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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-187

No. COA21-103

Filed 15 March 2022

Rutherford County, Nos. 09 CRS 50256-59; -50289

STATE OF NORTH CAROLINA

v.

TYLER MICHAEL HARRIS, Defendant.

Appeal by defendant from order entered 14 February 2020 by Judge J. Thomas Davis in Superior Court, Rutherford County. Heard in the Court of Appeals 19 October 2021.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant.

STROUD, Chief Judge.

¶ 1 Defendant Tyler Michael Harris appeals from judgments entered upon a plea agreement. Defendant argues the trial court erred in only vacating the judgment entered upon a fatally deficient bill of information because the appropriate remedy is vacatur of the entire plea agreement. We agree with Defendant and vacate the entirety of the plea agreement and the judgments entered pursuant to the plea

agreement.

I. Background

¶ 2 On 24 January 2009, magistrate orders were issued charging Defendant with: second-degree kidnapping in 09 CR[1] 50257; assault with a deadly weapon and assault by pointing a gun in 09 CR 50258; and injury to real property and simple possession of a schedule VI controlled substance in 09 CR 50289. On 17 February 2009, Defendant signed bills of information charging him with: breaking and entering and attempted robbery with a firearm in 09 CR 5056; and possession of a schedule I controlled substance and possession with intent to manufacture, sell or deliver a schedule I controlled substance in 09 CR 50289.

¶ 3 Defendant appeared in District Court, Rutherford County on 17 February 2009. Defendant and the State entered a plea agreement. The terms of the plea agreement were as follows: In lieu of attempted robbery with a firearm in 09 CR 5056, Defendant pled guilty to attempted common law robbery and in lieu of second-degree kidnapping in 09 CR 50257, Defendant pled guilty to false imprisonment. The transcript of the plea agreement states that "[i]n addition, the defendant shall plead guilty to": in 09 CR 5056, breaking and entering; in 09 CR 50258, assault with a deadly weapon and assault by pointing a gun; in 09 CR 50289, injury to real property,

[1] At various times in this case, both CR and CRS have been used but they refer to the same judgments each time.

simple possession of a schedule VI controlled substance, and possession with intent to sell or deliver a schedule I controlled substance. The State dismissed the possession of a schedule I controlled substance charge in 09 CR 50289.

¶ 4 The trial court consolidated the offenses into three judgments. For the first judgment—breaking or entering in 09 CR 50256—the trial court sentenced Defendant to an active sentence of 6-8 months. For the second judgment—false imprisonment in 09 CR 50257; assault with a deadly weapon and assault by pointing a gun in 09 CR 50258; injury to real property, simple possession of a schedule VI controlled substance, and possession with intent to sell or deliver a schedule I controlled substance in 09 CR 50289—the trial court sentenced Defendant to a suspended sentence of 6-8 months. For the third judgment—attempted common law robbery in 09 CR 5056—the trial court sentenced Defendant to a suspended sentence of 6-8 months.

¶ 5 The trial court issued violation reports on 26 March 2010 alleging that Defendant was in violation of the terms of his probation. After a hearing on 7 July 2010, the trial court revoked Defendant's probation and activated the suspended sentences in the second and third judgments.

¶ 6 On 17 July 2019, Defendant filed a *pro se* motion for appropriate relief ("MAR"), requesting his guilty plea and judgments be vacated. Defendant alleged that the trial court lacked subject matter jurisdiction because the information in 09

CR 50289 was fatally defective. Specifically, Defendant argued "that the indictment in 09 CR 50289 is fatally defective on its face because it fails to allege a controlled substance found listed in Schedule II."[2] Defendant argued "[w]hen lack of jurisdiction is shown, the trial court's judgment must be arrested and plea arrangement vacated."

¶ 7 The court issued orders on 5 August and 16 August 2019. Each respective order found that the court was "unable to resolve the matter . . . without hearing from the parties," appointed counsel for Defendant, and directed the State to respond within 45 days. The Public Defender's Office was initially appointed to represent Defendant but later a conflict arose and the court appointed a different attorney to represent Defendant.

¶ 8 On 14 November 2019, Defendant's appointed counsel filed a motion to withdraw. Also on 14 November 2019, Defendant sent a letter to the trial court "respectfully ask[ing] that you vacate the conviction(s) and set aside the plea agreement" because the State "failed to comply with your order . . . and therefore waived the right to respond and be heard."

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[2] Although the offense caption of the bill of information reads "PWIMSD SCH I CIS," the body of the allegation states that it was a schedule II controlled substance. However, the transcript of the plea of refers to the schedule I substance. This distinction is not relevant to our analysis, however. No substance listed as "METHYLENEDIOXYMETHAMPHETAMINE" appears on the list of schedule I controlled substances in North Carolina General Statute § 90-89 (2019) or schedule II controlled substances in North Carolina General Statute § 90-90 (2019). Therefore, the bill of information is fatally flawed either way.

