An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1556

NORTH CAROLINA COURT OF APPEALS

Filed: 01 October 2002

STATE OF NORTH CAROLINA

v.

KENTA CROSS

Wilson County
No. 00 CRS 54755

Appeal by defendant from judgment entered 2 August 2001 by Judge Frank R. Brown in Wilson 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.

Randolph J. Hill for defendant-appellant.

THOMAS, Judge.

Defendant pled guilty to trafficking in MDA/MDMA. The trial court sentenced him to imprisonment for a minimum term of 70 months and a maximum term of 84 months. Defendant appeals.

Preliminarily, we note that the State has filed a motion to dismiss the appeal on the ground that defendant does not have a right of appeal because he pled guilty and received the mandatory minimum sentence established by N.C. Gen. Stat. § 90-95(h)(4b)(b) (1999). *See State v. Willis*, 92 N.C. App. 494, 496, 374 S.E.2d 613, 615 (1988). We agree with the State that defendant does not have a right of appeal. Accordingly, we dismiss the appeal as we

did in *Willis*.

However, as we also did in *Willis*, we elect in our discretion to treat the record on appeal and defendant's brief as a petition for a writ of certiorari. We allow the petition for the purpose of considering the issue raised by defendant.

Defendant's sole contention is that the trial court failed to exercise and/or abused its discretion by failing to find that defendant rendered substantial assistance in the identification, arrest, or conviction of, any accomplices, accessories, co-conspirators or principals in accordance with N.C. Gen. Stat. § 90-95(h)(5) (1999). The determination of whether or not a criminal defendant's aid amounts to substantial assistance within the purview of N.C. Gen. Stat. § 90-95(h)(5) is within the discretion of the sentencing judge. *State v. Wells*, 104 N.C. App. 274, 276, 410 S.E.2d 393, 394 (1991). The trial court's decision will not be disturbed by a reviewing court unless there is an abuse of discretion, prejudicial procedural misconduct, manifest unfairness and injustice, or conduct offensive to the public sense of fair play. *State v. Myers*, 61 N.C. App. 554, 557, 301 S.E.2d 401, 403 (1983). For example, the sentencing court's wrongful refusal to consider evidence offered by a defendant in support of a finding of substantial assistance may constitute an abuse of discretion. *See State v. Hamad*, 92 N.C. App. 282, 289, 374 S.E.2d 410, 414 (1988), *aff'd per curiam*, 325 N.C. 544, 385 S.E.2d 144 (1989).

In the present case, however, there is nothing in the record to indicate that the trial court wrongfully refused to consider

evidence or that it wrongfully believed it could not as a matter of law make a finding of substantial assistance. The record shows that defendant's counsel related to the court several ways in which defendant purported to render substantial assistance but counsel acknowledged that defendant's efforts were "not fruitful." After hearing the evidence and arguments of counsel, the trial court elected not to find that defendant rendered substantial assistance. There was no abuse of discretion.

AFFIRMED.

Judges WALKER and BIGGS concur.

Report per Rule 30(e).