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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-48

No. COA21-372

Filed 18 January 2022

Surry County, Nos. 19 CRS 51017-19, 20 CRS 50555

STATE OF NORTH CAROLINA

v.

KENNETH RAY DAWSON

Appeal by defendant from judgments entered 13 January 2021 by Judge Angela B. Puckett in Surry County Superior Court. Heard in the Court of Appeals 15 December 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Michael E. Bulleri, for the State.

Leslie C. Rawls for defendant-appellant.

ARROWOOD, Judge.

¶ 1

Kenneth Ray Dawson (“defendant”) appeals from judgments entered upon his guilty plea to charges of first-degree murder, first-degree kidnapping, robbery with a dangerous weapon, and felony assault on a local detention officer causing physical injury. Defendant’s appellate counsel filed an *Anders* brief on defendant’s behalf.

After review, we find no error.

I. Background

¶ 2

On 26 August 2019, a Surry County grand jury indicted defendant on charges of first-degree murder, first-degree kidnapping, and robbery with a dangerous weapon. On 13 January 2021, the State issued a Bill of Information charging defendant with felony assault on a local detention officer causing physical injury. Defendant and his trial counsel signed and waived the finding and return of a Bill of Indictment.

¶ 3

On 28 August 2019, the State notified defendant and the trial court that it intended to seek the death penalty on defendant's first-degree murder charge, and moved for a Rule 24 pretrial conference. The Rule 24 conference was set for 8 October 2019, but with the parties' consent the conference was continued twice, the second time until either party asked to reschedule.

¶ 4

On 13 January 2021, in Surry County Superior Court, Judge Puckett presiding, defendant pleaded guilty to all charges. Judge Puckett engaged in a plea colloquy with defendant at the hearing. Defendant told the trial court that he was thirty-three years old, could hear and understand the judge, could read at a twelfth-grade level, and had his GED. Defendant also stated that he understood his right to remain silent and that any statement he made could be used as evidence against him. Defendant stated that he was prescribed three medications: "an antidepressant,

Celexa, a heartburn medication, Protonix, and [Zyrtec].” Defendant affirmed that these medications did not impair his ability to think clearly and that he understood what he was doing at the hearing.

¶ 5 Defendant told the trial court that his lawyer had explained the charges and that he understood the nature of the charges and their elements. Defendant said he had discussed possible defenses with his lawyer and that he was satisfied with his lawyer’s legal services. Defendant understood his right to plead not guilty, to be tried by a jury, and to confront and cross-examine witnesses, and acknowledged he was giving up those and other constitutional rights by pleading guilty.

¶ 6 The trial court advised defendant of the maximum sentence for each count in his plea: first-degree murder, a Class A felony punishable by death; first-degree kidnapping, a Class C felony punishable by a maximum of 231 months imprisonment; robbery with a dangerous weapon, a Class D felony punishable by a maximum of 204 months; and felony assault on a detention officer inflicting physical injury, a Class I felony, punishable by a maximum of 24 months. After acknowledging that he understood, defendant personally pleaded guilty and admitted that he was in fact guilty.

¶ 7 Regarding his prior record, defendant admitted the offenses were committed while he was on probation, that evidence supported the record points, and that the trial court could accept his admission of the record points. Defendant also stipulated

that he had seven prior record level points and was Class III for sentencing. Defendant acknowledged that he understood that at a sentencing hearing, a jury would determine aggravating factors and that he would have the right to prove mitigating factors.

¶ 8 Defendant affirmed that the full plea agreement terms were a sentence of life without parole for first-degree murder, with the remaining sentences in the trial court's discretion and set to run consecutively to each other and concurrently to the first-degree murder sentence. Additionally, the State agreed to dismiss the charges of felony conspiracy, felony possession of a stolen vehicle, concealing a death, assault with a deadly weapon with intent to kill inflicting serious injury, felony possession of methamphetamine, misdemeanor possession of drug paraphernalia, and misdemeanor resisting a public officer.

¶ 9 Defendant personally accepted the plea agreement, acknowledging that no one had promised or threatened him to make him plead guilty against his wishes and that he was pleading guilty of his own free will, with full understanding of what he was doing. Defendant was given an opportunity to ask questions about the trial court's statements or anything else related to his case, but defendant did not ask any questions. Defendant consented to the trial court hearing a summary of the evidence, and swore to the truthfulness of his answers.

