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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-581

No. COA21-71

Filed 19 October 2021

Carteret County, Nos. 19 CRS 51820-22

STATE OF NORTH CAROLINA

v.

CHARLES WESLEY RIGGS, Defendant.

Appeal by Defendant from judgment entered on 18 August 2020 by Judge Joshua W. Willey, Jr., in Carteret County Superior Court. Heard in the Court of Appeals 21 September 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Ashley Holloway Foxx, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for Defendant.

JACKSON, Judge.

¶ 1 Charles Wesley Riggs (“Defendant”) has filed an *Anders* brief asking this Court to conduct an independent review to determine whether the record discloses prejudicial error in his convictions of assault with a deadly weapon with the intent to kill, communicating threats, and injury to personal property. After careful review of the record, we find no error.

I. Factual and Procedural Background

¶ 2

On 8 July 2019, Defendant was charged by indictment with assault with a deadly weapon with intent to kill, communicating threats, and injury to personal property. On 17 August 2020, Defendant was brought to court and after a colloquy with the trial judge, Defendant waived his right to a jury trial in open court and consented to a bench trial. The next day, the case was called for trial in the Criminal Session of Carteret County Superior Court with the Honorable Joshua W. Willey, Jr., presiding.

¶ 3

The testimony presented at Defendant's trial demonstrated that in June 2019, Defendant was dating Ms. R. Hart ("Hart"). The couple lived together in Defendant's house in Morehead City and had lived there for about year. On 27 June 2019, Hart had picked Defendant up from jail and they got into an argument once they got home. At trial, Hart testified in detail about what happened that day. According to Hart's testimony, Defendant was high on drugs and got very upset with her and told her to get out of the house. Defendant trashed his house, chopped up a piece of furniture with a machete, and started a fire on his back porch.

¶ 4

As Hart was in the bedroom getting her things, Defendant "macheted through the door." When Hart tried to leave the bedroom, Defendant pushed her onto the bed and held a machete to her throat. Hart escaped the bedroom and hid in the bathroom. Defendant swung the machete through the bathroom door, grabbed Hart by her neck,

and pushed the machete against Hart's chest causing a puncture wound. Hart ran out of the bathroom and Defendant gave chase while swinging the machete at her. Defendant threatened to kill not only Hart, but also her kids and her grandchildren. When Hart escaped the house, Defendant followed Hart outside, swinging the machete at her and threatening to kill her if she called the police. Hart ran to the neighbor's house and called the police. Hart's car was parked in Defendant's driveway and he hit Hart's car with the machete causing at least \$1000 in damage to the car's exterior.

¶ 5 Defendant exercised his constitutional right not to testify. Based on the evidence from the State, Defendant was convicted of assault with a deadly weapon with intent to kill, communicating threats, and injury to personal property. The trial court imposed an active sentence within the presumptive range.

II. Appellate Jurisdiction

¶ 6 An appeal of right from a final judgment entered in the superior court upon conviction properly lies directly with this Court. N.C. Gen. Stat. §§ 7A-27(b), 15A-1444(a) (2019). Thus, Defendant was entitled to appeal the superior court's judgment to this Court.

¶ 7 However, there are certain possible deficiencies in Defendant's notice of appeal that must first be addressed. With his brief, Defendant filed a petition requesting review by writ of certiorari as the right to appeal, *see id.* § 15A-1444(a), was possibly

waived for failure to enter notice of appeal in compliance with every technical requirement of Rule 4 of the North Carolina Rules of Appellate Procedure. In particular, it does not appear from the face of the Record that the District Attorney's Office was served with a copy of the Notice of Appeal.

¶ 8 Pursuant to Rule 21(a)(1) of the North Carolina Rules of Appellate Procedure, this Court is authorized to review the judgment by writ of certiorari. *State v. Hammonds*, 218 N.C. App. 158, 162-63, 720 S.E.2d 820, 822-23 (2012) (reviewing criminal judgment by writ of certiorari pursuant to Rule 21 when right to appeal waived for failure to enter notice of appeal in compliance with Rule 4).

