

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-919

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

STATE OF NORTH CAROLINA

v.

Scotland County
Nos. 03CRS001606-11

RONALD JEFFERY

Appeal by defendant from judgments entered 21 February 2005 by Judge Robert F. Floyd, Jr. in Scotland County Superior Court. Heard in the Court of Appeals 12 March 2007.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Thomas H. Moore, for the State.

Brannon Strickland, PLLC, by Anthony M. Brannon, for defendant-appellant.

HUNTER, Judge.

Ronald Jeffery ("defendant") appeals from his guilty plea contending that he received ineffective assistance of counsel.

On 16 April 2003, defendant pled guilty to six counts of taking indecent liberties with a child, Class F felonies. The plea was entered pursuant to *North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed. 2d 162 (1970). The trial court sentenced defendant to six consecutive sentences of twenty to twenty-four months in prison. In exchange for his plea, the State dismissed rape and sex offense charges against defendant. Defendant appealed the conviction, and,

on 21 December 2004, this Court remanded defendant's case for re-sentencing due to the State's failure to introduce sufficient evidence of defendant's prior record level. *State v. Jeffery*, 167 N.C. App. 575, 582, 605 S.E.2d 672, 676 (2004).

On 21 February 2006, the trial court conducted a new sentencing hearing. The State and defendant stipulated that the defendant had six prior conviction points and a prior record level of three. The trial court again imposed six consecutive sentences of twenty to twenty-four months, which fall within the statutory presumptive range. Defendant made no objections during the hearing.

On 2 March 2005, defendant filed a *pro se* notice of appeal and appellate counsel was thereafter appointed by the trial court. In his sole assignment of error, defendant asserts that he was deprived of effective assistance of counsel because his trial counsel stipulated to the State's calculation of his prior record level without taking appropriate steps to confirm the information used by the State in making the calculation.

A defendant's right to appeal in a criminal proceeding is derived from 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). Because defendant entered an *Alford* plea, the issues he may appeal are limited by N.C. Gen. Stat. § 15A-1444 to the following: (1) whether a sentence with a minimum duration that falls outside of the statutory presumptive range is supported by the evidence; (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 is of a type or duration 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. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003).

Defendant's assertion that he received ineffective assistance of counsel falls outside the scope of his statutory right to a direct appeal, and, consequently, we dismiss defendant's appeal. However, we do so without prejudice to defendant's right to assert his claim in the superior court in the form of a motion for appropriate relief pursuant to N.C. Gen. Stat. § 15A-1420.

Dismissed without prejudice to defendant's right to assert his claim in the superior court in the form of a motion for appropriate relief.

Dismissed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).