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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-661

Filed: 15 December 2015

New Hanover County, No. 12 CRS 61266

STATE OF NORTH CAROLINA

v.

HAROLD LAMONT FLETCHER

Appeal by Defendant from judgment entered 15 January 2015 by Judge Doug Parsons in Superior Court, New Hanover County. Heard in the Court of Appeals 3 December 2015.

*Attorney General Roy Cooper, by Special Deputy Attorney General Laura E. Crumpler, for the State.*

*Appellate Defender Staples S. Hughes, by Assistant Appellate Defender James R. Grant, for Defendant-Appellant.*

McGEE, Chief Judge.

Harold Lamont Fletcher (“Defendant”) appeals from his resentencing for the charge of taking indecent liberties with a minor (“12 CRS 61266”). Defendant contends the trial court did not have jurisdiction to resentence him. We agree.

I. Background

Defendant was indicted on 18 March 2013 for a number of offenses after the State Bureau of Investigation discovered nude photos of Defendant’s step-daughter

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on his computer. A jury convicted Defendant on 23 May 2014 of all of the crimes alleged in the indictments, although the trial court arrested judgment on some of the convictions. During sentencing, the State acknowledged that the date range of the offenses spanned two different iterations of the structured sentencing statute, N.C. Gen. Stat. § 15A-1340.17, and “in an abundance of caution” requested that Defendant be sentenced entirely under the 2009 iteration of N.C.G.S. § 15A-1340.17, which was less punitive than the 2011 iteration. *See* 2011 N.C. Sess. Laws ch. 192, §§ 2.(e), (j) (“effective December 1, 2011, and appli[cable] to offenses committed on or after that date”). Even though the judgment entered for 12 CRS 61266 listed the offense date as occurring after 1 December 2011, the trial court obliged the State’s request and sentenced Defendant to 16 to 20 months for 12 CRS 61266 in accordance with the 2009 iteration of N.C.G.S. § 15A-1340.17. Defendant gave a general notice of appeal from that judgment, entered on 23 May 2014.

On 22 October 2014, the North Carolina Department of Public Safety sent the New Hanover County Clerk of Court a letter, indicating that the “[m]aximum sentence [Defendant received for 12 CRS 61266 did] not [correctly] correspond to the minimum sentence imposed” under the 2011 iteration of N.C.G.S. § 15A-1340.17. Accordingly, the trial court held a resentencing hearing and resentedenced Defendant to 16 to 29 months for 12 CRS 61266 in a judgment entered 15 January 2015 (“the resentencing judgment”). Defendant appeals.

II. Analysis

Defendant contends the trial court lacked subject matter jurisdiction to conduct the resentencing hearing in 12 CRS 61266. Specifically, Defendant argues – and the State concedes – that his notice of appeal from the initial judgment entered 23 May 2014 divested the trial court of jurisdiction over his case. We agree. *See State v. Davis*, 123 N.C. App. 240, 242, 472 S.E.2d 392, 393 (1996) (“The general rule is that the jurisdiction of the trial court is divested when notice of appeal is given, except that the trial court retains jurisdiction for matters ancillary to the appeal[.]”). Accordingly, we vacate the resentencing judgment for Defendant’s conviction of 12 CRS 61266.

VACATED.

Judges HUNTER, JR. and DILLON concur.

Report per Rule 30(e).