

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1049

Filed: 7 April 2015

Hoke County, Nos. 12 CRS 050220-222, 50224, 13 CRS 000982-986

STATE OF NORTH CAROLINA

v.

JOHNNY RAY STURDIVANT

Appeal by defendant from judgments entered 2 April 2014 by Judge Ebern T. Watson, III, in Hoke County Superior Court. Heard in the Court of Appeals 16 February 2015.

*Roy Cooper, Attorney General, by Angenette Stephenson, Assistant Attorney General, for the State.*

*Staples Hughes, Appellate Defender, by John F. Carella, Assistant Appellate Defender, for defendant-appellant.*

STEELMAN, Judge.

The trial court correctly determined the number of prior record points and record level of the defendant.

I. Factual and Procedural Background

On 2 April 2014, Johnny Ray Sturdivant (defendant) pled guilty to one count of attempted first degree statutory rape of a person 13, 14, or 15 years old, and nine counts of taking indecent liberties with a child. Defendant's plea arrangement with the State provided that all other charges against defendant were to be dismissed, and

that defendant would be sentenced to three consecutive active sentences of 96-125 months, 21-26 months, and 21-26 months.

The trial court accepted defendant's plea, found defendant to be a prior record level III for purposes of felony sentencing, and entered three judgments imposing consecutive, active sentences in accordance with the plea agreement.

Defendant appeals.

## II. Standard of Review

We review alleged sentencing errors for whether the sentence is supported by evidence introduced at the trial and sentencing hearing. *State v. Deese*, 127 N.C. App. 536, 540, 491 S.E.2d 682, 685 (1997) (citation omitted). "The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction." N.C. Gen. Stat. § 15A-1340.14(f) (2013).

## III. Computation of Defendant's Felony Sentencing Level

In his only argument on appeal, defendant contends that the trial court incorrectly determined that he had six prior record points and was a felony record level III. We disagree.

We first note that defendant's plea arrangement was a plea bargain as to sentence as provided in N.C. Gen. Stat. §§ 15A-1021(c) and 15A-1023. Defendant

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received precisely the sentences for which he bargained, which were from the presumptive range of sentences for a defendant at felony sentencing level III.

At the sentencing hearing, defendant did not stipulate to his prior convictions or record level. The State submitted a print-out of defendant's record from the Administrative Office of the Courts (AOC). Defendant offered no evidence. The trial court found that defendant had six prior record points and was a prior record level III for felony sentencing. On appeal, defendant only contests one of the convictions found by the court, for communicating threats in Hoke County case 96 CRS 2984. He contends that the State failed to meet its burden of proving that this was a conviction of defendant, arguing that "the birthdate in the report was incorrect and the address was not Mr. Sturdivant's address at the time of sentencing." Defendant contends that if the one sentencing point was removed, he would only be a prior record level II.

We first note that the address of defendant shown in the print-out for this conviction, "Lot 9 Lumbee Est MHP, Raeford, NC 28376," is the address for nine of defendant's cases prior to 2000, with the remaining five cases having the address of "Lot 7 Harts MHP, Raeford, NC 28376." We hold that the fact that defendant was living at a different address at the time of sentencing is not controlling on the issue of whether this conviction was that of defendant. The sentencing hearing was held in 2014, and it is not unusual for a person to have lived at a different address fourteen years earlier.

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The charges in this case showed defendant's date of birth to be 27 March 1974. The AOC print-out presented at the sentencing hearing by the State identifies defendant by the same name and social security number, but contains two different birthdates; 27 January 1974 and 27 March 1974.

Under the provisions of N.C. Gen. Stat. § 15A-1340.14(f), a copy of a record maintained by the AOC "bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court. . ." N.C. Gen. Stat. § 15A-1340.14(f) (2013). As noted in Section II of this opinion, we review the sentence of the trial court to see if it is supported by evidence in the record. In the instant case, the identity of the name of the defendant is *prima facie* evidence that the record is that of the defendant. The name, coupled with the social security number and the same address in nine of his pre-2000 cases, provides evidence in the record that the conviction for communicating threats in Hoke County case 96 CRS 2984 was that of the defendant. Under the rationale of *State v. Safrit*, 154 N.C. App. 727, 572 S.E.2d 863 (2002), the discrepancy in the date of defendant's birth is not determinative. It is the role of the trial court to weigh the evidence, and this Court is bound by the trial court's determinations if supported by evidence in the record.

This argument is without merit.

### IV. Conclusion

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We affirm the trial court's decision to assess one sentencing point for defendant's conviction for communicating threats in Hoke County case 96 CRS 2984, and its determination that defendant was a prior record level III for felony sentencing.

AFFIRMED.

Chief Judge McGEE and Judge BRYANT concur.