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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-345

Filed 17 December 2024

Rowan County, No. 20 CRS 50270

STATE OF NORTH CAROLINA

v.

DANIEL L. GREENE, Defendant.

Appeal by Defendant from judgment entered 8 August 2023 by Judge Michael Adkins in Rowan County Superior Court. 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 Wyatt Orsbon, for Defendant-Appellant.

CARPENTER, Judge.

Daniel L. Greene (“Defendant”) appeals from judgment entered upon his guilty plea to one count of resisting a public officer. On appeal, Defendant’s appellate counsel filed an *Anders* brief because he was “unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal,” and requests this Court conduct a full examination of “the record on appeal for possible prejudicial

STATE V. GREENE

Opinion of the Court

error and to determine whether counsel overlooked any meritorious issues.” Defendant’s appellate counsel directs our attention to three potential issues on appeal, including whether: (1) the criminal pleading was facially valid; (2) the trial court erred in denying Defendant’s motion to suppress; and (3) the trial court erred in sentencing Defendant. After careful review, we discern no error.

I. Factual & Procedural Background

On 16 January 2020, Deputy Brad Bebber and Sergeant Randall Correll (collectively, “the Officers”) of the Rowan County Sheriff’s Office arrived at Defendant’s listed home address in Salisbury, North Carolina to serve him with an order for arrest arising from a child support case. Defendant had been served by officers at the same address in the months prior.

When the Officers arrived around 9:00 a.m., they observed a car parked in the driveway and a white male standing on the front porch. Deputy Bebber informed the man why the Officers were there and advised him that they needed to speak with Defendant. The man said, “I’ll go get him,” and went inside the home. When no one came to the door for several minutes, Sergeant Correll became “suspicio[us]” and called for backup while staying close to the porch “in case somebody came back.” Meanwhile, Deputy Bebber walked over to a spot in the yard where he could see both sides of the home.

STATE V. GREENE

Opinion of the Court

After a few more minutes passed, Defendant's daughter came outside. Deputy Bebber asked her if he could see Defendant. In response, Defendant's daughter said: "she hadn't seen [Defendant] in months[,] did not know where he was [], [and] didn't know if he was coming back or not." When Deputy Bebber asked her if he could come inside to look for Defendant, her "eyes got big," and she started looking around. She told Deputy Bebber that "she didn't think she had permission to let [him] search," but would "go get somebody." She then went back inside the home.

A few minutes later, Defendant's girlfriend came outside to talk with Deputy Bebber. When Deputy Bebber posed the same questions he had asked Defendant's daughter, she "hem-hawed around." Deputy Bebber then asked Defendant's girlfriend if he could come inside to look for Defendant. Defendant's girlfriend responded by asking Deputy Bebber if he had a warrant. Deputy Bebber showed her the order for arrest, which accurately reflected the address as Defendant's home. After looking at the order, Defendant's girlfriend said, "hold on a minute. I'll be right back." She went back inside the home, and Deputy Bebber heard "[t]he latch click[] for the lock on the door."

After waiting for approximately five to ten minutes, Deputy Bebber started knocking on the front door, asking Defendant's girlfriend if she would come back outside. When ten more minutes passed with no response, Deputy Bebber called his supervisor, who directed him to "go on in." After the backup arrived, Deputy Bebber

STATE V. GREENE

Opinion of the Court

“knocked and announced” then “kicked” in the front door. The Officers entered the home and found Defendant “hiding in one of the back bedrooms.”

By magistrate’s order issued in Rowan County on 16 January 2020, Defendant was charged with misdemeanor resisting a public officer. Defendant pleaded guilty in district court. After Defendant stipulated to a prior conviction level of III with five or more prior convictions, the district court sentenced Defendant to sixty days confinement in the county jail.

Defendant appealed to superior court. On 9 November 2020, Defendant filed a motion to suppress, arguing the “officers lacked the reasonable belief required in order to enter the home and search for [him].” On 11 May 2023, the trial court conducted a hearing on Defendant’s motion to suppress. The trial court denied Defendant’s motion to suppress, and Defendant gave oral “notice of intent to preserve the issue for . . . appeal[.]” On 26 May 2023, the trial court entered a written order denying the motion.

