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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-932

No. COA22-330

Filed 29 December 2022

Brunswick County, Nos. 16 CRS 55123–27, 55131

STATE OF NORTH CAROLINA

v.

GERAD MICHAEL CHRISTMAN

Appeal by defendant from judgments entered 1 November 2021 by Judge Jason C. Disbrow in Brunswick County Superior Court. Heard in the Court of Appeals 16 November 2022.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Ameshia Cooper Chester, for the State.*

*Richard Croutharmel for defendant.*

DIETZ, Judge.

¶ 1 Defendant Gerad Christman was convicted and sentenced on thirty separate sex offense charges. After this Court vacated a number of those convictions, we remanded the case. The trial court resentenced Christman and this appeal followed.

¶ 2 Christman now argues that the trial court erred by sentencing him to more prison time than he received at his initial sentencing. As explained below, we reject

this argument because—although the trial court reconfigured how it consolidated many of the convictions for judgment—the court’s resentencing did not increase the term of any of the individual sentences or the total aggregate sentence imposed. Accordingly, the trial court complied with the applicable statutory criteria for resentencing and we find no error in the trial court’s judgments.

### **Facts and Procedural History**

¶ 3 In 2019, the State indicted Defendant Gerad Christman for fifteen counts of taking indecent liberties with a child, six counts of statutory sexual offense, and nine counts of statutory sexual offense with a child by an adult. Following a trial, the jury convicted Christman of all 30 charges. The trial court consolidated all of the convictions into three judgments imposing consecutive sentences of 300 to 420 months each, the mandatory minimum sentence for statutory sexual offense with a child by an adult under N.C. Gen. Stat. § 14-27.28. In total, the trial court sentenced Christman to a term of 900 to 1,260 months in prison.

¶ 4 Christman appealed his convictions. In July 2021, this Court vacated “the portions of the judgment convicting Defendant of six counts of statutory sexual offense and eight counts of statutory sex offense with a child by an adult,” found no error in the remaining convictions for one count of statutory sexual offense with a child by an adult and 15 counts of indecent liberties with a child, and remanded the case for further proceedings. *State v. Christman*, 278 N.C. App. 606, 2021-NCCOA-

381, ¶¶ 19–20. On remand, the State declined to retry the vacated sex offense counts.

¶ 5

The trial court then resentenced Christman for the remaining convictions. Following a resentencing hearing, the trial court entered judgment on the remaining statutory sex offense count, sentencing Christman to a term of 300 to 420 months in prison. The trial court also consolidated the 15 indecent liberties counts into five judgments encompassing three counts each, imposing five consecutive prison terms of 16 to 80 months. In total, the trial court sentenced Christman to a prison term of 380 to 820 months at resentencing. Christman again appealed.

### **Analysis**

¶ 6

Christman argues that the trial court erred by sentencing him to more prison time on remand after his successful appeal than he received at his initial sentencing in violation of N.C. Gen. Stat. § 15A-1335.

¶ 7

When a defendant alleges “statutory errors regarding sentencing issues, such errors are questions of law, and as such, are reviewed *de novo*.” *State v. Allen*, 249 N.C. App. 376, 379, 790 S.E.2d 588, 591 (2016). Arguments asserting that the “sentence imposed was unauthorized at the time imposed, exceeded the maximum authorized by law, was illegally imposed, or is otherwise invalid as a matter of law” may be reviewed on appeal “even though no objection, exception or motion has been made in the trial division.” N.C. Gen. Stat. § 15A-1446(d)(18); *State v. Johnson*, 253 N.C. App. 337, 345, 801 S.E.2d 123, 128 (2017).

¶ 8 N.C. Gen. Stat. § 15A-1335 governs resentencing after appellate review and provides that when “a conviction or sentence imposed in superior court has been set aside on direct review . . . , the court may not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served.”

