An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA04-103-2

NORTH CAROLINA COURT OF APPEALS

Filed: 21 August 2007

STATE OF NORTH CAROLINA

v.

CHAUMON MARTE WEBB,
Defendant.

Pitt County
Nos. 02 CRS 5685,
02 CRS 5687-88,
02 CRS 54018

Court of Appeals

Slip Opinion

On remand by order of the North Carolina Supreme Court filed 29 December 2006, vacating in part and remanding the unanimous decision of the Court of Appeals, *State v. Webb*, 172 N.C. App. 594, 616 S.E.2d 693 (2005) (unpublished opinion), for reconsideration in light of *State v. Blackwell*, 361 N.C. 41, 638 S.E.2d 452 (2006). Appeal by defendant from a judgment dated 24 July 2003 by Judge Cy A. Grant in Pitt County Superior Court. Originally heard in the Court of Appeals 3 November 2004.

Attorney General Roy Cooper, by Assistant Attorney General John G. Barnwell, for the State.

Jarvis John Edgerton, IV, for defendant-appellant.

BRYANT, Judge.

This case comes before us on remand from the North Carolina Supreme Court in order that we may reexamine the issue of sentencing in light of its recent decision in *State v. Blackwell*, 361 N.C. 41, 638 S.E.2d 452 (2006). For the reasons stated herein, we hold that the trial court's finding of an aggravating factor

during defendant's sentencing was not error, however the case must be remanded for the limited purpose of correcting a clerical error as addressed in our original opinion. *See State v. Webb*, 172 N.C. App. 594, 616 S.E.2d 693 (2005) (unpublished opinion).

Facts and Procedural History

On 15 April 2002, Chaumon Marte Webb (defendant) was indicted by a grand jury for attempted murder, possession of a firearm by a felon, robbery with a dangerous weapon, and assault with a deadly weapon with intent to kill. Defendant was convicted of all charges by a jury on 24 July 2003. Prior to sentencing defendant, the trial court found one aggravating factor, that defendant committed the offense while on pretrial release on another charge. This aggravating factor was not brought before the jury. However, defendant stipulated at trial that he committed the offense while on pretrial release on another charge. The following exchange transpired:

> THE COURT: What says the State?
>
> [PROSECUTOR]: Your Honor, first of all, I would like to allege one aggravating factor.
>
> THE COURT: All right.
>
> [PROSECUTOR]: That being the Defendant was out on bond - pretrial release at the time of these offenses, Your Honor. He had been arrested for a series of breaking, entering, and larcenies. 01 CR 65556, 6557 and 01-6573, which he was arrested on 12-13-01, and made a bond on those cases on the same date, Your Honor, and was out on pretrial release these charges [sic] - when these were committed, Your Honor. I have those files. . . .

> If you want me to hand these file[s] up, Judge. The Defendant may stipulate he was out on bond.
>
> [DEFENSE COUNSEL]: He was.
>
> THE COURT: All right.

The trial court subsequently consolidated the charges and entered judgment, sentencing defendant in the aggravated range to a minimum of 392 months and a maximum of 480 months imprisonment. In accordance with the findings of the trial court, the aggravating factor that should have been marked on the judgment sheet is N.C. Gen. Stat. § 15A-1340.16(d)(12) (defendant committed the offense while on pretrial release on another charge). However, as a result of a clerical error, the aggravating factor actually marked on the judgment form was N.C. Gen. Stat. § 15A-1340.16(d)(1) (defendant induced others to participate in the commission of the offense).

Blakely Review

Defendant argues the trial court's imposition of a sentence in the aggravated range was done in violation of *Blakely v. Washington*, 542 U.S. 296, 159 L. Ed. 2d 403 (2004), and his Sixth Amendment right to a trial by a jury. The United States Supreme Court held in *Blakely* that a judge may not impose a sentence based on findings that are in addition to "the facts reflected in the jury verdict or admitted by the defendant." *Id.* at 303, 159 L. Ed. 2d at 413 (citation omitted). However, a trial court's imposition of a sentence on the basis of an admission to an aggravating factor does not violate the Sixth Amendment if "that defendant personally

or through counsel admits the necessary facts." *State v. Hurt*, 361 N.C. 325, 330, 643 S.E.2d 915, 918 (2007).

In the instant case, the transcript indicates the State was prepared to present evidence showing that defendant was out on pretrial release, but did not because defendant stipulated to this fact. Defendant's unequivocal stipulation to the fact that he was out on pretrial release when he committed the instant offenses "constitutes an admission of the necessary facts relied on by the trial court to increase defendant's sentence" and the trial court's subsequent sentence based on the aggravating factor did not violate defendant's Sixth Amendment right to a trial by a jury. *State v. Cupid*, __ N.C. __, __, 646 S.E.2d 348, __ (2007); *see also Hurt*, 361 N.C. at 329-30, 643 S.E.2d at 917-18.

Having reviewed the Supreme Court's opinion in *State v. Blackwell*, we find it is not directly applicable to this case. Instead, we rely on a more recent Supreme Court opinion, *State v. Hurt*, in reaching this decision. Except as herein modified, the opinion filed by this Court on 16 August 2005 remains in full force and effect.

No error. Remanded for correction of clerical error.

Judges McGEE and JACKSON concur.

Report per Rule 30(e).