¶ 9 In his petition, Defendant concedes that his notice may not have complied with the requirements of Rule 4, but requests that this Court nevertheless allow review because his intent to appeal was clear and because the State has not been prejudiced by the potential defect in his notice of appeal. In its response, the State does not identify any specific prejudice that it would suffer as a result of the defect in Defendant's appeal and appears not to take a position on Defendant's request. Accordingly, we choose to exercise our discretion to allow Defendant's petition for writ of certiorari. *See State v. Springle*, 244 N.C. App. 760, 763, 781 S.E.2d 518, 521 (2016) ("[A] defect in a notice of appeal should not result in loss of the appeal as long as the intent to appeal . . . can be fairly inferred from the notice and the appellee is not misled by the mistake.") (internal marks and citation omitted).

III. *Anders* Brief

¶ 10 Defendant's appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), indicating that after a close examination of the record and relevant law, she is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal. Defendant asks this Court to conduct its own review of the record for possible error.

¶ 11 Counsel has filed documentation with the Court showing that she has complied with the requirements of both *Anders* and *State v. Kinch*, 314 N.C. 99, 102, 331 S.E.2d 665, 666 (1985) (holding that defense counsel's brief had "fully complied with *Anders*" by "stat[ing] in his brief that he found no merit in the assignments of error and request[ing] this Court to review the record for any prejudicial error"). Namely, counsel here advised Defendant in writing on 24 February 2021 of his right to file written arguments with the Court and has provided him with a copy of the documents pertinent to his appeal, including the transcript, record on appeal and counsel's brief.

¶ 12 Unlike the appellant in *Kinch*, Defendant here has not filed a *pro se* brief with this Court, and a reasonable time for him to do so has expired. *Id.* at 102, 331 S.E.2d at 666-67. Further, as in *Kinch*, counsel for Defendant has referred us to three issues that might arguably support an appeal: (1) the court's prior record level calculation; (2) the sentence imposed by the court; and (3) whether the indictments were legally sufficient to confer jurisdiction on the trial court.

¶ 13 We agree with counsel that none of these arguments have merit. The three indictments were legally sufficient to confer jurisdiction to the trial court. Defendant's waiver of his right to a jury trial was in full compliance with N.C. Gen. Stat. § 15A-1201(b), as the trial judge personally addressed Defendant about his decision to waive his right to a jury trial through proper colloquy, and Defendant then executed a valid written waiver to which the State had no objection. There was also sufficient evidence to support Defendant's convictions for assault with a deadly weapon with intent to kill, communicating threats, and injury to personal property.

¶ 14 Defendant's counsel lists in her brief a potential error in the prior record level calculation. By her count, Defendant had only 14 points for felony sentencing instead of the 16 points found by the trial court and stipulated to by Defendant. It appears the prior record level worksheet calculations were wrong in that a G felony and a H felony were both included and counted despite those convictions taking place during the same week of criminal superior court. Defendant, however, has suffered no prejudice from this apparent miscalculation. Prior record level V is reached with 14 to 17 points. No matter whether Defendant only had 14 points as argued in his brief or in fact had 16 points as he stipulated to in court, he was still properly a prior record level V for sentencing. Since Defendant suffered no prejudice from this error, it was harmless. *State v. Ledwell*, 171 N.C. App. 314, 321, 614 S.E.2d 562, 567 (2005).

¶ 15 Finally, the active sentence imposed upon Defendant for this Class F felony

conviction was within the presumptive range and was properly authorized under the applicable statutes.

IV. Conclusion

¶ 16 In accordance with our duty under *Anders* and *Kinch*, we have fully examined the record to determine whether any meritorious issues appear to exist and have found none. Defendant received a fair trial, free from prejudicial error. There is no error in the trial court's verdict or in the judgment entered thereon.

NO ERROR.

Judges TYSON and GORE concur.

Report per Rule 30(e).