

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-1612

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2004

STATE OF NORTH CAROLINA

v.

Alamance County
No. 01 CRS 054464

TONY HESTER VINSON

Appeal by defendant from judgment entered 9 December 2002 by Judge James C. Spencer in Alamance County Superior Court. Heard in the Court of Appeals 23 August 2004.

Attorney General Roy Cooper, by Special Deputy Attorney General Thomas J. Ziko, for the State.

J. Clark Fischer for defendant-appellant.

TIMMONS-GOODSON, Judge.

After reserving the right to appeal the denial of his motion to suppress pursuant to N.C. Gen. Stat. § 15A-979(b) (2003), defendant entered a guilty plea to trafficking in at least 400 grams of cocaine by possession and five lesser narcotics offenses. The trial court consolidated the offenses for judgment and sentenced defendant to an active prison term of 115 to 147 months. On 4 June 2003, we allowed defendant's petition for writ of certiorari to review the judgment. Our order explicitly provided, however, that "[s]uch review shall be limited to the issues within

defendant's appeal of right from his guilty plea."

In his sole argument on appeal, defendant claims the trial court erred in denying his motion to enforce a prior plea agreement with the State. The record reflects the prosecutor withdrew the earlier plea offer after defendant signed a written agreement but before he entered his plea thereunder. Defendant claims the State should be bound by the earlier plea agreement, in light of his detrimental reliance thereon.

"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). The appellate rights of a defendant who pleads guilty are defined by N.C. Gen. Stat. § 15A-1444 (2003). See *State v. Jarman*, 140 N.C. App. 198, 200, 535 S.E.2d 875, 877 (2000). Under § 15A-1444(a1) and (a2), a defendant who pleads guilty may raise the following issues related to his sentence: (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. Gen. Stat. § 15A-1444(e) (2003) allows a 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. *Id.* If a defendant who pleads guilty fails to raise issues within this limited appeal of right, his appeal must be dismissed. See *State v. Hamby*, 129 N.C. App. 366, 369, 499 S.E.2d 195, 196 (1998) (citing *State v. Golden*, 96 N.C. App. 249, 385 S.E.2d 346 (1989)).

As shown above, the issue raised by defendant lies outside his statutory appeal of right under N.C. Gen. Stat. § 15A-1444 and, therefore, outside the scope of the writ of certiorari issued by this Court on 4 June 2003. Accordingly, we dismiss defendant's appeal.

Appeal dismissed.

Judges CALABRIA and LEVINSON concur.

Report per Rule 30(e).