

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-399  
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Cabarrus County  
Nos. 09 CRS 8151, 9763, 51863

MITCHELL EDWARD JOHNSON

On Writ of Certiorari to review judgment entered 1 February 2010 by Judge Tanya T. Wallace in Cabarrus County Superior Court. Heard in the Court of Appeals 17 October 2011.

*Attorney General Roy Cooper, by Assistant Attorney General G. Mark Teague, for the State.*

*Charlotte Gail Blake for defendant appellant.*

McCULLOUGH, Judge.

On 14 September 2009, defendant Mitchell Johnson ("defendant") was indicted for forgery, uttering a forged instrument, possession of a counterfeit instrument, and attaining habitual felon status. On 2 November 2009, defendant was indicted for two counts of attempting to obtain property by false pretenses. On 9 December 2009, a jury found defendant guilty of one count of attempted obtaining property by false

pretenses, uttering a forged instrument, possession of a counterfeit instrument, and attaining habitual felon status. The jury found defendant not guilty of the remaining charges. The trial court sentenced defendant to a consolidated term of 133 to 169 months' imprisonment.

Defendant was tried before the 7 December 2009 Criminal Session of Cabarrus County Superior Court. On the second day of trial, defendant left the courtroom during a break and never returned. Thereafter, the trial court issued an order for defendant's arrest and the trial resumed. After the jury rendered its verdict, the court informed the jury that an order for defendant's arrest was outstanding and that defendant's sentencing would be continued until after his arrest. Defendant was later arrested and sentenced, and the trial court entered judgment on 1 February 2010.

Defendant's sole argument on appeal is that the trial court lacked jurisdiction to enter judgment against him because the judgments were entered out of session. In support of his argument, defendant relies on *State v. Boone*, 310 N.C. 284, 311 S.E.2d 552 (1984), and *State v. Trent*, 359 N.C. 583, 614 S.E.2d 498 (2005). Both cases involved orders pertaining to motions to suppress evidence. In each case, the trial court did not rule

on the motion in open court, but later entered an order. *Trent*, 359 N.C. at 584, 614 S.E.2d at 499; *Boone*, 310 N.C. at 279, 311 S.E.2d at 285. In *Trent*, our Supreme Court held that “‘an order of the superior court, in a criminal case, must be entered during the term, during the session, in the county and in the judicial district where the hearing was held.’ Absent consent of the parties, an order entered in violation of these requirements is null and void and without legal effect.” *Trent*, 359 N.C. at 585, 614 S.E.2d at 499 (quoting *Boone*, 310 N.C. at 287, 311 S.E.2d at 555).

We find the instant case distinguishable. Unlike the courts in *Boone* and *Trent*, the trial court in the instant case properly continued the sentencing hearing. “[A] court is authorized to continue a case to a subsequent date for sentencing.” *State v. Lea*, 156 N.C. App. 178, 180, 576 S.E.2d 131, 132 (2003); see N.C. Gen. Stat. § 15A-1334(a) (2009). “This continuance is frequently referred to as a ‘prayer for judgment continued’ and vests a trial judge presiding at a subsequent session of court with the jurisdiction to sentence a defendant for crimes previously adjudicated.” *Id.* (quoting *State v. Degree*, 110 N.C. App. 638, 640, 430 S.E.2d 491, 493 (1993)). “As long as a prayer for judgment is not continued for an

unreasonable period . . . and the defendant was not prejudiced, . . . the court does not lose the jurisdiction to impose a sentence." *State v. Absher*, 335 N.C. 155, 156, 436 S.E.2d 365, 366 (1993). Here, the trial court ordered defendant's sentencing hearing to be continued and specified that defendant would be sentenced upon his arrest. We find that the trial court's statement was sufficient to qualify as a prayer for judgment continued and that the continuance was for a reasonable amount of time, given the circumstances.

Furthermore, we note that defendant is solely responsible for the trial court's inability to enter judgment on 9 December 2009. Defendant failed to return to court after a break on the second day of trial, and the trial court continued sentencing in order for defendant to participate in the hearing. "A defendant is not prejudiced . . . by error resulting from his own conduct." N.C. Gen. Stat. § 15A-1443(c) (2009). Thus, "[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). Therefore, we find no error in the judgment of the trial court.

No error.

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Judges MCGEE and ELMORE concur.

Report per Rule 30(e).