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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-17

No. COA20-796

Filed 4 January 2022

Catawba County, No. 18 CRS 1847; 19 CRS 54644

STATE OF NORTH CAROLINA

v.

TYRONE JAVELLE BOWENS, Defendant.

Appeal by Defendant from judgment entered 4 May 2020 by Judge Nathaniel J. Poovey in Catawba County Superior Court. Heard in the Court of Appeals 25 August 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Brittany Pinkham, for the State.

Joseph P. Lattimore, for Defendant-Appellant.

WOOD, Judge.

¶ 1

On May 4, 2020, Defendant Tyrone Bowens (“Defendant”) entered into a plea agreement (the “Plea Agreement”) with the State to plead guilty to the sale of cocaine and possession of cocaine with intent to sell and deliver. The trial court accepted the plea and entered judgment sentencing Defendant to a prison term of a minimum of 17 months and a maximum of 30 months. Defendant now comes before us by a petition for a writ of certiorari, contending an insufficient factual basis existed to

support his plea to selling cocaine. In our discretion, we deny Defendant's petition.

I. Background

¶ 2

Defendant entered the Plea Agreement on May 4, 2020, pleading guilty to the sale of cocaine and possession of cocaine with intent to sell and deliver. The trial judge questioned Defendant pursuant to N.C. Gen. Stat. § 15A-1022, and Defendant admitted, 1) the charges have been explained to him by his lawyer, 2) he understands the nature of the charges, 3) he understands the element of each charge, 4) his lawyer has discussed possible defenses, 5) he understands he has a right to plead not guilty, 6) he understands what rights he is giving up, and 7) he understands a plea of guilty limits his right to appeal. Defendant also agreed there was a factual basis to support the offenses to which he pleaded. Defendant further admitted he understood he was pleading guilty to the sale of cocaine and possession of cocaine with the intent to sell and deliver cocaine.

¶ 3

The trial judge explained to Defendant that under the Plea Agreement the offenses were to be consolidated into one judgment with a sentencing range of 17 months minimum and 30 months maximum. Defendant confirmed to the trial judge he understood and accepted the sentencing range of the Plea Agreement. The State proceeded to supply the following factual basis to support the offense of sale of cocaine. Throughout a drug trafficking investigation, the officers identified Defendant as a co-conspirator. Primarily utilizing interceptions derived from another

investigated individual's phone, evidence showed Defendant was being supplied with cocaine. The wiretap further exhibited a few occasions where Defendant asked for "a basket" which was identified by the officers as being an eight ball of cocaine. When the State finished summarizing the facts, the trial judge asked whether Defendant would like to say anything regarding the factual basis presented by the State and Defendant's attorney replied "[n]othing as to the factual basis of the plea." At no point during the hearing did Defendant object to, or make any motion concerning, the Plea Agreement or the factual basis of the offenses presented by the State. Pursuant to the Plea Agreement, Defendant was convicted and sentenced to 17 to 30 months and given credit for 512 days served.

¶ 4 Defendant now petitions this court through a writ of certiorari to determine whether a sufficient factual basis existed for the offense of selling cocaine.

II. Discussion

¶ 5 This Court, as the reviewing Court, has discretion when deciding whether to issue a writ of certiorari. N.C. Gen. Stat. § 7A-32(c) (2021); *North Carolina Cent. Univ. v. Taylor*, 122 N.C. App. 609, 612, 471 S.E.2d 115, 117 (1996), *aff'd*, 345 N.C. 630, 481 S.E.2d 83 (1997). *See also State v. Ledbetter*, 371 N.C. 192, 195, 814 S.E.2d 39, 41, (2018) ("[T]he Court of Appeals maintains broad jurisdiction to issue writs of certiorari unless a more specific statute revokes or limits that jurisdiction."). A writ of certiorari is a "discretionary writ, to be issued only for good or sufficient cause

shown, and it is not one to which the moving party is entitled to as a matter of right.”

Womble v. Moncure Mill & Gin Co., 194 N.C. 577, 579, 140 S.E. 230, 231 (1927).

¶ 6

In this case, Defendant appeals from a judgment entered pursuant to a guilty plea. Generally, a defendant “is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari.” N.C. Gen. Stat. § 15A-1444(e) (2021). *See also Ledbetter*, 371 N.C. at 195, 814 S.E.2d at 42. However, Section 15A-1444 provides for certain limited instances where a Defendant who has entered a plea of guilty or no contest may appeal as a matter of right.

(a1) [a] defendant who has been found guilty, or entered a plea of guilty or no contest to a felony, 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. Otherwise, the defendant is not entitled to appeal this issue as a matter of right but may petition the appellate division for review of this issue by writ of certiorari.

(a2) A defendant who has entered a plea of guilty or no contest to a felony or misdemeanor in superior court is entitled to appeal as a matter of right the issue of whether the sentence imposed: (1) . . . incorrect finding of defendant’s prior record level . . . or defendant’s prior conviction level . . . (2) [c]ontains a type of sentence disposition that is not authorized . . . [3] [c]ontains a term of imprisonment that is for a duration not authorized

§ 15A-1444(a1)-(a2).

¶ 7

Here, we note Defendant entered a guilty plea to two felonies in the superior court. The minimum sentence falls within the presumptive range for Defendant's prior record or conviction level and class of offense. N.C. Gen. Stat. § 15A-1340.17(d) (2021). Moreover, nowhere in Defendant's brief did he address any facet of Section 15A-1444(a2) and has thus waived this argument. N.C. R. App. P. Rule 28(b(6)) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned."). Because Defendant does not assert any argument to which a right of appeal lies, Defendant has no statutory right of appeal and must petition this Court for a writ of certiorari.

III. Conclusion

¶ 8

Because Defendant does not have a statutory right to appeal and failed to preserve the argument he now attempts to bring before this Court, we deny Defendant's petition for a writ of certiorari and accordingly dismiss this appeal.

DISMISSED.

Judges INMAN and JACKSON concur.

Report per Rule 30(e).