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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-629

Filed 2 April 2025

Davidson County, Nos. 23CRS000279-280, 23CRS000280-280, 23CRS243405-280,
23CRS367463-280

STATE OF NORTH CAROLINA

v.

BOBBY WAYNE ROSEMAN, JR.

Appeal by defendant from judgment entered 17 January 2024 by Judge Lori I.
Hamilton in Superior Court, Davidson County. Heard in the Court of Appeals
13 February 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General Jayla Cole, for
the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katherine
Jane Allen, for defendant.*

ARROWOOD, Judge.

Bobby Wayne Roseman (“defendant”) appeals from a sentence pursuant to plea
agreement on charges of larceny and habitual felon status. Defendant contends the
trial court erred in calculating his prior record points, and has additionally filed a
petition for writ of certiorari due to technical defects in his *pro se* notice of appeal.

For the following reasons, we find that the trial court did not commit prejudicial error.

I. Factual Background

On 8 December 2022, defendant was observed on camera taking a stand mixer and knife set from the Wal-Mart in Lexington, North Carolina. On 20 February 2023, defendant was indicted as a habitual felon for a series of convictions dating back to 1994. Defendant was also indicted for felony habitual larceny on the above theft; defendant had four prior larceny convictions. On 24 February 2023, defendant, later observed on camera, stole an air mattress, again from Wal-Mart. On 24 July 2023, Lexington Police Department received a report of a larceny in progress at Lowe's, that someone had pushed merchandise out the door and loaded it into his car. Sergeant Shoemaker, of the Lexington Police Department, made contact with defendant at a gas station, who admitted to taking the merchandise.

During the trial court proceeding, defendant pleaded guilty to three felony charges of larceny and habitual felon status; in exchange, the State dismissed several charges. Defendant stipulated to 34 prior record level points and a prior record level VI. Pursuant to the plea agreement, the trial court stated: "The above offenses shall be consolidated into 23 CRS 280. The defendant shall receive an active sentence in the mitigated range as a habitual felon. . . . And the State stipulates to Mitigating Factor No. 15; and that is that you have accepted responsibility for your criminal

conduct.”¹ Defendant was sentenced to a term of 103 months to 136 months in prison. Defendant gave *pro se* notice of appeal 24 January 2024.

II. Defendant’s Petitions

Defendant has filed two petitions in this case: a petition for a writ of certiorari requesting that we hear his appeal, and a request that we take judicial notice of his criminal record. We grant the petition for writ, but deny the petition to take judicial notice.

A. Petition for Writ

Defendant has filed a petition for writ of certiorari requesting appellate review in light of a defective notice of appeal. Defendant’s notice of appeal was filed *pro se*, and was not served on the State, nor did it identify the court to which the appeal was taken, as required by Rule 4 of the North Carolina Rules of Appellate Procedure. However, under Rule 21, we have discretion to grant certiorari and hear appeals that do not follow the technical requirements of Rule 4. The State recognizes our discretion and takes no position on whether writ should issue. Because defendant’s intent to appeal to this Court can be fairly inferred from the notice and the State has not been misled by the mistake, we allow this petition and hear defendant’s appeal.

¹ There is a minor discrepancy between the transcript and record regarding defendant’s prior record level points. Defendant stipulated to 34 points in open court, and this was the amount announced by the trial court at the close of the proceedings. However, in the judgment and commitment form, defendant was listed as having 36 points. Both briefs refer to defendant as having 36 points, with defendant’s brief citing the judgment and commitment form. Our opinion reflects the form and the parties briefs; further, this discrepancy is immaterial to our holding.

B. Petition to Take Judicial Notice

Defendant has filed a second petition as part of his appeal, requesting that we take judicial notice of the indictment and judgment and commitment in file number 04 CRS 55215. During the trial court proceedings, defendant was assigned nine prior record points for this conviction, which was stipulated as a Class B1 felony for incest. However, the documents provided the court by defendant indicate that this conviction was a Class H Felony for obtaining property by false pretenses. Defendant requests that we take judicial notice of this conviction to support his argument that the trial court incorrectly calculated his prior record level points. We deny defendant's petition for two reasons.

First, under N.C.G.S. § 15A-1340.14(f), a prior conviction for purposes of setting a defendant's prior record level may be proved by "[s]tipulation of the parties." By stipulating to the criminal record presented to the court, defendant declined the opportunity to address any errors therein. Secondly, Rule 9 of the Rules of Appellate Procedure requires that our review only extend to the record, the transcript, and anything filed under Rule 9. N.C. R. App. P., Rule 9(a). Rule 9 allows that, if the record is insufficient to respond to the contentions of the parties, a party may file a motion pursuant to Rule 9 to supplement the record. *Id.*, Rule 9(b)(5). Defendant has not made a Rule 9 motion in this case; rather, he has attached documents to his petition and requested we take judicial notice.

Finally, we note that in our discussion below, we hold that even if the trial

court erred in calculating defendant's prior record level points, it was harmless error. Thus, we deny defendant's request to take judicial notice.

III. Discussion

Defendant raises one issue on appeal, that the trial court prejudicially erred when it incorrectly calculated his prior record level points for sentencing purposes; the trial court assigned defendant 36 points, while defendant contends that this included an erroneous Class B1 felony conviction for incest which should have been a Class H felony conviction for false pretenses. We find that the trial court did not commit prejudicial error.

The trial court's assignment of a prior record level is a conclusion of law, which we review *de novo*. *State v. Fraley*, 182 N.C. App. 683, 691 (2007).

When a defendant is sentenced with a higher record level due to an error in calculating prior record level points, the case must be remanded for resentencing. *State v. McNeill*, 158 N.C. App. 96, 99 (2003). However, if the error does not change the defendant's record level, the error is harmless. *State v. Blount*, 209 N.C. App. 340, 347 (2011).

Defendant and the State disagree as to whether defendant's stipulation to his prior record points precludes our ability to engage in *de novo* review of the trial court's conclusion. We need not decide this issue, because even if the trial court committed error, it was not prejudicial.

According to the worksheet for calculating a defendant's prior record level, a

Class B1 felony is assigned nine points. Further, a defendant will be assigned a prior record level VI if they have 18 or more points. Thus, even if defendant had not been assigned the nine points from the Class B1 felony and assigned 2 for a Class H, he would still have been a prior record level VI with 29 points.

Defendant argues that had his criminal history properly reflected his prior convictions, rather than including an erroneous B1 felony, there is a “reasonable probability” that he would have received a sentence at the lower end of the mitigated range, rather than the upper end. Defendant does not support his contention with any case law, but rather with comments made by the trial court concerning his record level and criminal history. However, defendant fails to acknowledge that none of the court’s comments mentioned his erroneous B1 felony conviction. In fact, the trial court stated that “after 18 [prior record] points, it’s all kind of just a blur.” As noted above, defendant would have had 29 prior record points absent the B1 felony. Thus, we find that the defendant has failed to offer any support for this argument regarding sentencing and we find the trial court did not commit prejudicial error.

III. Conclusion

For the foregoing reasons, we find the trial court did not commit prejudicial error.

NO PREJUDICIAL ERROR.

Judges STROUD and FREEMAN concur.

Report per Rule 30(e).