

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1161

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v.

Wayne County
No. 00CRS54213

KYLE SHANE HOGAN,
Defendant.

Appeal by defendant from judgments entered 1 December 2000 by Judge Jerry Braswell in Wayne County Superior Court. Heard in the Court of Appeals 13 May 2002.

Attorney General Roy Cooper, by Assistant Attorney General John P. Scherer, II, for the State.

Benjamin M. Turnage for defendant-appellant.

TYSON, Judge.

Kyle Shane Hogan ("defendant") was charged with some fifteen felony offenses arising out of a 18 May 2000 breaking and entering. Defendant was subsequently convicted by jury verdicts on each count, with the exception of Count Fifteen, in which the jury found defendant guilty of a lesser offense. In Count Thirteen, the jury found defendant guilty of attempted first degree burglary, a Class E felony. When the court entered judgment on 1 December 2000, the trial court erroneously listed the conviction as to Count Thirteen as attempted robbery with a dangerous weapon, a Class D felony, and

sentenced defendant to a corresponding fifty-five to seventy-five months imprisonment.

The defendant argues, and the State concedes, this was error. This matter, as to Count Thirteen alone, is remanded to the trial court for the entry of judgment in accordance with the jury's verdict.

Remanded for resentencing as to Count Thirteen.

Judges GREENE and HUDSON concur.

Report per Rule 30(e).