¶ 10 The prosecutor proceeded to summarize the factual basis for defendant's pleas.

On 3 April 2019, Bradley Hawks (“Hawks”) went to the Surry County Sheriff’s Department to provide information about a murder. Hawks told the officers that he had been with defendant, Desiree Billings (“Billings”), Stephanie Wall (“Wall”), Kimberly Bruner (“Bruner”), and Rebecca Plitt (“Plitt”) “for two or three days,” and that “they were all together using meth and riding around” in a car that belonged to Plitt’s mother. At some point, defendant became angry with Plitt because of a text message she had sent. Bruner and Wall began physically beating Plitt in the back seat of the car as defendant continued to drive; defendant eventually dropped off Bruner and Wall at another person’s house. Shortly thereafter, defendant forced Plitt into the trunk of the car and continued to drive around with Plitt in the trunk “for some period of time,” before stopping the car again and directing Billings to open the trunk. Defendant then took a bow and arrow he had in the car and “fired an arrow into the trunk,” which struck Plitt. Over a period of “hours, maybe more than a day[,]” defendant continued to drive around with Plitt in the trunk, and “hit [Plitt] three times with an arrow.” “[F]rom time to time,” defendant also “hit [Plitt] with [a] machete.”

¶ 11 Defendant was later located in Virginia and, in an interview with an SBI agent, admitted to killing Plitt. Defendant provided law enforcement officers with an approximate location for his vehicle, which was found “fairly easily after [defendant] gave a statement.”

¶ 12 Regarding the charge for assault on a detention officer, the prosecutor stated that defendant struck a detention officer at the Surry County jail, causing physical injury to the officer’s face and head.

¶ 13 The trial court entered judgments upon defendant’s guilty pleas on 13 January 2021. Defendant was sentenced to life in prison without parole for first-degree murder and 96 to 128 months for first-degree kidnapping. The trial court consolidated the robbery and assault charges and sentenced defendant to a term of 84 to 113 months imprisonment, consecutive to the first-degree kidnapping sentence.

¶ 14 Defendant filed written notice of appeal on 10 February 2021.

II. Discussion

¶ 15 Defendant’s appellate counsel could not “identify a nonfrivolous issue to support a meaningful argument for relief on appeal” and thus requests this Court review the record on appeal for any issues of merit, pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). In order to comply with *Anders*, appellate counsel was required to file a brief referring any arguable assignments of error, as well as provide defendant with copies of the brief, record, transcript, and the State’s brief. *Kinch*, 314 N.C. at 102, 331 S.E.2d at 666-67. Defendant’s counsel has done so and accordingly has fully complied with *Anders* and *Kinch*. Defendant did not file a *pro se* brief with this Court.

¶ 16 Pursuant to *Anders*, this Court must 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 102-103, 331 S.E.2d at 667 (citation omitted). Defendant’s appellate counsel submitted the following legal points: (1) whether the sentences imposed resulted from an incorrect finding of defendant’s prior record level; (2) whether the sentence dispositions were authorized; and (3) whether the duration of the term of punishment was authorized by law. We agree with defendant’s appellate counsel that it is frivolous to argue these issues.

A. Prior Record Level

¶ 17 A trial court’s determination of a defendant’s prior record level is reviewed to determine “whether the sentence is supported by evidence introduced at the trial and sentencing hearing.” *State v. Best*, 202 N.C. App. 753, 755, 690 S.E.2d 58, 60 (2010) (citation and quotation marks omitted).

¶ 18 A prior conviction may be proved by any of the following methods:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior conviction.
- (3) A copy of records maintained by the Department of Public Safety, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
- (4) Any other method found by the court to be reliable.

N.C. Gen. Stat. § 15A-1340.14(f) (2019). Additionally, a felony conviction in a

jurisdiction other than North Carolina is classified as a Class I felony for purposes of determining prior record points. N.C. Gen. Stat. § 15A-1340.14(e).

¶ 19 In this case, the prior record level worksheet classified defendant’s Virginia felony possession charges as Class I offenses. The worksheet included a stipulation regarding defendant’s prior record level, which was signed by the prosecutor and defendant’s trial counsel. Additionally, when the trial court asked if defendant was “stipulating it is a Record Level III with 8 prior sentencing points[,]” defendant’s trial counsel responded, “Yes, Your Honor.” The trial court’s determination of defendant’s prior record level was supported by the evidence presented to the trial court, and further review of this legal point would be wholly frivolous.

