

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1576

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

STATE OF NORTH CAROLINA

v.

Guilford County  
No. 99 CRS 066743

ZACKERY DAVID GRIMES

Appeal by defendant from judgments entered 10 October 2000 by Judge Steve A. Balog in Guilford County Superior Court. Heard in the Court of Appeals 30 September 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Robert C. Montgomery, for the State*

*Clifford Clendenin O'Hale & Jones, LLP, by Walter L. Jones, for defendant-appellant.*

BIGGS, Judge.

Zackery David Grimes (defendant) was indicted on 13 December 1999 for murder. On 3 January 2000, defendant was indicted for felonious breaking and entering and felonious larceny. On 24 January 2000, defendant was indicted for robbery with a dangerous weapon. On 21 August 2000, defendant was indicted on charges of first degree burglary, first degree kidnapping, robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon.

On 23 December 1999, defendant entered into an agreement with

the State in which he stipulated to certain facts regarding the alleged crimes and agreed to provide information to the State in an ongoing criminal investigation. In return, the State agreed that defendant would:

receive consecutive sentences totaling 360 months minimum, 438 months maximum, that he not be prosecuted for First Degree Murder and that the State of North Carolina will not seek the death penalty in this case. . . .

Further, the State of North Carolina will agree to consider giving the Defendant further consideration if he cooperates fully and his cooperation leads to physical evidence. . . . The decision of whether the Defendant is entitled to further consideration shall be solely in the discretion of the District Attorney's Office and in no event will result in sentences less than 300 months minimum, 378 months maximum.

Pursuant to the agreement, defendant provided information to the State regarding the location of the murder weapon. Defendant had learned that the knife used in the murder could be found in a box in the crawlspace of Robert Reid's parent's home. However, defendant was told that the State would not be able to search the house and find the knife.

Sometime thereafter, defendant was contacted and asked to come to the District Attorney's office because they believed they had found the knife and wanted defendant to identify it. Defendant described the knife in detail, after which the State showed him the knife and he positively identified it. Apparently, the State already had the knife in their possession before the 23 December 1999 agreement. Accordingly, the State declined to agree to a reduction of defendant's sentence per the terms of the agreement.

The State argued that because the knife was already in their possession, defendant could not lead them to it, and thus the State "[did] not choose to give him credit for that physical evidence because it was not seized pursuant to his efforts. . . ."

On 10 October 2000, defendant pled guilty pursuant to a plea agreement to charges of second degree murder, conspiracy to commit first degree murder, breaking or entering, larceny after breaking or entering, two counts of robbery with a dangerous weapon, first degree burglary, first degree kidnapping, and conspiracy to commit robbery with a dangerous weapon. Pursuant to the plea agreement, defendant was sentenced to 180 to 225 months imprisonment on the murder charge. Additionally, the remaining charges were consolidated for judgment and defendant was sentenced to a consecutive term of 180 to 225 months imprisonment. However, the prosecutor declined to recommend a reduction in sentence as outlined in the 23 December 1999 agreement. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by refusing to require that the State honor the terms of the plea agreement. Specifically, defendant argues that he provided information to the State regarding the location of the knife, and thus was entitled to a reduction in his sentence as per the terms of the agreement. Defendant argues that the information he gave was accurate, and that the State did not know that the knife it had in its possession was the murder weapon until defendant confirmed it.

We note initially that the State has filed a motion to dismiss

defendant's appeal, asserting that, pursuant to N.C.G.S. § 15A-1444 (2001), defendant has no statutory right of appeal. Defendant responds and petitions the Court for writ of certiorari in the alternative.

After careful review of the record, we dismiss the appeal. Defendant pled guilty, was sentenced in the presumptive range, and does not raise an issue as to the calculation of his prior record level. Thus, defendant is not entitled to appellate review of his conviction. N.C.G.S. § 15A-1444(a1) and (a2).

Additionally, we decline to review defendant's appeal on a petition for writ of certiorari. The decision whether to recommend a reduced sentence for defendant was left solely in the discretion of the prosecutor. The prosecutor determined in its discretion that the information provided by defendant did not warrant a reduced sentence. Accordingly, we find defendant's arguments to be wholly without merit.

Appeal dismissed; petition for writ of certiorari denied.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).