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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1399

Filed: 2 October 2018

Johnston County, Nos. 15 CRS 57245, 17 CRS 52933

STATE OF NORTH CAROLINA

v.

FREDRICK EARL SANDERS

Appeal by defendant from judgment entered 15 June 2017 by Judge Thomas H. Lock in Johnston County Superior Court. Heard in the Court of Appeals 27 September 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Kimberly N. Callahan, for the State.

Mark Hayes for defendant.

DIETZ, Judge.

Defendant Fredrick Earl Sanders appeals his convictions, pursuant to guilty pleas, for drug possession, felonious restraint, and attaining habitual felon status. His appellate counsel filed an *Anders* brief asserting that counsel is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asking this Court to conduct our own review. Having reviewed the record and

determined that the trial court correctly sentenced Sanders in accordance with his plea agreements and stipulations, we affirm the trial court's judgment.

Facts and Procedural History

On 13 June 2017, Fredrick Earl Sanders pleaded guilty to possession of cocaine, felonious restraint, and attaining habitual felon status. The plea agreement stated: "The Defendant will plead guilty to possession of cocaine & admit his status as a [habitual] felon. He will also plead [guilty] to felonious restraint. The [habitual] felon *will not* attach to this charge." Because there were still additional charges pending against Sanders, the trial court continued judgment to allow Sanders and the State additional time to negotiate a plea agreement regarding the remaining charges.

On 15 June 2017, Sanders agreed to enter an *Alford* plea pursuant to a plea arrangement to the additional charges of possession of cocaine, possession of a controlled substance on jail premises, and attaining habitual felon status. The terms of the plea agreement provided that the convictions would be consolidated with the convictions from Sanders's 13 June 2017 plea. Additionally, other pending charges were to be dismissed. At the plea hearing, the trial court stated the following:

He's a Prior Record Level VI offender based on a total of 19 points. That is by stipulation. With regard to all charges other than the felonious restraint, the Court does adjudge him to be an habitual felon, to be sentenced at a level - - or a class four classes higher than the principal felony. The State is not seeking and the Court is not sentencing him as

an habitual felon with regard to the felonious restraint charge. Since the charges will be consolidated, that means, of course, he will be sentenced as a Class D felon.

The trial court entered judgment and sentenced Sanders in the mitigated range to a term of 82 to 111 months in prison. Sanders appealed.

Analysis

Counsel appointed to represent Sanders has been unable to identify any nonfrivolous issues on appeal and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has also shown to the satisfaction of this Court that he has complied with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising Sanders of his right to file written arguments with this Court and providing him with the documents necessary for him to do so.

Sanders has not filed any written arguments on his own behalf with this Court and a reasonable time in which he could have done so has passed. In accordance with *Anders*, we have fully examined the record to determine whether there are any issues of arguable merit. By virtue of his guilty pleas, Sanders's right of appeal is limited to the sentencing issues set forth in N.C. Gen. Stat. § 15A-1444(a1)-(a2).

Here, Sanders stipulated to his prior convictions and prior record level. Additionally, Sanders's convictions from both 13 June 2017 and 15 June 2017 were consolidated for sentencing. "[W]hen an offender's offenses are consolidated, [t]he

judgment shall contain a sentence disposition specified for the class of offense and prior record level of the most serious offense.” *State v. Spence*, __ N.C. App. __, __, 787 S.E.2d 455, 459 (2016). The most serious offense in the consolidated judgment was Sanders’s conviction for possession of a controlled substance on jail premises as a habitual felon.¹ Due to Sanders’s habitual felon status, the Class H felony was raised four levels to Class D. *See* N.C. Gen. Stat. §§ 90-95(e)(9), 14-7.6. The trial court correctly sentenced Sanders in the mitigated range for a Class D felony offense with a Prior Record Level VI. N.C. Gen. Stat. § 15A-1340.17.

Conclusion

We find no prejudicial error in Sanders’s sentence and therefore affirm the trial court’s judgment.

AFFIRMED.

Judges STROUD and MURPHY concur.

Report per Rule 30(e).

¹ Felonious restraint, to which defendant pleaded guilty, is a Class F felony, a higher class felony than Sanders’s conviction for possession of a controlled substance on jail premises. *See* N.C. Gen. Stat. § 14-43.3. However, the plea agreement provided that habitual felon status would not attach to this offense, so it was not raised to a Class C felony.