

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-406

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

STATE OF NORTH CAROLINA

v.

Halifax County
Nos. 04 CRS 53105-06

OLLIE BUFFALOE,
Defendant.

Appeal by defendant from judgment entered 12 December 2005 by Judge Alma L. Hinton in Superior Court, Halifax County. Heard in the Court of Appeals 19 February 2007.

Attorney General Roy Cooper, by Assistant Attorney General Stormie D. Forte, for the State.

Russell J. Hollers III for defendant-appellant.

WYNN, Judge.

"In North Carolina, a defendant's right to appeal in a criminal proceeding is purely a creation of state statute." *State v. Jamerson*, 161 N.C. App. 527, 527, 588 S.E.2d 545, 546 (2003). Here, Defendant contends the trial court erred by accepting his guilty plea without conducting a hearing on his capacity to proceed. Because this is not an issue for which Defendant has a statutory right to appeal when he has pled guilty, we must dismiss this appeal.

On 12 December 2005, Defendant Ollie Buffaloe pled no contest to sale of cocaine, possession with intent to sell or deliver

cocaine, and delivery of cocaine. At the hearing, Defendant informed the trial court that he had "a very bad mind condition" and that he had been "misled" by his attorney. Defendant asked that he receive a plea deal that had been offered to him "before my mind got bad." The trial court questioned Defendant's attorney regarding Defendant's mental condition. Counsel for Defendant conceded that Defendant "does have certainly some mental issues" and that it had been "difficult" dealing with Defendant as a result. Counsel further stated that he was unsure if Defendant understood that any plea offer did not come from him, but from the State. However, he did not send Defendant for a mental evaluation because he felt that Defendant "knows right from wrong." Additionally, counsel stated that he was "satisfied" that Defendant understood all the terms and conditions of the plea agreement. The trial court then informed Defendant of every right listed in N.C. Gen. Stat. § 15A-1022 and the maximum possible sentence. Before accepting the plea, the court also questioned Defendant regarding his understanding of the charges and his satisfaction with his counsel. The convictions were consolidated for judgment, and Defendant was sentenced from the mitigated range to one term of twelve to fifteen months' imprisonment. Defendant appeals; in the alternative, Defendant petitions this Court to issue its writ of certiorari.

Defendant argues that the trial court erred by failing to *sua sponte* conduct a hearing on his capacity to proceed before accepting his plea. Defendant contends that his behavior and

demeanor demonstrated his complete lack of understanding of the proceedings. However, we decline to review Defendant's assignment of error.

"In North Carolina, a defendant's right to appeal in a criminal proceeding is purely a creation of state statute." *Jamerson*, 161 N.C. App. at 527, 588 S.E.2d at 546. Here, Defendant is not entitled to a review of his conviction since he pled no contest. N.C. Gen. Stat. § 15A-1444(a) (2005). Moreover, Defendant is also not entitled to a review of his sentence since he was sentenced in the mitigated range. N.C. Gen. Stat. § 15A-1444(a)(1) (2005). Thus, Defendant's right to appellate review is limited to a review of whether the sentence imposed resulted from an incorrect calculation of Defendant's prior record level. N.C. Gen. Stat. § 15A-1444(a)(2). However, Defendant does not seek review of his prior record level calculation. Instead, Defendant argues that the trial court erred by accepting his guilty plea without conducting a hearing on his capacity to proceed. This is not an issue for which Defendant has an appeal of right.

Alternatively, Defendant requests that the Court issue a writ of certiorari to review the judgment against him. However, this Court has stated that:

Where a defendant has no appeal of right, our statute provides for defendant to seek appellate review by a petition for writ of certiorari. However, our appellate rules limit our ability to grant petitions for writ of certiorari to cases where: (1) defendant lost his right to appeal by failing to take timely action; (2) the appeal is interlocutory; or (3) the trial court denied defendant's motion for appropriate relief. In

considering appellate Rule 21 and N.C. Gen. Stat. § 15A-1444, this Court reasoned that since the appellate rules prevail over conflicting statutes, we are without authority to issue a writ of certiorari except as provided in Rule 21.

State v. Jones, 161 N.C. App. 60, 63, 588 S.E.2d 5, 8 (2003), *rev'd in part, remanded in part*, 358 N.C. 473, 598 S.E.2d 125 (2004); see also N.C. Gen. Stat. § 15A-1444(e) (2005). Thus, we are without authority to review Defendant's assignment of error, either by right or by certiorari.

Nevertheless, we note that Defendant may seek post-trial relief through a motion for appropriate relief with the trial court. N.C. Gen. Stat. §§ 15A-1411 thru 1422 (2005).

Appeal dismissed.

Judges ELMORE and GEER concur.

Report per Rule 30(e).