IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-478

No. COA21-500

Filed 5 July 2022

Buncombe County, Nos. 15 CRS 88082, 16 CRS 463

STATE OF NORTH CAROLINA

v.

CHRISTOPHER LEE MICHELSON

Appeal by defendant from judgments entered 8 March 2021 by Judge Steve R. Warren in Buncombe County Superior Court. Heard in the Court of Appeals 7 June 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Kayla D. Britt, for the State.

Edward Eldred for defendant-appellant.

ARROWOOD, Judge.

¶ 1 Christopher Lee Michelson ("defendant") appeals and petitions this Court from judgments entered against him following his entry of a guilty plea pursuant to a plea agreement. For the following reasons, in our discretion we deny defendant's petition and dismiss the appeal.

I. Background

¶ 2 On 11 July 2016, defendant was indicted on two counts of robbery with a dangerous weapon, one count of conspiracy to commit robbery with a dangerous weapon, two counts of common law robbery, three counts of trafficking opium or heroin, two counts of conspiracy to traffic opium or heroin, one count of possession with intent to sell or deliver a Schedule II substance, and one count of attaining habitual felon status.

¶ 3 On 2 December 2020, defendant filed a Petition for *Writ of Habeas Corpus* in Buncombe County Superior Court, which the trial court granted on 15 December 2020. On 12 January 2021, the trial court filed a bond modification, allowing defendant to be released on a $100,000 unsecured bond on the conditions that he cooperate with electronic monitoring, live with his father, and continue to "take any medication currently prescribed to him." On 19 February 2021, defendant appealed, *pro se*, from the trial court's "order from Habeas Corpus hearing[,]" stating that he had "not been released at this date and has discovered that it may take another (6) [sic] months for his release from the unlawful and illegal detention."

¶ 4 Defendant appeared before Buncombe County Superior Court, Judge Warren presiding, for a plea hearing on 8 March 2021. Defendant entered a plea agreement by which he pleaded guilty to six charges; the State dismissed the remaining charges. The plea agreement provided that defendant's charges "shall be consol[i]dated into two class F consecutive judgements [sic]. All other charges shall be consolidated into

these two consecutive judgments." Pertinently, the plea agreement also provided that "defendant shall be sentenced in the mitigated range in both 15CRS88082 and 16CRS463[,]" receiving "an active sentence of 46 months min[i]mum to 65 months maximum.[1] This is a time served plea."

¶ 5 At the hearing, the following was exchanged regarding sentencing:

> THE COURT: . . . . It is hereby ordered that the two cases, 15 CRS 88082 and 16 CRS 463, and the other remaining charges will [be] consolidated, all those into 15 CRS 88082. In 15 CRS 88082, [defendant] will receive 23 to 37 months. Well, excuse me. All right. We will do 23 months minimum -- and what are we doing on the maximum? I'm trying to get to 65. Let's do it this way.
>
> On each one [of] those charges, on 15 CRS 88082 and 16 CRS 463, those two charges will run consecutive to each other. The Court imposes a sentence of 23 months minimum on . . . each one of those and the maximum sentence -- it's going to 46 months on the minimum side and 65 months on the maximum side.
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> [DEFENDANT'S COUNSEL]: So it's 46 minimum and 65 maximum.
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> THE COURT: Right. 65 divided by two.
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> THE CLERK: DOC is going to kick that back, the 32.5.
>
> THE COURT: I can just give a minimum on each one and consolidate those and that gives me 46 months minimum. And when I go to the sentencing chart on page 35, that

[1] The plea agreement, as typed out in the plea transcript, originally set out a maximum sentence of 68 months. However, per the Record, the transcript was subsequently manually edited to reflect a maximum sentence of 65 months.

yields me 65 month [sic] maximum. Do you see that?

THE CLERK: I'm really confused right now.

[DEFENDANT'S COUNSEL]: I think if you give 23 to 37, the Department of Corrections is going to add them, and he's going to have 46 to 65.

THE COURT: That will be 64.

[DEFENDANT'S COUNSEL]: Sure, but the Department of Corrections will change that anyways.

