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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-685

No. COA21-191

Filed 7 December 2021

Cherokee County, No. 17 CRS 536

STATE OF NORTH CAROLINA,

v.

JASON BOYD PARKER, Defendant.

Appeal by defendant from judgment entered 17 November 2020 by Judge William H. Coward in Cherokee County Superior Court. Heard in the Court of Appeals 3 November 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Bryan G. Nichols, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Sterling P. Rozear, for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 Jason Boyd Parker ("Defendant") appeals from judgment entered upon a jury's verdict finding him guilty of failing to report a new address as a sex offender. Appellate counsel for Defendant filed an *Anders* brief on Defendant's behalf. After careful review of the trial proceedings, we find no prejudicial error.

I. Factual & Procedural Background

¶ 2 On 7 August 2007, Defendant pled guilty to the offense of indecent liberties with a child and was required to register his physical address with the Cherokee County Sheriff's Department. As a condition of his sentencing, Defendant was required to appear in person at the county sheriff's department to provide written notification of any changes in address within three business days of the change. *See* N.C. Gen. Stat. § 14-208.9(a) (2019). Failure to do so would result in Defendant being charged with a Class F felony. *See* N.C. Gen. Stat. § 14-208.11(a)(2) (2019).

¶ 3 On 26 May 2017, Defendant submitted a change of address, indicating he was moving from 85 Crest View Way to the "1st free camp site befor [sic] 2nd bridge down Joe Brown Hwy." On 6 June 2017, Defendant submitted another change of address form, indicating he was moving from the "2nd bridge on Joe Brown Hwy" to the "West Motel Room 2" located at 691 Andrews Road. No change of address was provided by Defendant after 6 June 2017. On 13 November 2017, following an investigation by the Cherokee County Sheriff's Department, a Cherokee County grand jury indicted Defendant for failing to report a new address as a sex offender pursuant to N.C. Gen. Stat. § 14-208.11(a)(2), and for submitting information under false pretenses pursuant to N.C. Gen. Stat. § 14-208.11(a)(4).

¶ 4 A jury trial began on 17 November 2020 before the Honorable William H. Coward, judge presiding. At trial, Detective Roger Williams ("Detective Williams") of the Cherokee County Sheriff's Department testified he went to the West Motel to

check on the status of Defendant on 26 June 2017. He spoke to the owner who provided him with two registration cards, indicating Defendant stayed at the hotel on two separate occasions. Defendant's first stay was for two nights beginning on 31 May 2017, and the second stay was for four nights starting on 2 June 2017. Detective Williams did not receive any additional changes of address for Defendant between 6 June 2017 and 26 June 2017.

¶ 5 Defendant pled not guilty to the charges. On 17 November 2020, the jury returned its verdict finding Defendant was not guilty of submitting information under false pretenses, but was guilty of failing to report a new address between 6 June 2017 and 26 June 2017. After calculating Defendant's prior record level at IV based on eleven prior record points, the trial court sentenced Defendant to a minimum term of 24 months and a maximum term of 38 months of imprisonment. Defendant gave oral notice of appeal in open court.

II. Jurisdiction

¶ 6 This Court has jurisdiction to address Defendant's appeal from a final judgment pursuant to N.C. Gen. Stat. § 7A-27(b) (2019) and N.C. Gen. Stat. § 15A-1444(a) (2019).

III. *Anders* Brief

¶ 7 On appeal, counsel appointed to represent Defendant is "unable to identify

any issue with sufficient merit to support a meaningful argument for relief on appeal" and asks this Court to conduct its own review of the record for possible prejudicial error pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985).

¶ 8 Under *Anders*,

> a defendant may appeal even if defendant's counsel has determined the case to be "wholly frivolous." In such a situation[,] counsel must submit a brief to the court "referring to anything in the record that might arguably support the appeal." Counsel must furnish the defendant with a copy of the brief, the transcript, and the record and inform the defendant of his or her right to raise any points he or she desires and of any time constraints related to such right.

State v. Dobson, 337 N.C. 464, 467, 446 S.E.2d 14, 16 (1994) (citing *Anders*, 386 at 744, 87 S. Ct. at 1400, 18 L. Ed. 2d at 498). We hold Defendant's counsel has complied with the requirements of *Anders* and *Kinch* by advising Defendant of his right to file written arguments with this Court and providing him with the documents necessary to do so.

¶ 9 Defendant has not filed any written arguments on his own behalf with this Court, and a reasonable time for him to do so has passed. However, Defendant's counsel has directed our review to whether the trial court made any prejudicial errors in finding Defendant guilty of failure to report a new address as a sex offender. Specifically, counsel directs this Court's review to: (1) the indictment, (2) the prior

record calculation, (3) the sentences imposed, (4) the closing argument, and (5) the jury instruction.

