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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-919

Filed: 16 June 2020

Yancey County, Nos. 15CRS050081, 271

STATE OF NORTH CAROLINA

v.

WILLIAM JESSE BUCHANAN, Defendant.

Appeal by Defendant from judgment entered 1 May 2019 by Judge Gary M. Gavenus in Yancey County Superior Court. Heard in the Court of Appeals 29 April 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Ronald D. Williams, II, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for the Defendant.

DILLON, Judge.

Defendant William Jesse Buchanan appeals from a judgment finding him guilty of obtaining property by false pretense and of attaining habitual felon status.

I. Background

STATE V. BUCHANAN

Opinion of the Court

In 2015, Defendant was indicted on the charges of obtaining property by false pretense, attempting to obtain property by false pretense, and attaining habitual felon status.¹ In March 2016, a jury found Defendant guilty of the first two charges, and he subsequently pleaded guilty to attaining the status of a habitual felon. Defendant appealed to our Court. On 6 June 2017, we issued our first opinion in Defendant's case, concluding that the trial court did not commit reversible error.²

Subsequently, Defendant filed a petition for writ of *certiorari* with our Supreme Court. The motion was allowed and our Supreme Court remanded Defendant's case to our Court for reconsideration of one issue.

On 6 November 2018, we issued a second opinion, remanding Defendant's case to the trial court with instructions to "vacate one of the false pretense convictions, to consider whether the vacation of the conviction affects Defendant's habitual felon status, and to re-sentence Defendant accordingly."³

In the trial court, prior to re-sentencing, Defendant filed a motion to withdraw his habitual felon status guilty plea on several grounds. The trial court denied Defendant's motion. The State submitted certified copies of three prior unrelated felonies to establish Defendant's habitual felon status,⁴ and the trial court re-

¹ The underlying facts of these charges are laid out in our previous opinions written in Defendant's case.

² *State v. Buchanan*, 253 N.C. App. 783, 801 S.E.2d 366 (2017) (COA16-697).

³ *State v. Buchanan*, ___ N.C. App. ___, 821 S.E.2d 890 (2018) (COA16-697-2).

⁴ Defendant's trial counsel did not object to the admission of this evidence from the State.

sentenced him to 60-84 months of imprisonment. Defendant appealed again to our Court.

II. Analysis

Defendant makes several arguments on appeal. We address each in turn.

A. Mandate from This Court

Defendant argues that the trial court erred by failing to comply with our Court's mandate to consider whether the vacation of one of his convictions affected his habitual felon plea. We disagree.

“[T]his Court's interpretation of its own mandate is properly considered an issue of law reviewable *de novo*.” *State v. Watkins*, 246 N.C. App. 725, 730, 783 S.E.2d 279, 282 (2016). Further, “in discerning a mandate's intent, the plain language of the mandate controls.” *Id.* at 730, 783 S.E.2d at 283. Limiting language of a mandate limits the issues the trial court may consider on remand. *Id.* at 731, 783 S.E.2d at 283.

Defendant argues that our Court's mandate required the trial court to reconsider his habitual felon *plea*. But the plain language of the mandate only required the trial court “to consider whether the vacation of the conviction affects Defendant's habitual felon status.” We conclude that the mandate only required the trial court to consider whether the vacation of one of Defendant's convictions would result in Defendant still having the requisite number of felonies to attain habitual

felon status. The trial court specifically considered our mandate in stating, “it’s been stipulated to by the parties, that after removing the three felony convictions that were used to establish the [D]efendant’s habitual felon status, that the [D]efendant has six points, and is a Prior Record Level 3.”

B. Motion to Withdraw Habitual Felon Plea

Defendant next argues that the trial court erred by denying his pre-sentencing motion to withdraw his habitual felon plea. We disagree.

Our Supreme Court has noted that “[a] fundamental distinction exists between situations in which a defendant pleads guilty but changes his mind and seeks to withdraw the plea before sentencing and in which a defendant only attempts to withdraw the guilty plea after he hears and is dissatisfied with the sentence.” *State v. Handy*, 326 N.C. 532, 536, 391 S.E.2d 159, 161 (1990). *Handy* instructs that a defendant’s motion to withdraw his plea “at a very early stage of the proceedings, should be granted with liberality[.]” *Id.* at 537, 391 S.E.2d at 162.

Therefore, where a defendant asks to withdraw a guilty plea *after* a sentence has already been imposed, a court is to grant his request “only to avoid manifest injustice.” *Id.* at 536, 391 S.E.2d at 161. Defendant argues that the trial court should have applied the “any fair and just reason” standard. However, this standard is reserved for when a defendant seeks to withdraw his guilty plea *before* sentencing. *See id.* at 536, 391 S.E.2d at 161 (“In a case where the defendant seeks to withdraw

his guilty plea before sentence, he is generally accorded that right if he can show any fair and just reason.”).

For the reasons stated in Subsection A, we conclude that the trial court was not required to reconsider Defendant’s habitual felon plea. But assuming *arguendo* that the trial court was required to consider Defendant’s motion, the trial court did not err in denying Defendant’s motion. Defendant’s motion to withdraw his habitual felon plea came three years after his initial sentence was given, not at an early stage of the proceedings. Defendant did not demonstrate the requisite manifest injustice to warrant the withdrawal of his habitual felon plea.

III. Conclusion

We conclude that the trial court correctly followed this Court’s mandate and correctly denied Defendant’s motion to withdraw his habitual felon plea.

AFFIRMED.

Judge BERGER concurs.

Judge HAMPSON concurs in result only.

Report per Rule 30(e).