

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-680

NORTH CAROLINA COURT OF APPEALS

Filed: 01 October 2002

STATE OF NORTH CAROLINA

v.

JEFFERY ALLEN STEPPS

Martin County  
Nos. 96 CRS 3697  
96 CRS 3698  
96 CRS 3700  
96 CRS 3701

On writ of certiorari to review judgments entered 11 September 1997 by Judge W. Russell Duke, Jr. in Martin County Superior Court. Heard in the Court of Appeals 30 September 2002.

*Attorney General Roy Cooper, by Special Deputy Attorney General W. Dale Talbert, for the State.*

*Paul Pooley for defendant-appellant.*

THOMAS, Judge.

On 31 July 1997, defendant pled guilty pursuant to a plea agreement to two counts of first-degree burglary, two counts of larceny and two counts of breaking and entering a motor vehicle. In accordance with the terms of the plea, the trial court consolidated the offenses for sentencing into the two counts of first-degree burglary and continued entry of judgment until 11 September 1997.

In September, the trial court found defendant had a prior record level of III and made no findings as to factors in

aggravation or mitigation. The trial court imposed sentences of 96 to 125 months imprisonment, which were within the presumptive range, and it directed that the two sentences be served consecutively.

On 15 November 2000, defendant filed a *pro se* petition for writ of certiorari with this Court. Defendant sought a belated appeal of right pursuant to N.C. Gen. Stat. § 15A-1444(a2)(1) (1999) to argue that his prior record level had been incorrectly determined. In an order entered 5 December 2000, this Court issued its writ of certiorari "for the purpose of reviewing [defendant's] sentence and prior record level calculation in judgments entered 11 September 1997 by Judge W. Russell Duke, Jr." The trial court appointed counsel for defendant, who subsequently filed the record on appeal with this Court on 29 May 2001.

When defendant pled guilty to the criminal charges in superior court, he originally had an appeal of right only in very limited circumstances. See N.C. Gen. Stat. § 15A-1444(e). In his petition for writ of certiorari, defendant sought a belated appeal in one such circumstance - that the sentence imposed "[r]esults from an incorrect finding of the defendant's prior record level . . . ." N.C. Gen. Stat. § 15A-1444(a2)(1) (1999). This Court's order in issuing its writ of certiorari limited defendant's appeal to review of the calculation of his prior record level and the sentence imposed. Defendant failed to assign error or advance any argument as to that issue in his appeal.

Because the record before this Court supports the trial

court's use of defendant's prior convictions in calculating his prior record level, see N.C. Gen. Stat. § 15A-1340.11(7) (1999), that issue would have been found to be without merit had counsel brought it forward in this appeal.

Defendant attempts to raise two other issues on appeal. He first seeks to argue the trial court erred by accepting his plea of guilty in violation of N.C. Gen. Stat. § 15A-1022(a)(6) (1999). Defendant then seeks to argue the trial court erred by declining to take into consideration the purposes of sentencing in violation of N.C. Gen. Stat. § 15A-1340.12 (1999). Those arguments could not have been presented in defendant's original appeal of right and they are not within the scope of appeal permitted by this Court's writ of certiorari on 5 December 2000. See N.C. Gen. Stat. § 15A-1444(e). Accordingly, those arguments are dismissed.

DISMISSED.

Judges WALKER and BIGGS concur.

Report per Rule 30(e).