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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1130

Filed: 7 January 2020

Iredell County, Nos. 14CRS4302, 14CRS054550

STATE OF NORTH CAROLINA

v.

TROSHAWN N. WILLIAMS, Defendant.

Appeal by Defendant from judgment entered 7 June 2018 by Judge Jesse B. Caldwell, III, in Iredell County Superior Court. Heard in the Court of Appeals 1 October 2019.

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

Joseph P. Lattimore for Defendant-Appellant.

McGEE, Chief Judge.

Troshawn N. Williams (“Defendant”) appeals from a judgment entered after he pleaded guilty to second-degree murder and possession of a firearm by felon. Defendant contends the trial court erred in considering, as an aggravated factor, Defendant’s willful violation of the conditions of his probation. We affirm the trial court.

I. Factual and Procedural History

Defendant was indicted on a charge of first-degree murder on 15 September 2014 and a charge of possession of a firearm by felon on 3 November 2014. Defendant tendered an *Alford* plea to the charges of second-degree murder and possession of a firearm by felon and stipulated to a prior record level of III on 7 June 2018.

At the plea hearing on 7 June 2018, the trial court conducted a plea colloquy, which included the following exchange:

THE COURT: Do you understand that you are admitting the existence of aggravating factors, which is that you have, during the 10-year period prior to the commission of the offense for which you are now being tried and involved in a guilty plea and will be sentenced, that you, within that 10-year period had been found by a Court of this State to be in willful violation of the conditions of probation imposed pursuant to a suspended sentence. Specifically, that case was Iredell County file number 10 CR 007061, and the case was misdemeanor break or entering. Do you to [sic] understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And also understand that you agree that there is evidence to support this aggravating factor beyond a reasonable doubt. That you agree the Court may accept your admission to this factor. You understand that you're waiving any notice of whatever the State may have with regard to this aggravating factor. You further agree that the State has provided you with appropriate notice of this aggravating factor. Is that right?

THE DEFENDANT: Yes, sir.

The trial court stated the terms of the plea bargain:

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The first-degree murder charge will be reduced. The charges will be consolidated, that is joined together. The defendant shall be sentenced at Level III, maximum punishment for a B1 felony Level III is 488 months in prison. The defendant's impending probation violation shall be served concurrently with whatever sentence is imposed herein. The remaining conditions of the sentence lie solely in the Court's discretion.

The trial court confirmed the terms of the plea bargain with the prosecutor and Defendant's attorney, and Defendant formally accepted the plea bargain.

As to the factual basis for the plea, the prosecutor presented the State's rendition of the events surrounding the 5 September 2014 homicide and Defendant's statement to the police. Regarding Defendant's willful violation of probation in 2012, the prosecutor explained:

The defendant was -- in support of the aggravating factor, was placed on probation for misdemeanor breaking or entering on August 24th of 2011, found to be in willful violation on September 12th of 2012.

I gave certified copies of the violation report that I'll offer into evidence as State[]s 1 for sentencing, Judge. And I will tell the Court, in all candor, it is -- they were monetary violations only. And as a matter of fact, on the back of the court shuck, the writing by the clerk notes that the defendant admitted his violation. The monies were remitted owed -- remit the monies owed and terminate successfully.

So notwithstanding the fact that it was terminated successfully, he did admit that he was found to be in violation at the time that the violation was heard. So I would tender this to the Court as State[]s Exhibit 1 for sentencing . . . toward the aggravating factor.

Later in the hearing, when arguing aggravating factors, the prosecutor again stated:

So speaking on behalf of aggravation, as I indicated -- I want the Court to consider -- I want the Court to consider, and I know how it will, in 2011, if I'm not mistaken, even from what some folks might classify as a minor offense, Mr. Williams was placed on probation August 24th, 2011. And a month later was found to be in willful violation. And the violations were monetary, which sometimes we consider lesser violations, but violations nonetheless. Because you were ordered to do something and you failed to do it, so you were brought back to court.

Well, he got a windfall there, because the cost according to -- because it was remitted. And then we gave him a break and said, okay we will terminate him successfully after admitting being in violation.

The trial court, “find[ing] there’s a factual basis for these pleas” accepted the negotiated plea. Further, the trial court found:

there is a factor in aggravation, which has been proven beyond a reasonable doubt. That the defendant has, during the 10-year period prior to the commission of the offense, which is now being sentenced, has been found by the Court this day in willful violation of the conditions of probation, imposed pursuant to suspended sentence, to wit, Iredell County case 10 CR 00761.

After balancing the mitigating and the aggravating factors, the trial court sentenced Defendant in the aggravated range to a minimum of 325 months, maximum of 402 months. Defendant appeals.

II. Analysis

Defendant contends the trial court erred by finding, as an aggravated factor, that Defendant was in willful violation of the conditions of his probation, imposed pursuant to a prior suspended sentence. We disagree.

“Generally, when a defendant assigns error to the sentence imposed by the trial court our standard of review is whether the sentence is supported by evidence introduced at the trial and sentencing hearing.” *State v. Allen*, ___ N.C. App. ___, ___, 790 S.E.2d 588, 591 (2016) (citations and brackets omitted).

