

of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising Defendant of his right to file written arguments with this Court and providing Defendant with the documents necessary to do so.

Defendant's counsel further directs our attention to two possible issues on appeal: whether the trial court (1) "properly conducted a de novo sentencing hearing"; and (2) "properly considered [D]efendant's federal conviction for possession of a firearm by a convicted felon as a Class G felony." (Italics omitted). We address each in turn.

I.

It is long "established that each sentencing hearing in a particular case is a de novo proceeding." *State v. Abbott*, 90 N.C. App. 749, 751, 370 S.E.2d 68, 69 (1988) (citation and italics omitted). Thus, "when a trial court relies on a previous court's sentence determination and fails to conduct its own independent review of the evidence, a defendant is deprived of a de novo sentencing hearing." *State v. Watkins*, 246 N.C. App. 725, 732, 783 S.E.2d 279, 284 (2016) (italics omitted). Nonetheless, "[a] trial court's resentencing of a defendant to the same sentence as a prior sentencing court is not *ipso facto* evidence of any failure to exercise independent decision-making or conduct a de novo review." *Id.* (citation and italics omitted).

Here, Defendant's counsel has not provided any specific argument to support an assertion that on remand the trial court failed to conduct a de novo sentencing hearing. Moreover, our review of the transcript establishes that the trial court made "a new and fresh determination" of Defendant's sentence in accordance with our case law. *State v. Mitchell*, 67 N.C. App. 549, 551, 313 S.E.2d 201, 202 (1984). This argument is overruled.

II.

The second possible issue raised by Defendant's counsel relates to the classification of Defendant's prior federal conviction in calculating his prior record level for felony sentencing purposes. Under the North Carolina Criminal Procedure Act, if the State establishes, by a preponderance of the evidence, "that an offense classified as . . . a felony in [another] jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points." N.C. Gen. Stat. § 15A-1340.14(e) (2019). "The State may establish the elements of the out-of-state offense by producing evidence of the applicable statute, including printed copies thereof." *State v. Weldon*, 258 N.C. App. 150, 161, 811 S.E.2d 683, 692 (2018) (citation omitted).

In the instant case, Defendant pleaded guilty in 2004 to possession of a firearm in commerce after a felony conviction, a violation of 18 U.S.C. §§ 922(g)(1) and

924(a)(2). At sentencing, the State presented the 2003 version of 18 U.S.C. § 922(g)(1) to the trial court, and argued that "the federal firearm by a felon statute is substantially similar to the North Carolina statute," justifying a Class G classification. The trial court determined that the federal and state statutes were substantially similar, and treated the federal offense as a Class G felony for purposes of calculating Defendant's prior record level. Before us now is the issue of "[w]hether the trial court properly considered [D]efendant's federal conviction for possession of a firearm by a convicted felon as a Class G felony."

This Court recently concluded that the federal offense of possession of a firearm in commerce after a felony conviction, 18 U.S.C. § 922(g)(1), is substantially similar to the North Carolina offense of possession of a firearm by a felon, N.C. Gen. Stat. § 14-415.1(a), and should therefore receive the same felony classification, Class G. *State v. Riley*, 253 N.C. App. 819, 820, 802 S.E.2d 494, 495-96 (2017). In *Riley*, the Court compared 18 U.S.C. § 922(g)(1) (2015) and N.C. Gen. Stat. § 14-415.1 (2015); here, we compare 18 U.S.C. § 922(g)(1) (2000 & Supp. III 2003) and N.C. Gen. Stat. § 14-415.1 (2015). The same North Carolina offense is applicable in the present case and in *Riley*. Moreover, the 2004 iteration of the federal offense is the same as the 2015 version examined in *Riley*.

"Because this Court has already determined that [D]efendant's present offense is substantially similar to his federal offense, we necessarily conclude that the trial

court's prior record level determination was correct." *Weldon*, 258 N.C. App. at 164, 811 S.E.2d at 693; *see also In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court."). The trial court did not err in classifying Defendant's federal conviction for possession of a firearm in commerce by a convicted felon as a Class G felony.

III.

Defendant has not filed any written arguments on his own behalf with this Court, and a reasonable time in which he could have done so has passed. As required by *Anders* and *Kinch*, we have conducted a full examination of the record for any issue with arguable merit. We have been unable to find any error, and we conclude that this appeal is wholly frivolous, presenting no issue that might entitle Defendant to relief. Accordingly, we affirm the judgment entered in this case.

AFFIRMED.

Judges DILLON and BROOK concur.

Report per Rule 30(e).