IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-579

No. COA21-596

Filed 16 August 2022

Pitt County, No. 20 CRS 55579

STATE OF NORTH CAROLINA

v.

JESSE LEE EVERETT, JR.

Appeal by defendant from judgment entered 15 April 2021 by Judge Thomas D. Haigwood in Pitt County Superior Court. Heard in the Court of Appeals 11 May 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Elizabeth Forrest, for the State.

Sarah Holladay for defendant.

DIETZ, Judge.

¶ 1 Defendant Jesse Everett appeals his criminal judgment entered after his *Alford* plea to a charge of felonious breaking and entering.

¶ 2 Everett argues that there was an insufficient factual basis to support the plea; that the trial court should have allowed him to withdraw his plea after the court announced his sentence; that the trial court abused its discretion by imposing a

curfew and electronic monitoring as a condition of probation; and that there was insufficient evidence to support the $250 award of restitution as part of his sentence.

¶ 3 As explained below, we reject Everett's challenges to the entry of his *Alford* plea, the denial of his request to withdraw that plea, and the terms of his probation. But we agree that there was insufficient evidence to support the award of restitution and vacate that portion of the judgment and remand for further proceedings.

Facts and Procedural History

¶ 4 In September 2020, Janesha Johnson was at the dumpster of her apartment complex when she saw an unfamiliar person walk into her apartment. Johnson called the police, who performed a sweep of her apartment. The officers did not find anyone in the apartment, and nothing had been taken, but a glass vase had been broken and it appeared that someone had left through the back door.

¶ 5 The officers then searched the surrounding area looking for anyone matching the description Johnson provided. The officers located and detained Defendant Jesse Everett nearby. Johnson then went to where Everett was held and identified him as the person who had entered her apartment.

¶ 6 The State charged Everett with felonious breaking and entering. In April 2021, Everett entered an *Alford* plea as part of a plea agreement with the State in which the State agreed not to oppose a mitigated sentence. According to Everett, he believed he was innocent but chose to accept the plea deal so he could get out of jail and move

on with his life.

¶ 7 The trial court sentenced Everett to a term of 11 to 23 months in prison, suspended for a split sentence of 150 days with credit for time served followed by 36 months of supervised probation. The trial court also ordered Everett to submit to an electronically monitored curfew for six months and to pay $250 in restitution for the broken vase in Johnson's apartment.

¶ 8 Immediately after the trial court announced the sentence, the court asked Everett's counsel about his time spent on the case and his fee request. At that point, Everett's counsel informed the court that Everett wished to withdraw his plea and go to trial. The court rejected that request and explained that it already had accepted the plea and would enter the judgment the court already announced.

¶ 9 Everett gave oral notice of appeal after the court rejected his request to withdraw his plea. In December 2021, Everett petitioned for a writ of certiorari, asking this Court to review the merits of his challenge to the factual basis for his plea. Because we have jurisdiction to review the other portions of Everett's appeal, and because the interests of justice are best served by examining Everett's arguments in a single, direct appeal, we allow the petition in the exercise of our discretion and issue a writ of certiorari. *See* N.C. Gen. Stat. § 7A-32.

Analysis

I. Factual basis for *Alford* plea

¶ 10 Everett first argues that there was an insufficient factual basis to support his *Alford* plea.

¶ 11 A defendant may enter a guilty plea while maintaining innocence when that guilty plea is in his best interest. *North Carolina v. Alford*, 400 U.S. 25 (1970). To accept a plea of guilty, the trial court must first determine whether there is a factual basis for the plea. N.C. Gen. Stat. § 15A-1022(c). This factual basis may be based upon various information including a "statement of the facts by the prosecutor." *Id.* § 15A-1022(c)(1). The factual basis is designed to assure the trial court that "some substantive material independent of the plea itself appear of record which tends to show that defendant is, in fact, guilty." *State v. Agnew*, 361 N.C. 333, 336, 643 S.E.2d 581, 583 (2007). The determination of whether there is a factual basis for a defendant's plea is a question of law that is reviewed *de novo*. *State v. Crawford*, 278 N.C. App. 104, 2021-NCCOA-272, ¶ 29.

¶ 12 The three elements of felonious breaking and entering are: (1) the breaking or entering, (2) of any building, (3) with the intent to commit any felony or larceny therein. N.C. Gen. Stat. § 14-54(a). Because it is difficult to prove intent through direct evidence, the "requisite intent for felony breaking and entering need not be directly proved—it may be inferred from the circumstances" surrounding the

occurrence. *State v. Roberts*, 135 N.C. App. 690, 696, 522 S.E.2d 130, 134 (1999).

¶ 13 Here, the prosecutor provided a recitation of facts supporting the guilty plea to the trial court. That statement of facts included the explanation that the victim saw Everett enter her apartment without permission, that she identified Everett as the perpetrator shortly after the crime occurred, and that property inside her home was damaged—a fact from which a reasonable person could infer that the perpetrator was searching the inside of the apartment for valuable items. These facts are sufficient for a court to infer that Everett entered Johnson's apartment with the intent to commit a felony which, in turn, means that there was a sufficient factual basis for the court to accept Everett's *Alford* plea. We therefore reject Everett's challenge to the factual basis supporting his plea.

