

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1555

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

STATE OF NORTH CAROLINA

v.

GREGORY LYNN ROSS

Cabarrus County
Nos. 99 CRS 15116
00 CRS 06801

Appeal by defendant from judgment entered 14 March 2001 by Judge Michael E. Beale in Cabarrus County Superior Court. Heard in the Court of Appeals 30 September 2002.

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

Hartsell, Hartsell, & White, P.A., by H. Jay White, for defendant appellant.

BIGGS, Judge.

K, a five-week-old girl, was admitted to the Emergency Room of Northeast Medical Center on the night of 1 September 1999, suffering from vaginal trauma indicating sexual abuse, bruises to her face and scalp, severe blunt force trauma to her skull and brain, and a contusion of her spinal cord. She died from her injuries two days later. On 13 September 1999, a grand jury indicted Gregory Lynn Ross (defendant) on charges of first-degree statutory sex offense, first-degree murder, and felony child abuse. In exchange for a dismissal of the felony child abuse and first-

degree murder charges, defendant entered a guilty plea to second-degree murder and an *Alford* plea to first-degree statutory sex offense. See *North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed. 2d 162 (1970). The trial court sentenced defendant to consecutive prison terms totaling 527 to 651 months.

Defendant raises three issues on appeal. He claims the trial court erred in denying his request for a continuance. Next, defendant avers the court erred in denying his motion for a bill of particulars. Finally, he challenges the trial court's failure to dismiss the short-form murder indictment, because it failed to allege the underlying felony offense required for a charge of first-degree murder under the felony murder rule.

The State has filed a motion to dismiss defendant's appeal on the ground that the issues raised do not fall within his appeal of right under N.C.G.S. § 15A-1444 (2001).

"The right to appeal in a criminal proceeding is purely statutory." *State v. Nichols*, 140 N.C. App. 597, 598-99, 537 S.E.2d 825, 826 (2000) (quoting *State v. Shoff*, 118 N.C. App. 724, 725, 456 S.E.2d 875, 876 (1995)). The appellate rights of a defendant who pleads guilty are defined by N.C.G.S. § 15A-1444(a1) and (a2) (2001). *State v. Jarman*, 140 N.C. App. 198, 535 S.E.2d 875 (2000). Under these subsections, the issues properly brought on appeal following a guilty plea are (1) whether the evidence supports the defendant's sentence, if the sentence is not within the presumptive range, (2) whether the defendant's prior record level or prior conviction level is correctly calculated, (3)

whether the type of sentence or term of imprisonment is authorized by statute, based on the defendant's class of offense and prior record or conviction level. In addition to these sentencing issues, N.C.G.S. § 15A-979 (2001) allows the defendant to appeal the denial of a pre-trial motion to suppress, if he gives notice to the prosecutor and trial court before entering his guilty plea.

Finally, a defendant has an appeal of right from the denial of a motion to withdraw his guilty plea. See N.C.G.S. § 15A-1444(e). "If a defendant who has pled guilty does not raise the specific issues enumerated in subsection [s (a1) and] (a2) 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)

The issues raised by defendant lie outside his appeal of right. Accordingly, we allow the State's motion to dismiss. We note that defendant waived his pre-trial procedural rights by pleading guilty. See *State v. Hughes*, 136 N.C. App. 92, 524 S.E.2d 63 (1999), *disc. review denied*, 351 N.C. 644, 543 S.E.2d 878 (2000), and that he has not challenged the sufficiency of the short-form indictment to support the charge of second-degree murder to which he pled guilty. See *State v. Caldwell*, 269 N.C. 521, 526, 153 S.E.2d 34, 37-38 (1967) (A guilty plea "waives all defenses other than that the indictment charges no offense.").

Appeal dismissed.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).