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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-950

Filed 7 May 2025

Mecklenburg County, Nos. 19CRS246898-590, 19CR246899-590, 19CR246934-590,
23CR002255-590

STATE OF NORTH CAROLINA

v.

DEMONT MAURICE FORTE

Appeal by defendant from judgment entered 8 April 2024 by Judge James T. Davis in Mecklenburg County Superior Court. Heard in the Court of Appeals 22 April 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Elizabeth B. Jenkins, for the State.

Drew Nelson for defendant.

ARROWOOD, Judge.

Demont Maurice Forte (“defendant”) appeals from judgment entered following his conviction for assault, false imprisonment, and fleeing to elude arrest. Defendant contends that the trial court erred in calculating his prior record level for sentencing

purposes. For the following reasons, we hold that the trial court properly calculated his prior record level for sentencing.

I. Background

On 6 December 2019, defendant assaulted a woman in a public parking lot. When police arrived on the scene, defendant had fled. Warrants were issued for his arrest, and officers later recognized defendant while he was driving. When the officers activated their lights and attempted to conduct a traffic stop, defendant did not stop and attempted to evade the officers.

Defendant was eventually apprehended and charged with two counts of assault on a female, one count of false imprisonment, and one count of feloniously operating a motor vehicle to elude arrest. On 8 April 2024, defendant was found guilty on all charges. After rendering its verdict, the jury was instructed to determine whether defendant had attained habitual felon status.

The State submitted to the jury Judgment and Commitment forms regarding three of defendant's prior state felony convictions and presented the testimony of the Clerk of the Superior Court of Mecklenburg County. This testimony showed that defendant had been convicted of felonies for the possession of cocaine in 1996, 2002, and 2005. The jury then returned a guilty verdict as to defendant's habitual felon status.

At the sentencing phase, the State submitted that defendant had seven total convictions. These were: (1) felony fleeing to elude arrest in the case at hand; (2-4)

STATE V. FORTE

Opinion of the Court

the three felony convictions previously submitted to the jury; (5) felony possession of cocaine; (6) voluntary manslaughter; and (7) a federal conviction for possession of a forged or counterfeit instrument under 18 U.S.C. § 471.

To prove that defendant's federal conviction was a felony, the State presented the trial court with the judgment obtained from PACER. The State offered to elaborate further on PACER and its function, however, the trial court noted that it was "familiar with what [PACER] is." The State pointed out that defendant was sentenced to 29 months in prison for this conviction. Defendant declined to stipulate that the federal conviction was a felony. The trial court then found that the federal conviction was a felony.

The trial court then proceeded to sentencing. The trial court found that defendant's first conviction for assault was a Class A1 misdemeanor, that defendant's prior record level was Level III and then sentenced defendant to 150 days in prison for the conviction.

For sentencing purposes, the trial court then consolidated defendant's second conviction into the conviction for fleeing to elude arrest. The trial court then found that it was a Class A1, Level III misdemeanor and sentenced defendant to 150 days in prison.

Next, the trial court found that defendant's conviction for fleeing to elude arrest was a Class H felony. However, due to defendant's habitual felon status, the conviction was elevated to a Class C felony. Further, the trial court found that in

light of his previous convictions, defendant's prior record level for the fleeing to elude arrest charge had risen from Level III to Level IV. The trial court then sentenced defendant to 78 to 106 months of imprisonment. Defendant's misdemeanor convictions were to run consecutively, and the felony conviction was to run concurrently with the other two sentences.

The trial court adjourned for the day at 5:25 p.m. The next day, 9 April 2024, at 9:31 a.m. defense counsel stated that he "didn't have a chance to give notice of appeal." He then proceeded to give notice.

Defendant filed a Petition for Writ of Certiorari on 19 November 2024 requesting that, although defendant did not give oral notice of appeal at trial, this Court address the merits of the case.

II. Discussion

A. Defendant's Petition for Writ of Certiorari

Because defendant did not give oral notice of appeal at trial, this Court must first determine whether to exercise its discretion to grant defendant's petition for writ of certiorari.

