

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-453

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

STATE OF NORTH CAROLINA

v.

Guilford County  
Nos. 08 CRS 80243-45

BRAD STERLING WEATHERLY

Appeal by defendant from judgment entered 19 August 2008 by Judge Edwin G. Wilson, Jr., in Guilford County Superior Court. Heard in the Court of Appeals 30 November 2009.

*Attorney General Roy Cooper, by Special Deputy Attorney General Marc Bernstein, for the State.*

*Culbertson & Associates, by K.E. Krispen Culbertson, for defendant-appellant.*

CALABRIA, Judge.

Brad Sterling Weatherly ("defendant") appeals from the judgment based on the trial court's denial of his motion to suppress evidence found as the result of a search warrant. However, since defendant failed to give notice of intent to appeal from the denial of his motion to suppress prior to the trial court's acceptance of the guilty plea, we dismiss the appeal.

On 7 April 2008, defendant was indicted for manufacturing marijuana, possession with intent to sell and deliver marijuana, and maintaining a dwelling for keeping and selling marijuana as a result of events which occurred on 17 February 2008. Defendant

filed a motion to suppress the evidence collected as a result of a search of his residence. Defendant argued the search was based on a search warrant obtained on the basis of information supplied by a confidential informant with unsubstantiated reliability.

The matter came on for hearing on 7 August 2008 in Guilford County Superior Court. After hearing evidence and arguments, the trial court denied the motion to suppress. The court found that the information given by the confidential informant was sufficiently corroborated by law enforcement officers, and therefore shown to be reliable. Defendant then agreed to enter an *Alford* plea of guilty to the three charges, and the trial court conducted a plea colloquy. On the transcript of the plea arrangement the section that was initialed by the prosecutor, defendant, and defendant's counsel stated, "Charges to be consolidated for judgment and defendant placed on probation." The trial court accepted the plea arrangement and entered judgment. Defendant was sentenced to a minimum of six months to a maximum of eight months in the North Carolina Department of Correction, the sentence was suspended, and defendant was placed on supervised probation for twenty-four months. Defendant appeals.

A defendant is entitled to appeal from the denial of a motion to suppress upon judgment entered pursuant to a guilty plea. N.C. Gen. Stat. § 15A-979(b) (2007). The right to appeal is not absolute, however, and "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) (citing *State v. Reynolds*, 298 N.C. 380, 396-97, 259 S.E.2d 843, 853 (1979), *cert. denied*, 446 U.S. 941, 64 L. Ed. 2d 795 (1980)). A notice of intent to appeal is distinct from the "Notice of Appeal" required by N.C. Gen. Stat. § 15A-1448, and N.C.R. App. P. 4(a): "Notice of intent to appeal prior to plea bargain finalization is a rule designed to promote a 'fair posture for appeal from a guilty plea.' Notice of Appeal is a procedural appellate rule, required in order to give 'this Court jurisdiction to hear and decide a case.'" *McBride*, 120 N.C. App. at 625, 463 S.E.2d at 405 (quoting *State v. Morris*, 41 N.C. App. 164, 166, 254 S.E.2d 241, 242 (1979)). Neither can a notice of appeal serve as a substitute for a notice of intent to appeal. *Id.* at 626, 463 S.E.2d at 405. The notice of intent must be "specifically given," *Id.* at 625, 463 S.E.2d at 404, and must be found in the record, *State v. Brown*, 142 N.C. App. 491, 492-93, 543 S.E.2d 192, 193 (2001).

Here, according to the plea arrangement and the judgment, defendant failed to give notice of his intent to appeal from the denial of his motion to suppress. Our careful review of the entire record, including the transcript of plea and the actual transcript of the proceedings reveals the absence of any indication by defendant that he alerted the prosecutor or the trial court in advance of the entry of the plea of guilty of his intention to appeal from the denial of his motion to suppress. Therefore, the appeal must be dismissed.

Dismissed.

Judges WYNN and STROUD concur.

Report per Rule 30(e).