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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-863

Filed 15 October 2024

Guilford County, Nos. 19 CRS 726444, 19 CRS 83818, 20 CRS 28231

STATE OF NORTH CAROLINA,

v.

WILLIAM LEO STEPHANY, JR., Defendant.

Appeal by Defendant from judgment entered 13 January 2023 by Judge William A. Wood, II in Guilford County Superior Court. Heard in the Court of Appeals 20 March 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General J. D. Prather, for the State.*

*Manning Law Firm, by Clarke S. Martin, for Defendant-Appellant.*

CARPENTER, Judge.

William Leo Stephany, Jr. (“Defendant”) appeals from judgment entered after a jury convicted him of driving while impaired (“DWI”) and driving while license revoked due to a prior DWI. Appellate counsel for Defendant filed an *Anders* brief because she was “unable to identify any discernable issue with sufficient merit to support a meaningful argument for relief,” and requested that “this Court . . . conduct

a full examination of the record for any prejudicial error and determine if any issue has been overlooked.” After careful review, we discern no non-frivolous issues and dismiss the appeal.

**I. Factual & Procedural Background**

On 21 January 2020, a Guilford County grand jury indicted Defendant for driving while license revoked for an impaired driving revocation, felony fleeing to elude arrest with a motor vehicle, careless and reckless driving, and driving over the posted speed limit. On 20 April 2020, a Guilford County grand jury indicted Defendant for DWI. On 3 May 2021, a Guilford County grand jury returned a superseding indictment for felony fleeing to elude arrest with a motor vehicle, careless and reckless driving, and driving over the posted speed limit.

Defendant filed a pretrial motion to suppress the search warrant authorizing the collection of a sample of his blood. Defendant’s motion to suppress was heard and denied at a pretrial hearing. Prior to trial, the State dismissed the charges of careless and reckless driving and driving over the posted speed limit.

On 11 January 2023, Defendant’s trial commenced before the Honorable William A. Wood, II, in Guilford County Superior Court. Trial evidence tended to show the following.

On 10 September 2019 at about 6:30 in the evening, the High Sheriff of Guilford County, Danny Rogers, was driving in his unmarked police cruiser near Greensboro when he noticed a Dodge Charger switching between lanes, failing to

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signal, and tailgating other vehicles. Sheriff Rogers initiated a traffic stop and observed the Charger pull into a gas station parking lot with Defendant in the driver's seat. Sheriff Rogers plainly smelled alcohol about Defendant's person and noticed Defendant leaning on the car and having difficulty standing upright.

When Sheriff Rogers asked Defendant for his identification, Defendant handed Sheriff Rogers a business card containing contact information for the former Sheriff of Wake County. During his approximately seven-minute interaction with Defendant, Sheriff Rogers formed an opinion that Defendant was appreciably impaired by an impairing substance which Sheriff Rodgers believed to be alcohol, based on his training and experience.

Deputy Rebecca Roman, one of the backup deputies who responded, observed Defendant's behavior and formed the same opinion as to Defendant's impairment. Deputy Roman testified that Defendant "adamantly refused" to perform a field sobriety test and was also unwilling to submit to a breathalyzer once placed under arrest. Because of Defendant's refusals, law enforcement officers sought and obtained a warrant for a sample of Defendant's blood.

Kristi Benson, a forensic-scientist supervisor of the toxicology section at the State Crime Lab, testified that Defendant's blood sample contained a "measured blood ethanol concentration [of] 0.203 plus or minus 0.008 grams of alcohol per 100 milli[liters] of blood at a coverage probability of 99.7 percent."

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On 13 January 2023, a jury convicted Defendant of DWI and driving while license revoked due to a prior DWI. The jury acquitted Defendant of felony fleeing to elude arrest with a motor vehicle.

The trial court determined Defendant was a prior record level II for misdemeanor sentencing purposes based on Defendant having two prior convictions. The trial court determined Defendant was an Aggravated Level I for DWI sentencing purposes, having found the existence of three grossly aggravating factors, one aggravating factor, and no mitigating factors. Thereafter, the trial court sentenced Defendant to a minimum of thirty-six months and a maximum of thirty-six months in the Misdemeanant Confinement Program for the DWI offense, and forty-five days in the custody of the Guilford County Sheriff for driving while license revoked. On 24 January 2023, Defendant filed timely notice of appeal.

**II. Jurisdiction**

This Court has jurisdiction under N.C. Gen. Stat. § 15A-1444(a) (2023).

**III. Discussion**

On appeal, Defendant's appellate counsel was unable to identify any meritorious issue to support a meaningful argument for relief and asks this Court to conduct an independent review of the record for prejudicial error 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). Under *Anders*,

a defendant may appeal even if defendant's counsel has

determined the case to be “wholly frivolous.” In such a situation[,] counsel must submit a brief to the court “referring to anything in the record that might arguably support the appeal.” Counsel must furnish the defendant with a copy of the brief, the transcript, and the record and inform the defendant of his or her right to raise any points he or she desires and of any time constraints related to such right.

*State v. Dobson*, 337 N.C. 464, 467, 446 S.E.2d 14, 16 (1994) (citing *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400, 18 L. Ed. 2d at 498). Appellate counsel complied with the requirements of *Anders* and *Kinch* by advising Defendant of his right to submit his own written arguments to this Court and by providing Defendant with copies of the necessary documents to do so. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400, 18 L. Ed. 2d. at 198; *Kinch*, 314 N.C. at 102, 331 S.E.2d at 666–67. Defendant did not submit his own arguments on appeal.

