

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

NO. COA01-1214

NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2002

STATE OF NORTH CAROLINA

v.

Forsyth County  
No. 00 IFS 15771

RICKY ALLEN PHILLIPS

Appeal by defendant from judgment entered 6 June 2001 by Judge Michael E. Helms in Forsyth County Superior Court. Heard in the Court of Appeals 22 May 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Deborah L. Newton, for the State.*

*Ricky Allen Phillips, defendant appellant, pro se.*

McCULLOUGH, Judge.

Defendant Ricky Allen Phillips was tried before the Honorable Michael E. Helms at a bench trial during the 6 June 2001 Criminal Session of Forsyth County Superior Court. Defendant had appealed the findings of responsible by the district court to the charges of speeding and failure to wear a seatbelt.

The facts in this case are not at issue. On 6 September 2000, defendant was pulled over by Deputy F. P. Shutt for speeding. Deputy Shutt issued defendant a Uniform Citation for speeding (78 miles per hour in a 65 miles per hour zone) and for failure to wear a seatbelt. Defendant was served with a "Misdemeanor Statement of

Charges" pursuant to N.C. Gen. Stat. § 15A-922 (2001) for the above charges on 7 May 2001. Defendant made several motions at trial, all of which were denied by the trial court. Pursuant to N.C. Gen. Stat. § 15A-1115, defendant was tried without a jury by Judge Helms, who found defendant responsible as charged. He was ordered by the trial court to pay \$317.00 in fines and costs of court. Defendant appeals.

Defendant makes the following assignments of error: The trial court erred (1) in failing to grant defendant's pre-trial sworn demand to dismiss for want of subject matter jurisdiction; (2) in failing to grant defendant's motion to dismiss for lack of subject matter jurisdiction; (3) in denying defendant's notice and demand for right to counsel of choice; (4) in failing to grant defendant's motion to dismiss for failure to state a claim upon which relief can be granted and reject as insufficient on its face the unsworn document used to prosecute defendant; (5) in accepting pleading filed by an executive officer in the name of the State and on behalf of the District Attorney; and (6) in failing to have a probable cause hearing.

From the outset, we note that defendant has failed to include a copy of the district court judgment establishing the derivative jurisdiction of the superior court in the record on appeal. As the appellant, it is defendant's burden to produce a record establishing the jurisdiction of the court from which appeal is taken, and his failure to do so subjects this appeal to dismissal. See *State v. Felmet*, 302 N.C. 173, 176, 273 S.E.2d 708, 711 (1981).

The merits of this appeal have been previously addressed by this Court in the recent cases of *State v. Phillips*, 149 N.C. App. 310, 560 S.E.2d 852, *appeal dismissed*, 355 N.C. 499, 564 S.E.2d 230 (2002); and *State v. Phillips*, (NO. COA01-1236, filed 3 September 2002). All contentions and arguments by defendant have been decided against him by this Court. Thus, we have nothing to review. We therefore decline to take any action to correct the record on appeal as we are allowed pursuant to N.C.R. App. P. 9(b)(5), and dismiss the appeal.

Dismissed.

Judges WALKER and BRYANT concur.

Report per Rule 30(e).