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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-13

No. COA19-1121

Filed: 2 February 2021

Davidson County, No. 18 CRS 57083

STATE OF NORTH CAROLINA

v.

COLON MARSH EVANS

Appeal by defendant from judgment entered 10 July 2019 by Judge Lori I. Hamilton in Davidson County Superior Court. Heard in the Court of Appeals 12 January 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kyla Wonder, for the State.*

*Winifred H. Dillon for defendant-appellant.*

TYSON, Judge.

¶ 1 Colon Marsh Evans (“Defendant”) appeals from the judgment entered following his guilty plea to habitual larceny. We dismiss his appeal.

**I. Background**

¶ 2 Defendant was observed on video surveillance stealing a soda, snack, and phone charger from a Walmart store in Lexington. Defendant was apprehended

outside of the store and admitted taking the items. Based upon his prior criminal record, Defendant was later indicted for habitual misdemeanor larceny.

¶ 3

On 10 July 2019, Defendant appeared in superior court with his appointed counsel. Defendant pled guilty to the felony count of habitual misdemeanor larceny pursuant to a plea arrangement, in exchange for dismissal of three misdemeanor charges. Defendant stipulated in open court to his prior convictions, record level points, and level. Defendant was sentenced as a prior record level V offender and received a sentence in the presumptive range of minimum 15 months, maximum 27 months. Defendant filed a written notice of appeal *pro se*.

## II. *Anders* Brief

¶ 4

Counsel appointed to represent Defendant on appeal “is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal” and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has shown to the satisfaction of this Court that counsel has complied with the requirements of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising Defendant of his right to file written arguments with this Court and providing to him the documents necessary to do so. Defendant has not filed any documents on his own behalf with this Court and a reasonable time for him to do so has expired.

## III. Analysis

¶ 5 Where a defendant has pled guilty and was sentenced within the presumptive range, his right to appeal is limited to where the sentence imposed:

(1) Results from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;

(2) Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or

(3) Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level.

N.C. Gen. Stat. § 15A-1444(a2) (2019).

¶ 6 The State contends the record on appeal is complete and free of prejudicial errors. Our review of the record on appeal confirms Defendant's record level calculation was correct, and that his sentence falls within the presumptive range for a record level V for the Class H felony. *See* N.C. Gen. Stat. § 15A-1340.17 (2019).

¶ 7 Defendant has brought forth no issues on appeal. "If a defendant who has pled guilty does not raise the specific issues enumerated in subsection (a2) and does not otherwise have a right to appeal, his appeal should be dismissed." *State v. Hamby*, 129 N.C. App. 366, 369, 499 S.E.2d 195, 196 (1998).

¶ 8 In his plea agreement, Defendant stipulated his prior record level was V. Defendant's counsel signed and Defendant acknowledged each statement on the

agreement. Additionally, in open court, Defendant accepted that he could be sentenced to a maximum term of 39 months and that the sentence imposed would be “left up” to the court. Defendant brought forth no issues on appeal and if so, he could not have raised those issues enumerated in N.C. Gen. Stat. § 15A-1444(a2).

#### **IV. Conclusion**

¶ 9

We have fully examined the record to determine whether any issues of arguable merit appear therefrom in accordance with *Anders*. We discern no prejudicial error and conclude the appeal is wholly frivolous. His appeal is dismissed. *It is so ordered.*

DISMISSED.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).