

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-194

NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2002

STATE OF NORTH CAROLINA

v.

Yadkin County  
No. 00 CRS 50472

JEFFREY SCOTT ROYALL

Appeal by defendant from judgment entered 5 April 2000 by Judge William Z. Wood, Jr. in Superior Court, Yadkin County. Heard in the Court of Appeals 13 November 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Mark J. Pletzke, for the State.*

*Jarvis John Edgerton, IV, for the defendant-appellant.*

WYNN, Judge.

On 27 March 2001, defendant entered Alford guilty pleas to felony breaking and entering, kidnapping, and assault with a deadly weapon inflicting serious injury. On 5 April 2001, the trial court sentenced defendant to between 146-185 months for, purportedly, the class D felony of kidnapping. On appeal, defendant contends, and the State concedes, the trial court erroneously sentenced him for the class D felony of kidnapping. We, likewise, agree that this was error.

By statute, there are two degrees of kidnapping: "kidnapping

in the first degree . . . is punishable as a Class C felony . . . .  
[Whereas,] kidnapping in the second degree . . . is punishable as  
a Class E felony." N.C. Gen. Stat. § 14-39(b) (2001).

The record reveals that Assistant District Attorney Lyle told the trial court that "regular kidnapping [is a] . . . class D felony." In reliance on this statement, the trial court entered judgment against defendant for kidnapping and sentenced defendant pursuant to a class D felony. The transcript reflects, and the State concedes, defendant plead guilty to the elements of second-degree kidnapping. Accordingly, defendant's sentence for kidnapping is set aside; and, this matter is remanded for a new sentencing hearing.

By his remaining assignments of error, defendant contends the trial court erroneously found, or did not find, various factors in aggravation and mitigation. We will not address these assignments of error, as the trial court must revisit the factors in aggravation and mitigation at the new sentencing hearing and the alleged errors may not arise.

Remanded for a new sentencing hearing.

Judges TIMMONS-GOODSON and HUNTER concur.

Report per Rule 30(e).