IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-654

Filed 19 December 2023

Buncombe County, Nos. 21 CRS 86691–98; 22 CRS 335860, 84072; 23 CRS 54–56

STATE OF NORTH CAROLINA

v.

JEROD IRVIN FREEMAN, Defendant.

Appeal by Defendant from judgment entered 11 January 2023 by Judge Alan Z. Thornburg in Buncombe County Superior Court. Heard in the Court of Appeals 20 November 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Katherine M. McCraw, for the State.

Richard Croutharmel, for Defendant-Appellant.

CARPENTER, Judge.

Jerod Irvin Freeman ("Defendant") appeals from a judgment entered upon his guilty plea to one count of breaking or entering a building to terrorize or injure its occupants. On appeal, Defendant argues the trial court erred in calculating his prior-record level. After careful review, we agree with Defendant and remand for resentencing.

I. Factual & Procedural Background

On 11 January 2023, Defendant appeared in Buncombe County Superior Court in order to plead guilty to: one count of breaking or entering a building to terrorize or injure its occupants, three counts of conspiracy to commit robbery with a dangerous weapon, one count of larceny of a motor vehicle, two counts of carrying a concealed gun, and one felony count of possession of a schedule-II controlled substance.

In his plea agreement, Defendant stipulated he was a prior-record level II offender because the offenses to which he was pleading guilty were committed while he was on probation. The prior conviction for which Defendant was presumably on probation, however, was for possession of drug paraphernalia, which occurred on 11 April 2022.

The trial court accepted Defendant's plea agreement and announced two judgments for the charges. The first judgment, assigned 21 CRS 86692, included only one count of breaking or entering a building to terrorize or injure its occupants, which occurred on 2 August 2021. The second judgment, assigned 21 CRS 86693, included three counts of conspiracy to commit robbery with a dangerous weapon, which also occurred on 2 August 2021. But the second judgment also included the following crimes, all of which occurred after 11 April 2022: one count of larceny of a motor vehicle, two counts of carrying a concealed gun, and one felony count of possession of a schedule-II controlled substance.

In both judgments, the trial court sentenced Defendant within the presumptive range for a prior-record level II offender. On 24 January 2023, Defendant filed notice of appeal.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 15A-4444(a2)(1) (2021).

III. Issue

The issue on appeal is whether the trial court erred in calculating Defendant's prior-record level concerning his first judgment, 21 CRS 86692.

IV. Analysis

A trial court's determination of a defendant's prior-record level is a conclusion of law, which we review de novo. *State v. McNeil*, 262 N.C. App. 340, 341, 821 S.E.2d 862, 863 (2018). Under a de novo review, "'the court considers the matter anew and freely substitutes its own judgment' for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen, Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

Article 81B allows criminal sentences based on two factors: a "class of offense" and the offender's "prior record level." N.C. Gen. Stat. § 15A-1340.13(b) (2021). A sentencing judge must determine an offender's prior-record level by adding together the point levels of each of the offender's prior convictions. *Id.* § 15A-1340.14(a)–(b). Judges may consolidate multiple offenses into a single judgment. *Id.* § 15A-1340.15(b).

Here, the trial court sentenced Defendant as a prior-record level II offender concerning both judgments. The trial court based both of its prior-record level II determinations on the premise that Defendant was on probation from his conviction for possessing drug paraphernalia. But Defendant's conviction for possessing drug paraphernalia occurred on 11 April 2022. Defendant's crime of breaking or entering a building to terrorize or injure its occupants, however, occurred on 2 August 2021. Therefore, Defendant could not have been on probation for possessing drug paraphernalia when he committed breaking or entering a building to terrorize or injure its occupants because that crime occurred before the drug-paraphernalia conviction.

So because Defendant's breaking-or-entering crime was the only crime included in the first judgment, 21 CRS 86692, Defendant was a record-level I offender concerning the first judgment. *See id.* § 15A-1340.14(a)–(b). Accordingly, the trial court erred when it sentenced Defendant as a record-level II for the first judgment.[1] *See id.*

V. Conclusion

We conclude the trial court erred in calculating Defendant's prior-record level for the first judgment, 21 CRS 86692. Therefore, we reverse the trial court's

[1] On the other hand, the trial court appropriately determined Defendant was a record-level II offender concerning the second judgment, 21 CRS 86693, because it included offenses committed while Defendant was on probation. *See id.* § 15A-1340.15(b).

sentencing concerning this judgment and remand for the trial court to sentence Defendant in accordance with his prior-record level I status.

REVERSED in part and REMANDED.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).