N.C.G.S. § 15A-1340.16(d)(12a) provides for an aggravating factor when

[t]he defendant has, during the 10-year period prior to the commission of the offense for which the defendant is being sentenced, been found by a court of this State to be in willful violation of the conditions of probation imposed pursuant to a suspended sentence or been found by the Post-Release Supervision and Parole Commission to be in willful violation of a condition of parole or post-release supervision imposed pursuant to release from incarceration.

N.C.G.S. § 15A-1340.16(d)(12a) (2017). However,

[b]efore accepting an admission to the existence of an aggravating factor or a prior record level point under G.S. 15A-1340.14(b)(7), *the court shall determine that there is a factual basis for the admission*, and that the admission is the result of an informed choice by the defendant. The court may base its determination on the factors specified in G.S. 15A-1022(c), as well as any other appropriate information.

N.C.G.S. § 15A-1022.1(c) (2017) (emphasis added). N.C.G.S. § 15A-1022(c) provides 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” and that

[t]his determination may be based upon information including but not limited to:

- (1) A statement of the facts by the prosecutor.
- (2) A written statement of the defendant.
- (3) An examination of the presentence report.
- (4) Sworn testimony, which may include reliable hearsay.
- (5) A statement of facts by the defense counsel.

N.C.G.S. § 15A-1022(c) (2017).

In the present case, in support of the aggravating factor, the prosecutor stated at the sentencing hearing that Defendant had been found to be in willful violation of probation on 12 September 2012. Additionally, the prosecutor offered into evidence the probation violation report. The violation report provided the following:

Of the conditions of probation imposed in that judgment, the defendant has willfully violated:

1. Condition of Probation “The defendant shall pay to the Clerk of Superior Court the “Total Amount Due” as directed by the Court or probation officer” in that
THE OFFENDER IS \$585 IN ARREARS IN COURT COST
AT TIME OF THIS REPORT.

2. Condition of Probation “The defendant shall pay to the Clerk of Superior Court the monthly probation supervision fee as set by law” in that in that [sic]
THE OFFENDER IS \$320 IN ARREARS IN PROBATION
SUPERVISION FEES AT TIME OF THIS REPORT.

The prosecutor explained “on the back of the court shuck, the writing by the clerk notes that [D]efendant admitted his violation” and “[Defendant] did admit that he was found to be in violation at the time the violation was heard.” A copy of the shuck was entered into evidence. The clerk’s note on the shuck was dated 19 September 2012 and contained the following language: “admits; remit monies owed; term prob successful.” Therefore, in addition to the plea transcript, the trial court considered the probation violation report, the statement of the prosecutor that Defendant was found to be in willful violation on 12 September 2012, and the “shuck” indicating Defendant had admitted his violation. Further, Defendant’s counsel acknowledged the existence of the aggravating factor during the sentencing hearing.

Defendant asserts the “trial court’s action in remitting the monies is consistent with a further determination by the court that the violation was not willful” and, “this action shows the court, pursuant to the dictates of N.C.[G.S.] § 15A-1364(c), concluded there was a good faith inability to pay the monies.” Thus, Defendant asserts “the State’s evidence presented an insufficient factual basis to support the finding of the aggravating factor in N.C.[G.S.] § 15A-1340.16(d)(12a).”

N.C.G.S. § 15A-1364(c) provides:

[i]f it appears that the default in the payment of a fine or costs is not attributable to failure on the defendant’s part to make a good faith effort to obtain the necessary funds for payment, the court may enter an order:

- (1) Allowing the defendant additional time for payment; or
- (2) Reducing the amount of the fine or costs or of each

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installment; or
(3) Revoking the fine or costs or the unpaid portion in whole
or in part.

N.C.G.S. § 15A-1364(c) (2017). This Court has held “[w]hen a defendant does put on evidence of his inability to pay . . . he is entitled to have his evidence considered and evaluated by the trial court, and the trial judge has a duty to make findings of fact which clearly show that he did consider and did evaluate the defendant’s evidence.” *State v. Jones*, 78 N.C. App. 507, 509, 337 S.E.2d 195, 197 (1985) (internal quotation marks, citation, and ellipsis omitted).

In the present case, the record is devoid of evidence indicating Defendant had offered any evidence at his 12 September 2012 probation violation hearing regarding his inability to pay his probation costs. Moreover, there is no evidence in the record that the trial court had made a finding of fact that Defendant’s failure to pay was not willful, as required by statute. Although Defendant asserts that the clerk’s note on the “shuck” – which indicated the remittal of monies owed – “established that the monies were ordered remitted that same day[.]” the note on the shuck was dated 19 September 2012, seven days after the probation violation hearing. Therefore, there is no evidence in the record that the trial court concluded on 12 September 2012 that Defendant’s failure to pay his probation costs resulted from his good faith inability to pay the monies and was, thus, not willful.

III. Conclusion

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In determining that Defendant's probation violation was willful and in considering it as an aggravating factor beyond a reasonable doubt, the trial court was presented with a sufficient factual basis of Defendant's admission, including Defendant's admission at the 7 June 2018 hearing, the statements of the prosecutor, the acknowledgment of Defendant's counsel, the note on the "shuck" indicating Defendant had admitted his violation, and the probation violation report. Therefore, the trial court did not err in sentencing Defendant within the aggravated range.

AFFIRMED.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).