An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1299

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

STATE OF NORTH CAROLINA

v.

THOMAS VINCENT CROSBY

Forsyth County
No. 03CRS058755

Appeal by defendant from judgment entered 12 October 2004 by Judge W. Douglas Albright in Forsyth County Superior Court. Heard in the Court of Appeals 8 May 2006.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Tina A. Krasner, for the State.

Charns & Charns, by D. Tucker Charns, for defendant-appellant.

HUNTER, Judge.

A jury found Thomas Vincent Crosby ("defendant") guilty of statutory sexual offense with a fifteen-year-old child and taking indecent liberties with a child. The trial court consolidated the offenses and sentenced defendant to an active prison term of 240 to 297 months. For the reasons stated herein, we find no error.

On appeal, defendant challenges the trial court's denial of his motion to dismiss the charge of statutory sexual offense under N.C. Gen. Stat. § 14-27.7A(a), on the ground that the victim, A.W., was fifteen years and five months old at the time of the sexual

activity. Under N.C. Gen. Stat. § 14-27.7A(a) (2005), "[a] defendant is guilty of a Class B1 felony if the defendant engages in . . . a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person . . . ." *Id.* Interpreting this statute in a similar context, we held that "the fair meaning of '15 years old,' in accord with the manifest intent of the legislature when viewed in the context of the historical development of this area of law, includes children during their fifteenth year, until they reach their sixteenth birthday." *State v. Roberts*, 166 N.C. App. 649, 651, 603 S.E.2d 373, 375 (2004), *appeal dismissed and disc. review denied*, 359 N.C. 325, 611 S.E.2d 843 (2005). Accordingly, evidence that defendant, who was more than forty years of age, engaged in anal intercourse with a boy who was fifteen years and five months old was sufficient to sustain his charge and conviction under N.C. Gen. Stat. § 14-27.7A(a). *Id.* at 652, 603 S.E.2d at 376 (affirming conviction where the victim "was fifteen years and eleven months at the time of the offense"). We are bound by our prior holding in *Roberts* and so decline defendant's invitation to revisit the issue here. *See In the Matter of Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989).

The record on appeal includes additional assignments of error not addressed by defendant in his brief to this Court. Pursuant to N.C.R. App. P. 28(b)(6), they are deemed abandoned.

No error.

Judges WYNN and McGEE concur.

Report per Rule 30(e).