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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-664

Filed: 3 March 2020

Duplin County, Nos. 17-CRS-051941, 42

STATE OF NORTH CAROLINA

v.

KEVIN LAMONTE WHITE, Defendant.

Appeal by Defendant from judgment entered 19 April 2018 by Judge Albert D. Kirby in Duplin County Superior Court. Heard in the Court of Appeals 19 February 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Nora F. Sullivan, for the State-Appellee.

Leslie C. Rawls, Attorney for Defendant-Appellant.

COLLINS, Judge.

Defendant appeals from judgment entered upon guilty verdicts, arguing that the trial court erred by entering judgment for both the sale and the delivery of methamphetamine, as both charges arose from a single transaction. Because the trial court arrested judgment for the delivery conviction and sentenced Defendant for the sale of methamphetamine only, but the record contains no written order arresting

judgment on the delivery conviction, we remand to the trial court for entry of such order.

I. Procedural History

Defendant was indicted on charges of selling methamphetamine; delivering methamphetamine; manufacturing methamphetamine; possession with intent to manufacture, sell, and/or deliver a Schedule II controlled substance; possessing drug paraphernalia; maintaining a vehicle to keep controlled substances; and having attained habitual felon status. On 19 April 2018, a jury found Defendant guilty of all substantive sale and delivery charges except manufacturing methamphetamine. After the clerk read the verdicts into the record, the trial court stated that it would “arrest judgment with respect to the count or the offense of delivery of a controlled substance . . . since defendant was convicted of the sale of the schedule II.” Defendant pled guilty to having attained habitual felon status. The parties stipulated that Defendant was a prior record level III.

During the sentencing phase the trial court stated:

[B]ased upon the jury’s verdicts in this matter, and this is in 17-CRS-51941, the Court is going to give the following judgment:

. . . .

In 17-CRS-51941, the offense of selling methamphetamine, defendant is sentenced to 96 minimum to 128 maximum in months in the Department of Correction active time. That’s eight to 10.6 years.

The Court arrests judgment with respect to the

second count in file number 17-CRS-51941, that is the delivery of methamphetamine as by law provided.

The second count in file number 17-CRS-51941 is delivery of methamphetamine. The trial court consolidated the remaining convictions with the selling methamphetamine conviction for sentencing purposes. The judgment entered indicates convictions for both the sale and the delivery of methamphetamine while the record contains no written order arresting judgment for the delivery of methamphetamine conviction.

Defendant gave oral notice of appeal in open court.

II. Discussion

Defendant argues that the trial court erred when it entered judgment for both the sale and the delivery of methamphetamine, because the charges arose from a single transaction.¹ Defendant argues that the trial court announced that it would arrest judgment on the delivery charge, and asks us to remand the case to the trial court for entry of a new sentencing judgment.

Whether the judgment properly reflected the trial court's ruling is a question of law reviewed de novo.² *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011). The presence of an error in a trial court's written judgment does not

¹ The parties do not dispute that a defendant cannot be convicted of or punished for both the sale and the delivery of a controlled substance arising from a single transfer. *State v. Moore*, 327 N.C. 378, 382, 395 S.E.2d 124, 127 (1990).

² While Defendant characterizes the alleged error as sentencing error, he does not challenge the length or type of sentence imposed. Any argument as to the length or type of sentence imposed is deemed abandoned. N.C. R. App. P. 28(a).

necessarily entitle a defendant to a new sentencing hearing. *State v. Gell*, 351 N.C. 192, 218, 524 S.E.2d 332, 349 (2000). “[A]n error on a judgment form which does not affect the sentence imposed is a clerical error, warranting remand for correction but not requiring resentencing.” *State v. Gillespie*, 240 N.C. App. 238, 245, 771 S.E.2d 785, 790 (2015) (citation omitted); *see also State v. Wright*, 826 S.E.2d 833, 839 (N.C. Ct. App. 2019) (remanding for correction of “a clerical error on the form arresting judgment (AOC-CR-305)”).

In this case, although the jury returned guilty verdicts for both the sale and the delivery of methamphetamine, the trial court announced that it was arresting judgment on the delivery conviction and sentencing Defendant based on the sale conviction only. The judgment, entered on form AOC-CR-601, does not indicate that judgment had been arrested for the delivery conviction, and no order arresting judgment on the delivery conviction, using a form AOC-CR-305 for example, appears in the record on appeal. Accordingly, we remand for entry of an order arresting judgment on the delivery of methamphetamine conviction to correct the clerical error.

NO PREJUDICIAL ERROR; REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges DIETZ and MURPY concur.

Report per Rule 30(e).