IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-719

No. COA20-765

Filed 21 December 2021

Person County, No. 18CRS051332

STATE OF NORTH CAROLINA

v.

DAWARIFAMA PRINCE FIABEMA, Defendant.

Appeal by Defendant from judgment entered 5 February 2020 by Judge Orlando F Hudson in Person County Superior Court. Heard in the Court of Appeals 5 October 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sonya Calloway-Durham, for the State.

Dylan J.C. Buffum, Attorney at Law, PLLC, by Dylan J.C. Buffum, for the Defendant.

DILLON, Judge.

¶ 1 Defendant Dawarifama Prince Fiabema appeals from a judgment finding him guilty of second-degree forcible rape.

I. Background

¶ 2 Defendant was charged and tried for the crime of second-degree forcible rape. Following the jury verdict of guilty, the State indicated its intent to prove an

aggravating factor to the court. The State further indicated on the record that it had shown its proof of the aggravating factor to the defense. Defense counsel then stipulated to the aggravating factor:

> [DEFENSE COUNSEL:] He clearly once revoked on probation within the last ten years. And so he doesn't want to waste any more time with the jury. We'd certainly be arguing not to be sentenced in the aggravated range. If there is a way he can do that without making an admission that would affect his appeal, then he is willing to do it. . . . And I think he can admit the aggravating factor while maintaining his innocence in the case for purposes of appeal.
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> * * *
>
> THE COURT: It's not like some other kind of aggravating factor. This aggravating factor is simply his status at the time the jury has found the offense occurred. It doesn't have anything to do with the substantive issue of innocence or guilt.
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> * * *
>
> [THE STATE:] 12a[1] would be the aggravating factor the State is proceeding on.
>
> THE COURT: All right. The only issue, [defense counsel,] is he willing to stipulate to that?

[1] "The defendant has, during the 10-year period prior to the commission of the offense for which the defendant is being sentenced, been found by a court of this State to be in willful violation of the conditions of probation imposed pursuant to a suspended sentence or been found by the Post-Release Supervision and Parole Commission to be in willful violation of a condition of parole or post-release supervision imposed pursuant to release from incarceration." N.C. Gen. Stat. § 15A-1340.16(d)(12a) (2018).

> [DEFENSE COUNSEL:] Yes, Your Honor, he is.
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> THE COURT: All right. So, Ms. DA, are you ready to go forward with that?
>
> [THE STATE:] Yes, Your Honor.
>
> THE COURT: We're going to bring -- we're going to bring the jury back.
>
> [THE STATE:] Yes, sir. Your Honor, does he need to go through any type of transcript or anything with respect to admitting the aggravating factor? I've seen judges do it different ways.
>
> THE COURT: No. I think all that the law requires is he can do so through his counsel. . . . Which he just did as far as I'm concerned.

The trial court resumed the sentencing hearing in the presence of the jury where defense counsel presented arguments in support of mitigation.

¶ 3 The trial court sentenced Defendant in the aggravated range. Defendant was also ordered to enroll in satellite-based monitoring for the remainder of his natural life upon his release from prison due to the nature of his offense. Defendant timely appealed.

II. Analysis

¶ 4 Defendant argues that his admission to the aggravating factor "was not the product of an informed choice where the record does not establish that he understood

the effect of the admission."[2] We disagree.

¶ 5 Defendant argues that the trial court violated a statutory mandate. "In order to succeed with [a statutory mandate claim, a] defendant would have to be able to show both that the trial court violated the statute and that such violation prejudiced him." *State v. Swink*, 252 N.C. App. 218, 221, 797 S.E.2d 330, 332 (2017).

¶ 6 Specifically, Defendant argues that the trial court violated Section 15A-1022.1, which provides:

> (b) In all cases in which a defendant admits to the existence of an aggravating factor . . . the court shall comply with the provisions of [N.C. Gen. Stat §] 15A-1022(a). In addition, the court shall address the defendant personally and advise the defendant that:
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> > (1) He or she is entitled to have a jury determine the existence of any aggravating factors . . . and
> >
> > (2) He or she has the right to prove the existence of any mitigating factors at a sentencing hearing before the sentencing judge.
> >
> > * * *
>
> (e) The procedures specified in this Article for the handling of pleas of guilty are applicable to the handling of admissions to aggravating factors . . . *unless the context clearly indicates that they are inappropriate*.

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[2] To the extent Defendant raises constitutional issues, we do not address them. *See State v. Hunter*, 305 N.C. 106, 112, 286 S.E.2d 535, 539 (1982) ("[A] constitutional question which is not raised and passed upon in the trial court will not ordinarily be considered on appeal.").

N.C. Gen. Stat. § 15A-1022.1 (emphasis added).

¶ 7 Mirroring subsection (e) above, our Court has held that it is not reversible error for a trial court to fail to address a defendant directly "within the context of defendant's sentencing hearing [when] the procedures specified by N.C. Gen. Stat. § 15A-1022.1 would have been inappropriate." *State v. Snelling,* 231 N.C. App. 676, 682, 752 S.E.2d 739, 744 (2014). In *Snelling*, the defendant stipulated to being on probation when he committed the crimes and we noted that the trial court met no resistance from *the defendant* when it announced his probation violation during sentencing. *Id.* at 681, 752 S.E.2d at 743-44. Thus, "[u]nder the circumstances, the determination of defendant's probation point was routine and a non-issue." *Id.* at 682, 752 S.E.2d at 744.

¶ 8 Here, the State put forth aggravating factor N.C. Gen. Stat. § 15A-1340.16(d)(12a), indicating that Defendant was in willful violation of probation within the last ten years. The transcript clearly shows that the trial court only conversed with defense counsel, not Defendant. However, in this case, we conclude that the trial court was not required to address Defendant personally. As in *Snelling*, Defendant was represented by counsel[3] and had opportunities to resist the trial

[3] "In conducting an individual's defense an attorney is presumed to have the authority to act on behalf of his client. The burden is upon the client to prove lack of authority to the satisfaction of the court." *State v. Watson*, 303 N.C. 533, 538, 279 S.E.2d 580, 583 (1981) (internal citation omitted).

court's finding that he had stipulated to the aggravating factor.

¶ 9 Further, Defendant was not prejudiced by the trial court's action. The State proffered its exhibit to the defense before indicating to the trial court that it intended to present an aggravating factor during sentencing. There is no indication that the aggravating factor would not have been proven by the State if Defendant had not stipulated to it. Therefore, even if the trial court erred, Defendant has not met his burden of showing prejudice from the error.

III. Conclusion

¶ 10 We conclude that Defendant received a fair trial, free from reversible error.

NO ERROR.

Judges MURPHY and JACKSON concur.

Report per Rule 30(e).