

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1285

Filed: 5 November 2019

Randolph County, Nos. 16CRS1115, 52524

STATE OF NORTH CAROLINA

v.

JAQUAIL DONAVEN ALSTON, Defendant.

Appeal by Defendant from judgment entered 8 March 2018 by Judge V. Bradford Long in Randolph County Superior Court. Heard in the Court of Appeals 18 September 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kristin J. Uicker, for the State.*

*Cooley Law Office, by Craig M. Cooley, for Defendant-Appellant.*

DILLON, Judge.

Defendant Jaquail Donaven Alston appeals from a judgment convicting him of felony serious injury by vehicle (“FSIBV”). We affirm.

I. Background

In April 2017, a grand jury indicted Defendant for FSIBV, driving while impaired, and driving while license revoked. Eleven months later, in March 2018, Defendant pleaded guilty to the FSIBV charge and the other two charges were dropped, as part of a plea agreement.

Defendant petitioned our Court for a writ of *certiorari* to review whether the prosecutor's factual basis presented to the trial court was not sufficient. We grant *certiorari* to consider the merits of Defendant's appeal.

## II. Analysis

Defendant alleges that the factual basis put forth by the prosecutor was insufficient to warrant an informed decision by the trial court. Our General Assembly has provided that "[t]he judge may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea" but that "[t]his determination may be based upon . . . a statement of facts by the prosecutor[.]" N.C. Gen. Stat. § 15A-1022(c) (2018). *See State v. Atkins*, 349 N.C. 62, 95-97, 505 S.E.2d 97, 118-19 (1998) (concluding that the prosecutor's factual summary was sufficient to allow the trial court to accept a defendant's guilty plea).

Here, after the trial judge read the plea transcript to Defendant, the prosecutor gave the following factual summary:

This matter occurred on [25 May 2016], Your Honor. It was investigated by the highway patrol. On that date, Your Honor, they received a call at 3 o'clock in the morning, Your Honor. The vehicle had a one car accident. It had veered off the road and struck a tree and then flipped over, Your Honor, on I-73.

When they arrived there, there were three individuals, Your Honor, a male, female and small child, I believe at the time was an infant, five months or so. The EMTs, Your Honor, had taken the individuals to the hospital. At the hospital, Your Honor, Mr. Alston was acting erratically –

unresponsive and acting erratically, so they drew the blood, Your Honor. The EMT noted to the hospital that he was the driver.

When they actually questioned him, Your Honor, when he was responsive, he did say he was the driver. At the hospital, blood was drawn. He was then released. . . . His girlfriend was there with her baby, Your Honor. The baby was injured and flown to another hospital. His wife then said, "No, no, I was the driver." She gave a statement that she was distracted by her cell phone or so and that she was the driver.

There was a little argument between the two. He told her, why are you lying in front of the trooper, etc. So the charges stayed with him, Your Honor. Like I said, the EMT noticed that he was the driver. He was the initial person that said he was the driver. So, that being said, the reason we bring that to your attention, Judge, is that we have limited contact with her, obviously, for those.

Some of the stuff came back, no impact statement. We did finally track her down through Mr. Evans, as far as a phone number, just to clarify that she did not want to be here, and she said the child was doing fine now. So, just as far as that information. His blood was sent off to the lab, Your Honor. It came back positive for Alprazolam and Benzodiazepine. Those two narcotics were in his system, Judge. And that would be all, Judge.

The trial judge then asked defense counsel if there was anything more that he wanted to add. Defense counsel answered that he did not wish to change any of the information put forth by the prosecutor and that "[Defendant] does have a two-year old daughter, and one of the reasons he wanted to go ahead and try and go on

probation is so he can get out, go back to work and start taking care of his child. . . .  
So we just ask Your Honor to accept the plea.”

