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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-469-2

Filed 15 January 2025

Buncombe County, No. 19 CRS 090651

STATE OF NORTH CAROLINA

v.

JASON WILLIAM KING

Appeal by defendant from judgments entered 18 November 2021 by Judge Karen Eady-Williams in Buncombe County Superior Court. Heard in the Court of Appeals 10 January 2023 and decided by this Court in an opinion issued 18 April 2023. Defendant appealed to the North Carolina Supreme Court, and by opinion filed 18 October 2024, the North Carolina Supreme Court reversed this Court's decision and remanded for further consideration.

Attorney General Jeff Jackson, by Special Deputy Attorney General Kathryne E. Hathcock, for the State

Caryn Strickland, for defendant-appellant.

ARROWOOD, Judge.

Jason William King ("Defendant") appealed from the trial court's judgment sentencing him to 120 days of imprisonment. On appeal, this Court concluded that

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the defendant was entitled to a new sentencing hearing on his reckless driving conviction under N.C.G.S. § 20-179(a1)(2) (2023), vacating his sentence and remanding for resentencing. *State v. King*, 288 N.C. App. 459 (2023). Our Supreme Court reversed that opinion and remanded to this Court for a harmless error determination. *State v. King*, __ N.C. __, 906 S.E.2d 808 (2024).

The salient facts of the case are as follows: following a trial, defendant was found guilty of driving while impaired and reckless driving. At sentencing, the trial court found no mitigating factors and three aggravating factors: (1) defendant's driving was especially reckless, (2) defendant's driving was especially dangerous, and (3) defendant was convicted of death by a motor vehicle in August 2015. These factors were not submitted to the jury for consideration prior to the trial court imposing a sentence of six months imprisonment and supervised probation for thirty-six months.

Defendant argues that he is entitled to resentencing because the trial court, rather than a jury, determined the aggravating factors for purposes of sentencing. Based upon the directive from our Supreme Court, we disagree.

Under the harmless error standard of review for Constitutional errors, "[t]he State bears the burden of showing that the error was harmless beyond a reasonable doubt." *State v. Wilson*, 363 N.C. 478, 487 (2009). "In other words, resentencing is not necessary unless the violation of N.C.G.S. § 20-179(a1)(2) prejudiced defendant." *State v. King*, __ N.C. __, 906 S.E.2d 808, 813 (2024). When the defendant argues that the trial court violated a statutory right, the defendant is required to show "a

reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.”

Here, defendant argues that his statutory right under N.C.G.S. § 20-179(a1)(2) was violated when the trial court determined, without submitting the issue to the jury, that he was driving recklessly, dangerously, and had a previous conviction on his record of death by a motor vehicle. However, defendant’s argument fails because the State provided ample evidence to support these findings, and this evidence was not contested by defendant.

First, the State presented evidence in the form of testimony from Trooper Onderdonk, the off-duty officer who initially observed defendant’s driving, to establish that defendant was driving recklessly and dangerously. Trooper Onderdonk testified that she followed defendant for approximately seven miles and observed him crossing the double yellow line “numerous times”, almost colliding with a school bus, and watched as “cars were having to scoot over to avoid colliding with him.” This evidence went uncontested at trial. Thus, defendant has failed to show that the jury would have come to a different conclusion from the trial court’s findings of these aggravating factors.

Second, defendant contests the trial court’s finding that his previous conviction of death by motor vehicle is an aggravating factor for the purposes of sentencing. Specifically, defendant argues the impaired driving statute requires “two or more prior convictions of a motor vehicle offense not involving impaired driving” for those

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convictions to be considered an aggravating factor. N.C.G.S. § 20-179(d)(5). While defendant's argument may be correct with respect to this factor this will not entitle him to a new hearing. Because the trial court properly found at least *one* aggravating factor and no mitigating factors, the aggravators outweigh any mitigators and defendant was properly sentenced under a Level Three sentence. *See State v. Geisslercrain*, 233 N.C. App. 186, 191 (2014) (“[I]f there are only aggravating factors present—and no mitigating factors present—then the aggravating factors ‘substantially outweigh’ the mitigating factors[.]”)

Accordingly, defendant has failed to show that he was prejudiced by the trial court's findings of these aggravating factors and thus any potential error was harmless and defendant is not entitled to resentencing.

For the foregoing reasons, we affirm the trial court.

AFFIRMED.

Judges WOOD and GORE concur.

Report per Rule 30(e).