

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1125

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v.

Moore County  
Nos. 97 CRS 9469  
97 CRS 9470

JAMES DAVID CUMMINGS

On a writ of certiorari from judgment entered 13 April 1999 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 8 April 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Ann Stone, for the State.*

*Matthew Rothbeind, for defendant-appellant.*

TYSON, Judge.

James David Cummings ("defendant") pled guilty to trafficking in cocaine by possession and maintaining a vehicle for the keeping of controlled substances on 13 April 1999. For trafficking, the court sentenced defendant to an active term of thirty-five to forty-two months. For maintaining a vehicle, the court imposed a suspended sentence. Defendant gave notice of appeal in a timely fashion but his appointed appellate counsel failed to perfect the appeal. On 29 March 2001 the trial court entered an order discharging appellate counsel and appointing new counsel. This Court allowed defendant's petition for a writ of certiorari on 27

June 2001.

The evidence at the plea hearing tends to show that an undercover officer arranged to purchase cocaine from defendant on 4 September 1997. After receiving \$2,300 in marked and recorded bills from the undercover officer at a location near Vass in Moore County, defendant drove to a location near Biscoe in Montgomery County, while under surveillance the entire time. Defendant returned and gave the officer in excess of 55 grams in cocaine. Defendant attempted to flee and elude arrest. After the officers arrested him, he identified his source as "Thomas." Law enforcement officers subsequently searched the location where defendant obtained the cocaine and found the marked bills given by the undercover officer to defendant, in addition to a large quantity of cocaine. The officers arrested the person from whom defendant obtained the cocaine.

Defendant's sole contention is that the court erred by failing to find pursuant to N.C. Gen. Stat. § 90-95(h)(5) (1999) that defendant rendered substantial assistance in the identification, arrest or conviction of any accomplices, accessories, co-conspirators or principals. The decision whether to find substantial assistance has been rendered is discretionary with the trial court. *State v. Wells*, 104 N.C. App. 274, 276, 410 S.E.2d 393, 394 (1991). Even when the court makes a finding of substantial assistance, the sentencing decision is within the court's discretion. *State v. Willis*, 92 N.C. App. 494, 498, 374 S.E.2d 613, 616 (1988), *disc. review denied*, 324 N.C. 341, 378

S.E.2d 808 (1989). A discretionary sentencing decision will not be disturbed unless it is shown that the court's decision was so arbitrary that it could not have been the result of a reasoned decision. *State v. Hayes*, 314 N.C. 460, 473, 334 S.E.2d 741, 749 (1985).

We find no abuse of discretion. The evidence shows that other officers conducting surveillance followed defendant to the location where defendant obtained his contraband. Defendant did not identify his source until after he had been confronted with the evidence against him, and defendant did not give the source's full name. Defendant attempted to flee or elude arrest prior to his arrest. Defendant's source was a fugitive at the time of defendant's trial. We affirm the judgments.

Affirmed.

Judges GREENE and HUDSON concur.

Report per Rule 30(e).