

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-694

Filed: 20 October 2020

Haywood County, No. 16 CRS 50980; 17 CRS 863

STATE OF NORTH CAROLINA

v.

LARRY DEAN PRUITT, JR.

Appeal by defendant from judgment entered 3 October 2018 by Judge Forrest D. Bridges in Haywood County Superior Court. Heard in the Court of Appeals 18 February 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Stephanie C. Lloyd, for the State.*

*Edward Eldred, Attorney at Law, PLLC, by Edward Eldred for defendant-appellant.*

BRYANT, Judge.

This appeal arises out of a conviction for attaining habitual felon status. The trial court did not err in denying defendant's motion to dismiss the habitual felon indictment, and therefore, we find no error in the trial court's decision.

Factual and Procedural History

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On 23 March 2016, Sergeant Brandon Gilmore (“Sergeant Gilmore”) encountered defendant Larry Dean Pruitt, Jr.’s truck stopped in the middle of the roadway. Defendant was standing outside of the truck, and he had both his driver’s side and passenger’s side doors open. Sergeant Gilmore noticed a plastic baggie tied off with a small knot sitting on the door jamb. Based on his training and experience, Sergeant Gilmore identified the baggie as containing narcotics and picked it up. A subsequent field test determined the contents of the baggie to be methamphetamine.

Defendant was indicted on 2 October 2017 for possession of methamphetamine and, by separate indictment that same day, for attaining habitual felon status. The State presented certified copies of court records to prove the following three felony convictions underlying defendant’s habitual felon status: (1) on or about 15 July 2011, defendant committed the felony crime of larceny for which he was convicted on 2 August 2012 in Superior Court in Guilford County, North Carolina (“Predicate Felony 1”); (2) on or about 21 November 2012, defendant committed the felony crime of larceny for which he was convicted on 22 April 2013 in Superior Court in Guilford County, North Carolina (“Predicate Felony 2”); and (3) on or about 4 August 2016, defendant committed the felony crime of possession with intent to manufacture, sell, or distribute a Schedule II controlled Substance for which he was convicted on 25 January 2017 in District Court in Yancey County, North Carolina (“Predicate Felony 3”).

The jury found defendant guilty of possession of methamphetamine and of attaining habitual felon status. The trial court entered judgment against defendant and imposed a sentence of 30 to 48 months imprisonment. Defendant entered notice of appeal in open court.

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Habitual Felon

Defendant contends that the trial court erred in denying his motion to dismiss the habitual felon indictment. We disagree.

“This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

“Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual felon and may be charged as a status offender pursuant to this Article.” N.C. Gen. Stat. § 14-7.1 (2020). This Court has already held that this language is clear and unambiguous. *State v. Brown*, 146 N.C. App. 590, 553 S.E.2d 428 (2001).

Defendant meets the definition of an habitual felon as defined by N.C. Gen. Stat. § 14-7.1, because he was convicted of three qualifying felonies at the time of his indictment. On 2 October 2017, defendant was indicted as a habitual felon based on the following: he was convicted of Predicate Felony 1 on 2 August 2012; he was

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convicted of Predicate Felony 2 on 22 April 2013; and he was convicted of Predicate Felony 3 on 2 January 2017.

Defendant committed the principal offense before he was convicted of the third predicate offense; however, at the time of defendant's indictment for the principal felony and habitual felon status, defendant had been convicted of three felonies. Therefore, defendant was properly charged and found to have attained the status of habitual felon. Accordingly, we hold no error by the trial court.

NO ERROR.

Chief Judge McGEE and Judge HAMPSON concur.

Report per Rule 30(e).