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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1052

Filed: 5 July 2017

Cabarrus County, Nos. 15 CRS 50855-56

STATE OF NORTH CAROLINA

v.

SHANNON DALE ISOM

Appeal by defendant from judgments entered 3 February 2016 by Judge Martin B. McGee in Cabarrus County Superior Court. Heard in the Court of Appeals 19 June 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Melody R. Hairston, for the State.

Ward, Smith & Norris, P.A., by Kirby H. Smith, III, for defendant.

DIETZ, Judge.

Defendant Shannon Dale Isom challenges his sentence for various marijuana trafficking convictions. He contends that the trial court improperly considered his decision to go to trial in imposing a harsher sentence.

As explained below, the trial court's comments at sentencing demonstrate that it imposed a harsher sentence not because Isom went to trial but because, at trial,

Isom falsely accused law enforcement officers of lying under oath and attempting to frame him. We therefore reject Isom's argument and find no error in the trial court's judgments.

Facts and Procedural History

On 7 November 2014, law enforcement went to Defendant Shannon Dale Isom's home to investigate a report that the home was used in a marijuana trafficking operation. According to law enforcement, Isom cooperated with the investigation, consented to a search of the home, brought the officers various incriminating evidence, and signed a written statement admitting to growing marijuana for personal use. The State then charged Isom with various drug trafficking offenses.

At trial, Isom presented an entirely different version of events. He claimed that the law enforcement officers forced their way into his home and that, when he explained that the officers were violating his "constitutional rights," the officers threatened to take him to jail if he did not consent to a search. Isom also claimed that the officers threatened to arrest him if he tried to call an attorney. Finally, Isom testified that the officers forced him to sign the written admission statement without showing him what that statement said.

The jury found Isom guilty of possession of marijuana, manufacture of marijuana, intentionally maintaining a dwelling for the purpose of keeping a controlled substance, and possession of drug paraphernalia. The trial court then

sentenced Isom within the presumptive range for these offenses. For the three Class I felonies, the trial court sentenced Isom at the top of the presumptive range to three suspended prison terms of 6 to 17 months and 36 months of supervised probation. *See* N.C. Gen. Stat. § 15A-1340.17(c)-(d) (2015). The court further ordered Isom to serve three consecutive 120-day periods of confinement as a condition of special probation. *See* N.C. Gen. Stat. § 15A-1351(a) (2015). The court imposed an additional 45-day active sentence for Isom's misdemeanor conviction, the maximum punishment authorized for that offense given Isom's prior record level. *See* N.C. Gen. Stat. § 15A-1340.23 (2015). Isom timely appealed.

Analysis

Isom contends that the trial court impermissibly punished him for invoking his right to a jury trial. He first points to the following portion of the prosecutor's sentencing argument:

[PROSECUTOR]: . . . The State's concern is this: The point of the judicial system is to rehabilitate and have defendants suffer consequences for what they know to be wrong. *It is one thing to demand your trial and demand that the State jump through hoops to prove your case. The defendant still has not taken any responsibility. And beyond that, he has disparaged the name of well respected officers within this community.* So the State is requesting that you do give the top end of the presumptive range, which would be 6 to 17 months, and give the maximum split allowable by law for at least two of those offenses. And the defendant, I believe, is eligible as well for an active sentence . . . for the misdemeanor case as well, Your Honor. We would ask for an active sentence in that case as well.

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(Emphasis added). Isom contends that, in the argument quoted above, the prosecutor urged the court to punish him for entering a plea of not guilty. Isom then points to the trial court's pronouncement of his sentence:

THE COURT: . . . [A]fter reviewing all of the information before the Court, sir, *I'm simply going to say your story was an extraordinary one and the jury rendered the verdict that it has. In recognition of it, I'm going to tell you, you are not eligible for an active sentence, but I certainly would give you an active sentence. Given the case as presented before me, I would give you an active sentence right off.* In these matters, I'm not able to do that. I'm going to give you a split sentence. . . . I'm not going to make any written findings because the sentence I'm going to impose will be within the presumptive range.

(Emphasis added).

Isom argues that the court's reference to the jury's verdict, in light of the prosecutor's argument quoted above, indicates that the court punished Isom for invoking his right to a jury trial.

To be sure, criminal defendants may not be punished at sentencing for exercising their constitutional right to trial by jury. *State v. Cannon*, 326 N.C. 37, 39, 387 S.E.2d 450, 451 (1990). Thus, a defendant is entitled to a new sentencing hearing where "it can reasonably be inferred from the language of the trial judge that the sentence was imposed at least in part because defendant did not agree to a plea offer by the state and insisted on a trial by jury." *Id.*

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That is not what happened here. The trial court's statements are not directed at Isom's decision to go to trial; they are directed at Isom's accusation that law enforcement officers lied under oath and engaged in a series of unlawful actions to frame him. The trial court (and, evidently, the jury) concluded that it was Isom, not the officers, whose story was a lie. It is well-settled that a trial court may take into account a defendant's false testimony at trial in selecting an appropriate sentence. *See State v. Tice*, 191 N.C. App. 506, 515, 664 S.E.2d 368, 374 (2008); *see also State v. Person*, 187 N.C. App. 512, 528, 653 S.E.2d 560, 570 (2007), *rev'd in part on other grounds*, 362 N.C. 340, 663 S.E.2d 311 (2008). Accordingly, the trial court's pronouncement during sentencing was entirely appropriate.

Conclusion

We find no error in the trial court's judgments.

NO ERROR.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).