¶ 9 On 30 January 2020, Defendant filed a "motion for summary judgment and demand for relief." (Capitalization altered.) Defendant alleged that the State, by willfully failing to comply with the order directing response in 45 days, was in civil contempt and had "waived the right and opportunity to be heard on this issue[.]" Defendant also argued that because his "consolidated guilty plea relies upon this fatally defective indictment, the Trial Court did not have jurisdiction to enter judgment on [Defendant's] entire guilty plea and it must also be vacated as required by law."

¶ 10 On 13 February 2020, Defendant's MAR came on for hearing. Following a colloquy with Defendant, the trial court allowed Defendant's appointed counsel to withdraw and Defendant to represent himself. The trial court explained that it would "re-review" and that Defendant "should hear something back from the State inside of 50 days." Moments later, however, the trial court advised Defendant that "the State has indicated to me that they are going to concede. You are correct in that motion for appropriate relief in that that judgment is void and should be stricken." The hearing on the motion on Defendant's MAR proceeded that day. The State explained that "with regard to File 09CRS50289, the defendant is correct. The information is fatally defective. . . . It would be the State's intention to file a dismissal on that file number." The State agreed to dismiss all the charges consolidated for judgement in 09 CRS 50289.

¶ 11 The trial court entered an "order on motion for appropriate relief" (capitalization altered) on 14 February 2020. The order dismissed the charges consolidated for judgment in 09 CRS 50289. The order left intact the plea agreement as to the other charges and the two other judgments. On 22 June 2020, Defendant filed a petition for writ of certiorari to this Court from the trial court's order disposing of Defendant's MAR. This Court allowed Defendant's petition on 7 July 2020.

II. Analysis

¶ 12 Defendant argues that his "entire guilty plea should have been set aside because its express terms required the court to enter judgment against him even though the court lacked jurisdiction to do so." (Capitalization altered.) The State conceded and the trial court properly held that the bill of information in 09 CRS 50289 charging Defendant with possession with intent to sell or deliver a schedule I controlled substance was fatally defective. The only question on appeal is the effect of the defective bill of information on Defendant's guilty plea. Therefore, we must determine whether the trial court erred in only vacating the charges consolidated for judgment in 09 CRS 50289 or whether the appropriate remedy was vacatur of the entire plea agreement and all judgments entered upon it.

¶ 13 "When considering rulings on motions for appropriate relief, we review the trial court's order to determine whether the findings of fact are supported by evidence, whether the findings of fact support the conclusions of law, and whether the

conclusions of law support the order entered by the trial court." *State v. Wilkerson*, 232 N.C. App. 482, 488–89, 753 S.E.2d 829, 834 (2014) (citation and quotation marks omitted). "Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal." *Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004) (citation omitted).

¶ 14 In its order disposing of Defendant's MAR, the trial court found and concluded, in relevant part:

> 4. After hearing from both the State and the defendant the Court concludes as a matter of law that the information on the PWIMSD Sch. I charge was defective and the Court lacked jurisdiction to proceed on that charge and that judgment should be revoked to which the State agrees. The State upon the announcement of this conclusion took a dismissal of all the charges on the PWIMSD Sch. I judgment.
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> 5. The defendant further contends that all the judgments should be revoked and his guilty plea stricken as to all charges. The defendant, however, is erroneous in this conclusion. The rule is set out in *State v. Stonestreet*, 243 N.C. 28:
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>> Where two or more indictments or counts are consolidated for the purpose of judgment, and a single judgment is pronounced thereon, even though the plea of guilty or conviction on one is sufficient to support the judgment and the trial thereon is free from error, the award of a new trial on the other indictment(s) or count(s) requires that the cause be remanded for proper judgment on the valid count. "Presumably this (the single judgment) was based upon consideration of guilt on both charges." *Devin,*

> *J.,* later *C. J.,* in *S. v. Camel*, 230 N.C. 426, 53 S.E. 2d 313; also, see *S. v. Braxton*, 230 N.C. 312, 52 S.E. 2d 895. **But the rule is otherwise when, as here, separate judgments, each complete within itself, are pronounced on separate indictments or counts. In such case, a valid judgment pronounced on a plea of guilty to a valid count in a bill of indictment will be upheld. *S. v. Tlzom e, supra; S. v. Calcutt*, 219 N.C. 545, 15 S.E. [***9) 2d 9. (Emphasis added)**
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> 6. In addition, the defendant has not alleged nor shown any grounds for setting aside the entire plea. As a result, the plea as to the other charges on valid judgments will not be revoked and those judgments will continue in full force and effect. No reallocation of jail credit will be necessary since the probationary judgments were to run concurrent with each other as modified at the revocation hearing.
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> IT IS, THEREFORE, ORDERED that the PWIMSD Sch. I judgment in file number 09 CRS 50289 is set aside as a result of the invalid information supporting this charge, and all the charges set out on that judgment are dismissed by the State. To this extent the defendant's motion for appropriate relief is allowed. Other than the setting aside of this one judgment the defendant's motion for appropriate relief is denied as to the remaining judgments.

¶ 15 There is no factual dispute and the only question presented is a question of law, which we review *de novo*. *Id.* at 517, 597 S.E.2d at 721. The trial court's legal conclusion to vacate only one judgment and to leave the other two judgments intact was based on *State v. Stonestreet*, 243 N.C. 28, 89 S.E.2d 734 (1955). In *Stonestreet*, the defendant pled guilty to two offenses and went to trial on the remaining charges.