On appeal, Defendant claims that it was unclear from the prosecution’s factual summary whether he was under the influence *while driving* and whether the infant sustained *serious* injury. He claims the prosecutor needed to provide more evidence to the trial judge to prove these elements of the charge. However, the prosecutor need not “find evidence from each, any, or all of the enumerated sources.” *Atkins, supra*. These elements could reasonably be inferred. Specifically, it could be inferred from the prosecutor’s description of drug components being found in Defendant’s blood that Defendant was driving under the influence. And it could be inferred from the prosecutor’s statement that the child victim had to be transferred to another hospital for care that the child sustained *serious* injury. Thus, the information given by the prosecutor for the case’s factual basis was sufficient.

### III. Conclusion

For the aforementioned reasons, we affirm the lower court’s ruling that finds the factual basis to support the guilty plea.

AFFIRMED.

Judge BROOK concurs.

Judge TYSON dissents by separate opinion.

TYSON, Judge, dissenting.

I vote to deny Defendant’s petition for writ of certiorari in the exercise of discretion and precedents, and to grant the State’s motion to dismiss his appeal. I respectfully dissent.

I. Petition for Writ

Defendant has “petitioned this Court for *certiorari*. A petition for the writ must show merit or that error was probably committed below. *In re Snelgrove*, 208 N.C. 670, 672, 182 S.E. 335. *Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown. *Womble v. Gin Company*, 194 N.C. 577, 579, 140 S.E. 230.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959). *See also State v. Ross*, 369 N.C. 393, 400, 794 S.E.2d 289, 293 (2016) (reversing grant of certiorari by the Court of Appeals on defendant’s challenge of sufficiency of factual basis of plea: “Court of Appeals may choose to grant such a writ to review some issues that are meritorious but not others for which a defendant has failed to show good or sufficient cause”).

Defendant entered a guilty plea pursuant to a plea arrangement with the State on one count of felony serious injury by vehicle. In exchange, *the State dismissed both the remaining charges* of driving while impaired and driving while license revoked. The trial court suspended the sentence and placed Defendant on supervised probation.

The majority's opinion details from the transcript the factual basis for his plea and Defendant's specifically addressing the trial court and declining to add to or change the State's factual summary for his plea. The trial court entered judgment in accordance with the terms of the plea arrangement.

Defendant received the full benefit of his plea bargain and failed to place the State or the trial court on any notice of any dissatisfaction or that he intended to seek further review on appeal after judgment on his plea was entered. Defendant's in-court admission to the factual basis to support his guilty plea, acceptance of its benefits, and his failure to provide or preserve any prior notice to the State and the trial court precludes further review. For Defendant to now seek appellate review of his guilty plea, with no showing of either merit or any prejudicial error, damages the fairness and integrity of the plea bargaining process and violates long standing precedents. *See id.*

The State may offer fewer binding plea bargains, if a defendant circumvents the fairness requirement to inform the State of his intent to seek further review on appeal. The State can expressly preclude such collateral back door actions by requiring prior disclosure and waiver of appeal as an express condition of the plea arrangement.

## II. Conclusion

Defendant's petition "must show merit or that error was probably committed below." *Grundler*, 251 N.C. at 189, 111 S.E.2d at 9. This standard mandates a writ to be "issued only for good and sufficient cause shown." *Id.* Absent Petitioner's "must" showing of "merit" or probable prejudicial "error," there exists no "good and sufficient cause shown to issue" the writ. *Id.* Defendant's petition asserts no basis to allow and is procedurally barred.

Defendant's petition for a wholly discretionary writ is properly denied and the State's motion to dismiss his purported appeal is properly allowed. *Ross*, 369 N.C. at 400, 794 S.E.2d at 293. Defendant received the full benefit of his plea bargain and did not disclose or preserve his intent to seek appellate review.

The majority's opinion provides no basis whatsoever to allow Defendant's petition after his guilty plea, dismissal of other charges, being given a suspended sentence and probation, particularly after his expressed agreement with the State's factual basis for his guilty plea. Allowing his petition under this facts is clearly precluded under binding precedents. *See id.* I vote to deny Defendant's petition for writ of certiorari and allow the State's motion to dismiss the appeal. I respectfully dissent.