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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-575

Filed 5 March 2025

Beaufort County, No. 22CRS291736

STATE OF NORTH CAROLINA

v.

MICHAEL ADARRYL MORGAN

Appeal by Defendant from judgments entered 7 June 2023 by Judge Cy A. Grant, Sr., in Beaufort County Superior Court. Heard in the Court of Appeals 28 January 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Allison J. Newton, for the State-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for Defendant-Appellant.

COLLINS, Judge.

Defendant Michael Adarryl Morgan appeals from judgments entered upon his guilty plea to trafficking fentanyl by transportation and trafficking methamphetamine by transportation. Defendant argues that the trial court erred by failing to correctly inform him of the minimum fine associated with his plea and by

improperly considering circumstances unrelated to the charges against him during sentencing. We find no prejudicial error in Defendant's plea and no error in his sentence.

I. Background

A confidential informant notified the Beaufort County Sheriff's Office that Defendant was transporting a large amount of methamphetamine and fentanyl into Beaufort County and staying at the Quality Inn. Officers established surveillance and watched Defendant carry a tan bag into the hotel. The confidential informant arranged a deal to purchase fentanyl from Defendant. Defendant met the informant at the Quality Inn and sold the informant 50 blue pressed pills of fentanyl and 10 yellow pressed pills of fentanyl. Officers detained Defendant and searched his room and the bag he had carried into the room. Officers found a plastic baggie containing compressed briquettes of a gray powder consistent with fentanyl and two vacuum-sealed packages containing a compressed substance resembling crystal methamphetamine. The substances were tested and confirmed to be fentanyl and methamphetamine.

Defendant was indicted on four charges and ultimately plead guilty to two charges: one count of trafficking in fentanyl by transportation and one count of trafficking in methamphetamine by transportation.

The trial court sentenced Defendant to two consecutive 70-to-93-month prison terms and imposed a fine of \$50,000 for each conviction. Defendant gave written

notice of appeal. The trial court dismissed Defendant’s notice of appeal. Defendant petitioned this Court for a writ of certiorari. This Court granted Defendant’s petition and vacated the trial court’s dismissal order. The trial court entered appellate entries on 21 November 2023. Defendant filed a second petition for writ of certiorari with his brief.¹

II. Discussion

A. Appellate Jurisdiction

As a threshold issue, we must determine whether we have jurisdiction to hear this appeal.

A defendant is generally not entitled to appellate review as a matter of right when he has entered a plea of guilty to a criminal charge in the superior court. N.C. Gen. Stat. § 15A-1444(e) (2024). However, a defendant may petition the appellate division for review by writ of certiorari. *Id.* In particular, a defendant challenging the trial court’s acceptance of their guilty plea “may obtain appellate review of this issue only upon grant of a writ of certiorari.” *State v. Bolinger*, 320 N.C. 596, 601 (1987).

In this case, Defendant entered a plea of guilty in superior court and is not entitled to appellate review as a matter of right. *See* N.C. Gen. Stat. § 15A-1444 (e). Acknowledging this defect, Defendant filed a petition for writ of certiorari. In our

¹ Defendant filed a “Motion for Appropriate Relief in the Appellate Division” on 23 January 2025. We dismiss without prejudice Defendant’s Motion for Appropriate Relief.

discretion, we grant Defendant's petition for writ of certiorari and review the merits of his appeal. *See State v. Demaio*, 216 N.C. App. 558, 563 (2011) (granting the defendant's petition for writ of certiorari to review the trial court's acceptance of his guilty plea).

B. Guilty Plea

Defendant first contends that the trial court erred by accepting his guilty plea to two counts of drug trafficking because the trial court failed to inform him that if he pled guilty to those charges, he would be subject to a statutorily-mandated minimum total fine of \$550,000.

Due process requires that a defendant's guilty plea be made voluntarily and understandingly. *State v. Bozeman*, 115 N.C. App. 658, 661 (1994) (citing *Boykin v. Alabama*, 395 U.S. 238, 244 (1969)). Thus, the plea "must be entered by one fully aware of the direct consequences" of that plea. *Id.* at 661 (quotation marks, emphasis, and citation omitted). Direct consequences are "those which have a definite, immediate[,] and largely automatic effect on the defendant's punishment." *Id.* (quotation marks and citation omitted). *See State v. Smith*, 352 N.C. 531, 550 (2000) (maximum possible sentence); *Bozeman*, 115 N.C. App. at 661 (mandatory minimum sentence); *State v. McNeill*, 158 N.C. App. 96, 104 (2003) (additional term of imprisonment associated with habitual offender status). Our courts have never held that a mandatory fine is a direct consequence of a guilty plea.

