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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-111

No. COA21-453

Filed 15 February 2022

Catawba County, Nos. 19 CRS 56315-17, 19 CRS 56319, 20 CRS 1026

STATE OF NORTH CAROLINA

v.

RODNEY FADELL MCGILL

Appeal by defendant from judgments entered 17 March 2021 by Judge Donnie Hoover in Catawba County Superior Court. Heard in the Court of Appeals 26 January 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Nathan D. Childs, for the State.

Richard Croutharmel for defendant.

ARROWOOD, Judge.

¶ 1 Rodney Fadell McGill (“defendant”) appeals from judgments entered against him for two counts of habitual larceny. Defendant argues the trial court lacked subject matter jurisdiction in the matter because the habitual larceny indictments were fatally defective in that they failed to allege whether defendant was represented

by counsel or had waived counsel in each of his four prior larceny convictions. For the following reasons, we dismiss defendant’s appeal.

I. Background

¶ 2

On 16 December 2019, the Hickory Police Department received a call about defendant “loading large shopping bags full of merchandise at the Valley Hills Mall . . . in Hickory after stealing items from” two retail shops inside the mall. After being given “a description of a specific black SUV that was waiting in the parking lot[,]” officers waited for defendant “to come out of the mall and get back in his car.” When officers approached defendant while he was returning to the SUV, defendant “refuse[d] to follow commands, start[ed] his vehicle[,] and [took] off out of the parking lot.” A chase ensued, with defendant eluding arrest by running “multiple stop signs” and driving “well over 15 miles per hour over the speed limit.” When defendant failed to stop after hitting an unoccupied parked vehicle, the officers “call[ed] off the chase.” After obtaining the SUV’s registered owner’s address, the officers arrived at the address, where they found the same SUV, bearing damages from a collision, and defendant, who had changed his clothes.

¶ 3

On 2 March 2020, a Catawba County Grand Jury indicted defendant on one count of fleeing to elude arrest with a moving vehicle, one count of hit and run for failure to stop after damaging property, and, pertinently, two counts of larceny under file number 19 CRS 56316 and two counts of larceny under file number 19 CRS 56317.

¶ 4 The indictment for file number 19 CRS 56316 read as follows:

COUNT I OFFENSE: Larceny under 14-72(a)

COUNT II OFFENSE: Larceny under 14-72(b)(6)

THE JURORS FOR THE STATE upon their oath present that on or about December 16th, 2019, [defendant], unlawfully, willfully, and feloniously did steal, take, carry away PINK gift sets, perfume, beach wear and ladies underwear, the personal property of Victoria's Secret Stores LLC.

THE JURORS FOR THE STATE upon their oath present that on or about December 16th, 2019, [defendant] had been previously convicted of at least four previous larceny offenses. The defendant was convicted of the offense of Misdemeanor Larceny on February 17th, 1994 in Catawba County District Court file number 93CRS013361. The defendant was convicted of the offense of Misdemeanor Larceny on December 15th, 1998 in Columbus County District Court file number 98CR001692. The defendant was convicted of the offense of Misdemeanor Larceny on July 29th, 2004 in Catawba County District Court 03CR057145. The defendant was convicted of the offense of Misdemeanor Larceny on January 9th, 2019 in Catawba County District Court file number 18CR56453.

¶ 5 The indictment for file number 19 CRS 56317 read as follows:

COUNT I OFFENSE: Larceny under 14-72(a)

COUNT II OFFENSE: Larceny under 14-72(b)(6)

THE JURORS FOR THE STATE upon their oath present that on or about December 16th, 2019, [defendant], unlawfully, willfully, and feloniously did steal, take, and carry away clothing items, the personal property of J.C. Penney Corporation, INC.

THE JURORS FOR THE STATE upon their oath present

that on or about December 16th, 2019, [defendant] had been previously convicted of at least four previous larceny offenses. The defendant was convicted of the offense of Misdemeanor Larceny on February 17th, 1994 in Catawba County District Court file number 93CRS013361. The defendant was convicted of the offense of Misdemeanor Larceny on December 15th, 1998 in Columbus County District Court file number 98CR001692. The defendant was convicted of the offense of Misdemeanor Larceny on July 29th, 2004 in Catawba County District Court 03CR057145. The defendant was convicted of the offense of Misdemeanor Larceny on January 9th, 2019 in Catawba County District Court file number 18CR56453.