243 N.C. at 29, 89 S.E.2d at 736. At trial, the defendant was found guilty of one of the charges submitted to the jury. *Id.* The trial court entered three separate judgments: one judgment for each guilty conviction. *Id.* at 30, 89 S.E.2d at 736. The Supreme Court ex mero motu held that two of the underlying bills of indictment were defective and, as a result, arrested judgment on those two judgments. *Id.* at 31, 89 S.E.2d at 737. As quoted in the trial court's order here, the Supreme Court held that when separate judgments are pronounced on separate indictments, "a valid judgment pronounced on a plea of guilty to a valid count in a bill of indictment will be upheld." *Id.* (citation omitted). *Stonestreet* is distinguishable, however, as there is no indication that the defendant entered his guilty pleas pursuant to a plea agreement. Here, the three judgments entered against Defendant were in accordance with the terms of a plea agreement. As discussed below, the Supreme Court and this Court have offered guidance on the effects of a fatally defective indictment on judgments entered pursuant to a plea agreement.

¶ 16 In *State v. Rico*, 218 N.C. App. 109, 720 S.E.2d 801 (2012), *rev'd in part per curiam for the reasons stated in the dissent*, 366 N.C. 327, 734 S.E.2d 571 (2012), the defendant and the State entered a plea agreement wherein the defendant pleaded guilty to voluntary manslaughter and admitted to an aggravating factor in lieu of the State dismissing a first-degree murder charge. *Id.* at 110–11, 720 S.E.2d at 802. The trial court accepted the plea agreement and entered judgment imposing an

aggravated sentence. *Id.* at 111, 720 S.E.2d at 802. The defendant subsequently filed a MAR challenging the factual sufficiency of the aggravated factor; the majority opinion and dissent at this Court agreed that the imposition of the aggravating sentence was statutorily unauthorized. *Id.* at 122, 720 S.E.2d at 809. The majority opinion decreed that the "defendant should be resentenced upon his guilty plea to voluntary manslaughter." *Id.* at 119, 720 S.E.2d at 807. However, the dissenting judge reasoned:

> In the instant case, essential and fundamental terms of the plea agreement were unfulfillable. Defendant has elected to repudiate a portion of his agreement. Defendant cannot repudiate in part without repudiating the whole. *State v. Fox*, 34 N.C. App. 576, 579, 239 S.E.2d 471, 473 (1977) ("Where a defendant elects not to stand by his portion of a plea agreement, the State is not bound by its agreement to forego the greater charge.").
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> The entire plea agreement must be set aside, and this case remanded to the Superior Court of Sampson County for disposition on the original charge of murder.

Id. at 122, 720 S.E.2d at 809. In a *per curiam* opinion, the Supreme Court adopted the reasoning of the dissenting judge. *State v. Rico*, 366 N.C. 327, 734 S.E.2d 571 (2012).

¶ 17 This Court applied the reasoning from *Rico* in *State v. Pless*, 249 N.C. App. 668, 791 S.E.2d 869 (2016). There, the defendant argued "that the terms of the plea bargain required him to be sentenced to a term that was not authorized under the

statutory provisions applicable to the date on which he committed these offenses." *Id.* at 669, 791 S.E.2d at 870. This Court agreed with the defendant and based on *Rico*, vacated the defendant's entire plea agreement and judgment entered pursuant to the plea agreement. *Id.* at 672, 791 S.E.2d at 871.

¶ 18 The State asserts that there "are several possible remedies for breaches of plea agreement" and *Stonestreet* simply provided "another potential remedy for breaches of plea agreements," *i.e.* that a trial court can excise a portion, but not the entire plea arrangement. However, as mentioned above, in *Stonestreet*, there is no indication that the defendant plead guilty pursuant to a plea agreement. In contrast, the analysis in *Rico* and *Plessy* hinged on the principle that a "[d]efendant cannot repudiate [a plea agreement] without repudiating the whole." *Rico*, 218 N.C. App. at 122, 720 S.E.2d at 809. Here, the terms of the plea agreement specifically provided that "[i]n addition, defendant shall plead guilty to . . . possession with intent to sell or deliver schedule I controlled substance." Thus, "essential and fundamental terms of the plea agreement [are] unfulfillable." *Id.* at 122, 720 S.E.2d at 809. Since we agree with Defendant that the appropriate remedy is to vacate the judgment in 09 CRS 50289, "[t]he entire plea agreement must be set aside." *Plessy*, 218 N.C. App. at 122, 720 S.E.2d at 809. We therefore vacate the plea agreement, all judgments entered pursuant to the plea agreement, and remand to the trial court for a new disposition.

III. Conclusion

¶ 19 We hold that the trial court did not have subject matter jurisdiction to enter the plea agreement because the bill of information in 09 CRS 50289 was fatally defective. As a result, we vacate the entire plea agreement and the three judgments entered. We remand to the trial court for a new disposition.

VACATED AND REMANDED.

Judges INMAN and GORE concur.

Report per Rule 30(e).