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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-226

Filed 17 December 2024

Union County, Nos. 22 CRS 298072, 392

STATE OF NORTH CAROLINA

v.

RODNEY MAURICE SMITH, Defendant.

Appeal by Defendant from judgment entered 6 April 2023 by Judge W. Taylor Browne in Union County Superior Court. Heard in the Court of Appeals 22 October 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Samuel R. Gray, for the State.

Jarvis John Edgerton, IV, for Defendant.

GRIFFIN, Judge.

Defendant Rodney Maurice Smith appeals from the trial court's judgment entered after a jury found him guilty of felony larceny. On appeal, Defendant contends the trial court erred by enhancing Defendant's conviction pursuant to a habitual felon indictment that did not confer jurisdiction to enhance Defendant's sentence. We vacate Defendant's habitual felon guilty plea and remand Defendant's

larceny conviction for resentencing.

I. Factual and Procedural Background

On 5 July 2022, Defendant was indicted for obtaining habitual felon status. The habitual felon indictment was issued on 5 July 2022 and returned on 26 July 2022. On 28 November 2022, Defendant was indicted for the substantive offenses of: (1) larceny; and (2) resisting, delaying, and obstructing an officer. The offenses were committed on 18 September 2022.

Defendant was tried on 3 April 2023 in Union County Superior Court before the Honorable W. Taylor Browne. The jury found Defendant guilty on all counts. Defendant subsequently pled guilty to the habitual felon indictment. The trial court accepted Defendant's guilty plea, adjudicated Defendant as a habitual felon, and enhanced Defendant's felony larceny conviction. Defendant's judgments were entered on 6 April 2023. Defendant gave notice of appeal in open court.

II. Analysis

Defendant argues the trial court committed reversible error by enhancing Defendant's felony larceny conviction pursuant to a habitual felon indictment improperly before the court. We agree. Because the habitual felon indictment was issued and returned when there was no pending prosecution for any substantive felony, and because the habitual felon indictment was not ancillary to any substantive felony addressed at trial, we hold the trial court lacked jurisdiction over

the habitual felon charge. We vacate Defendant's habitual felon guilty plea and remand Defendant's larceny conviction for resentencing.

Issues pertaining to subject-matter jurisdiction “may be raised at any time, and may be raised for the first time on appeal.” *State v. Frink*, 177 N.C. App. 144, 147, 627 S.E.2d 472, 473–74 (2006) (citations omitted). If an indictment is fatally defective, the trial court does not acquire jurisdiction. *Id.* at 146–47, 627 S.E.2d at 473 (citation omitted). We review sufficiency of an indictment de novo. *State v. McKoy*, 196 N.C. App. 650, 652, 675 S.E.2d 406, 409 (2009).

A habitual felon, per statute, is one who has “been convicted of or pled guilty to three felony offenses.” *State v. Ross*, 221 N.C. App. 185, 188, 727 S.E.2d 370, 373 (2012); N.C. Gen. Stat. § 14–7.1 (2023). The Habitual Felons Act allows those defendants to be indicted as such when they have also been charged with the commission of another substantive felony. *State v. Blakney*, 156 N.C. App. 671, 674, 577 S.E.2d 387, 390 (2003). When a person is “charged by indictment with the commission of a felony . . . and is also charged with being [a] habitual felon . . . he must, upon conviction, be sentenced and punished as [a] habitual felon[.]” *State v. Allen*, 292 N.C. 431, 432–33, 233 S.E.2d 585, 586–87 (1977). The purpose of establishing an accused as a habitual felon “is to enhance the punishment which would otherwise be appropriate for the substantive felony which he has allegedly committed while in such a status.” *Id.* at 435, 233 S.E.2d at 588.

When an individual has attained habitual felon status and is indicted with the

commission of another felony, the State may then, at that time, charge the individual in a separate indictment as being a habitual felon. *Id.* at 433, 233 S.E.2d at 587. *See Allen*, 292 N.C. at 433–34, 233 S.E.2d at 587 (“It is likewise clear that the proceeding by which the [S]tate seeks to establish that [a] defendant is [a] habitual felon is necessarily ancillary to a pending prosecution for the ‘principal,’ or substantive, felony.”). The Habitual Felons Act “does not authorize a proceeding independent from the prosecution of some substantive felony for the sole purpose of establishing a defendant’s status as [a] habitual felon.” *Id.* In other words, the State cannot prosecute someone just to establish them as a habitual felon. *Id.* Establishing one as a habitual felon must be coupled with pending prosecution of a substantive felony. *Id.* There must be a “pending felony prosecution to which the habitual felon proceeding [can] attach.” *Blakney*, 156 N.C. App. at 675, 577 S.E.2d at 390.