A. The Indictment

¶ 10 An indictment is considered facially valid if it meets all requirements set forth in N.C. Gen. Stat. § 15A-924(a) (2019), including the essential elements of the crimes charged. *See State v. Rankin*, 371 N.C. 885, 897, 821 S.E.2d 787, 797 (2018). Here, the indictment lists the essential elements of the charged offenses and meets all other statutory requirements under N.C. Gen. Stat. § 15A-924(a); therefore, we conclude the indictment was facially valid and properly conferred jurisdiction on the trial court.

B. Defendant's Prior Record Level

¶ 11 A prior record level "is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court[ ] or . . . the jury[ ] finds to have been proved . . . ." N.C. Gen. Stat. § 15A-1340.14(a) (2019). The trial court signed, and the prosecutor and defense counsel stipulated to, a worksheet for prior record level for felony sentencing on 27 November 2020 which listed two prior Class F felony convictions as well as three prior Class 1 misdemeanor convictions, totaling eleven points. No evidence has been presented suggesting Defendant's prior record level was incorrectly calculated. Thus, we find no error with the trial court's calculation of Defendant's prior record level.

C. The Trial Court's Sentencing

¶ 12 Pursuant to N.C. Gen. Stat. § 15A-1444,

> [a] defendant who has been found guilty . . . is entitled to appeal as a matter of right the issue of whether his or her sentence is supported by evidence introduced at the trial and sentencing hearing only if the minimum sentence of imprisonment does not fall within the presumptive range for the defendant's prior record or conviction level and class of offense.

N.C. Gen. Stat. § 15A-1444(a1) (2019).

¶ 13 In this case, Defendant's minimum sentence of imprisonment fell within the presumptive range based on his prior record level, and the trial court assigned the correct corresponding maximum sentence. Therefore, Defendant "is not entitled to appeal this issue as a matter of right" and has failed to petition this Court to review the issue by writ of certiorari. *See id.*

D. The Closing Arguments

¶ 14 "[W]here a defendant fails to object to the closing arguments at trial, defendant must establish that the remarks were so grossly improper that the trial court abused its discretion by failing to intervene *ex mero motu*." *State v. Tart*, 372 N.C. 73, 80–81, 824 S.E.2d 837, 842 (2019). "[A] new trial will be granted only if the remarks were of such a magnitude that their inclusion prejudiced defendant . . . ." *Id.* at 82, 824 S.E.2d at 843 (internal quotation marks omitted). In determining whether the prosecutor's argument was grossly improper, this Court must examine

"the argument in the context in which it was given and in light of the overall factual circumstances to which it refers." *State v. Hipps*, 348 N.C. 377, 411, 501 S.E.2d 625, 645 (1998).

¶ 15 After examining the transcript of the closing arguments made by the State, this Court finds no statements were made of such magnitude that Defendant was prejudiced; therefore, the State's closing argument was not improper. **{T pp 95-108}**. *See Tart,* 372 N.C. at 82, 824 S.E.2d at 843; *Hipps*, 348 N.C. at 411, 501 S.E.2d at 645.

E. The Jury Instruction

¶ 16 If an alleged error related to a jury instruction is not properly preserved at trial, the error is subject to the plain error standard of review. *See State v. Odom*, 307 N.C. 655, 660 300 S.E.2d 375, 378 (1983). When reviewing for plain error, "the appellate court must examine the entire record and determine if the instructional error had a probable impact on the jury's finding of guilt." *Id.* at 661, 300 S.E.2d at 379. A defendant must be able to show prejudice in addition to error. *Id*. at 660, 300 S.E.2d at 378.

¶ 17 Here, the record shows the jury instruction was given for the charges of "failure to provide a change of address" and "submission of information under false pretenses." Defendant did not object to the proposed instructions. The jury instruction stated, *inter alia*, "the defendant *willfully changed the defendant's*

address and failed to provide written notice of the defendant's new address." (Emphasis added). The adverb "willfully" modified the verb "changed" rather than the verb "failed." Thus, the jury instruction did not entirely conform to the statutory language of the offense. *See* N.C. Gen. Stat. § 14-208.11(a)(2). However, nothing in the record indicates the error was prejudicial to Defendant or that the misplaced modifier had a probable impact on the jury's finding of guilt. *See Odom*, 307 N.C. at 661 300 S.E.2d at 379. Hence, we find no prejudicial error with the jury instruction.

¶ 18 We find no prejudicial errors in the indictment, the trial court's calculation of Defendant's prior conviction points, the State's closing argument, or the jury instruction. Moreover, we are unable to identify any other possible prejudicial errors in the record.

IV. Conclusion

¶ 19 In accordance with *Anders* and *Kinch*, we have fully reviewed the transcripts, records, and briefs to determine whether any issues of arguable merit can be identified and have found none. We find no prejudicial error and conclude Defendant's appeal is wholly frivolous.

NO ERROR.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).