Rule 4 of North Carolina's Rules of Appellate Procedure requires oral notice of appeal to be given at trial. However, Rule 21 provides that a "writ of certiorari may be issued in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]" N.C. R. App. P. 21. This Court has previously granted

petitions for writ of certiorari where, as here, “[d]efendant lost [their] right to appeal through no fault of [their] own but rather due to [their] trial counsel’s failure to give proper notice of appeal.” *State v. Holanek*, 242 N.C. App. 633, 640 (2015). In such circumstances, the defendant’s appeal is dismissed and this Court issues writ of certiorari to address the merits of the defendant’s argument. *Id.* (citing *In Re I.T.P.-L.*, 194 N.C. App. 453, 460 (2008)).

Defendant’s counsel did not give oral notice of appeal at trial. However, the circumstances indicate that defendant’s counsel may not have been given the opportunity to give a timely notice of appeal when the trial court adjourned proceedings at 5:25 p.m. on 8 April 2024. Further, defendant’s counsel gave the oral notice of appeal at the next possible opportunity when the court reconvened the next day at 9:31 a.m.

Because defendant has lost the right to appeal without fault, we exercise our discretion to grant defendant’s petition for writ of certiorari and address the merits of defendant’s appeal.

B. Sentencing

We review alleged sentencing errors to determine whether the sentence imposed was supported by the evidence introduced at trial and at the sentencing hearing. *State v. Jeffery*, 167 N.C. App. 575, 578 (2004) (citation omitted). However, the calculation of a defendant’s prior record level is a question of law reviewed *de novo*. *State v. Fraley*, 182 N.C. App. 683, 691 (2007). Under *de novo* review, this

Court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal. *In re Appeal of Greens of Pine Glen Ltd.*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003) (citation omitted).

Under federal law, a felony is “an offense punishable by a maximum term of imprisonment of more than one year.” 18 U.S.C. § 3156(a)(3). Pursuant to N.C.G.S. § 15A-1340.14(e), “a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony[.]” N.C.G.S. § 15A-1340.14(e); *State v. Hinton*, 196 N.C. App. 750, 755 (2009). “The 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.G.S. § 15A-1340-14(f). However, “[i]f the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points.” N.C.G.S. § 15A-1340.14(e).

Here, the State presented the trial court with a copy of the judgment obtained from PACER entered against defendant in the Western District of North Carolina for possession of a forged or counterfeit instrument under 18 U.S.C. § 471, which carried a sentence of 29 months. Because the offense was punishable by a maximum term of imprisonment of more than one year, the trial court did not err in classifying it as a

felony. Further, defendant did not attempt to prove that the federal felony offense is substantially similar to a misdemeanor under North Carolina law.

Defendant alternatively argues that the federal conviction should not be factored into his prior record calculation because his prior-record level worksheet noted the date of conviction for the federal conviction as “5/24/2025” when the federal judgment from PACER indicates that Mr. Forte entered a guilty plea and was sentenced on 5 September 2006. However, defendant does not dispute that he committed the crime, nor that he was found guilty of the crime. Additionally, by submitting to the court a copy of the judgment, the State met its burden of proving defendant’s prior federal conviction. Thus, the trial court did not err in including the federal conviction in defendant’s prior-record level calculation.

Although defendant’s prior-record level was properly calculated, we note that the prior-record level worksheet does reflect an incorrect date of conviction. Where “the sentence imposed will not be affected by a recalculation of Defendant’s prior record points, it is not necessary that there be a new sentencing hearing. Rather, we treat this as a clerical error and remand this matter to the trial court for its correction. *State v. Everette*, 237 N.C. App. 35, 43 (2014) (citing *State v. Dobbs*, 208 N.C. App. 272, 274 (2010)). Accordingly, we remand to the trial court for correction of defendant’s prior-record level worksheet, namely correcting the date of defendant’s federal conviction from 24 May 2005 to 6 September 2006.

III. Conclusion

STATE V. FORTE

Opinion of the Court

For the foregoing reasons, we find no error in sentencing and remand for correction of clerical error.

NO ERROR IN PART, REMANDED FOR CORRECTION OF CLERICAL
ERROR IN PART.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).