

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-765

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

STATE OF NORTH CAROLINA

v.

Pitt County  
No. 06 CRS 848

HEATHER DAWN SANDERS

Appeal by defendant from judgment entered 24 January 2006 by Judge William C. Griffin, Jr., in Pitt County Superior Court. Heard in the Court of Appeals 26 March 2007.

*Attorney General Roy Cooper, by Assistant Attorney General Scott A. Conklin, for the State.*

*William D. Spence for defendant appellant.*

McCULLOUGH, Judge.

FACTS

Defendant Heather Dawn Sanders (defendant) was charged with assault with a deadly weapon inflicting serious injury and driving while impaired. Defendant and the State entered into a plea agreement in which defendant agreed to plead guilty to misdemeanor reckless driving and the State agreed to dismiss the charges of felony assault and driving while impaired. On 24 January 2006, defendant appeared with counsel before Judge William C. Griffin, Jr., who reviewed the terms of the plea bargain with defendant. The State then summarized the factual basis for the charges as

follows: Defendant was operating a motor vehicle on a public street in Pitt County and "crossed left of center and [defendant] hit a vehicle that was being operated by Dustin Polk." Defendant lost a leg as a result of the collision. Mr. Polk sustained broken bones in his face and damage to his eye, which required several reconstructive surgeries. The restitution worksheet submitted to the court was for the amount of \$70,000.00 based upon Mr. Polk's medical summary and testimony from Mr. Polk's father.

Judge Griffin sentenced defendant to an active term of 45 days in the Pitt County Jail, suspended the sentence and placed defendant on supervised probation for 36 months. As a monetary term of her probation, defendant was ordered to pay restitution in the amount of \$70,000.00. Defendant appeals.

#### ANALYSIS

In her sole assignment of error, defendant argues the trial court erred in conditioning her probation on the payment of \$70,000.00 restitution by not considering her ability to pay the restitution under N.C. Gen. Stat. §§ 15A-1340.36(a) and -1343(d). The dispositive issue is whether this Court has the authority to hear defendant's appeal given that she entered a guilty plea.

"In North Carolina, a defendant's right to appeal in a criminal proceeding is purely a creation of state statute." *State v. Pimental*, 153 N.C. App. 69, 72, 568 S.E.2d 867, 869, *disc. review denied*, 356 N.C. 442, 573 S.E.2d 163 (2002). Pursuant to N.C. Gen. Stat. § 15A-1444, a defendant who pleads guilty may appeal only the following issues:

(1) whether the sentence is supported by the evidence (if the minimum term of imprisonment does not fall within the presumptive range); (2) whether the sentence results from an incorrect finding of the defendant's prior record level under N.C. Gen. Stat. § 15A-1340.14 or the defendant's prior conviction level under N.C. Gen. Stat. § 15A-1340.21; (3) whether the sentence constitutes a type of sentence not authorized by N.C. Gen. Stat. § 15A-1340.17 or § 15A-1340.23 for the defendant's class of offense and prior record or conviction level; (4) whether the trial court improperly denied the defendant's motion to suppress; and (5) whether the trial court improperly denied the defendant's motion to withdraw his guilty plea.

*State v. Carter*, 167 N.C. App. 582, 584, 605 S.E.2d 676, 678 (2004) (citing *State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003)). Defendant's appeal does not fit into any of these five categories, and therefore, does not have an appeal of right to this Court.

In the alternative to her appeal, defendant filed a petition for writ of certiorari on 2 August 2006 asking this Court to review her assignment of error. Although N.C. Gen. Stat. § 15A-1444(e) provides for a defendant to seek appellate review by a petition for writ of certiorari where a defendant does not have an appeal of right, North Carolina Rules of Appellate Procedure limits our ability to do so. Rule 21(a)(1) allows this Court to grant a petition for writ of certiorari in the following situations: "(1) defendant lost his right to appeal by failing to take timely action; (2) the appeal is interlocutory; or (3) to review a trial court's denial of a motion for appropriate relief." *State v.*

*Jamerson*, 161 N.C. App. 527, 529, 588 S.E.2d 545, 547 (2003) (citing N.C. R. App. P. 21(a)(1)). Because defendant's case does not contain any of these circumstances, we do not have authority to issue a writ of certiorari. Without an appeal of right or the authority to grant certiorari, this Court may not consider defendant's argument. Defendant may, however, file a motion for appropriate relief with the superior court pursuant to N.C. Gen. Stat. § 15A-1413 (2005). See *Jamerson*, 161 N.C. App. at 530, 588 S.E.2d at 547. Accordingly, defendant's appeal is dismissed and defendant's petition for writ of certiorari is denied.

Dismissed. Petition for writ of certiorari denied.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).