

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-183
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA

v.

Johnston County
Nos. 08 CRS 8632, 56681

ERICK LAMONT WILLIAMS

Appeal by defendant from judgment entered 17 May 2010 by Judge James G. Bell in Johnston County Superior Court. Heard in the Court of Appeals 22 August 2011.

Attorney General Roy Cooper, by Assistant Attorney General Tenisha S. Jacobs, for the State.

Russell J. Hollers, III, for defendant-appellant.

MARTIN, Chief Judge.

Defendant Erick Lamont Williams appeals from a judgment entered upon jury verdicts finding him guilty of felony possession of cocaine and having attained habitual felon status.

Defendant was tried during the 12 April 2010 mixed criminal and civil session of superior court in Johnston County. On the morning of 13 April 2010 defendant was found guilty of felony possession of cocaine. The court recessed for lunch and

defendant failed to return. In the afternoon, defendant was found guilty of having attained habitual felon status. The court announced its decision in open court by rendering an active sentence in the presumptive range. The court also issued an order for defendant's arrest. Defendant was brought to the court and sentenced during the 17 May 2010 mixed criminal and civil session of superior court in Johnston County.

Defendant's sole argument on appeal is that the trial court lacked jurisdiction to enter judgment out of session on 17 May 2010. He contends the trial court did not continue prayer for judgment or extend the session on 13 April 2010, and thus, it did not have jurisdiction to enter judgment against defendant on 17 May 2010.

Defendant relies on *State v. Boone*, 310 N.C. 284, 286-87, 311 S.E.2d 552, 555 (1984), and *State v. Trent*, 359 N.C. 583, 585, 614 S.E.2d 498, 499 (2005), to support his argument. In *Boone* and *Trent*, the orders at issue pertained to suppression motions on which the trial court did not make a ruling in open court. The trial court in both instances did not rule on the motions until after the session ended and the terms at which the motions were heard had expired. Our Supreme Court held the

orders were null and void because they were entered out of session. The facts of the present case are distinguishable from those presented in *Boone* and *Trent*.

Here, the trial court announced its judgment in open court on 13 April 2010, during the session in which the case was heard. However, defendant was not present in court at this time because he failed to return to court after the lunch recess. Therefore, the trial court could not enter a written judgment on 13 April 2010. See *State v. Pope*, 257 N.C. 326, 334, 126 S.E.2d 126, 132 (1962) ("The accused has the undeniable right to be personally present when sentence is imposed."). The trial court issued an order for defendant to be picked up and defendant was subsequently brought back to court on 17 May 2010 for the trial court to enter a written judgment. See *Abels v. Renfro Corp.*, 126 N.C. App. 800, 803, 486 S.E.2d 735, 737 ("Announcement of judgment in open court merely constitutes 'rendering' of judgment, not entry of judgment."), *disc. review denied*, 347 N.C. 263, 493 S.E.2d 450 (1997).

In *State v. Smith*, 320 N.C. 404, 415-16, 358 S.E.2d 329, 335 (1987), our Supreme Court rejected the defendant's argument that a written order denying his motion to suppress was void because it was entered out of session where the trial court

rendered a verbal order in open court. The Supreme Court found the written order was "simply a revised written version of the verbal order entered in open court." *Id.* at 415, 358 S.E.2d at 335. We conclude, as in *Smith*, the judgment entered on 17 May 2010 was proper as it was merely a revised written version of the judgment rendered in open court on 13 April 2010.

Moreover, the sole reason the trial court could not enter judgment on 13 April 2010 was because defendant failed to return to court after the lunch recess. We note, "[e]ven had some procedural error been committed, defendant would not have been prejudiced by it." *State v. Williams*, 363 N.C. 689, 708, 686 S.E.2d 493, 506 (2009), *cert. denied*, ___ U.S. ___, 178 L. Ed. 2d 90 (2010). "A defendant is not prejudiced . . . by error resulting from his own conduct." N.C. Gen. Stat. § 15A-1443(c) (2009).

No error.

Judges HUNTER, JR. and THIGPEN concur.

Report per Rule 30(e).