¶ 6 On 17 March 2021, defendant entered guilty pleas pursuant to *Alford* on two counts of habitual larceny under N.C. Gen. Stat. § 14-72(b)(6). In exchange for defendant’s plea, the State agreed to “[d]ismiss remaining charges,” not pursue Habitual Felon status, and provide a sentence “in the bottom of presumptive range” to run consecutively. Defendant received two consecutive active sentences of 16 to 29 months for the habitual larceny convictions.

¶ 7 On 25 March 2021, the Clerk of Superior Court in Catawba County received an “Inmate Grievance Record” in which defendant stated, in pertinent part: “IM [sic] REQUESTING TO ENTER AN APPEAL ON MY CASE THAT TOOK PLACE ON 3-17-20 [sic] [.]” (The actual date of the case was 3-17-21.) Appellate entries followed on the same day, where the trial court, through boilerplate language, noted that defendant had given notice of appeal, found defendant indigent, and ordered the Appellate Defender’s office to represent defendant on appeal. On 20 May 2021, the

Appellate Defender's office appointed appellate counsel, and, on 2 June 2021, all trial transcripts were delivered to all appellate attorneys. The record was filed on 13 August 2021, and defendant, through appellate counsel, filed his appellant brief on 5 October 2021.

II. Discussion

¶ 8 Defendant claims that the trial court lacked subject matter jurisdiction to hear the larceny charges against him, arguing that the indictments for larceny were fatally defective in that they failed to state whether defendant was represented by counsel or had waived counsel during any of his four prior larceny convictions. We first address whether this appeal is properly before us.

¶ 9 Defendant's appeal is defective in multiple ways. Defendant failed to serve notice of appeal upon the State, in violation of Rule 4. *See* N.C.R. App. P. 4(a)(2). Furthermore, defendant had no statutory right to appeal, as he appeals from a non-sentencing issue following his *Alford* plea. *See* N.C. Gen. Stat. § 15A-1444(a1-a2) (2021).

¶ 10 Recognizing that his appeal is subject to dismissal, defendant has filed a Petition for *Writ of Certiorari*. In this petition, defendant concedes that this Court could dismiss his appeal for failure to serve the State and for lack of a statutory right to directly appeal. Indeed, defendant "has not properly given notice of appeal," and

thus “this Court is without jurisdiction to hear the appeal.” *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320 (2005) (citations omitted).

¶ 11 We next review whether granting defendant’s petition is warranted in this case. “Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (citation omitted). Thus, “[a] petition for the writ must show merit or that error was probably committed below.” *Id.* (citation omitted).

¶ 12 Here, defendant cannot meet his burden of showing merit because this Court already addressed the exact same issue on appeal in *State v. Edgerton*, 266 N.C. App. 521, 832 S.E.2d 249 (2019). In *Edgerton*, we found that, according to our Supreme Court, the offense of habitual larceny as prescribed by N.C. Gen. Stat. § 14-72(b)(6) does not include any “counsel requirement in its list of the essential elements” *Id.* at 527, 832 S.E.2d at 254 (citing *State v. Brice*, 370 N.C. 244, 248-49, 806 S.E.2d 32, 35-36 (2017)). Thus, we concluded that the indictment at issue in *Edgerton* “was not required to allege facts regarding representation by or waiver of counsel and was sufficient to charge [the] [d]efendant with the crime of felony larceny and grant the trial court subject matter jurisdiction.” *Id.* at 529, 832 S.E.2d at 255.

¶ 13 The same applies here. Because the habitual larceny indictments against defendant were not required, by statute or precedent, to allege any facts as to whether defendant was represented by counsel or had waived counsel during any of his prior

four larceny convictions, the lack of such allegation does not render the indictments fatally defective. *See id.* Thus, the indictments were appropriate to confer subject matter jurisdiction to the trial court. *See id.*

III. Conclusion

¶ 14 Defendant's purported appeal is defective in two respects and thus fails to confer jurisdiction on this Court. Furthermore, the issue defendant seeks to raise in his appeal by *writ of certiorari* is without merit. Accordingly, we deny defendant's Petition for *Writ of Certiorari* and dismiss defendant's appeal

APPEAL DISMISSED.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).