IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-78

No. COA21-164

Filed 1 February 2022

Rockingham County, Nos. 17 CRS 52174, 1643

STATE OF NORTH CAROLINA

v.

CHRISTOPHER LARGEN

Appeal by defendant from judgments entered 20 March 2019 by Judge Stanley L. Allen in Rockingham County Superior Court. Heard in the Court of Appeals 30 November 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Caden William Hayes, for the State.*

*Jarvis John Edgerton, IV, for defendant.*

DIETZ, Judge.

¶ 1 Defendant Christopher Largen challenges the factual basis supporting his guilty plea to two felony charges and the calculation of his prior record level for purposes of sentencing. The record does not contain a timely notice of appeal and Largen does not have a right to appeal his factual basis argument. Thus, Largen

petitioned this Court for a writ of certiorari to review these issues. As explained below, Largen has not shown merit or that error probably was committed below and we therefore deny the petition for a writ of certiorari and dismiss this appeal.

**Facts and Procedural History**

¶ 2 In 2019, Defendant Christopher Largen pleaded guilty to voluntary manslaughter and robbery with a dangerous weapon. Largen's plea was made under a plea agreement that included dismissal of more serious charges and a stipulation that Largen was within prior record level V for purposes of sentencing but otherwise left sentencing to the discretion of the trial court. The trial court conducted the required plea colloquy with Largen at the plea hearing and Largen acknowledged that he was pleading guilty because he was in fact guilty.

¶ 3 After the trial court completed this plea colloquy with Largen, the court asked the State to present its factual basis for the plea. The State explained that Largen and another man, Joseph White, got into an argument with Teddy Compton. At some point, Largen hit Compton on the head from behind with a metal pipe. Compton later died from a resulting head injury. After Largen struck Compton with the pipe, Largen and White put Compton in the back of a car and drove away. Largen later took Compton's wallet and a bloody sweatshirt from Compton and then abandoned the car with Compton still in it.

¶ 4 Following the State's presentation of the factual basis for the plea, Largen

submitted his own, written factual basis to the trial court in which Largen explained that Compton had assaulted a guest at Largen's home and Largen tried to intervene. Largen explained that he "grabbed a nearby tool to defend himself and his guest" and then, during the struggle, "Compton got hit one time in an attempt to stop Compton from his deadly assault." Largen's counsel explained to the court that he submitted this alternative factual basis because "we would hope the Court would see fit to give him some type of consolidated sentence. He's looking at a minimum of 69 months, which he's accepted and cleared in his mind that that's his penalty for having engaged in this controversy."

¶ 5 The State responded to Largen's written statement by explaining that the statement contradicted witness statements and Largen's own statements during the investigation. The State also pointed out that, after Largen hit Compton on the head, he put Compton in a car, drove away from his home, and abandoned the car with Compton still in it after first removing Compton's wallet and a piece of bloody clothing. The State explained that these are "not the actions of somebody who has acted in self-defense."

¶ 6 After the parties concluded their presentations, the trial court accepted Largen's plea, commenting that Largen's alternative explanation was not credible because it was undisputed that during Largen's "interview or interrogation with law enforcement, he never said anything about self-defense." The court explained that

"that would have been the first thing I would have been saying. That he was coming at me and I smacked him to defend myself and protect my home."

¶ 7 Pursuant to the plea agreement, the parties stipulated that Largen was at prior record level V. The sentencing worksheet included four prior Class H or I felony convictions and six prior Class A1 or 1 misdemeanor convictions, totaling 14 prior record points, leading to prior record level of V.

¶ 8 In March 2019, the trial court entered judgments and sentenced Largen to a total of 200 to 264 months in prison. There is no evidence in the record that Largen filed a timely notice of appeal. In a *pro se* filing in August 2019, Largen stated that "in the Month of June Defendant Filed A Motion of 'Direct Appeal' based on 'Ineffective Assistance of Counsel' (I.A.C.) and 'Due Process violations.'"

¶ 9 Largen later petitioned this Court for a writ of certiorari to review the arguments in this appeal because "the record evidence does not clearly demonstrate his written notice of appeal was timely filed and served on the State" and because a challenge to the factual basis supporting a guilty plea "is not appealable as a matter of right."

