

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-270

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

STATE OF NORTH CAROLINA

v.

Harnett County  
Nos. 99 CRS 08258  
99 CRS 16366  
00 CRS 00016  
00 CRS 00017

WILLIAM OTIS MOORE

Appeal by defendant from judgments entered 10 November 2005 by Judge Franklin F. Lanier in Harnett County Superior Court. Heard in the Court of Appeals 2 October 2006.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Lisa H. Graham, for the State.*

*Paul T. Cleavenger, for defendant-appellant.*

JACKSON, Judge.

William Otis Moore ("defendant") appeals from a judgment entered upon his guilty plea to breaking and entering, larceny, possession of stolen goods, and habitual felon status.

On 17 May 2001, the trial court sentenced defendant to imprisonment for a minimum term of 107 months and a maximum term of 138 months in accordance with a plea agreement, based on a sentencing level of Level IV. Due to an error in the calculation of prior record level points, causing defendant's prior record level to change from level IV to level III, on 10 November 2005,

the trial court re-sentenced defendant to a term within the presumptive range of a minimum of 100 months and a maximum of 129 months. On 16 November 2005, defendant filed notice of appeal.

"In North Carolina, a defendant's right to appeal in a criminal proceeding is purely a creation of state statute. Furthermore, there is no federal constitutional right obligating courts to hear appeals in criminal proceedings.'" *State v. Jamerson*, 161 N.C. App. 527, 528, 588 S.E.2d 545, 546 (2003) (quoting *State v. Pimental*, 153 N.C. App. 69, 72, 568 S.E.2d 867, 869, *disc. rev. denied*, 356 N.C. 442, 573 S.E.2d 163 (2002)). A defendant who pleads guilty has a right to appeal only the following:

1. Whether the sentence "is supported by the evidence." This issue is appealable only if his minimum term of imprisonment does not fall within the presumptive range. N.C. Gen. Stat. § 15A-1444(a1) (2001);
2. Whether the sentence "[r]esults from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21." N.C. Gen. Stat. § 15A-1444(a2) (1) (2001);
3. Whether the sentence "[c]ontains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level." N.C. Gen. Stat. § 15A-1444(a2) (2) (2001);
4. Whether the sentence "[c]ontains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level." N.C. Gen. Stat. § 15A-1444(a2) (3) (2001);

5. Whether the trial court improperly denied defendant's motion to suppress. N.C. Gen. Stat. §§ 15A-979(b) (2001), 15A-1444(e) (2001);
6. Whether the trial court improperly denied defendant's motion to withdraw his guilty plea. N.C. Gen. Stat. § 15A-1444(e).

*Id.* at 528-29, 588 S.E.2d at 546-47 (alterations in original).

On appeal, defendant contends that: (1) the plea agreement should have been set aside on the ground of mutual mistake of fact; and (2) the trial court erred by sentencing him to a term not contemplated by the plea agreement. We need not address the merits of these contentions as neither of defendant's arguments are within his limited right of appeal. Accordingly, we are without authority to review defendant's appeal, and we must dismiss defendant's appeal.

Dismissed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).