

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-718

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

STATE OF NORTH CAROLINA

v.

New Hanover County
No. 05CRS051253

SAMUEL RAY OXENDINE, JR.

Appeal by defendant from judgment entered 2 February 2006 by Judge Ernest B. Fullwood in New Hanover County Superior Court. Heard in the Court of Appeals 12 March 2007.

Attorney General Roy A. Cooper, III, by Assistant Attorney General David D. Lennon, for the State.

Terry W. Alford for defendant-appellant.

HUNTER, Judge.

Samuel Ray Oxendine, Jr. ("defendant") appeals from a judgment imposing an active sentence of imprisonment for his conviction by a jury of robbery with a dangerous weapon. In addition to filing its appellee's brief in this appeal, the State has filed a motion to dismiss the appeal to which defendant has not responded.

In its motion to dismiss, the State asserts that this Court should dismiss defendant's appeal due to his failure to adequately present his assignments of error in compliance with Rule 10 of the North Carolina Rules of Appellate Procedure. This rule provides in

pertinent part that “[e]ach assignment of error . . . shall state plainly, concisely and without argumentation the legal basis upon which error is assigned.” N.C.R. App. P. 10(c)(1). Rule 10 further provides, “the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10.” N.C.R. App. P. 10(a). “[B]road, vague, and unspecific” assignments of error are insufficient to satisfy Rule 10. *In re Appeal of Lane Co.*, 153 N.C. App. 119, 123, 571 S.E.2d 224, 226-27 (2002).

Defendant’s assignments of error state:

1. The Trial Court committed prejudicial and reversible error in allowing the State’s motion to amend the indictment of robbery with a dangerous weapon.

2. The Trial Court committed prejudicial and reversible error in denying defendant’s motion to dismiss the charges at the end of the State’s evidence and at the end of all the evidence.

These assignments of error are only general statements that the trial court’s rulings were erroneous and fail to specify any legal basis for the alleged errors. *See Walker v. Walker*, 174 N.C. App. 778, 783, 624 S.E.2d 639, 642 (2005) (holding that assignments of error are inadequate where they “essentially amount to no more than an allegation that ‘the court erred because its ruling was erroneous’”), *disc. review denied*, 360 N.C. 491, 632 S.E.2d 774 (2006).

The references to the record also fail to provide any further specification of the basis for defendant’s contentions. In fact, defendant’s citation to the trial transcript for assignment of

error #1 reveals only that trial counsel made a general objection to the State's amendment of the indictment. While trial counsel does inform the trial court that a brief on this issue was made part of the court file for purposes of appeal, defendant has failed to include this brief in the record on appeal.

We hold that neither of the assignments of error comply with Rule 10 of the North Carolina Rules of Appellate Procedure. Consequently, the issues presented in the briefs were not properly preserved for appeal thereby subjecting this appeal to dismissal. See *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (holding that violation of the appellate rules subjects an appeal to dismissal), *rehearing denied*, 359 N.C. 643, 617 S.E.2d 662 (2005); *Hubert Jet Air, LLC v. Triad Aviation, Inc.*, ___ N.C. App. ___, ___, 628 S.E.2d 806, 808 (2006). As defendant has failed to properly preserve the issues presented for appellate review, the State's motion to dismiss is allowed. Even though we dismiss this case, we have reviewed defendant's assignments of error and find them to be without merit.

Dismissed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).