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NO. COA02-694

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

STATE OF NORTH CAROLINA

v.

CARL LAMONT DAVIS

Forsyth County
Nos. 98 CRS 053251, 053253-54,
and 99 CRS 009615

On writ of certiorari to review judgment dated 27 July 1999 by Judge Larry G. Ford in Forsyth County Superior Court. Heard in the Court of Appeals 30 December 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General John R. Corne, for the State.

Hall & Hall Attorneys at Law, P.C., by Douglas L. Hall, for defendant appellant.

GREENE, Judge.

Carl Lamont Davis (Defendant) by writ of certiorari appeals from a judgment dated 27 July 1999 entered consistent with a jury verdict finding him guilty of possession of a firearm by a felon, and possession of a controlled substance in jail and from Defendant's guilty plea to being a habitual felon.

Defendant was charged with three principal felonies: one count of possession of a firearm by a convicted felon; and two counts of possession of a controlled substance in jail. Defendant was later

charged in an ancillary indictment with having attained the status of habitual felon based upon three underlying felony convictions: a 18 November 1991 conviction for uttering forged instruments, a 6 October 1994 conviction for possession with intent to sell and deliver marijuana, and a 5 January 1998 conviction for possession with intent to sell and deliver marijuana. After the guilty verdict was returned on the principal felonies, Defendant's lawyer stated: "At this point, in the trial, I assume that the [State] intends to proceed on the habitual felon indictment." The State responded: "That's correct." No formal arraignment on the habitual felon indictment took place and Defendant did not request one, nor did he object to the lack of a formal arraignment. Defendant subsequently informed the trial court he would plead guilty, while reserving his right to appeal the jury verdict on the underlying felonies, to having attained the status of habitual felon. The trial court inquired of Defendant, "Have the charges been explained to you by your lawyer and do you understand the nature of the charges and do you understand every element of each charge?" Defendant responded, "Yes, sir." The trial court also asked Defendant whether he understood he was pleading guilty to habitual felony status, and Defendant confirmed he did. Defendant then entered his guilty plea to being a habitual felon.

Defendant failed to perfect his appeal, and this Court granted Defendant's petition for writ of certiorari to come forward with a belated appeal on 28 December 2001.

The issues are whether: (I) the indictments charging the principal felonies must also charge habitual felon status in order to convict Defendant as a habitual felon and (II) it was plain error for the trial court to fail to require a formal arraignment on the habitual felon indictment.

At the outset, we note as Defendant pled guilty to having attained the status of habitual felon and has not moved the superior court to withdraw that plea, his right to appeal is limited by N.C. Gen. Stat. § 15A-1444. See N.C.G.S. § 15A-1444 (2001) (limiting a defendant who has pled guilty and who was sentenced within the presumptive range of sentences, to raising certain sentencing issues on appeal). The issues raised by Defendant here appear to be outside those matters permitted by section 15A-1444. Moreover, even if those issues were properly before this Court, we conclude Defendant is not entitled to the requested relief.

I

By his first assignment of error, Defendant argues the indictments for the principal felonies charged in this case cannot sustain his conviction as a habitual felon since those indictments do not charge or state that he is a habitual felon. We disagree.

The North Carolina Supreme Court and this Court have previously addressed this issue, and have held the principal felony indictment need not refer to a defendant's alleged status as a habitual felon in order to sustain either the habitual felon or the underlying conviction. See *State v. Todd*, 313 N.C. 110, 120, 326

S.E.2d 249, 255 (1985); see also *State v. Sanders*, 95 N.C. App. 494, 504-05, 383 S.E.2d 409, 416 (1989) (not referring to the defendant's habitual status in the principal indictments has become "well established precedent" in this state). Thus, charging Defendant as a habitual felon in a separate ancillary indictment from the indictments for the principal felonies was not error.

II

By his second assignment of error, Defendant argues the trial court committed plain error in failing to arraign him on his habitual felon indictment pursuant to N.C. Gen. Stat. § 15A-928(c) prior to the close of the State's evidence on the principal felonies. Again, we disagree.

An arraignment usually "consists of bringing a defendant in open court . . . before a judge having jurisdiction to try the offense, advising [the defendant] of the charges pending against him, and directing him to plead." N.C.G.S. § 15A-941 (2001). The State must either "read the charges or fairly summarize them to the defendant." *Id.* Failure to conduct a formal arraignment is not reversible error, unless the defendant objects and states he is not properly informed of the charges against him. *State v. Brunson*, 120 N.C. App. 571, 578, 463 S.E.2d 417, 421 (1995). Section 15A-928 applies to offenses in which a prior conviction "raises an offense of lower grade to one of higher grade and thereby becomes an element of the latter." N.C.G.S. § 15A-928(a) (2001). This section requires in cases where a prior conviction is an element of the charged offense, the defendant be arraigned after the

commencement of trial and before the close of the State's evidence to give the defendant the opportunity to admit or deny the prior conviction. See *State v. Ford*, 71 N.C. App. 452, 454, 322 S.E.2d 431, 432 (1984); N.C.G.S. § 15A-928(c) (2001). The proceeding under a habitual felon indictment is different from the proceeding required under section 15A-928. See *State v. Sullivan*, 111 N.C. App. 441, 444, 432 S.E.2d 376, 378 (1993). Proof of habitual felon status is not a required element for a conviction of a principal felony; in fact, the jury is not made aware of the habitual felon indictment until after it has already returned a guilty verdict on the principal felonies. *Id.*; N.C.G.S. § 14-7.5 (2001).

In this case, section 15A-928 is therefore inapplicable to Defendant's habitual felon charge. Furthermore, as the failure to conduct a formal arraignment is not reversible error unless Defendant objected and stated he was not properly informed of the charges against him, Defendant's argument that a failure to conduct a formal arraignment is plain error must fail. Finally, Defendant did not object to the lack of a formal arraignment on the habitual felon indictment and acknowledged before entering his guilty plea he understood he was charged with having habitual felon status and understood all the elements of that charge.

Accordingly, the trial court did not commit reversible error.

No error.

Judge TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).