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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-485

Filed 17 September 2024

Moore County, Nos. 23 CRS 203372, 215138

STATE OF NORTH CAROLINA

v.

RYAN DAVID BAILEY

Appeal by Defendant from judgment entered 8 November 2023 by Judge Stephan R. Futrell in the Superior Court of Moore County. Heard in the Court of Appeals 29 August 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Megan Shook, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for defendant-appellant.

WOOD, Judge.

Ryan David Bailey (“Defendant”) appeals from a judgment entered upon his guilty plea to selling or delivering a controlled substance to a person under the age of sixteen, indecent liberties, and breaking or entering a place of worship. Counsel appointed to represent Defendant is unable to identify any issue with sufficient merit

to support a meaningful argument for relief on appeal and asks this Court to conduct its own review of the record for possible prejudicial error. After a full examination of the record, we are unable to find any possible prejudicial error and conclude this appeal is wholly frivolous. Accordingly, we find no error with the trial court's judgment.

I. Factual and Procedural Background

On 8 November 2023, Defendant's matter came on for a plea hearing. The State presented, and Defendant stipulated to, the factual basis to support the plea. The State's grounds as to the offenses of selling or delivering a controlled substance to a person under sixteen and indecent liberties are explained as follows. On 14 July 2022, Defendant was at the home of Amanda Wallace, with Amanda's 13-year-old niece Sarah¹ and 15-year-old nephew Sam². Law enforcement received a call from Ms. Wallace requesting assistance in removing Defendant from her home. When officers arrived, Sam informed the authorities that Defendant molested him by putting his hands on his thigh and rubbing it. Subsequently, over the span of two interviews, Sam disclosed that Defendant touched him inappropriately on the outside and inside of his clothing. When Sam asked Defendant to stop, the touching got worse. Sam stated that Defendant was using methamphetamine on that occasion.

¹ A pseudonym is used to protect the identity of the juvenile pursuant to N.C. R. App. P. 42(b).

² See n.1.

He further stated that he and Defendant used the methamphetamine together. On 6 September 2022, a report was made that there was a domestic violence incident between Amanda and Defendant and that Sarah and Sam were smoking methamphetamine. The following day Sarah was interviewed and stated that Defendant would provide her and Sam with methamphetamine. Sarah detailed how she used and ingested the substance.

The State further presented the basis as to the offense of breaking and entering a place of worship. On 3 January 2021, a break-in was reported at Union Grove Church. Items from the closet in the church were thrown around, taken out, and placed on the floor. Officers noticed that copper wiring and piping had been cut and stolen from the church's well pump and gas tank. Additionally, at the scene, the officers found controlled substances on the kitchen counter of the church, two gloves, and a headlamp. Testing later confirmed that Defendant's DNA was on one of the gloves. A witness also confirmed seeing Defendant leaving the church carrying a backpack containing copper wire and piping. Defendant told the witness that his grandfather was coming to pick him up. The witness got the registration plate for the vehicle that picked up Defendant. The vehicle was registered to Defendant's grandfather.

On 23 October 2023, Defendant was indicted for selling or delivering a controlled substance to a person under sixteen years old by a person eighteen years or older; selling or delivering a controlled substance to a person thirteen years or

younger by a person eighteen years or older; taking indecent liberties with a child; breaking or entering a place of worship; and larceny after breaking and entering. Pursuant to a plea agreement, Defendant entered an *Alford* guilty plea to selling or delivering a controlled substance to a person under the age of sixteen, indecent liberties, and breaking or entering a place of worship. In exchange, the State dismissed the remaining charges. The trial court confirmed that Defendant understood the nature of the charges and the rights he was giving up by pleading guilty; that Defendant entered the plea knowingly, intelligently, and voluntarily; and that he had the opportunity to review and understand the terms of the plea. Thereafter, the trial court entered judgment in accordance with the plea agreement and sentenced Defendant to a consolidated mitigated term of 75 to 102 months of imprisonment. Defendant filed written notice of appeal on 20 November 2023.

II. Analysis

Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), indicating she “is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal.” Counsel asks this Court to conduct its own review of the record for possible prejudicial error. Pursuant to *Anders* and *Kinch*, this Court “then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.” *Anders*, at 744, 87 S.Ct. at 1400, 18 L. Ed. 2d at 498.

Counsel identified potential issues to assist in our independent review, namely: (1) whether Defendant's prior record level calculation was erroneous; and (2) whether Defendant's sentence was authorized by statute. Pursuant to N.C. Gen. Stat. § 15A-1444(a2), the trial court's prior record level calculation, type of sentence, and term of imprisonment imposed can be challenged in a guilty plea appeal. The trial court determined, and Defendant stipulated, that he was a level 4 with 12 points for felony sentencing. Upon review, under N.C. Gen. Stat. § 15A-1340.14, the prior record level calculation should have been 11; however, this error does not affect his sentencing as a prior record level 4 offender. As the term of Defendant's sentence is unaffected by this calculation, we hold this error is not prejudicial and proceed with our review. Defendant was sentenced to a mitigated consolidated term of 75 to 102 months of imprisonment. Consistent with N.C. Gen. Stat. § 15A-1340.17, we hold that Defendant's type of sentence and term of imprisonment was statutorily authorized.

Counsel shows to the satisfaction of this Court that she has complied with the requirements of *Anders* and *Kinch*, by advising Defendant of his right to file written arguments with this Court and providing him with the documents necessary to do so. Defendant has not filed any written arguments on his own behalf with this Court, and a reasonable time for him to do so has expired. We have fully examined the record for any issue with arguable merit and find no error in the judgments.

III. Conclusion

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Opinion of the Court

Upon a full review of the record pursuant to our duty under *Anders* and *Kinch*, we are unable to find prejudicial error with the trial court's judgment and hold that this appeal is wholly frivolous.

NO ERROR.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).