

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-29

No. COA20-284

Filed 16 February 2021

Mecklenburg County, Nos. 17 CRS 33194-95

STATE OF NORTH CAROLINA

v.

CURTIS HOWIE, AKA AZIZ MATEEN-EL

Appeal by defendant from judgment entered 13 September 2019 by Judge Julia Lynn Gullett in Mecklenburg County Superior Court. Heard in the Court of Appeals 26 January 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Alan D. McInnes, for the State.

Kimberly P. Hoppin for defendant.

ARROWOOD, Judge.

¶ 1 Curtis Howie, also known as Aziz Mateen-El (“defendant”) appeals from final judgment entered 13 September 2019 following his conviction for failing to register as a sex offender and for having attained the status of being a habitual felon. Defendant contends that the trial court erred in denying defendant’s motion to dismiss for insufficient evidence to support the charge alleged in the indictment.

Defendant further contends that the trial court erred in failing to conduct a meaningful inquiry into defendant's request for substitute counsel. For the following reasons, we reverse defendant's conviction.

I. Background

¶ 2 On 4 December 2017, a Mecklenburg County grand jury indicted defendant on two counts of failing to register as a sex offender and one count of attaining the status of being a habitual felon. The first count of failing to register alleged that defendant had failed to register "within three (3) business days of release from a penal institution," and the second count of failing to register alleged that defendant had failed to register after "a change of address since [11 August 2016]." The grand jury indicted defendant on an additional count of failing to register as a sex offender on 19 February 2018, alleging that defendant "changed his address and failed to provide written notice of his new address within three (3) business days after the change to the Sheriff's Office in the county he had last registered."

¶ 3 The matter came on for trial on 10 September 2019 in Mecklenburg County Superior Court, the Honorable Julia Lynn Gullett presiding. The State's evidence tended to show as follows.

¶ 4 Defendant was required to register as a sex offender after pleading guilty to indecent liberties with a child on 29 July 2002. After his release from prison, defendant registered as a sex offender with the Mecklenburg County Sheriff's

Department on 6 December 2004. Defendant moved out of state in 2005 and upon his return to North Carolina he registered as a sex offender in Mecklenburg County on 10 March 2008.

¶ 5

Defendant was arrested in August 2016 for an unrelated charge and was placed in Mecklenburg County Jail. Defendant provided 2424 Kings Park Drive as his address when he was arrested. After his release from jail on 11 August 2016, defendant signed a notice of duty to register as a sex offender, providing his address as 945 North College Street, which is a soup kitchen in Charlotte that does not provide overnight shelter. Lydia Hilliard, defendant's ex-wife, testified that she lived in Apartment D at 2424 Kings Park Drive and that defendant had been staying with her on several occasions in 2016 because he had nowhere else to go. Ms. Hilliard also testified that defendant was not on the apartment lease and was not allowed to live in the apartment complex because he was a registered sex offender. Defendant was arrested again on 17 January 2017 and 15 April 2017 and on both occasions provided the 2424 Kings Park Drive address. Deputy Robert Sherwin testified that he spoke with defendant at the Kings Park address after his release on 17 May 2017, but that he and other deputies had been unable to locate defendant at the Kings Park address on other occasions. Defendant did not appear in person at the Mecklenburg County Sheriff's Department to formally provide a valid address at any point before the proceeding at issue.

¶ 6

At the close of the State's evidence, defendant made two motions to dismiss the charges, arguing that there was insufficient evidence to support the charges and that submission to the jury would violate the Fourteenth Amendment. Defendant further argued that there was a variance between the crime alleged in the indictment and any crime for which the State's evidence may have been sufficient to warrant submission to the jury. Defendant's motions were denied.

¶ 7

The jury was instructed on three offenses for failing to comply with the sex offender registration laws: one for failure to register with the sheriff's office within three days of release from a penal institution, one for failure to register a change of address, and one for failure to provide written notice of a new address. Regarding the first offense, the jury was instructed that the State must prove "that the Defendant willfully failed to register in person with the sheriff's office in the county of the Defendant's residence within three business days of the Defendant's release from a penal institution." The trial court ultimately instructed the jury on the other two offenses together, requiring the jury to find the same third element in each of these two counts: "that the Defendant willfully changed the Defendant's address and failed to provide written notice of the Defendant's new address and failed to provide written notice of the Defendant's new address in person at the sheriff's office no later than three business days after the change of address to the sheriff's office in the county in which the Defendant had last registered."

¶ 8 The jury returned a verdict of guilty to one count of failing to register as a sex offender within three days of release from a penal institution and a verdict of not guilty to the other two counts. Defendant then entered a guilty plea to one count of attaining the status of being a habitual felon and preserved the right to appeal the judgment entered on the jury's verdict.

¶ 9 The trial court entered judgment on 13 September 2019 and sentenced defendant to imprisonment for a term of 77 to 105 months. Defendant gave oral notice of appeal.

II. Analysis

¶ 10 Defendant contends that the trial court erred in denying his motion to dismiss for insufficient evidence to support the charge alleged in the indictment. We agree.

¶ 11 This Court reviews the trial court's denial of a motion to dismiss for insufficient evidence *de novo*. *State v. Holt*, 241 N.C. App. 577, 582, 773 S.E.2d 542, 545 (2015) (citing *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007)). On a motion to dismiss for insufficient evidence, the court must consider the evidence in the light most favorable to the State and decide whether there is substantial evidence to establish every element of the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 296 S.E.2d 649 (1982). Substantial evidence is that which "a reasonable mind might accept as reasonable to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980).

¶ 12 N.C. Gen. Stat. § 14-208.7 addresses registration within three days of release from a penal institution and provides, in relevant part:

If the person is a current resident of North Carolina, the person shall register: (1) Within three business days of release from a penal institution or arrival in a county to live outside a penal institution.

N.C. Gen. Stat. § 14-208.7(a)(1) (2019).

¶ 13 Our Supreme Court has ruled that N.C. Gen. Stat. § 14-208.7(a) addresses only initial registration after a sex offender is released from prison following a sentence for a sex offense. *State v. Crockett*, 368 N.C. 717, 782 S.E.2d 878 (2016); *State v. Barnett*, 368 N.C. 710, 782 S.E.2d 885 (2016). In *Crockett*, the Court held that N.C. Gen. Stat. § 14-208.9, the “change of address” statute, and not N.C. Gen. Stat. § 14-208.7, the “registration” statute, governs the situation when a sex offender who has already complied with the initial registration requirements is later incarcerated and then released. *Crockett*, 368 N.C. at 722, 782 S.E.2d at 882.

¶ 14 In this case, defendant’s release from jail on 11 August 2016 was a pretrial release on an unrelated charge and was not his initial release on the 2002 indecent liberties conviction. Defendant had properly registered after his initial conviction. The State concedes that defendant’s appeal is meritorious. Accordingly, we hold that the trial court erred in denying defendant’s motions to dismiss and reverse defendant’s conviction for failing to register as a sex offender.

¶ 15 Because we reverse defendant’s conviction, we do not reach defendant’s other arguments.

III. Conclusion

¶ 16 For the foregoing reasons, we hold that the trial court erred in denying defendant’s motions to dismiss and reverse defendant’s conviction.

REVERSED.

Judges DIETZ and WOOD concur.

Report per Rule 30(e).