“[P]ursuant to *Anders* and *Kinch*, we must determine from a full examination of all the proceedings whether the appeal is wholly frivolous.” *State v. Frink*, 177 N.C. App. 144, 145, 627 S.E.2d 472, 473 (2006) (citation and quotation marks omitted). Appellate counsel directs our review to four potential issues: (1) whether the prior record level was properly calculated; (2) whether the trial court imposed the proper sentence under the relevant statute; (3) whether the indictments were sufficient; and (4) whether the trial court properly denied Defendant’s motion to suppress the search warrant authorizing the collection of his blood sample.

#### **A. Prior Record Level**

### **1. Driving While License Revoked**

A prior record level “is determined by calculating the sum of the points assigned to each of the offender’s prior convictions that the court, or . . . the jury, finds to have been proved . . . .” N.C. Gen. Stat. § 15A-1340.14(a) (2023).

Here, the trial court found Defendant to be a prior record level II for misdemeanor sentencing purposes. At sentencing, the trial court prepared, and the prosecution and defense stipulated to, a prior-record level worksheet. The worksheet indicated Defendant was previously convicted of DWI and felony fleeing to elude arrest in May of 2017 in Wake County and was convicted of DWI in Onslow County in January of 2017. These convictions placed Defendant in the 1-4 prior convictions range resulting in Defendant being a prior record level II for misdemeanor sentencing purposes. *See* N.C. Gen. Stat. § 15A-1340.14. Thus, we find no error with the trial court’s calculation of Defendant’s prior record level for misdemeanor sentencing purposes applicable to Defendant’s driving while license revoked conviction.

### **2. Driving While Impaired**

Defendant stipulated to the existence of three grossly aggravating factors. Defendant stipulated that (1) he had a prior conviction for DWI within 7 years of the occurrence of this offense, (2) he had two prior convictions for DWI within 7 years of the occurrence of this offense, and (3) he had been convicted of an offense involving impaired driving which occurred after the date of this offense but before the

sentencing for this offense. Thus, Defendant is an Aggravated Level One for DWI sentencing purposes. *See* N.C. Gen. Stat. § 20-179 (2023).

### **B. Sentence Imposed**

After a conviction for impaired driving, “the judge shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.” N.C. Gen. Stat. § 20-179(a). Under subsection 20-179(c), “[t]he judge must impose the Aggravated Level One punishment under subsection (f3) of this section if it is determined that three or more grossly aggravating factors apply.” *See id.* § 20-179(c). Subsection 20-179(f3) sets a mandatory minimum sentence of twelve months imprisonment and a maximum of thirty-six months imprisonment. *See id.* § 20-179(f3).

At sentencing, Defendant stipulated to three grossly aggravating factors and one aggravating factor. Since three grossly aggravating factors were present, the trial court was required to impose the “Aggravated Level I punishment”—specifically, a minimum term of not less than twelve months and a maximum term of not more than thirty-six months. *See id.* § 20-179(f3). The trial court sentenced Defendant to a term of thirty-six months imprisonment for DWI and forty-five days imprisonment for driving while license revoked due to a prior DWI. Thus, Defendant’s sentence imposed by the trial court was proper.

### **C. Sufficiency of Indictments**

An indictment is considered facially valid if it meets all requirements set forth in N.C. Gen. Stat. § 15A-924(a) (2023), including the essential elements of the crimes charged. *See State v. Singleton*, 386 N.C. 183, 215, 900 S.E.2d 802, 824 (2024); *see also State v. Wilson*, 128 N.C. App. 688, 691, 497 S.E.2d 416, 419 (1998).

Here, the indictments list the essential elements of the charged offenses and meet all other statutory requirements under N.C. Gen. Stat. § 15A-924(a). Therefore, we conclude the indictments were facially valid and properly conferred jurisdiction on the trial court.

#### **D. Motion to Suppress**

Finally, Defendant's motion to suppress the search warrant authorizing the collection of his blood sample was properly denied.

"A search warrant must be executed within 48 hours from the time of issuance. Any warrant not executed within that time limit is void and must be marked 'not executed' and returned without unnecessary delay to the clerk of the issuing court." N.C. Gen. Stat. § 15A-248 (2023). "An officer who has executed a search warrant must, without unnecessary delay, return to the clerk of the issuing court the warrant together with a written inventory of items seized. The inventory, if any, and return must be signed and sworn to by the officer who executed the warrant." N.C. Gen. Stat. § 15A-257 (2023).

On 10 September 2019, Magistrate Brown issued the search warrant at 8:12 p.m., after the court had closed for the day. The search warrant application contained

the sworn affidavit of Deputy Roman containing facts sufficient to support probable cause for the issuance of the search warrant for bodily fluids. Deputy Roman executed the warrant at 8:34 p.m., well within the 48-hour statutory provision. *See* N.C. Gen. Stat. § 15A-248. Deputy Roman signed and swore to the warrant, which contained a written inventory of items seized, that being two vials of blood. *See* N.C. Gen. Stat. § 15A-257.

At 9:33 p.m., Magistrate Nixon signed the section of the warrant certifying delivery of “this Search Warrant to the Office of the Clerk of Superior court as soon as possible on the Clerk’s next business day.” Therefore, the search warrant was properly executed. *See* N.C. Gen. Stat. §§ 15A-248, -257.

#### **IV. Conclusion**

In accordance with *Anders* and *Kinch*, we have fully examined the record for any issue with arguable merit. Upon review, we conclude that Defendant fails to present any non-frivolous issue on appeal. We find no error in: the trial court’s calculation of Defendant’s prior record level and sentence; the sufficiency of the indictments; or the trial court’s denial of Defendant’s motion to suppress the search warrant authorizing the collection of blood samples. Moreover, we are unable to identify any other possible prejudicial errors in the record. We therefore dismiss Defendant’s appeal.

DISMISSED.

Judges TYSON and STADING concur.

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Report per Rule 30(e).