II. Request to withdraw the guilty plea

¶ 14 Everett next argues that the court should have allowed him to withdraw his guilty plea after the conditions of his probation were announced. Whether a defendant should be allowed to withdraw a guilty plea is a question of law, to be reviewed *de novo* based on the appellate court's independent review of the record. *State v. Handy*, 326 N.C. 532, 539, 391 S.E.2d 159, 161 (1990). "When a defendant seeks to withdraw a guilty plea after sentencing, his motion should be granted only where necessary to avoid manifest injustice." *State v. Konakh*, 266 N.C. App. 551, 556, 831 S.E.2d 865, 869 (2019).

¶ 15 North Carolina recognizes a variety of factors to examine when determining whether there has been manifest injustice including: "whether the defendant has asserted legal innocence, the strength of the State's proffer of evidence, the length of the time between entry of the guilty plea and the desire to change it, and whether the accused has had competent counsel at all relevant times." *Handy*, 326 N.C. at 539, 391 S.E.2d at 163. "Misunderstanding of the consequences of a guilty plea, hasty entry, confusion, and coercion are also factors for consideration." *Id.*

¶ 16 "A plea is voluntary and knowing if it is made by someone fully aware of the direct consequences of a plea. In cases where there is evidence that a defendant signs a plea transcript and the trial court makes a careful inquiry of the defendant regarding the plea, this has been held to be sufficient to demonstrate that the plea was entered into freely, understandingly, and voluntarily." *State v. Wilkins*, 131 N.C. App. 220, 224, 506 S.E.2d 274, 277 (1998) (citations omitted).

¶ 17 Although some of the factors described in *Handy* support Everett's argument, the balance of those factors indicate that denial of Everett's request to withdraw the plea would not result in "manifest injustice."

¶ 18 Everett pleaded guilty after filling out a transcript of his plea with his attorney and orally responding in the affirmative to a series of questions from the trial court relating to his understanding of the charges, the possible punishments he was facing, the consequences of a guilty plea, and the adequacy of his representation. We thus

conclude that the trial court properly determined that denying Everett's request to withdraw his plea, after the court already pronounced its judgment, was not manifestly unjust. We therefore reject this argument as well.

III. Imposition of electronic monitoring as a condition of probation

¶ 19 Everett next argues that the trial court abused its discretion by imposing a curfew and electronic monitoring as part of his conditions of probation. Everett contends that it will be impossible for him to comply with these conditions because he does not have a fixed address at which he can remain each night, nor a reliable location to recharge his electronic monitor.

¶ 20 "A challenge to a trial court's decision to impose a condition of probation is reviewed on appeal using an abuse of discretion standard." *State v. Chadwick*, 271 N.C. App. 88, 89, 843 S.E.2d 263, 264 (2020). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

¶ 21 The trial court may impose conditions of probation reasonably necessary to ensure "that the defendant will lead a law-abiding life or to assist him to do so." N.C. Gen. Stat. § 15A-1343. A curfew "requires the offender to remain in a specified place each day and wear a device that permits the offender's compliance with the condition to be monitored electronically." N.C. Gen. Stat. § 15A-1343.2(e)(6). In the case of

someone like Everett, who has a history of larceny offenses and who had pleaded guilty to breaking and entering, it is not unreasonable to conclude that a curfew period for six months is "reasonably necessary" to ensure that he will not commit a similar offense.

¶ 22 Furthermore, during Everett's hearing, there was a discussion about whether Everett would be able to comply with the terms of his probation before he entered his *Alford* plea. Everett's counsel explained that Everett was concerned about his probation conditions because he did not have a verifiable address. The court indicated that Everett could address that issue with his probation office. Because Everett is not a sex offender, he would have access to housing, even in homelessness, through shelters or other non-profit facilities designed to assist those with difficulty finding stable housing. *See State v. Talbert*, 221 N.C. App. 650, 651, 727 S.E.2d 908, 909 (2012). In light of these facts, the trial court's determination that the curfew and electronic monitoring—with assistance from his probation officer—was reasonably necessary as part of the conditions of his probation was a reasoned decision and within the trial court's sound discretion. We therefore reject this argument as well.

IV. Restitution award

¶ 23 Finally, Everett argues that the $250 restitution award for the broken vase in the victim's apartment is improper because the award was not supported by any testimony or documentation from the State.

¶ 24 We review an award of restitution *de novo* to determine whether it was supported by competent evidence. *State v. McNeil*, 209 N.C. App. 654, 667, 707 S.E.2d 674, 684 (2011). "The amount of restitution must be limited to that supported by the record." N.C. Gen. Stat. § 15A-1340.36(a). Although the evidence necessary to support a restitution award is not a particularly high bar, the award "must be based on something more than a guess or conjecture." *State v. Lucas*, 234 N.C. App. 247, 258, 758 S.E.2d 672, 680 (2014).

¶ 25 Here, the restitution worksheet filled out by the prosecution was the only basis given for the $250 valuation of the vase. The established law in North Carolina is that "a restitution worksheet, unsupported by testimony or documentation, is insufficient to support an order for restitution." *State v. Mauer*, 202 N.C. App. 546, 552, 688 S.E.2d 774, 778 (2010). As the State has not offered any evidence to show an accurate value of the broken vase, the order for restitution must be vacated and remanded for further proceedings.

Conclusion

¶ 26 We affirm Everett's conviction and criminal sentence but vacate the order for $250 in restitution and remand for further proceedings on that issue.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

Judges DILLON and TYSON concur.

Report per Rule 30(e).