

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-597

Filed 19 February 2025

Pasquotank County, No. 21CRS050580

STATE OF NORTH CAROLINA

v.

TIMOTHY BARRETT, Defendant.

Appeal by defendant from judgment and commitment entered 7 November 2023 by Judge Craig Croom in Pasquotank County Superior Court. Heard in the Court of Appeals 16 January 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General Aymie B. Feeney, for the State-appellee.*

*W. Michael Spivey for defendant-appellant.*

PER CURIAM.

This case arises from defendant Timothy Barrett's conviction for misdemeanor assault on a female. Jurisdiction is proper pursuant to N.C.G.S. §§ 7A-27(b)(1) and 15A-1444(a). On appeal, defendant challenges the trial court's calculation of his prior conviction level for sentencing purposes. After careful review, we conclude that any error in the trial court's classification of a prior conviction was harmless.

STATE V. BARRETT

*Opinion of the Court*

Defendant stipulated to a prior conviction level III for sentencing purposes. The trial court sentenced defendant, however, as a prior conviction level II, decreasing the number of days of incarceration. Defendant gave written notice of appeal from his sentence.

The issue presented is whether the trial court erred in determining defendant's prior conviction level by failing to classify a prior conviction for no operator's license as either an infraction or a misdemeanor, and whether any such error affected defendant's sentence.

"The determination of an offender's prior record level is a conclusion of law that is subject to de novo review on appeal." *State v. Bohler*, 198 N.C. App. 631, 633 (2009). Nonconstitutional sentencing issues are preserved by statute without the necessity of being raised in the trial court. *See* N.C.G.S. § 15A-1446(d)(18); *State v. Meadows*, 371 N.C. 742, 747–48 (2018).

The record indicates defendant stipulated to the accuracy of the prior conviction worksheet. The trial court sentenced defendant as a level II offender despite the worksheet establishing a level III designation. Even assuming error in classifying defendant's prior conviction for no operator's license, the error is harmless. Defendant received a sentence within the presumptive range for a level II offender. *See State v. Blount*, 209 N.C. App. 340, 347 (2011) (If the incorrect "calculation of [a] defendant's prior record points does not affect the determination of his prior record level, the error is harmless.")

STATE V. BARRETT

*Opinion of the Court*

The sentence imposed was less severe than the sentence defendant could have received based on the stipulations provided. As the sentencing range was not adversely impacted, there is no prejudice to defendant arising from any alleged error in classification. Under these circumstances, harmless error analysis dictates that no reversal or remand is warranted.

The trial court did not err in relying on the prior conviction worksheet to which defendant stipulated. Any error in the trial court's calculation of defendant's prior conviction level was harmless, as defendant was sentenced within the presumptive range for the correct prior conviction level.

NO ERROR.

Before a panel consisting of Judges HAMPSON, GORE, and FREEMAN.

Report per Rule 30(e).