On 8 August 2023, the trial court conducted a plea hearing where Defendant pleaded guilty to resisting a public officer in exchange for receiving a sentence of time served. As part of his plea, “Defendant specifically reserve[d] the right to appeal the denial of [his] Motion to Suppress Evidence entered by the Court on 26 May 2023, along with the final judgment of this matter.”

The trial court accepted Defendant's guilty plea, and, consistent with the parties' agreement, sentenced him to three days confinement, crediting him for three days already served. Defendant gave oral notice of appeal at the close of the plea hearing. On 10 August 2023, Defendant filed written notice of appeal.

II. Discussion

Pursuant to *Anders* and *Kinch*, Defendant requests this Court review the record to determine whether Defendant's appeal presents any non-frivolous issues warranting relief. *See Anders v. California*, 386 U.S. 738, 741, 87 S. Ct. 1396, 1399, 18 L.Ed.2d 489, 493 (1967); *State v. Kinch*, 314 N.C. 99, 102, 331 S.E.2d 665, 666 (1985).

Specifically, Defendant's appellate counsel directs our attention to three potential issues, including whether: (1) the criminal pleading was facially valid; (2) the trial court erred in denying Defendant's motion to suppress; and (3) the trial court erred in sentencing Defendant.

"The concept of the no-merit brief originated in the United States Supreme Court's decision in [*Anders*]." *In re L.E.M.*, 372 N.C. 396, 399, 831 S.E.2d 341, 343 (2019); *see Anders*, 386 U.S. at 738, 87 S. Ct. at 1396, 18 L.Ed. 2d at 493. "[I]f counsel finds his case to be wholly frivolous," he must "advise the court and request permission to withdraw," and the request must be accompanied by "a brief referring to anything in the record that might arguably support the appeal." *Anders*, 386 U.S.

at 744, 87 S. Ct. at 1400, 18 L. Ed. 2d at 498. In addition, “[a] copy of counsel’s brief should be furnished the indigent and time allowed him to raise any points that he chooses” *Id.* at 744, 87 S. Ct. at 1400, 18 L. Ed. 2d at 498.

Here, Defendant’s appellate counsel has complied with the requirements of *Anders* and *Kinch*. Defendant did not file any arguments on his own behalf, and a reasonable time for him to do so has expired.

A. Facial Validity of Criminal Pleading

First, we consider whether the criminal pleading charging Defendant with resisting a public officer was facially valid.

Because Defendant has filed an *Anders* brief requesting review of the entire record to discern “whether the appeal is ‘wholly frivolous,’” *State v. Hamby*, 128 N.C. App. 366, 369, 499 S.E.2d 195, 196–97 (1998) (quoting *Kinch*, 314 N.C. at 102, 312 S.E.2d at 666), we have jurisdiction to “examine any issues that defendant could have possibly raised,” including whether the trial court had subject matter jurisdiction, *see id.* at 369, 312 S.E.2d at 197; *see also State v. Webber*, 190 N.C. App. 649, 650, 660 S.E.2d 621, 622 (2008) (“It is well-established that the issue of a court’s jurisdiction over a matter may be raised at any time, even for the first time on appeal or by a court *sua sponte*.”).

Because a trial court “lack[s] the ability to act where a criminal indictment suffers from a jurisdictional defect, that is, where it wholly fails to allege a crime

STATE V. GREENE

Opinion of the Court

against the laws or people of this State,” *State v. Singleton*, 386 N.C. 183, 215, 900 S.E.2d 802, 824 (2024), this Court may, in our review of the record pursuant to *Anders*, examine the criminal pleading for the sole purpose of determining whether it conferred subject matter jurisdiction on the trial court below, *see State v. Frink*, 177 N.C. App. 144, 146–47, 627 S.E.2d 472, 473 (2006).

“This Court reviews the sufficiency of an indictment de novo.” *State v. Stewart*, 386 N.C. 237, 240, 900 S.E.2d 652, 655 (2024) (citing *State v. White*, 372 N.C. 248, 250, 827 S.E.2d 80, 82 (2019)). “Under a *de novo* review, [this 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) (quoting *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

A criminal pleading must contain a “plain and concise factual statement in each count which . . . asserts facts supporting every element of a criminal offense and the defendant’s commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation.” N.C. Gen. Stat. § 15A-924 (2023). This “substantive requirement applies to a criminal pleading ‘[w]hether by statement of charges or by indictment[.]’” *State v. Reavis*, 287 N.C. App. 322, 327, 882 S.E.2d 590, 594 (2022) (quoting *State v. Dale*, 245 N.C. App. 497, 502, 783 S.E.2d 222, 226 (2016)).

