

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1013

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 01 CRS 51836

NORVELL RAY SIMPSON

Appeal by defendant from judgment entered 8 May 2001 by Judge Ronald E. Spivey in Forsyth County Superior Court. Heard in the Court of Appeals 29 April 2002.

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

White and Crumpler, by Dudley A. Witt, for defendant-appellant.

MARTIN, Judge.

Defendant entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed. 2d 162 (1970), to the charge of assault with a deadly weapon inflicting serious injury. In exchange for the plea, the State agreed to the following terms as to sentencing: "State agrees to sentence in mitigated range[.] State does not request active sentence --State agrees to sentence in discretion of the court." After reviewing the plea agreement with defendant and hearing the prosecutor's summary of the evidence, the trial court sentenced defendant in the mitigated range to an active term of nineteen to thirty-two months imprisonment.

On appeal, defendant claims the trial court abused its discretion in sentencing him to an active prison term not requested by the State. Defendant avers he should not be punished for relying upon the State's agreement not to seek an active sentence. He faults the trial court for punishing him "beyond the State's recommendations[.]"

Because he made no motion to withdraw his plea, defendant's right of direct appeal was limited to the following issues: (1) whether his sentence was supported by the evidence introduced at the hearing; (2) whether his prior record level was properly calculated; and (3) whether the type and duration of his sentence was authorized by G.S. § 15A-1340.17 for his class of offense and prior record level. N.C. Gen. Stat. § 15A-1444(a1), (a2), (e). "If a defendant who has pled guilty does not raise the[se] specific issues . . . and does not otherwise have a right to appeal, his appeal should be dismissed." *State v. Hamby*, 129 N.C. App. 366, 369, 499 S.E.2d 195, 196 (1998) (citing *State v. Golden*, 96 N.C. App. 249, 385 S.E.2d 346 (1989)).

Defendant has no right to appeal the trial court's election to impose an active sentence. Assault with a deadly weapon inflicting serious injury is a Class E felony, and defendant had a prior record level of II. N.C. Gen. Stat. § 14-32(b) (1999). Under the felony sentencing grid in G.S. § 15A-1340.17(c), active imprisonment for a duration of nineteen to thirty-two months is a sentencing disposition properly within the mitigated range for defendant's offense and prior record level. Therefore, defendant

has no right of appeal under G.S. § 15A-1444(a2). Moreover, although the trial court had the discretion to suspend defendant's sentence in this case, see N.C. Gen. Stat. § 15A-1340.17(c), there is no evidentiary threshold for the imposition of an active, rather than intermediate, punishment. See N.C. Gen. Stat. § 15A-1340.13(f) (1999) (providing that "[t]he court may suspend the sentence of imprisonment if the class of offense and prior record level authorize, but do not require, active punishment as a sentence disposition."). Accordingly, the trial court's exercise of discretion in this regard is not subject to appellate review under G.S. § 15A-1444(a1).

Defendant also asks this Court to conduct its own review of the record for possible reversible error pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967). See *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). By bringing forward an assignment of error on appeal, however, defendant is barred from seeking *Anders* review. See *State v. Grady*, 136 N.C. App. 394, 524 S.E.2d 75, *appeal dismissed and cert. denied*, 352 N.C. 152, 544 S.E.2d 232 (2000).

Appeal dismissed.

Judges HUNTER and BRYANT concur.

Report per Rule 30(e).