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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-33

No. COA20-55

Filed 16 February 2021

McDowell County, No. 18 CRS 51493

STATE OF NORTH CAROLINA

v.

CRYSTAL ANN SILVERNALE

Appeal by Defendant from judgment entered 26 June 2019 by Judge J. Thomas Davis in McDowell County Superior Court. Heard in the Court of Appeals 27 January 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Carole Biggers, for the State.*

*Richard Croutharmel for Defendant.*

COLLINS, Judge.

I. Procedural Background

¶ 1 Defendant Crystal Ann Silvernale was indicted on charges of felony larceny and felony possession of stolen goods. She was tried by jury on 26 June 2019 and convicted on both charges the same day. The trial court arrested judgment on Defendant's conviction for possession of stolen goods, and sentenced Defendant to

eight to nineteen months imprisonment for her felony larceny conviction. Defendant appealed.

¶ 2           However, Defendant’s appellate counsel could not find “any issues with sufficient merit to support relief[,]” and requested this Court review the record on appeal for any issues of merit, pursuant to the requirements set forth in *Anders v. California*, 386 U.S. 738 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). Defendant’s “[c]ounsel has filed a brief referring to the [issues] . . . that might arguably support the appeal. A copy of the brief was furnished [D]efendant, as well as copies of the record, transcript, and the [S]tate’s brief.” *Kinch*, 314 N.C. at 102, 331 S.E.2d at 666-67. Accordingly, “[D]efendant’s counsel has fully complied with *Anders*[.]” *Id.* at 102, 331 S.E.2d at 666 (citation omitted). Defendant did not file a pro se brief with this Court.

## II. *Anders* Review

¶ 3           “Pursuant to *Anders*, this Court must now [conduct] . . . a full examination of all the proceedings[,]” including a “review [of] the legal points appearing in the record, transcript, and briefs, not for the purpose of determining their merits (if any) but to determine whether they are wholly frivolous.” *Id.* at 102-03, 331 S.E.2d at 667

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(citation omitted).<sup>1</sup> We agree with the conclusion of Defendant’s attorney that it is frivolous to argue that there was not sufficient evidence to support convictions of felony larceny and felony possession of stolen goods. *See State v. Chance*, 347 N.C. 566, 567, 495 S.E.2d 355, 356 (1998).<sup>2</sup>

¶ 4

In this case, the evidence was sufficient to support a determination by the jury that: Defendant’s housemate, Glenn Gardner, owned a motorcycle that was worth between \$5,000 and \$6,000; Defendant removed Gardner’s motorcycle from his residence; Defendant did not have permission to move the motorcycle, or to use it in any way; Defendant sold the motorcycle to a third party without any authority to do so; the third party drove away on the motorcycle and kept it at his residence as his own; as Gardner was giving a law enforcement officer a report of his missing motorcycle, Gardner saw Defendant “on the back of my motorcycle driving past my house.” “They were slowing down, noticed me and drove off.” This evidence was sufficient to support Defendant’s convictions for felony larceny and felony possession of stolen goods.

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<sup>1</sup> “Frivolous means ‘unworthy of serious attention; trivial.’ *Frivolous Appeal*. One in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed.” *Id.* at 102 n.1, 331 S.E.2d at 667 n.1 (citations omitted).

<sup>2</sup> We disavow the argument in Defendant’s *Anders* brief applying the analysis and holdings in *State v. Frazier*, 268 N.C. 249, 150 S.E.2d 431 (1966), to the facts and law of this case.

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¶ 5

Concerning felony larceny, the evidence supported the jury’s determination, guided by the trial court’s jury instructions, that “[D]efendant, acting either by herself or . . . with another person, took and carried away another person’s property [‘worth more than \$1000’] without the other person’s consent, knowing that [she] was not entitled to take it and intending at that time to deprive the victim of its use permanently[.]” *See* N.C. Gen. Stat. § 14-72(a) (2019); *State v. Watson*, 179 N.C. App. 228, 245-46, 634 S.E.2d 231, 242 (2006). Concerning felony possession of stolen goods, the evidence supported the jury’s determination that “[D]efendant acting either by herself or . . . with another person, possessed this property and knew or had reasonable grounds to believe that it was stolen[,] and that . . . [D]efendant possessed this property for a dishonest purpose[.]” *See* N.C. Gen. Stat. §§ 14-71.1, 14-72 (2019); *State v. Davis*, 302 N.C. 370, 373, 275 S.E.2d 491, 493 (1981).

III. Conclusion

¶ 6

“In accordance with our duty under *Anders*, we have examined the record and the transcript of the trial.” *Chance*, 347 N.C. at 568, 495 S.E.2d at 356. “Upon our examination of all of the proceedings, we hold the appeal to be wholly frivolous and subject to dismissal.” *Kinch*, 314 N.C. at 106, 331 S.E.2d at 669 (1985) (citations omitted).

DISMISSED.

Judges INMAN and GRIFFIN concur.

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Report per Rule 30(e).