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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-880

Filed 3 December 2024

Wake County, Nos. 18 CRS 205465–71

STATE OF NORTH CAROLINA

v.

ROBERT ELLIOTT KOAGEL, Defendant.

Appeal by Defendant from judgments entered 23 March 2023 by Judge A. Graham Shirley II in Wake County Superior Court. Heard in the Court of Appeals 4 March 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Tamika L. Henderson, for the State.

Drew Nelson for defendant-appellant.

STADING, Judge.

Robert Elliott Koagel (“Defendant”) appeals from the trial court’s judgments sentencing him to fourteen consecutive prison sentences after a jury found him guilty of six counts of indecent liberties with a child, four counts of first-degree sex offense with a child, and four counts of statutory sex offense. For the reasons below, we affirm the trial court.

I. Background

On 1 May 2018, Defendant was indicted for fourteen felonies comprised of six counts of indecent liberties with a child, four counts of first-degree sex offense with a child, and four counts of statutory sex offense. On 20 March 2023, a jury found Defendant guilty of all charges. That same day, the trial court announced Defendant's sentence in open court:

In 18 CRS 205469, count one, you're sentenced to a minimum of 300 to a maximum of 369 months in the North Carolina Division of Adult Corrections. In count two, you are sentenced to a minimum of 300 to a maximum of 369 months in the North Carolina Division of Adult Corrections. In count three, you are sentenced to a minimum of 240 to a maximum of 297 months in the North Carolina Division of Adult Corrections. In count four, you're sentenced to a minimum of 240 to a maximum of 297 months in the North Carolina Division of Adult Corrections. Those sentences will run consecutive. You will spend 36 years in prison before you even begin serving your second sentence because you will be required to serve the maximum minus post-supervision release.

In file 18 CRS 205470, in count one, you're sentenced to a minimum of 300 to a maximum of 369 months. In count two, you're sentenced to a minimum of 300 to a maximum of 369 months. In count three, you're sentenced to a minimum of 240 to a maximum of 297 months. And in count four, you're sentenced to a minimum of 240 to a maximum of 297 months. Those sentences will run consecutive to each other and consecutive to the ones previously imposed.

In 18 CRS 205465, you're sentenced to . . . a minimum of 16 to a maximum of 29 months.

In 205466, you're sentenced to a minimum of 16 to a

maximum of 29 months.

In 18 CRS 205467, you're sentenced to a minimum of 16 to a maximum of 29 months.

In 18 CRS 205468, you're sentenced to a minimum of 16 to a maximum of 29 months.

In 18 CRS . . . 205468, counts one and two will each be a minimum of 16 to a maximum of 29.

And in 205471, you're sentenced to . . . a minimum of 16 to a maximum of 29 months. Those will all run consecutive to the previously described offenses. . . . [T]hat's over 190 years. . . .

After the trial court orally announced the sentence, Defendant gave notice of appeal. The trial court formally entered the written judgments on 23 March 2023.

II. Jurisdiction

This Court has jurisdiction to consider Defendant's appeal under N.C. Gen. Stat. §§ 7A-27(b)(1) (2023) and 15A-1444(a) (2023).

III. Analysis

Defendant submits one issue for our consideration on appeal: whether the trial court erred by "issuing written judgments that were inconsistent with the oral judgments announced during [his] sentencing." Specifically, Defendant contends that the "six indecent liberties written judgments" substantively differed from the judgments announced in open court. Defendant thus maintains the trial court erred because the substantively different written judgment occurred outside of his presence. *See State v. Crumbley*, 135 N.C. App. 59, 66–67, 519 S.E.2d 94, 99 (1999).

After careful consideration, we disagree.

“On appeal, this Court reviews *de novo* whether a defendant was improperly sentenced outside his presence.” *State v. Briggs*, 249 N.C. App. 95, 97, 790 S.E.2d 671, 673 (2016); *see, e.g., State v. Arrington*, 215 N.C. App. 161, 166, 714 S.E.2d 777, 781 (2011). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (cleaned up).

The relevant statute provides that “[w]hen multiple sentences of imprisonment are imposed on a person at the same time . . . the sentences may run either concurrently or consecutively, as determined by the court.” N.C. Gen. Stat. § 15A-1354 (2023). “If not specified or not required by statute to run consecutively, sentences shall run concurrently.” *Id.*

“The right to be present at the time sentence or judgment is pronounced is a common law right, separate and apart from the constitutional or statutory right to be present at the trial.” *State v. Pope*, 257 N.C. 326, 330, 126 S.E.2d 126, 129 (1962). “Where the written judgment represents a substantive change from the sentence pronounced by the trial court, and the defendant was not present at the time the written judgment was entered, the sentence should be vacated and the matter remanded for entry of a new sentencing judgment.” *State v. Mims*, 180 N.C. App. 403, 413, 637 S.E.2d 244, 250 (2006) (cleaned up). If contested on appeal, the defendant “bears the burden to show the usefulness of his presence in order to prove

a violation of his right to presence. Once the defendant meets this burden, the burden shifts to the State to establish that the error is harmless beyond a reasonable doubt.” *State v. Murillo*, 349 N.C. 573, 596, 509 S.E.2d 752, 766 (1998) (cleaned up). “There is a presumption that the judgment of a court is valid and just. The burden is upon appellant to show error amounting to a denial of some substantial right.” *Pope*, 257 N.C. at 335, 126 S.E.2d at 133.