B. Sentence Dispositions

¶ 20 An alleged statutory violation presents a question of law, reviewed *de novo*. *State v. Mackey*, 209 N.C. App. 116, 120, 708 S.E.2d 719,721 (2011).

¶ 21 There are three categories of punishment available to trial courts for sentencing purposes: active punishment, intermediate punishment, and community punishment. N.C. Gen. Stat. § 15A-1340.11 (2019). Active punishment “requires an offender to serve a sentence of imprisonment and is not suspended.” N.C. Gen. Stat. § 15A-1340.11(1). Intermediate punishment places an offender on supervised probation, and “may include drug treatment court, special probation as defined in G.S. § 15A-1351(a), and one or more of the conditions set forth in G.S. § 15A-

1343(a1).” N.C. Gen. Stat. § 15A-1340.11(6). Community punishment does not include active punishment or assignment to a drug treatment court, but may include special conditions. N.C. Gen. Stat. § 15A-1340.11(2).

¶ 22 The only sentences available for a first-degree murder conviction are life without parole or death. N.C. Gen. Stat. § 14-17(a) (2019). Defendant pleaded guilty to first-degree murder, and the trial court sentenced defendant to life in prison without parole. The trial court properly sentenced defendant on the first-degree murder charge.

¶ 23 For first-degree kidnapping, a Class C offense, the only category of punishment available is active punishment, regardless of a defendant’s prior record. N.C. Gen. Stat. § 15A-1340.17(c) (2019). The trial court sentenced defendant to active punishment, and accordingly complied with the statute. Defendant has no available argument with respect to this sentence.

¶ 24 The trial court consolidated the Class D robbery and the Class I assault charges. When the trial court consolidates offenses, “[t]he judgment shall contain a sentence disposition specified for the class of offense and prior record level of the most serious offense” N.C. Gen. Stat. § 15A-1340.15(b) (2019). The only category of punishment available for a Class D felony is active punishment, regardless of a defendant’s prior record. N.C. Gen. Stat. § 15A-1340.17(c). The trial court sentenced defendant to an active sentence on the consolidated charges, as required by statute.

¶ 25 On each of defendant's sentences, the trial court was required by statute to impose an active punishment. The trial court did not err in doing so, and it would be wholly frivolous for defendant to argue this legal point.

C. Sentence Duration

¶ 26 First-degree murder is punishable by death or life in prison without parole. N.C. Gen. Stat. § 14-17(a). For Class C felonies, the minimum presumptive range sentence at a prior record level III is 77 to 96 months, while the corresponding maximum term is 128 months. N.C. Gen. Stat. § 15A-1340.17(c), (e). For Class D felonies, the minimum presumptive sentence range at defendant's prior record level is 67 to 84 months, with a corresponding maximum term of 113 months. *Id.*

¶ 27 Defendant's plea agreement specifically addressed sentencing. The State agreed that defendant would be sentenced to life without parole on the first-degree murder charge. The trial court retained discretion in sentencing on the other charges while also agreeing to run the sentences consecutive to each other and concurrent with the first-degree murder sentence. Defendant's sentence for first-degree murder was one of two sentences available, and the trial court did not err in imposing a sentence of life without parole on defendant's guilty plea to first-degree murder. On defendant's kidnapping charge, the trial court imposed a sentence of 96 to 128 months, which corresponds to a minimum at the top of the presumptive range and a maximum limited by the maximum term available by statute. Similarly on

defendant's consolidated charges, the trial court imposed a sentence of 84 months (the top of the presumptive range) to 113 months (the maximum possible term).

¶ 28 In each judgment, the trial court sentenced defendant within the presumptive range and did not exceed the maximum duration of punishment for any judgment. We hold that the trial court did not err in sentencing defendant along statutory guidelines.

III. Conclusion

¶ 29 For the foregoing reasons, we hold that defendant's appellate counsel has complied with *Anders* and *Kinch* by filing a brief identifying several legal points potentially at issue. After reviewing the record, we are unable to identify a nonfrivolous issue for appeal, and accordingly we affirm the trial court.

AFFIRMED.

Judges INMAN and HAMPSON concur.

Report per Rule 30(e).