THE COURT: All right. We will do this: Is there a place on that form for 23 to 37 months on each one. However, give the corresponding maximum value of a 46 month minimum sentence on a Class H felony, that would be 65 months, as set out on page 35 of the sentencing manual.

[DEFENDANT'S COUNSEL]: That's a Class F.

THE COURT: I don't know if there's a place on the form to do that. [Defendant's counsel] is saying to do just 23 to 36 on each one and consolidate them. Let's just do that and let DOC worry about it.

[DEFENDANT'S COUNSEL]: So two 23 to 37's.

THE CLERK: Okay.

THE COURT: So 23 to 37 on each one of those. Each one of those will run consecutive to each other. With regard to those consolidated sentences, he is to receive credit in the amount of 2047 days.

¶ 6 The trial court entered two judgments against defendant, sentencing him to a total of 46-to-74 months' imprisonment and crediting 2,047 days for time served. Defendant was released the same day.[2]

¶ 7 On 19 March 2021, defendant filed a *pro se* notice of appeal. On 13 December 2021, defendant, through counsel, filed his appellate brief; he filed a Petition for *Writ of Certiorari* ("PWC") the following day. On 8 April 2022, the State filed its appellate brief, a response to defendant's PWC, and a Motion to Dismiss Appeal, arguing the appeal should be dismissed because defendant's notice of appeal was defective in that it "failed to designate 'the court to which appeal is taken.' "

II. Discussion

¶ 8 Defendant argues that he "did not receive the benefit of his plea bargain" because, per his plea agreement, he was supposed to receive a maximum sentence of 65 months' imprisonment, and the trial court's judgments provided a maximum of 74 months. Thus, defendant argues, the trial court committed error and prejudiced defendant.

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[2] This information is available on the North Carolina Department of Public Safety's Offender Public Information website: https://webapps.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=1654719&searchLastName=michelson&searchFirstName=christopher&searchDOBRange=0&listurl=pagelistoffendersearchresults&listpage=1.

¶ 9 A defendant who pleads guilty in superior court is entitled to appeal as a matter of right if, and only if, the sentence imposed: "(1) [r]esults from an incorrect finding of the defendant's prior record level . . . or . . . prior conviction level"; "(2) [c]ontains a type of sentence disposition that is not authorized by [our General Statutes] for the defendant's class of offense and prior record or conviction level"; or "(3) [c]ontains a term of imprisonment that is for a duration not authorized by" our General Statutes. N.C. Gen. Stat. § 15A-1444(a2) (2021). If, on appeal, the defendant's argument does not entail any of the forementioned issues, the defendant "may petition the appellate division for review by writ of certiorari." N.C. Gen. Stat. § 15A-1444(e).

¶ 10 In the case *sub judice*, the arguments defendant presents in both his appellate brief and PWC do not entitle him to an appeal as of right under N.C. Gen. Stat. § 15A-1444(a2). Accordingly, it is in the Court's discretion whether to grant or deny defendant's PWC. *See* N.C. Gen. Stat. § 15A-1444(e).

¶ 11 "A writ of *certiorari* is an extraordinary remedial writ[.]" *State v. Roux*, 263 N.C. 149, 153, 139 S.E.2d 189, 192 (1964) (citations omitted). "*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), *cert. denied*, 362 U.S. 917, 4 L. Ed. 2d 738 (1960).

¶ 12 We are not persuaded that defendant has shown merit or that the trial court committed error. The trial court may have come to the wrong mathematical conclusion while determining in open court how to type out the sentence to which defendant had agreed via the plea agreement. However, per the Record, it is undisputed that defendant's plea agreement constituted a time served plea, that defendant was credited for time served, and, as a result, that defendant was released from detention on the same day as the 8 March 2021 plea hearing. In other words, defendant did indeed receive the benefit of his plea bargain. Thus, even presuming, *arguendo*, that the trial court committed error, defendant cannot show that this error has prejudiced him.

¶ 13 Having reviewed the Record, defendant's PWC, and the State's Motion to Dismiss, together with the briefs on the merits, we exercise our discretion and deny defendant's PWC.

III. Conclusion

¶ 14 For the foregoing reasons, because defendant's PWC is meritless, we, in our discretion, deny defendant's PWC and dismiss the appeal.

DISMISSED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).