NO. COA06-1257

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v. Wayne County
No. 02 CRS 57952

LARRY DONNELL JONES

Appeal by defendant from judgments entered 5 October 2005 by Judge Jerry Braswell in Wayne County Superior Court. Heard in the Court of Appeals 16 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General Amy C. Kunstling, for the State.

Kevin P. Bradley for defendant appellant.

McCULLOUGH, Judge.

On 3 March 2003, Larry Donnell Jones ("defendant") was indicted for one count of first-degree rape and two counts of indecent liberties with a child. Following a jury trial, defendant was found guilty of all charges. Defendant appealed his conviction, and this Court vacated one of the indecent liberties convictions and remanded the remaining counts for resentencing. On remand, Judge Braswell sentenced defendant to 335 to 411 months' imprisonment for the first-degree rape conviction and 25 to 30 months for the indecent liberties convictions.

Defendant contends the trial court lacked jurisdiction to enter the judgment against him due to an invalid indictment. Specifically, he asserts that the indictment fails to allege facts supporting each of the elements of the crime charged as required by N.C. Gen. Stat. § 15A-924(a)(5) (2005). We disagree.

Count I of the indictment alleges that defendant "unlawfully, willfully, and feloniously did ravish and carnally know [victim], a child under the age of 13 years." This language alleges the offense of first-degree rape of a child under the age of 13 years under N.C. Gen. Stat. § 14-27.2(a)(1) (2005). However, the caption of the indictment references N.C. Gen. Stat. § 14-27.7A which sets forth the offense of statutory rape of a 13, 14 or 15 year old. Defendant contends that this inconsistency in the indictment is fatal and requires dismissal of the charge against him.

While defendant did not raise this assignment of error in his first appeal, he asserts that he is entitled to raise it now, given that it involves a jurisdictional defect. Nevertheless, assuming without deciding, that defendant may now challenge the validity of the indictment, we conclude that his challenge is without merit. N.C. Gen. Stat. § 15A-924(a)(6) expressly provides that "[e]rror in the [statutory] citation or its omission is not ground for dismissal of the charges or for reversal of a conviction." *Id.* Furthermore, this Court has previously held that an incorrect statutory reference does not constitute a fatal defect where "the body of the indictment was sufficient to properly charge a violation." *State v. Jones*, 110 N.C. App. 289, 291, 429 S.E.2d

410, 412 (1993). Here, the language in the body of the indictment uses precisely the "short-form" language for the offense of rape sanctioned by N.C. Gen. Stat. § 15-144.1(b) and approved by our Supreme Court. *State v. Lowe*, 295 N.C. 596, 604, 247 S.E.2d 878, 884 (1978). Accordingly, we hold that this assignment of error is without merit, and it is overruled.

No error.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).