N.C. Gen. Stat. § 15A-1022 is designed to effectuate the constitutional

requirement that a plea be made voluntarily and understandingly and provides that before accepting a defendant's guilty plea, the trial court must address the defendant "personally" and inform him of various consequences of his plea, including "the maximum possible sentence on the charge for the class of offenses for which the defendant is being sentenced, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge[.]" N.C. Gen. Stat. § 15A-1022(6) (2024). The statute does not require the trial court to inform the defendant of any fine. *See id.*; *Bozeman*, 115 N.C. App. at 663.

Even if, however, a trial court were required to inform a defendant of a mandatory fine, the failure to do so would not require reversal of a conviction unless there was prejudice. A violation of a defendant's constitutional right is prejudicial unless the State demonstrates that it was "harmless beyond a reasonable doubt." N.C. Gen. Stat. § 15A-1443(b) (2024). A violation of a defendant's statutory right is prejudicial where the defendant demonstrates that "there is 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." *Id.* § 15A-1443(a) (2024).

Here, during the plea colloquy, the trial court had the following exchange with Defendant:

THE COURT: Now, do you also understand that -- do you also understand that these two charges carry a total possible maximum sentence of up to 186 months in prison and that the mandatory minimum sentence for these cases would be a 70 -- a minimum of 70 months to a maximum of

93 months with a possible fine or a fine of up to \$50,000?
Do you understand that?

THE DEFENDANT: Yes, sir.

Although the trial court was statutorily required to impose a mandatory minimum fine of \$50,000 for the trafficking in methamphetamine conviction, *see* N.C. Gen. Stat. § 90-95(h)(3b)(a) (2024), and a mandatory fine of \$500,000 for the trafficking in fentanyl conviction, *see id.* § 90-95(h)(4)(a)(1) (2024), the trial court informed Defendant that each charge carried “a fine of up to \$50,000.” This was a misstatement of the law.

Nonetheless, even if the trial court had been required to inform Defendant of any fines resulting from his guilty plea – and we need not decide that here – there was no prejudice to Defendant by this misstatement. First, Defendant received the exact \$50,000 fine per conviction that he was informed of and bargained for. Furthermore Defendant’s \$100,000 fine is \$450,000 less than he was statutorily required to be fined – this is not prejudice, it is a windfall. Defendant’s argument is meritless.

C. Sentencing

Defendant next argues that the trial court erred by considering personal knowledge of fentanyl overdoses when refusing to impose concurrent sentences.

It is within the trial court’s discretion whether to impose concurrent or consecutive sentences. N.C. Gen. Stat. § 15A-1354(a) (2024). While a trial court may

not base its decision to impose consecutive sentences upon “improper considerations” that do not apply to the defendant, the trial court may explain to a defendant why the court will impose a concurrent or a consecutive sentence. *State v. Butler*, 147 N.C. App. 1, 14 (2001).

In this case, at the sentencing hearing, defense counsel acknowledged that Defendant was serving a five-year sentence for trafficking and that his sentences for the present convictions could not run concurrently with that five-year sentence. Defense counsel asked that the sentences for the present convictions run concurrently with each other at the end of Defendant’s five-year sentence.

The trial court responded:

I understand what you’re saying [Defense counsel], and if it wasn’t probably fentanyl involved in this I might consider it, but you see it probably as much or more than I do now.

Just like we just had the situation with the witness who just testified, her daughter died of a fentanyl overdose. I mean, this stuff is killing folk all -- well, all over this district.

And this guy was -- this is a major dealer. I mean, you might say he was helping out somebody. That’s probably – he’s probably the largest dealer I’ve had in front of me in terms of fentanyl and methamphetamine. Most of the time it’s just real low level people. All right. Some of the stuff you’ve been selling, sir, has been killing folk. I’m sure it has.

With these remarks, the trial court explained its reasoning for imposing consecutive sentences in that fentanyl is having a devastating impact on the community and that

Defendant is “a major dealer” and perhaps “the largest dealer” he has had in front of him “in terms of fentanyl and methamphetamine.” There is nothing about the trial court’s statements that indicate that it based its decision to impose consecutive sentences upon “improper considerations” or that the decision was an abuse of discretion. Defendant’s argument is meritless.

III. Conclusion

For the reasons stated above, the trial court did not prejudicially err by accepting Defendant’s plea of guilty and did not err by explaining why it imposed consecutive sentences.

NO PREJUDICIAL ERROR IN PART; NO ERROR IN PART.

Judges WOOD and GRIFFIN concur.

Report per Rule 30(e).