

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-467

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

STATE OF NORTH CAROLINA

v.

TRAVIS EUGENE McAFEE,
Defendant.

Buncombe County
No. 00 CRS 63103
00 CRS 63105-06

Appeal by defendant from judgment entered 12 September 2001 by Judge Dennis J. Winner in Buncombe County Superior Court. Heard in the Court of Appeals 28 October 2002.

Attorney General Roy Cooper, by Assistant Attorney General Christopher W. Brooks, for the State.

Hall & Hall, by Douglas L. Hall, for defendant-appellant.

EAGLES, Chief Judge.

Travis Eugene McAfee ("defendant") was charged with felony possession of cocaine, second degree trespass, and misdemeanor possession of marijuana. After the trial court denied defendant's motion to suppress, defendant pled guilty to the charges in exchange for consolidation of the offenses for sentencing. The trial court sentenced defendant to a minimum term of imprisonment of six months and a maximum term of eight months. The trial court suspended defendant's sentence and placed him on supervised probation for 36 months. Defendant appeals.

For the following reasons, we grant the State's motion to dismiss the appeal.

In order to appeal pursuant to G.S. § 15A-979(b) from an order denying a motion to suppress, a defendant must give notice of his intention to appeal to the prosecutor and the trial court before plea negotiations are finalized or his right of appeal will be waived. *State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979), cert. denied, 446 U.S. 941, 64 L. Ed. 2d 795 (1980). "Defendant bears the burden of notifying the state and the trial court during plea negotiations of the intention to appeal the denial of a motion to suppress, or the right to do so is waived after a plea of guilty." *State v. McBride*, 120 N.C. App. 623, 625, 463 S.E.2d 403, 404 (1995), aff'd, 344 N.C. 623, 476 S.E.2d 106 (1996). The notification must explicitly reference the motion to suppress. See, e.g., *State v. Pimental*, __ N.C. App. __, __, 568 S.E.2d 867, 870 (2002); *State v. Stevens*, __ N.C. App. __, __, 566 S.E.2d 149, 150 (2002).

Here, the transcript of the motion hearing shows that at the conclusion of the hearing on the motion to suppress and the announcement of the trial court's decision, defendant's counsel stated that he "would like to reserve our right to appeal that, Your Honor." However, the transcript of the subsequent plea proceeding contains no indication that defendant preserved his right to appeal from the denial of the motion to suppress before he pled guilty. The "Transcript of Plea" form also contains no notation that defendant gave notice of his intent to appeal. The

"Transcript of Plea" form simply states the following as terms and conditions of the plea: "The defendant will plead guilty to the charges and the State agrees to consolidate the charges for sentencing."

Furthermore, the record on appeal does not contain a notice of appeal. The record on appeal cites counsel's statement at the conclusion of the hearing on the motion to suppress as the notice of appeal. This statement could not serve as oral notice of appeal because at the time it was made, defendant had not pled guilty and judgment had not been entered.

Based upon the record before us, we are constrained to conclude that defendant has not shown that he preserved his right to appeal from the order denying his motion to suppress. As we stated in *Pimental*, if defendant still desired to appeal after entering the plea, then he should have included language in the "Transcript of Plea" to indicate that he was preserving his right to appeal the denial of the motion to suppress. *Pimental*, __ N.C. App. at __, 568 S.E.2d at 871. Having failed to do so, defendant waived his right of appellate review as a matter of right.

We therefore dismiss the appeal.

Dismissed.

Judges McCULLOUGH and HUDSON concur.

Report per Rule 30(e).