

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-199

NORTH CAROLINA COURT OF APPEALS

Filed: 5 September 2006

STATE OF NORTH CAROLINA

v.

WILLIAM BRIAN ATKINS

Lee County

Nos. 04 CRS54260, 54262,
54364, 54365, 54369,
54466, 54553, 54738

Appeal by defendant from judgments entered 26 July 2005 by Judge Franklin F. Lanier in Lee County Superior Court. Heard in the Court of Appeals 21 August 2006.

Attorney General Roy Cooper, by Assistant Attorney General Vanessa N. Totten, for the State.

Duncan B. McCormick for defendant-appellant.

CALABRIA, Judge.

William Brian Atkins ("defendant") appeals from a judgment entered pursuant to a plea agreement in which he pled guilty to three counts larceny of a motor vehicle, financial card theft, attempted felonious breaking and entering, possession of a stolen vehicle, breaking and entering and larceny, and felonious breaking and entering. We remand for resentencing.

On 25 January 2005, defendant pled guilty pursuant to a plea agreement to multiple class H and I felonies, including a single

count of financial card theft. The trial continued sentencing so that defendant could complete the Teen Challenge program in Greensboro, North Carolina. Defendant failed to complete the program. On 26 July 2005, the trial court entered judgment against defendant and imposed eight consecutive terms of imprisonment. Counsel for defendant stipulated defendant had 17 prior record points and a corresponding prior record level V for felony sentencing purposes. On the single count of financial card theft, the trial court sentenced defendant to a term of fifteen to eighteen months imprisonment in the North Carolina Department of Correction as a Class H, Level V felon. Defendant appeals.

Defendant argues the trial court erred by sentencing him as a Class H felon. Defendant contends that financial card theft is a Class I felony. We agree and note the State concedes error.

N.C. Gen. Stat. § 14-113.9(b) (2005) states "(c)redit card theft is punishable as provided by [N.C. Gen. Stat. §] 14-113.17(b)." N.C. Gen. Stat. § 14-113.17 (2005) states "[a] crime punishable under this Article is punishable as a Class I felony." In the instant case however, though the judgment correctly described financial card theft as a Class I felony, the trial court sentenced defendant as a Class H felon. Accordingly, we remand for resentencing on the single count of financial card theft. We note defendant waived review of his remaining assignments of error by not presenting an argument. See N.C. R. App. P. 28(b)(6) (2005).

Remanded for resentencing.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).