

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-424

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

STATE OF NORTH CAROLINA

v.

Richmond County
Nos. 01 CRS 4184
01 CRS 51293-94

PRINCE MCBRIDE

Appeal by defendant from judgment entered 1 December 2005 by Judge Michael E. Beale in Richmond County Superior Court. Heard in the Court of Appeals 11 September 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General E. Burke Haywood, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Keischa M. Lovelace, for defendant-appellant.

CALABRIA, Judge.

Prince McBride ("defendant") appeals from sentences imposed based on convictions of possession of drug paraphernalia, possession of cocaine, and obtaining habitual felon status. We dismiss.

The underlying facts of this case are set forth in this Court's opinion in *State v. McBride*, ___ N.C. App. ___, 618 S.E.2d 754 (2005). Based on the underlying facts, on 21 March 2002, a jury found defendant guilty of possession of drug paraphernalia, possession of cocaine, and attaining the status of a habitual felon. The trial court consolidated the offenses for sentencing

and initially sentenced defendant to an aggravated sentence of one hundred eighty (180) to two hundred twenty-five (225) months in the North Carolina Department of Correction. Defendant appealed to this Court. On appeal, we affirmed defendant's conviction but held under *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), the trial court could not sentence defendant in the aggravated range in the absence of a jury finding beyond a reasonable doubt that an aggravating factor existed. *State v. McBride*, __ N.C. App. __, __, 618 S.E.2d 754, 761 (2005). Thus, we remanded the case to the trial court for resentencing.

Judge Michael E. Beale held a resentencing hearing on 1 December 2005 in Richmond County Superior Court. Defendant had been in prison for over three years at the time of the hearing. While in prison, he learned how to weld, received treatment for his drug and alcohol addictions, and visited a psychologist. Defense counsel asked the trial court to find two mitigating factors based upon defendant's successful treatment plan and minor role in the commission of the crime. The trial court, however, found no mitigating or aggravating factors and sentenced defendant within the presumptive range to one hundred twenty (120) to one hundred fifty-three (153) months in the North Carolina Department of Correction. Defendant appeals.

In his sole argument on appeal, defendant contends the trial court erred in failing to find mitigating factors. North Carolina General Statutes § 15A-1444(a1) provides:

A defendant who has been found guilty . . . is entitled to appeal as a matter of right the

issue of whether his or her sentence is supported by evidence introduced at the trial and sentencing hearing *only if the minimum sentence of imprisonment does not fall within the presumptive range* for the defendant's prior record or conviction level and class of offense. Otherwise, the defendant is not entitled to appeal this issue as a matter of right but may petition the appellate division for review of this issue by writ of certiorari.

(Emphasis added). Defendant's minimum sentence falls within the presumptive range; thus, he is not entitled to appeal this issue as a matter of right. Since defendant has failed to petition this Court for certiorari, *see id.*, he has failed to properly present any argument for our review. Accordingly, we dismiss this appeal.

Dismissed.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).