

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-202

NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2002

STATE OF NORTH CAROLINA

v.

Edgecombe County
No. 00 CRS 7813

QUANTARRIUS DKWON POWELL

Appeal by defendant from judgment entered 21 August 2001 by Judge W. Russell Duke, Jr. in Superior Court, Edgecombe County. Heard in the Court of Appeals 26 August 2002.

Attorney General Roy Cooper, by Assistant Attorney General Teresa L. White, for the State.

Paul T. Cleavenger, for defendant-appellant.

WYNN, Judge.

Defendant argues on appeal that he was denied effective assistance of counsel in his trial that resulted in convictions for possession with intent to sell or deliver cocaine and sale and delivery of cocaine. We find no error.

Briefly, the facts show that on 13 January 2000, the Edgecombe County Sheriff's Department, assisted by the Nash County Sheriff's Department, engaged in an undercover campaign targeting street level dealers of crack cocaine in Edgecombe County. On that date, Investigator James Tanner of the Nash County Sheriff's Department drove a truck equipped with a video camera to Forest Pines Trailer

Park in Edgecombe County. A man whom Investigator Tanner identified as defendant approached the truck and asked Investigator Tanner and his companion, a confidential informant, what they wanted. Investigator Tanner told defendant that they wanted "a twenty." Defendant responded that they had to spend at least forty dollars. Investigator Tanner gave defendant forty dollars and defendant directed them to leave and come back. When they returned, defendant got into the truck and handed them a bag containing a substance subsequently identified as crack cocaine.

The sole issue on appeal is whether defendant was denied effective assistance of counsel because of counsel's failure to object to admission of a videotape recording of the encounter. He argues that the admission of the videotape was prejudicial because it allowed an officer other than Investigator Tanner, Corporal Charles Kevin West of the Edgecombe County Sheriff's Department, to identify defendant as the perpetrator.

To show that counsel rendered ineffective assistance, the defendant must make a two-part showing as follows:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

State v. Braswell, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 80 L.

Ed. 2d 674, 693 (1984)). Defendant has not made this showing. Defendant has not shown that the videotape was not admissible so that an objection would have been sustained if it had been made. Moreover, defendant did not provide this Court with the videotape and he has not shown that his defense was prejudiced. Accordingly, we find no error in his trial.

No error.

Judges McGEE and CAMPBELL concur.

Report per Rule 30(e).