“An indictment is valid and sufficient in form for all intents and purposes if it

STATE V. GREENE

Opinion of the Court

express[es] the charge against the defendant in a plain, intelligible, and explicit manner,” and the indictment “shall not be quashed, nor the judgment thereon stayed, by reason of any informality or refinement, if in the bill or proceeding, sufficient matter appears to enable the court to proceed to judgment.” *Stewart*, 386 N.C. at 240, 900 S.E.2d at 655 (quoting N.C. Gen. Stat. § 15-153 (2023)). “Taken together with the purpose of an indictment ‘to put the defendant on notice of the crime being charged and to protect the defendant from double jeopardy,’ a test for indictment validity becomes ‘whether the indictment alleges facts supporting the essential elements of the offense to be charged.’” *Stewart*, 386 N.C. at 241, 900 S.E.2d at 656 (quoting *State v. Newborn*, 384 N.C. 656, 659, 887 S.E.2d 868, 871 (2023)); see N.C. Gen. Stat. § 15A-924(a)(5).

Additionally, the North Carolina Supreme Court has recently held that “so long as a crime against the laws and people of this State has been alleged, defects in indictments do not deprive the trial court of jurisdiction.” *Stewart*, 386 N.C. at 240, 900 S.E.2d at 655 (citing *Singleton*, 386 N.C. at 209, 900 S.E.2d at 820).

Here, Defendant was charged with misdemeanor resisting a public officer after the Officers went to Defendant’s home to execute the order for arrest. To properly charge a violation of resisting a public officer, the criminal pleading:

must identify the officer—the person alleged to have been resisted, delayed or obstructed—by name; indicate the official duty he was discharging or attempting to discharge; and should point out, generally, the manner in which the

STATE V. GREENE

Opinion of the Court

defendant is charged with having resisted, delayed, or obstructed the officer.

State v. Nickens, 262 N.C. App. 353, 360, 821 S.E.2d 864, 871 (2018); *see* N.C. Gen. Stat. § 14-223(a) (2023).

The record on appeal shows that the magistrate’s order alleged facts supporting all of the essential elements of the crime of resisting a public officer. Therefore, the magistrate’s order was not defective and fulfilled its purpose of providing Defendant with notice of the charges against him such that he could prepare a defense. *See Stewart*, 386 N.C. at 238–39, 900 S.E.2d at 653. Accordingly, we conclude the magistrate’s order was facially valid and the trial court had subject matter jurisdiction.

B. Motion to Suppress

Next, we consider whether the trial court erred by denying Defendant’s motion to suppress.

A defendant who has pleaded guilty may appeal the denial of his motion to suppress, provided that he has met the notice requirements. N.C. Gen. Stat. § 15A-979 (2023); *see State v. Jonas*, 386 N.C. 137, 145, 900 S.E.2d 915, 921 (2024) (explaining that, when a defendant enters into a plea agreement and intends to appeal from the denial of a suppression motion, he “must give notice of [his] intent to appeal before the court accepts the plea or [he] will waive the appeal of right provision of the statute”).

STATE V. GREENE

Opinion of the Court

Here, Defendant gave written notice of his intent to preserve the issue for appeal as well as oral notice at the suppression hearing and again at the plea hearing. Therefore, we have jurisdiction to review the trial court's denial of Defendant's motion to suppress. *See* N.C. Gen. Stat. §§ 15A-979(b), 15A-1444(e) (2023).

Our review of a trial court's denial of a motion to suppress is limited to a determination of "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Williams*, 291 N.C. App. 497, 500, 895 S.E.2d 912, 916 (2023). The trial court's conclusions of law are reviewed de novo. *Id.* at 500, 895 S.E.2d at 916.

Under section 15A-401(e)(1), a law-enforcement officer is authorized to enter a home to make an arrest if he has an arrest warrant in his possession, "reasonable cause to believe the person to be arrested is present," and "has given, or made reasonable effort to give, notice of his authority and purpose to an occupant" N.C. Gen. Stat. § 15A-401(e)(1) (2023).

