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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-620

Filed 19 November 2024

Forsyth County, Nos. 19 CRS 57124-125; 19 CRS 57165

STATE OF NORTH CAROLINA

v.

FELIX RAMOS ARELLANO

Appeal by defendant from judgment entered 23 September 2022 by Judge Tanya T. Wallace in Forsyth County Superior Court. Heard in the Court of Appeals 28 August 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Anne J. Brown, for the State.*

*Richard Croutharmel for defendant-appellant.*

PER CURIAM.

Defendant Felix Ramos Arellano (defendant) appeals from a judgment entered upon a jury's verdict finding him guilty of two counts of indecent liberties with a child, one count of statutory rape of a child by an adult, and one count of statutory sex offense with a child by an adult. After careful review, we conclude that the trial court erred in sentencing defendant in excess of the statutory maximum without making a

finding of an egregious aggravation; therefore, we vacate and remand for resentencing.

### **I. Factual Background and Procedural History**

It was alleged that between 1 June and 6 July 2019, defendant, who was forty-four years old at the time, sexually abused B.T.,<sup>1</sup> his ten-year-old stepdaughter. Defendant was indicted upon a true bill of indictment by a Forsyth County Grand Jury for statutory rape of a child by an adult offender, statutory sex offense with a child by an adult offender, and indecent liberties with a child.

The matter came on for hearing at the 19 September 2022 Criminal Session of Forsyth County Superior Court. On 22 September, defendant was found guilty upon a jury's verdict of all alleged offenses. Pursuant to the jury's guilty verdict, defendant was sentenced to, *inter alia*, 304 months minimum and 425 months maximum in the custody of the North Carolina Division of Adult Correction. From this judgment, defendant entered timely oral notice of appeal in open court.

### **II. Discussion**

On appeal, defendant argues, and the State concedes, that the trial court erred in imposing an aggravated sentence of 304 months minimum and 425 months maximum in prison on the two Class B1 felonies—statutory rape of a child by an adult and statutory sexual offense with a child by an adult—without making the

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<sup>1</sup> Initials are used to protect the identity of the minor child.

required finding of egregiousness as set forth in N.C. Gen. Stat. § 14-27.23(c) or N.C. Gen. Stat. § 14-27.28(c). We agree.

“Alleged statutory errors are questions of law, and as such, are reviewed *de novo*.” *State v. McLean*, 232 N.C. App. 115, 116, 753 S.E.2d 235, 238 (2014) (citation omitted). Pursuant to N.C. Gen. Stat. § 14-27.23(c) and § 14-27.28(b), the maximum sentence a defendant can receive for statutory rape of a child by an adult and statutory sexual offense with a child by an adult is 300 months minimum and 420 months maximum. N.C. Gen. Stat. §§ 14-27.23(b), 14-27.28(b) (2023). However, if the trial court finds an “egregious aggravation,” the defendant’s sentence can exceed these limits. *Id.* §§ 14-27.23(c), 14-27.28(c). Finally, aggravating factors that “increase the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *State v. Singletary*, 247 N.C. App. 368, 391, 786 S.E.2d 712, 727 (2016) (brackets and citation omitted).

Here, although the jury found that defendant violated a position of trust, thereby allowing sentencing in the aggravated range, the trial court made no findings of an “egregious aggravation” to support a sentence in excess of the statutory maximum. Indeed, the trial court sentenced defendant beyond the upper limit of the minimum aggravated range—for a minimum of 304 months, with a corresponding maximum of 425 months’ incarceration—without making any findings of fact regarding the “egregious aggravation” as is required pursuant to N.C. Gen. Stat. §§ 14-27.23(c), 14-27.28(c).

Based on the lack of findings of an egregious aggravation, the trial court's sentence exceeded both the mandatory minimum and maximum sentences allowed by statute. Consequently, we conclude that the trial court erred in imposing a minimum and maximum prison sentence greater than those prescribed by statute without making the requisite finding of an egregious aggravation.

### **III. Conclusion**

For the aforementioned reason, we conclude that the trial court erred in sentencing defendant to an active sentence in excess of the statutory maximum without making the requisite finding of egregiousness. For the aforementioned reason, we vacate and remand for resentencing without disturbing the conviction.

VACATED AND REMANDED.

Panel consisting of Chief Judge DILLON and Judges FLOOD and THOMPSON.

Report per Rule 30(e).