While this Court has recognized “[a] habitual felon indictment may be returned before, after, or simultaneously with a substantive felony indictment’, we concluded that ‘it is difficult to see how the habitual felon indictment could attach as ancillary to felonies that had not yet occurred.’” *Ross*, 221 N.C. App. at 189, 727 S.E.2d at 373 (cleaned up) (quoting *State v. Flint*, 199 N.C. App. 709, 717–18, 682 S.E.2d 443,448 (2009)).

Here, the habitual felon indictment must be vacated. First, the habitual felon indictment was issued and returned at a time when there was no pending prosecution for any substantive felony. *See Allen*, 292 N.C. at 436, 233 S.E.2d at 589 (holding the

habitual felon indictment improper where “all the substantive felony proceedings upon which it [was] based had been prosecuted to completion and there was no pending felony prosecution to which the habitual felon proceeding could attach as an ancillary proceeding”). The habitual felon indictment, here, was issued on 5 July 2022 and was returned on 26 July 2022. There is no evidence in the record to suggest there were any outstanding substantive felony indictments or pending prosecutions at the time the habitual felon indictment was issued and returned. In fact, based on Defendant’s conviction record, Defendant’s latest conviction appears to be from 2021. The habitual felon indictment was issued and returned in 2022. Because you cannot prosecute an individual for the sole purpose of establishing them as a habitual felon, issuing the habitual felon indictment without any outstanding substantive felony or pending prosecution was improper. *Allen*, 292 N.C.at 433–34, 233 S.E.2d at 587.

Second, the habitual felon indictment was not ancillary to any substantive felony addressed at trial because the larceny offense had not yet occurred when the habitual felon indictment was issued and returned. This very issue was addressed in the case of *State v. Flint* and then again in *State v. Ross*.

In *Flint*, the defendant was indicted for eighty-two felonies and eight misdemeanors between 14 November 2005 and 22 May 2006. *Flint*, 199 N.C. App. at 711–12, 682 S.E.2d at 445. The state issued a habitual felon indictment for the defendant, and it was returned on 28 November 2005. *Id.* The defendant committed two additional crimes on 10 March 2006, and he was indicted for those crimes on 22

May 2006. *Id.* at 717, 682 S.E.2d at 448. The only crimes brought to trial were the crimes the defendant committed on 10 March 2006. *Id.* On appeal, the defendant argued the trial court lacked jurisdiction to determine the defendant's habitual felon status "because the habitual felon indictment was not ancillary to the charges on which he was tried[.]" *Id.* at 717, 682 S.E.2d at 448. This Court addressed the defendant's argument in two parts. *Id.* at 717–19, 682 S.E.2d at 448–49. This Court agreed with the defendant in that the habitual felon indictment could not be ancillary to the 10 March 2006 crimes. *Id.* at 718, 682 S.E.2d at 448. This court reasoned "[i]t is difficult to see how the habitual felon indictment could attach as ancillary to felonies that had not yet occurred." *Id.*

However, this Court concluded the trial court did not lack jurisdiction to determine the defendant's habitual felon status because "(1) the trial court never proceeded to the habitual felon phase of the trial due to [the] defendant's plea [pleading guilty to habitual felon status and forty-seven other felonies pending against him], and (2) there were substantive felonies to which the habitual felon indictment was ancillary." *Id.* at 718, 682 S.E.2d at 448. In other words, because the defendant pled guilty to the habitual felon indictment and to multiple substantive felonies to which it was ancillary, the trial court did not lack jurisdiction to determine the defendant's habitual felon status and accept his guilty plea. *Id.*

This Court in *Ross* addressed the same issue, albeit under a different set of circumstances. *Ross*, 221 N.C. App. at 190–91, 727 S.E.2d at 374. In *Ross*, similar to