Here, Defendant's trial counsel conceded the first and third elements of section 15A-401(e)(1) at the suppression hearing, so the only potential issue is whether the Officers had "reasonable cause to believe" that Defendant was in his home. *See* N.C. Gen. Stat. § 15A-401(e)(1)(b).

All of the individuals the Officers interacted with while at Defendant's home appeared to be "stalling." When the man on the porch told Sergeant Correll, "I'll go

STATE V. GREENE

Opinion of the Court

get [Defendant],” he went inside and never returned. Defendant’s girlfriend and daughter both indicated that Defendant was not home, that they had no idea where he was, and denied seeing him for the past few months—despite Defendant being served at the address in the previous months. Finally, when Defendant’s girlfriend told Deputy Bebbber, “I’ll be right back,” he heard the door lock, and no one came back to the door.

In the order denying the motion to suppress, the trial court found that the Officers “[b]oth were aware that papers had previously been served on Defendant at this address,” and that the “demeanor and actions” of the man on the porch led them to believe the man was going to “have [Defendant] come to the door,” but “there was a delay and Defendant did not come out.” The trial court also found that Defendant’s daughter’s nervous responses “made Deputy Bebbber suspicious,” and after Officers talked to defendant’s girlfriend, she “closed the door and latched it.” Additionally, the trial court found that the Officers were “unable to get Defendant to come out” and could not get “anyone to come back to the door.” Based on these findings, the trial court concluded that the Officers had reasonable cause to believe Defendant was present in his home.

We conclude there is competent evidence to support the trial court’s findings, which in turn support its conclusion that there was “reasonable cause for the [O]fficers to believe that the Defendant was present.” *See* N.C. Gen. Stat. § 15A-

401(e)(1); *see Williams*, 291 N.C. App. at 500, 895 S.E.2d at 916. Therefore, the Officers were authorized to enter Defendant's home to execute the order for arrest. Accordingly, the trial court did not err by denying Defendant's motion to suppress.

C. Sentencing

Finally, we consider whether Defendant was legally sentenced. Specifically, Defendant's appellate counsel requests that we examine whether Defendant's sentence results from an incorrect finding of his prior conviction level, contains an unauthorized sentence disposition based the level of offense and Defendant's prior conviction level, or includes a term of imprisonment for an unauthorized duration based on the level of offense and Defendant's prior conviction level. *See* N.C. Gen. Stat. § 15A-1444(a2) (2023).

A defendant who has pleaded guilty to a misdemeanor has a right to appeal certain issues related to his sentence. *See* N.C. Gen. Stat. § 15A-1444(a2). Therefore, we have jurisdiction to analyze whether Defendant's sentence was properly imposed.

"Generally, '[w]hen a defendant assigns error to the sentence imposed by the trial court our standard of review is whether [the] sentence is supported by evidence introduced at the trial and sentencing hearing.'" *State v. Allen*, 249 N.C. App. 376, 379, 790 S.E.2d 588, 591 (2016) (quoting *State v. Chivers*, 180 N.C. App. 275, 278, 636 S.E.2d 590, 593 (2006)). At the trial level, "[t]he State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the

offender before the court is the same person as the offender named in the prior conviction.” N.C. Gen. Stat. § 15A-1340.21(c) (2023).

Section 15A-1340.23 authorizes the trial court to impose a community, intermediate, or active sentence of between one and sixty days on a defendant convicted of a class 2 misdemeanor who has a prior conviction level of III with five or more prior convictions. N.C. Gen. Stat. § 15A-1340.23(c) (2023).

Here, Defendant pleaded guilty to resisting a public officer, a class 2 misdemeanor. He stipulated to having five or more prior convictions with a prior conviction level of III, and the trial court sentenced Defendant to three days confinement with three days credit for time served.

Defendant failed to identify any specific error in his sentence, and the trial court’s sentence of three days confinement with three days credit for time served was authorized by statute. *See* N.C. Gen. Stat. § 15A-1340.23(c). Accordingly, we conclude Defendant’s sentence was proper.

III. Conclusion

As required by *Anders* and *Kinch*, we have conducted a full examination of the record for any issue with arguable merit. We have been unable to identify any non-frivolous issues and discern no error.

NO ERROR.

Judges ARROWOOD and WOOD concur.

STATE V. GREENE

Opinion of the Court

Report per Rule 30(e).