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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-98

Filed: 3 November 2020

Durham County, Nos. 17 CRS 50989, 15 CRS 59081

STATE OF NORTH CAROLINA

v.

JAMES ELLIOT PRICE

Appeal by defendant from judgment entered 13 August 2018 by Judge Orlando F. Hudson in Durham County Superior Court. Heard in the Court of Appeals 25 August 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Alesia Balshakova, for the State.

Yoder Law PLLC, by Jason Christopher Yoder, for defendant.

DIETZ, Judge.

Defendant James Elliot Price pleaded guilty to indecent exposure to a child in private and possessing an image of secret peeping. He appealed the trial court's judgment, challenging the factual basis for his guilty plea.

In an accompanying motion for appropriate relief, Price argues—and the State concedes—that the criminal statute under which Price was charged and convicted did

not take effect until several months after the acts alleged in the indictment. We agree with the parties that the appropriate course is to allow the motion, vacate Price's criminal judgment, set aside the plea agreement, and remand for further proceedings.

Facts and Procedural History

In 2018, James Elliot Price pleaded guilty to indecent exposure to a child in private and possessing an image of secret peeping. Price later filed a *pro se* notice of appeal and, after appointment of appellate counsel, filed a petition for a writ of certiorari. While the appeal and petition for a writ of certiorari were pending, Price also filed a motion for appropriate relief with this Court.

Analysis

We begin by addressing Price's motion for appropriate relief, which is properly before this Court based upon the pending appeal and petition for a writ of certiorari. *See* N.C. Gen. Stat. § 15A-1418(a). Price argues that his criminal judgment for indecent exposure must be vacated because the statute under which he was convicted did not apply to the acts alleged in the indictment.

Specifically, the indictment alleged that the criminal acts occurred in October 2015, but the criminal statute under which he was charged, N.C. Gen. Stat. § 14-190.9(a4), provides that it "becomes effective December 1, 2015, and applies to offenses committed on or after that date." 2015 N.C. Sess. Laws 250, § 2.3.

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The State concedes that “the law that created section 14-190.9(a4) said that the provision was effective for offenses committed on or after 1 December 2015,” that the alleged acts occurred before that date, and that “applying the statute retroactively would violate the state and federal constitutions.” Both parties contend that, because this criminal judgment stemmed from a guilty plea made pursuant to a plea agreement, this Court should vacate the criminal judgment, set aside the plea agreement, and remand for further proceedings.

We agree. A defendant may pursue a motion for appropriate relief if the acts alleged “did not at the time they were committed constitute a violation of criminal law” or if the “conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.” N.C. Gen. Stat. § 15A-1415(b)(1), (3). Here, Price is entitled to relief under these provisions because he was charged and convicted under a criminal statute that was not yet in effect at the time Price committed the acts alleged and because conviction under that statute would violate Price’s constitutional rights.

Accordingly, we vacate the trial court’s judgment, set aside the plea agreement, and remand this matter for further proceedings. Because we vacate the judgment on this basis, we need not address the issues Price sought to raise on direct appeal through his accompanying petition for a writ of certiorari.

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Conclusion

We vacate the trial court's judgment, set aside the plea agreement, and remand for further proceedings.

VACATED AND REMANDED.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).