Flint, the defendant was brought to trial only on charges that occurred after the habitual felon indictment was issued. *Id.* at 190, 727 S.E.2d at 374. This Court quoting *Flint* held “it is difficult to see how the habitual felon indictment could attach as ancillary to felonies that had not yet occurred.” *Id.* (cleaned up) (quoting *Flint*, 199 N.C. App. at 718, 682 S.E.2d at 448). Thus, this Court held “the habitual felon indictment was not ancillary to the substantive felony indictments for the June 2009 crimes[,]” the only crimes brought to the defendant’s trial. *Id.*

However, unlike *Flint*, this Court held “the trial court lacked jurisdiction over the [defendant’s] habitual felon charge and erred by accepting [the] [d]efendant’s habitual felon guilty plea.” *Id.* at 191, 727 S.E.2d at 374. This Court reasoned that, “[a]lthough there were other felonies pending against [the] [d]efendant, including substantive felonies to which the habitual felon indictment was ancillary . . . the State could have, but did not, bring [the] [d]efendant to trial for his other pending offenses in the same session of court.” *Id.* at 190, 727 S.E.2d at 374. Moreover, unlike the defendant in *Flint*, the defendant in *Ross* only pled guilty to habitual felon status, and the defendant did not plead guilty to any prior pending substantive felony indictments, indictments to which the habitual felon indictment was ancillary. *Id.* at 190–91, 727 S.E.2d at 374. Thus, this Court in *Ross* concluded the trial court did not have jurisdiction over the defendant’s habitual felon charge. *Id.* at 191, 727 S.E.2d at 374. As a result, this Court vacated the defendant’s habitual felon guilty plea and remanded the case to the trial court for resentencing within the appropriate ranges.

Id.

Here, the facts are remarkably similar to the facts in *Ross*. Like *Ross*, Defendant was brought to trial for felony offenses occurring after the habitual felon indictment was issued and returned. The habitual felon indictment, here, was issued on 5 July 2022 and was returned on 26 July 2022. Defendant was brought to trial for the substantive offenses of larceny, and for resisting, delaying, and obstructing an officer, offenses that occurred on 18 September 2022, almost two months after the habitual felon indictment had been returned. Defendant was indicted for those substantive offenses on 28 November 2022.

Our precedent is clear. Like this Court recognized in *Flint* and again in *Ross*, “it is difficult to see how the habitual felon indictment could attach as ancillary to felonies that had not yet occurred.” *Ross*, 221 N.C. App. at 190, 727 S.E.2d at 374 (cleaned up) (quoting *Flint*, 199 N.C. App. at 718, 682 S.E.2d at 448). Here, the habitual felon indictment cannot attach as ancillary to the substantive felony offense of larceny because the offense occurred after the habitual felon indictment was issued and returned. Thus, the trial court lacked jurisdiction over the habitual felon charge and erred by sentencing Defendant pursuant to the habitual felon statute.

Additionally, like in *Ross*, it was improper for the trial court to accept Defendant’s habitual felon guilty plea because Defendant did not plead guilty to any prior pending substantive felony indictments, indictments to which the habitual felon indictment was ancillary. *Ross*, 221 N.C. App. at 190–91, 727 S.E.2d at 374. Here,

there were no outstanding felonies to which the habitual felon indictment could have attached as ancillary. In *Ross*, unlike the present case, this Court noted that there were outstanding felonies to which the habitual felon indictment was ancillary. *Id.* at 190, 727 S.E.2d at 374. However, those offenses were not addressed at the defendant's trial, and the defendant did not plead guilty to those offenses when he pled guilty to the habitual felon indictment. *Id.* at 190–91, 727 S.E.2d at 374. Thus, the trial court lacked jurisdiction to accept the defendant's guilty plea. *Id.* at 191, 727 S.E.2d at 374. Like *Ross*, we hold the trial court erred by accepting Defendant's guilty plea. *Id.* Thus, we vacate that portion of the order and remand for resentencing.

III. Conclusion

We hold the trial court lacked jurisdiction over the habitual felon charge and erred by accepting Defendant's habitual felon guilty plea. We, therefore, vacate Defendant's habitual felon guilty plea and remand this case to the trial court for resentencing.

VACATED IN PART AND REMANDED.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).