An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1444

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2006

STATE OF NORTH CAROLINA

v.

Forsyth County
Nos. 04 CRS 62573-74
05 CRS 20112

ANTWONE DENNARD ARCHIE,
Defendant.

Appeal by defendant from judgment entered 16 August 2005 by Judge Julius A. Rousseau in the Superior Court in Forsyth County . Heard in the Court of Appeals 10 July 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Elizabeth Leonard McKay, for the State.

Richard G. Roose, for defendant-appellant.

HUDSON, Judge.

After a jury found defendant guilty of possession of cocaine, conspiracy to sell cocaine, and sale of cocaine, he pled guilty to habitual felon status. The court consolidated the convictions and imposed an active sentence of 130 - 165 months. Defendant appeals. We conclude that there was no error.

The evidence tends to show that on 23 September 2004, defendant sold crack cocaine to an undercover officer of the Winston-Salem Police Department. The substance defendant sold to the detective was identified by the State Bureau of Investigation laboratory as 0.23 grams of cocaine.

Defendant first contends that the court committed plain error by submitting a jury verdict form which did not include an option of finding defendant not guilty. Specifically, the verdict form for the possession of cocaine charge states: "As to the charge of possession of cocaine, we, the jury, find the defendant _________ as charged." The form contains a blank space for filling in the date and blank lines for the printed name and signature of the jury foreperson. The other two verdict forms are identical, except for the charges.

Review for plain error is limited to review of jury instructions and evidentiary matters. *State v. Greene*, 351 N.C. 562, 566, 528 S.E.2d 575, 578, *cert. denied*, 531 U.S. 1041, 148 L. Ed. 2d 543 (2000). Because defendant does not assign error to a jury instruction or evidentiary matter, this assignment of error is not properly before us. *Id.* Furthermore, even if this matter were properly before us, we cannot conclude that "absent the error the jury probably would have reached a different verdict." *State v. Walker*, 316 N.C. 33, 39, 340 S.E.2d 80, 83-84 (1986).

In *State v. Hicks*, 86 N.C. App. 36, 42-43, 356 S.E.2d 595, 598-599 (1987), the defendant contended that he was entitled to a new trial because the verdict form did not list the possible verdict of not guilty. This Court found no prejudicial error because the trial court instructed the jury (1) to find the defendant not guilty if the jury had a reasonable doubt of the defendant's guilt and (2) to write in either "guilty" or "not guilty" after the word "answer" on the form. *Id.* at 43, 356 S.E.2d

at 599. Here, the court instructed the jury to find defendant guilty of the charged offenses if it found beyond a reasonable doubt that he committed the offenses but that if it did not so find, then it was the jury's "duty to return a verdict of not guilty." As it prepared to deliver the verdict sheets, the court instructed the jury:

> I'm going to hand the foreperson three sheets of paper or hand one of you three sheets of paper. One reads as to charge of possession of cocaine with intent to sell, we the jury find the defendant, there's a blank space, as charged. Your foreman shall write in guilty or not guilty, depending entirely on how you find the facts to be, date it, sign it and return it in open Court.
>
> Same thing would apply as to sale of cocaine to Detective Cardwell and the conspiracy to sell cocaine. The foreman will write in guilty or not guilty, date it, sign it and return it in open court.

Given these clear instructions, we conclude that defendant was not prejudiced by the alleged error.

Defendant next contends that the court erred by failing to consider uncontroverted evidence in support of findings of statutory mitigating factors. When a court imposes a sentence within the presumptive range, as here, the failure to make such findings is not error. *State v. Dammons*, 159 N.C. App. 284, 299, 583 S.E.2d 606, 615, *disc. review denied,* 357 N.C. 579, 589 S.E.2d 133 (2003)*, cert. denied*, 541 U.S. 951, 158 L. Ed. 2d 382 (2004). We overrule this assignment of error.

No error.

Judges MCCULLOUGH and STEELMAN concur.

Report per Rule 30(e).