

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1118

NORTH CAROLINA COURT OF APPEALS

Filed: 01 May 2007

STATE OF NORTH CAROLINA

v.

Lee County  
No. 05 CRS 50737

TIMOTHY ALLEN HONEA

Appeal by defendant from judgment entered 22 May 2006 by Judge Franklin F. Lanier in Lee County Superior Court. Heard in the Court of Appeals 16 April 2007.

*Attorney General Roy Cooper, by Assistant Attorney General Michael R. Epperly, for the State.*

*Haakon Thorsen for defendant-appellant.*

STEELMAN, Judge.

When defendant failed to object to comments made by the trial judge, he has failed to preserve any alleged error for appellate review under N.C. R. App. P. 10(b)(1). *State v. Harrington*, 171 N.C. App. 17, 614 S.E.2d 337 (2005).

This matter was initially tried in district court on 11 July 2005, where defendant was found guilty on all charges, given a ten day suspended sentence and placed on twelve months unsupervised probation. Defendant appealed to the superior court for a trial *de novo*.

Before defendant's case was called for trial before Judge Franklin F. Lanier on 22 May 2006, Judge Lanier addressed defendant, who appeared *pro se*, as follows:

THE COURT: Now, do you understand you're charged with driving while impaired, and that in the district court you did not receive an active sentence. You received a suspended sentence and a fine and court costs.

MR. HONEA: Yes, your Honor.

THE COURT: All right. Now, do you understand, sir, that if you are convicted of that offense in a jury trial, that you may not get that same judgment?

MR. HONEA: Yes, your Honor. I understand.

THE COURT: You understand that there is a possibility that you could receive active time?

MR. HONEA: Yes, sir.

THE COURT: All right. I just wanted to make sure you understand that.

MR. HONEA: I understand.

Defendant then informed the court that he wished to proceed *pro se* and entered pleas of not guilty. After hearing evidence presented by the State and defendant, the jury found defendant guilty of driving while impaired and responsible of speeding 55 in a 35. At sentencing the following colloquy occurred:

THE COURT: Mr. Honea, do you remember before we started this case I told you what you were facing?

MR. HONEA: I understood that, Your Honor. But I believed I wasn't guilty. I understand that.

THE COURT: Well, we're past that now.

MR. HONEA: I know.

THE COURT: And, I mean, I told you what you were subject to be facing.

MR. HONEA: I understand.

THE COURT: That we don't play up here.

MR. HONEA: I wasn't playing either.

THE COURT: Well, I'm not either. . . .

THE COURT: All right. Mr. Honea, I wish you had not done what you did. But I told you what you were facing if you did, so there was no surprise.

The trial court found one mitigating factor, no aggravating factors, and imposed a Level Five punishment of sixty days active sentence in the Department of Corrections. Defendant appeals.

In his sole argument on appeal, defendant contends the trial court punished him for exercising his right to a jury trial when it sentenced him to a sixty day active sentence. Defendant's argument is based upon the colloquy that took place prior to the trial, and the trial court's comments at sentencing. The defendant failed to object at trial, and under the provisions of N.C. R. App. P. 10(b)(1), this issue has not been preserved for appellate review. The identical situation occurred in the case of *State v. Harrington*, 171 N.C. App. 17, 614 S.E.2d 337 (2005). Under the North Carolina Supreme Court opinion of *In re Civil Penalty*, 324 N.C. 373, 379 S.E.2d 30 (1989), this panel is bound to follow the precedent set forth in *Harrington*. This assignment of error is dismissed.

Defendant failed to argue his remaining assignments of error in his brief, and they are deemed abandoned. See *State v. Elliott*, 360 N.C. 400, 427, 628 S.E.2d 735, 753 (2006); N.C. R. App. P. 28(b)(6) (2006).

APPEAL DISMISSED.

Judges McCULLOUGH and LEVINSON concur.

Report per Rule 30(e).