This Court’s decision in *State v. Crumbley* is instructive for the present issue. 135 N.C. App. at 59, 519 S.E.2d at 94. In *Crumbley*, a jury found the defendant guilty of “taking indecent liberties with a child, first-degree statutory sex offense, and first-degree statutory rape.” *Id.* at 60, 519 S.E.2d at 95-96. During the sentencing phase of his trial, the court orally announced sentences for each respective offense. *Id.* at 61, 519 S.E.2d at 96. However, “[t]he trial court “did not indicate whether the sentences would run consecutively or concurrently.” *Id.* Thereafter, the trial court entered its written judgment—outside of the defendant’s presence—which “imposed the same length of sentence as previously rendered, but further stated the sentences would run consecutively.” *Id.*

The *Crumbley* defendant appealed to this Court arguing that “the trial court erred by imposing sentences [] to run consecutively . . . when [he] was not present.” *Id.* at 66, 519 S.E.2d at 99. This Court agreed and held that the defendant’s right to be present at the entry of written judgment was violated because there was a “substantive change in the sentence.” *Id.* at 67, 519 S.E.2d at 99. The Court noted

that the “legal effect of the oral judgment was that the prison sentences would run concurrently” given that the trial court never indicated they would run consecutive to one another. *Id.* (citing N.C. Gen. Stat. § 15A-1354(a)). By later entering the written judgment reflecting that the sentences would run consecutively with no evidence in the record that the defendant was present, this Court determined that the trial court violated the statutory mandate. *Id.*; see N.C. Gen. Stat. § 15A-1354(a) (“If not specified or required by statute to run consecutively, sentences shall run concurrently.”). The Court held that “[t]his substantive change in the sentence could only be made in the [d]efendant’s presence, where he and/or his attorney would have an opportunity to be heard.” *Crumbley*, 135 N.C. App. at 67, 519 S.E.2d at 99. The Court reasoned that “[h]ad the trial court not altered its sentence,” the defendant’s right to be present would not have been violated since he was present during the oral rendering. *Id.*

Defendant contends that the *Crumbley* decision supports his argument. Yet this matter is distinguishable from *Crumbley*. Here, the trial court’s oral announcement at sentencing mirrors its subsequently written judgment—both unambiguously indicate that all fourteen sentences are to run consecutively.

At sentencing, and in the presence of Defendant, the trial court announced:

In 18 CRS 205469 Those sentences will run consecutive. You will spend 36 years in prison before you even begin serving your second sentence because you will be required to serve the maximum minus post-supervision release.

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In file 18 CRS 205470. . . . *Those sentences will run consecutive to each other and consecutive to the ones previously imposed.*

In 18 CRS 205465, you're sentenced to . . . a minimum of 16 to a maximum of 29 months.

In 205466, you're sentenced to a minimum of 16 to a maximum of 29 months.

In 18 CRS 205467, you're sentenced to a minimum of 16 to a maximum of 29 months.

In 18 CRS 205468, you're sentenced to a minimum of 16 to a maximum of 29 months.

In 18 CRS . . . 205468, counts one and two will each be a minimum of 16 to a maximum of 29.

And in 205471, you're sentenced to . . . a minimum of 16 to a maximum of 29 months. *Those will all run consecutive to the previously described offenses. . . . [T]hat's over 190 years.*

(emphasis added). As reflected above, the trial court first orally announced eight sentences for the offenses in 18 CRS 205469 and 18 CRS 205470 respectively. Following the announcement in 18 CRS 205469, the trial court qualified its sentence and stated, “[t]hose [four] sentences will run consecutive.” And following the announcement in 18 CRS 205470, the trial court qualified its sentence and stated, “[t]hose [four] sentences will all run consecutive to each other and consecutive to the ones previously imposed.”

The trial court next announced the sentence imposed for each of the six indecent liberty counts in cases 18 CRS 205465, 205466, 205467, 205468, and 205471.

Immediately following this announcement, the trial court stated, “[t]hose will all run consecutive to the previously described offenses. . . . [T]hat’s over 190 years.” Upon reviewing the transcript as a whole, it becomes apparent that “the previously described offenses” included the six indecent liberty counts and the eight counts announced in 18 CRS 205469 and 18 CRS 205470. Although the trial court did not structure its language precisely as it did following the offenses in 18 CRS 205470, it explicitly stated, “that’s a total of 190 years.” When calculating all fourteen sentences handed down by the trial court in a consecutive manner, the total minimum sentence comes out to about 188 years. Had the trial court not intended for the six indecent liberties offenses to run consecutive to one another, the minimum sentence would have been around 180 years. Thus, in its oral announcement of Defendant’s sentence, the trial court adequately conveyed that all fourteen sentences shall run consecutive.

In its written judgment, the trial court noted that all fourteen sentences were to run consecutive to one another, including the six indecent liberties sentences. Defendant’s reliance on *Crumbley* is misplaced since the trial court in that case did not mention in its oral announcement whether the defendant’s sentences were consecutive. 135 N.C. App. at 61, 519 S.E.2d at 96. Comparatively, here the trial court said three separate times in its verbal announcement that the sentences were to run consecutive to one another and provided its calculation of the sentence directly to Defendant. The burden lies with Defendant to show error amounting to a denial of some substantial right, *Pope*, 257 N.C. at 335, 126 S.E.2d at 133, and he cannot do

so here as his right to be present during the trial court's entry of written judgment was not required since there was no "substantive change in the sentence." *Crumbley*, 135 N.C. App. at 67, 519 S.E.2d at 99. We therefore discern no error.

IV. Conclusion

We hold that the trial court did not violate Defendant's right to be present during entry of the written judgment because there is not a substantive difference between the two judgments. Accordingly, we affirm the trial court's judgment.

AFFIRMED

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).