## Analysis

¶ 10 Our Supreme Court recently held that a "writ of certiorari is not intended as a substitute for a notice of appeal because such a practice would render meaningless the rules governing the time and manner of noticing appeals." *State v. Ricks*, 378 N.C.

737, 2021-NCSC-116, ¶ 6. Thus, this Court may exercise its discretion to issue a writ of certiorari only when the petitioner has shown "merit or that error was probably committed below." *Id.*

¶ 11 As explained below, Largen has not met this standard and thus, in our discretion, we deny the petition for a writ of certiorari and dismiss the appeal.

## I. Factual basis supporting the guilty plea

¶ 12 We first address Largen's argument concerning the sufficiency of the factual basis for the guilty plea. N.C. Gen. Stat. § 15A-1022(c) provides that a judge "may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea" and that this determination "may be based upon" various information including a "statement of the facts by the prosecutor." N.C. Gen. Stat. § 15A-1022(c)(1).

¶ 13 Our Supreme Court has held that the statute "does not require the trial judge to elicit evidence from each, any or all of the enumerated sources." *State v. Dickens*, 299 N.C. 76, 79, 261 S.E.2d 183, 185 (1980). Instead, the trial court "may consider any information properly brought to his attention in determining whether there is a factual basis for a plea of guilty or no contest." *Id.* at 79, 261 S.E.2d at 185–86. The factual basis must be sufficient to assure the trial court that "some substantive material independent of the plea itself appear of record which tends to show that defendant is, in fact, guilty." *State v. Agnew*, 361 N.C. 333, 336, 643 S.E.2d 581, 583

(2007).

¶ 14 Largen contends that, when he presented an alternative factual basis during the plea hearing that might support an argument of self-defense, the court was required to make a formal finding identifying which factual basis was accurate. But the purpose of the factual basis is to confirm that evidence "independent of the plea itself" tends to show the defendant is guilty. *Id.* The factual basis presented in this case did so. The State's factual basis showed that Largen struck Compton in the head and killed him, drove Compton away from Largen's home, abandoned him in a car, and removed Compton's wallet and a piece of bloody clothing from the car. These facts tend to show that Largen committed all the essential elements of both offenses to which he pleaded guilty.

¶ 15 Largen does not cite any cases suggesting that a defendant must agree with the State's factual basis to enter a guilty plea, or that the trial court must conduct an evidentiary hearing or make fact findings about the State's factual basis if the defendant submits an alternative factual basis. Thus, we are not persuaded that Largen has shown "merit or that error was probably committed below." *Ricks*, ¶ 6. Accordingly, in our discretion, we decline to issue a writ of certiorari to review this issue.

## II. Calculation of prior record level

¶ 16 Largen next argues that the trial court committed reversible error by

considering in the sentencing calculation a number of prior misdemeanor convictions that should not have been separately considered for purposes of calculating prior record level.

¶ 17 On appeal, the "determination of an offender's prior record level is a conclusion of law that is subject to de novo review." *State v. Green*, 266 N.C. App. 382, 385, 831 S.E.2d 611, 614 (2019). But, as with similar sentencing calculation errors, to amount to reversible error the defendant must show that the calculation error would have resulted in a different prior record level determination for sentencing purposes. *See State v. Smith*, 139 N.C. App. 209, 219–20, 533 S.E.2d 518, 524 (2000).

¶ 18 Here, Largen points out that the scoring grid includes six prior Class A1 or 1 misdemeanor convictions but only four of those misdemeanor convictions properly were considered in the calculation. But as the State points out, the scoring grid also included only four prior Class H or I felony convictions, although there were six prior Class H or I felony convictions listed in the stipulated list of prior convictions that properly were considered in the calculation. Thus, had the scoring grid accurately tallied Largen's prior convictions, he would be at prior record level V, the same level at which he was sentenced. *See* N.C. Gen. Stat. § 15A-1340.14(c). Accordingly, Largen has not shown a prejudicial error in his prior record level calculation and we decline, in our discretion, to issue a writ of certiorari to review this issue.

## Conclusion

¶ 19 We deny the petition for a writ of certiorari and allow the State's motion to dismiss.

DISMISSED.

Judges MURPHY and WOOD concur.

Report per Rule 30(e).