IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-292

No. COA20-432

Filed 15 June 2021

Iredell County, Nos. 15 CRS 56346-49, 18 CRS 55457

STATE OF NORTH CAROLINA

v.

LONNELL JAKWON WILLIAMS, Defendant.

Appeal by defendant from five judgments entered 9 March 2020 by Judge Joseph N. Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 9 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General William A. Smith, for the State.

Drew Nelson, for Defendant-Appellant.

GORE, Judge.

¶ 1 Defendant-Appellant, Lonnell Jakwon Williams, ("Defendant") appeals pursuant to N.C. Gen. Stat. § 7A-27, N.C. Gen. Stat. § 15A-1347, and N.C. Gen. Stat. § 15A-1444 from judgments following a jury verdict finding him guilty of robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon. Defendant argues that the trial court erred in not performing the colloquy and

making the factual determinations required by N.C. Gen. Stat. § 15A-1022(a) and N.C. Gen. Stat. § 15A-1022(c). We disagree.

I. Factual and Procedural Background

¶ 2 On 20 February 2020, an Iredell County jury found Defendant guilty of one count of robbery with a dangerous weapon and one count of conspiracy to commit robbery with a dangerous weapon. Prior to trial, the State had provided Defendant with notice it would seek the application of an aggravating factor and would argue that Defendant was on probation during the offense. This information also appeared on the Prior Record Level Worksheet ("Worksheet"), which was signed by defense counsel before the sentencing hearing.

¶ 3 Defendant made no argument that he was not on probation during the offense and did not object to the State's argument regarding the probation issue at sentencing. The State offered the stipulated Worksheet to the trial court after it was signed by the State and defense counsel. The trial court asked defense counsel "anything on the stipulation on the aggravating factor?" Defense counsel responded "No, your honor." The trial court accepted the Worksheet and the stipulated probation status into evidence.

Based on the State's arguments and Defendant's stipulation, the trial court determined that Defendant had a prior record level of III, calculated from six prior record level points. One of these points was assigned based on the State's assertion

that Defendant was on probation during the time of the offense. This was denoted in section I of the Worksheet and singed by defense counsel in section III. Without the additional point, Defendant would have been assigned a prior record level of II. *See* N.C. Gen. Stat. § 15A-1340.17 (2020). Defendant was sentenced to a minimum of 96 months and a corresponding maximum of 128 months, which is in the middle of the aggravated range, based on his prior record level of III. Defendant entered oral notice of appeal in open court.

II. Discussion

¶ 4 Defendant contends that the trial court erred in not fulfilling the procedural requirements of N.C. Gen. Stat. § 15A-1022(a) and N.C. Gen. Stat. § 15A-1022(c). These requirements include a colloquy for admissions of probationary status during an offense and factual determinations by the trial court that there was a factual basis for the Defendant's admission and that Defendant made an informed choice. N.C. Gen. Stat. § 15A-1022 (2020). Defendant also contends that the exception in N.C. Gen. Stat. § 15A-1022.1(e) should be construed to apply exclusively to the colloquy requirement in N.C. Gen. Stat. § 15A-1022(a).

A. Standard of Review

¶ 5 "The determination of an offender's prior record level is a conclusion of law that is subject to *de novo* review . . . ." *State v. Bohler*, 198 N.C. App. 631, 633, 681 S.E.2d

801, 804 (2009). The question before this "Court is [] whether the competent evidence in the record adequately supports the trial court's decision . . . ." *Id.*

B. Procedural Requirements

¶ 6 Defendant contends that the trial court committed prejudicial error by not fulfilling the procedural requirements included in N.C. Gen. Stat. § 15A-1022(a) and N.C. Gen. Stat. § 15A-1022(c). Before accepting an admission regarding a prior record point, the court must perform a colloquy required under N.C. Gen. Stat. § 15A-1022(a). The court must also determine that there is a factual basis for the admission and that the Defendant made an informed choice. N.C. Gen. Stat. § 15A-1022(c). The trial court is not required to follow these procedures if "the context clearly indicates that they are inappropriate" N.C. Gen. Stat. § 15A-1022.1(e).

¶ 7 In *State v. Marlow,* a comparable case in which the Defendant was assigned a prior record level of II before the trial court performed the colloquy, this Court considered whether to apply the N.C. Gen. Stat. § 15A-1022.1(e) exception based on a variety of factors. *State v. Marlow*, 229 N.C. App. 593, 602, 74 S.E.2d 741, 747 (2013). The factors included whether the Defendant stipulated to his prior record level, defense counsel had the opportunity to inform the Defendant of repercussions of the stipulation, the Defendant "had the opportunity to interject had he not known such repercussions," and the assignment of the prior record point was a "routine determination." *Id.*

¶ 8 Here, the trial court did not err by not performing the colloquy. The context clearly indicates that the colloquy was inappropriate because Defendant did stipulate that he was on probation at the time of the offense, defense counsel had the opportunity to review the Worksheet and discuss the repercussions with Defendant and inform him of the repercussions, Defendant had and was given an opportunity to interject had he not known such repercussions, and the trial court assigned the prior record point based upon the Worksheet in a routine determination. *Id.* In addition, Defendant received notice that the State would be making the probation argument prior to sentencing. Therefore, the § 15A-1022.1(e) exception applies and a colloquy was not required here.

C. Applicability of § 15A-1022.1(e)

¶ 9 Defendant argues that this Court should find that the exception in N.C. Gen. Stat. § 15A-1022.1(e) only applies to the colloquy required by N.C. Gen. Stat. § 15A-1022(a) and not the additional procedural requirements in N.C. Gen. Stat. § 15A-1022. (Appellant's br. p 11). Defendant bases this argument on an unpublished opinion, *State v. Jolly*, 223 N.C. App. 102, 732 S.E.2d 393 (2012) (unpublished). *State v. Jolly* holds that because the exception in N.C. Gen. Stat. § 15A-1022.1(e) does not specifically mention any procedural requirements of N.C. Gen. Stat. § 15A-1022, it cannot apply to these requirements. *Id.* However, this Court came to the opposite conclusion in two subsequent published opinions. *State v. Marlow*, 229 N.C. App. 593,

747 S.E.2d 741 (2013); *State v. Snelling*, 231 N.C. App. 676, 752 S.E.2d 739 (2014). Unpublished opinions are non-precedential, and courts generally discourage their use, especially when relevant and controlling published opinions are available. *See State v. Hensley*, 254 N.C. App. 173, 802 S.E.2d 744 (2017). As a result, the exception in N.C. Gen. Stat. § 15A-1022.1(e) applies not only to N.C. § 15A-1022(a) but also to the remaining requirements of N.C. Gen. Stat. § 15A-1022.

III. Conclusion

¶ 10 For the foregoing reasons, we hold that the trial court committed no prejudicial error.

NO ERROR.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).