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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-819

Filed 21 May 2025

Wilkes County, Nos. 22CRS051421-960, 22CRS051422-960, 23CRS000011-960, 23CRS000222-960, 23CRS210474-960, 23CRS286190-960, 23CRS700215-960, 23CRS700217-960.

STATE OF NORTH CAROLINA

v.

JONAS LEE ELLER

Appeal by defendant from judgment entered 3 November 2023 by Judge Lori I. Hamilton in Wilkes County Superior Court. Heard in the Court of Appeals 22 April 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Asa C. Edwards, IV, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Anne M. Gomez, for defendant-appellant.

ZACHARY, Judge.

Defendant Jonas Lee Eller appeals from the trial court's judgment entered

pursuant to his *Alford* plea¹ to a multitude of crimes committed in 2022 and 2023. On appeal, Defendant does not challenge his convictions but rather challenges the sentence entered upon those convictions. After careful review, we affirm the trial court's judgment.

I. Background

On 9 January 2023, a Wilkes County grand jury indicted Defendant for several drug-related offenses committed on 15 July 2022 and for attaining habitual-felon status. While on pretrial release for these charges, Defendant was arrested on 14 January 2023 and again on 20 April 2023. On 1 May 2023, a Wilkes County grand jury returned an indictment charging Defendant with numerous additional drug-related and other offenses committed on 14 January 2023 and with attaining habitual-felon status. On 17 July 2023, a Wilkes County grand jury returned a final indictment charging Defendant with additional drug-related and other offenses committed on 20 April and with attaining habitual-felon status.

While in pretrial detainment, Defendant received 605 credits and ten certificates of completion for Pathway to Achieve² courses that he attended remotely between 26 and 31 January 2023.

¹ An *Alford* plea is a guilty plea in which the defendant does not admit to any criminal act but admits that there is sufficient evidence to convince the judge or jury of the defendant's guilt. *See North Carolina v. Alford*, 400 U.S. 25, 37, 27 L. Ed. 2d 162, 171 (1970); *State v. Baskins*, 260 N.C. App. 589, 592 n.1, 818 S.E.2d 381, 387 n.1 (2018), *disc. review denied*, 372 N.C. 102, 824 S.E.2d 409 (2019).

² Defendant describes Pathway to Achieve as "a free premium education platform, created to change lives and help reduce recidivism."

The trial court accepted Defendant's *Alford* plea on 3 November 2023. Pursuant to the plea arrangement, Defendant agreed to plead guilty to 29 felonies, 14 misdemeanors, 5 infractions, and attaining habitual-felon status; "the State agree[d] for all matter[s] to be consolidated into 1 [C]lass C felony." Defendant also "stipulate[d] to aggravating factor 12, that Defendant committed the offense while on pretrial release on another charge with sentencing in the [c]ourt's discretion." The court consolidated the charges and entered judgment in accordance with the plea arrangement, imposing a term of 182 to 231 months' imprisonment in the custody of the North Carolina Department of Adult Correction.

Defendant entered timely notice of appeal.

II. Discussion

Defendant raises a single issue on appeal: whether "the trial court erred by failing to find as a mitigating factor that [he] successfully completed a drug or alcohol treatment program." Defendant "took numerous courses and earned many certificates for completing programs in the Pathway to Achieve program, including a certificate for successfully completing a 12-Step Program."

"The standard of review for application of mitigating factors is an abuse of discretion." *State v. Hagans*, 177 N.C. App. 17, 31, 628 S.E.2d 776, 785 (2006). "A trial court must find a statutory mitigating factor if that factor is supported by uncontradicted, substantial, and credible evidence." *State v. Dahlquist*, 231 N.C. App. 575, 579, 753 S.E.2d 355, 358 (cleaned up), *disc. review denied*, 367 N.C. 495, 757

S.E.2d 903 (2014). “To show that the trial court erred in failing to find a mitigating factor, the evidence must show conclusively that this mitigating factor exists, i.e., no other reasonable inferences can be drawn from the evidence.” *Id.* (citation omitted). “While evidence may not be ignored, it can be properly rejected if it fails to prove, as a matter of law, the existence of the mitigating factor.” *Id.* (citation omitted).

Our General Statutes provide:

(a) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

. . . .

(e) Mitigating Factors.—The following are mitigating factors:

. . . .

(16) The defendant has entered and is currently involved in or has successfully completed either (i) a drug treatment program, (ii) an alcohol treatment program, or (iii) a mental, behavioral, or medical health-related treatment program, subsequent to arrest and prior to trial.

N.C. Gen. Stat. § 15A-1340.16(a), (e)(16) (2023).

In support of Defendant’s argument that the trial court should find as a mitigating factor that he had successfully completed a drug or an alcohol treatment

program, during sentencing, Defendant introduced ten certificates of completion of Pathway to Achieve courses and a transcript documenting his fulfillment of 605 online credits. The court admitted these materials without objection by the State. However, the court declined to find any mitigating factor.

Here, Defendant did not tender evidence that any of the Pathway to Achieve courses—all of which he completed in just six days—constituted a drug or an alcohol treatment program as referenced in N.C. Gen. Stat. § 15A-1340.16(e)(16). Indeed, the only evidence proffered regarding the Pathway to Achieve program was the ten course completion certificates and credits transcript. In submitting this evidence, defense counsel noted that Defendant “has tried to better himself . . . by taking online classes in the jail,” and that “the 605 credits earned in various classes about alcoholism and substance abuse” might satisfy the requirements of mitigating factor 16.

These brief mentions of the course completions—without any evidence that the Pathway to Achieve program constituted either “a drug treatment program” or “an alcohol treatment program”—are inadequate. *See id.* § 15A-1340.16(e)(16). Moreover, “[c]omments by defense counsel are not evidence and are not sufficient to carry [D]efendant’s burden of proof of mitigating factors.” *State v. Davis*, 206 N.C. App. 545, 550, 696 S.E.2d 917, 920 (2010).

“Defendant ha[d] the burden of proving by a preponderance of the evidence the existence of” a mitigating factor under N.C. Gen. Stat. § 15A-1340.16(e)(16). *Id.* at 548, 696 S.E.2d at 920 (cleaned up). Here, however, the evidence did not “show

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conclusively that this mitigating factor exist[ed], i.e., no other reasonable inferences c[ould] be drawn from the evidence.” *State v. Canty*, 321 N.C. 520, 524, 364 S.E.2d 410, 413 (1988). Thus, Defendant has not shown that the court abused its discretion by declining to find this mitigating factor. Accordingly, we affirm the trial court’s judgment.

AFFIRMED.

Judges ARROWOOD and GRIFFIN concur.

Report per Rule 30(e).