

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1017

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

STATE OF NORTH CAROLINA

v.

Rutherford County
No. 04 CRS 52512

CRISTINA G. HARDIN,
Defendant.

Appeal by defendant from judgment entered 20 January 2005 by Judge Dennis J. Winner in Rutherford County Superior Court. Heard in the Court of Appeals 22 May 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Melissa L. Trippe, for the State.

Marvin Sparrow for defendant-appellant.

GEER, Judge.

Defendant Cristina G. Hardin appeals from her conviction in superior court of simple assault, a misdemeanor. Because we are unable to determine from the record on appeal whether the superior court had jurisdiction, we are compelled to dismiss this appeal.

The record reveals that on 10 May 2004, defendant was charged with simple assault in violation of N.C. Gen. Stat. § 14-33(a) (2005), a misdemeanor offense. The statement in the printed record regarding the organization of the trial tribunal states only: "This appeal is from judgment entered at the January 10, 2005, criminal session of the Superior Court of Rutherford County, Judge Dennis

Winner presiding. Judgment was entered January 20, 2005, upon a jury verdict, finding defendant-appellant guilty of simple assault." The printed record contains no reference to any proceedings in the district court.

District courts have exclusive original jurisdiction of all misdemeanors. *State v. Felmet*, 302 N.C. 173, 174-75, 273 S.E.2d 708, 710 (1981). A superior court's jurisdiction over the trial of a misdemeanor is derivative, with the exception of the circumstances enumerated in N.C. Gen. Stat. § 7A-721(a) (2005), and "arises only upon appeal from a conviction of the misdemeanor in district court." *Felmet*, 302 N.C. at 174-75, 273 S.E.2d at 710. A superior court has no jurisdiction to try a defendant on a criminal summons for a misdemeanor charge unless the defendant was tried and convicted in district court and then appealed that judgment for a trial *de novo* in superior court. *State v. Hall*, 240 N.C. 109, 111, 81 S.E.2d 189, 190-91 (1954).

Our Supreme Court explained in *Felmet* that a record on appeal in a criminal case that originated in district court must include the judgment in district court and entries showing an appeal of that judgment to superior court. *Felmet*, 302 N.C. at 176, 273 S.E.2d at 711 ("These items should have been included in the record on appeal in this case but were not. Defendant had the duty to see the record on appeal was properly compiled."). When, because those items are omitted, "the record is silent and the appellate court is unable to determine whether the court below had jurisdiction, the appeal should be dismissed." *Id.* Because, based on the record

before us, we are unable to determine whether the superior court had jurisdiction, *Felmet* requires that we dismiss the appeal *ex mero motu*. *Id.* See also *State v. Hunter* 245 N.C. 607, 609, 96 S.E.2d 840, 841 (1957) ("What disposition was made of these cases in the inferior court or how they reached the Superior Court is not made to appear [in the record]. This alone is sufficient to require a dismissal of the appeal.").

Appeal dismissed.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).