¶ 9 This Court has interpreted this statutory provision to mean that, when resentencing a defendant for multiple convictions on remand after an appeal, the trial court is permitted make changes to the duration or structure of the sentences imposed and those changes do not violate Section 15A-1335 “provided neither the individual sentences, nor the aggregate sentence, exceeds that imposed at the original sentencing hearing.” *State v. Oliver*, 155 N.C. App. 209, 211, 573 S.E.2d 257, 258 (2002). Thus, although Section 15A-1335 “prohibits trial courts from imposing stiffer sentences upon remand than originally imposed, nothing prohibits the trial court from changing the way in which it consolidated convictions during a sentencing hearing prior to remand.” *State v. Ransom*, 80 N.C. App. 711, 713–14, 343 S.E.2d 232, 234 (1986).

¶ 10 Christman contends that the trial court in this case could not impose a total minimum sentence of more than 300 months at resentencing because the trial court was not permitted to “use the prison time associated with [his] vacated and un-retried convictions in calculating the pre-appeal aggregate prison sentence for purposes of

complying with N.C. Gen. Stat. § 15A-1335.” Thus, he asserts that the trial court violated Section 15A-1335 when it “created a prison sentence that now totaled a minimum of 380 months . . . which is greater than the 300 months” imposed in the original judgment for the statutory sex offense conviction that survived the prior appeal.

¶ 11 We reject this argument and hold that the trial court’s sentencing determination was appropriate under Section 15A-1335. At Christman’s original sentencing, the trial court’s longest individual sentence was a minimum of 300 months and the total aggregate minimum sentence was 900 months. On remand, the trial court’s longest individual sentence was a minimum of 300 months for the sole remaining sex offense count. After the trial court chose to consolidate the 15 counts of indecent liberties—which previously were consolidated into the original three sex offense judgments—into five consecutive judgments imposing minimum sentences of 16 months each, the trial court’s total aggregate minimum sentence on remand was a minimum of 380 months.

¶ 12 Importantly, none of the individual sentences imposed at resentencing exceeded the individual sentences from the original sentencing and the total aggregate sentence was well below that originally imposed. *Oliver*, 155 N.C. App. at 211, 573 S.E.2d at 258. The trial court’s resentencing determination thus complied with the criteria of Section 15A-1335.

¶ 13 Although Christman asserts that the trial court should have been limited to a total minimum sentence of 300 months, we find nothing in the statute or our precedent that requires that on the facts of this case. Despite the vacatur of all but one of the sex offense convictions, Christman’s convictions for 15 counts of indecent liberties—which were consolidated into the sex offense judgments and not separately sentenced at the original sentencing in this matter—survived Christman’s appeal and were subject to the court’s resentencing. Where multiple convictions were consolidated in the original sentencing, the original aggregate sentence is “deemed to be equally attributable to each indictment or conviction.” *State v. Nixon*, 119 N.C. App. 571, 575, 459 S.E.2d 49, 51 (1995). And as permitted by the statute and our precedent, the trial court was within its authority to change the way it consolidated the remaining convictions for resentencing so long as it did not exceed the total original sentence. *Ransom*, 80 N.C. App. at 713–14, 343 S.E.2d at 234.

¶ 14 This Court has held that the defendant “did not receive a more severe sentence on remand and has failed to show any error in the trial court’s decision to consolidate the charges differently for resentencing” when the defendant’s total term of imprisonment imposed at resentencing was less than the total term imposed in his original sentencing. *State v. Moffitt*, 185 N.C. App. 308, 313, 648 S.E.2d 272, 274–75 (2007). Where “[n]one of the sentences for the individual offenses exceeded the sentence for that offense imposed after the first trial” and “defendant’s aggregate

sentence on remand . . . does not exceed his original aggregate sentence,” we “hold that defendant’s sentences in this case do not violate § 15A-1335.” *State v. Ewell*, 186 N.C. App. 680, 652 S.E.2d 71, 2007 WL 3256643, at \*10 (2007) (unpublished).

¶ 15           Accordingly, we hold that the trial court did not violate N.C. Gen. Stat. § 15A-1335 when resentencing Christman.

### **Conclusion**

¶ 16           For the reasons discussed above, we find no error in the trial court’s judgments.

NO ERROR.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).