

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-988

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

STATE OF NORTH CAROLINA

v.

Wake County
No. 05 CRS 27812

ROBERT E. LEE

Appeal by defendant from judgments entered 16 June 2005 by Judge James C. Spencer, Jr. in Wake County Superior Court. Heard in the Court of Appeals 22 January 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General Victoria L. Voight, for the State.

Michael J. Reece for defendant-appellant.

MARTIN, Chief Judge.

On 16 May 2005, defendant Robert E. Lee was indicted on charges of felonious speeding to elude arrest, possession of stolen property, two counts of assault with a deadly weapon on a law enforcement officer, and one count of assault on a law enforcement officer. On 16 June 2005, defendant Robert E. Lee agreed to plead guilty by plea agreement to felonious speeding to elude arrest, possession of stolen property, assault with a deadly weapon on a law enforcement officer, and assault on a law enforcement officer. Pursuant to the plea agreement, one charge of misdemeanor assault with a deadly weapon on a law enforcement officer was reduced to

misdemeanor assault on a law enforcement officer, and the State agreed to dismiss a charge of felony larceny. Sentencing was left in the discretion of the trial court.

On the same date, defendant appeared in court for sentencing. The trial court accepted the plea arrangement and began entering judgment. The trial court announced there would be three judgments. First, the trial court consolidated the felonies and sentenced defendant to a term of ten to twelve months imprisonment. The trial court then began announcing the second judgment, when the defendant interrupted as follows:

THE DEFENDANT: Hold, hold, hold, hold, hold.
No. No. No. No. No, no, no. I better take
this trial. No. No. No, huh-uh, no. I was to
take that plea back. No. No.

The trial court continued entering the final two judgments without addressing defendant's statements. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by refusing to allow him to withdraw his guilty plea.

Assuming *arguendo* that defendant's comments should be considered a motion to withdraw his guilty plea, and thus further assuming *arguendo* that the issue has been preserved for appeal, we find no error. Our Supreme Court has stated that:

A fundamental distinction exists between situations in which a defendant pleads guilty but changes his mind and seeks to withdraw the plea before sentencing and in which a defendant only attempts to withdraw the guilty plea after he hears and is dissatisfied with the sentence. This distinction creates the need for differing legal standards for adjudicating such motions to withdraw guilty pleas, a distinction recognized by most courts.

In a case where the defendant seeks to withdraw his guilty plea before sentence, he is generally accorded that right if he can show any fair and just reason.

On the other hand, where the guilty plea is sought to be withdrawn by the defendant after sentence, it should be granted only to avoid manifest injustice.

State v. Handy, 326 N.C. 532, 536, 391 S.E.2d 159, 161 (1990) (citations omitted).

In the case *sub judice*, prior to the trial court's acceptance of defendant's plea, defendant indicated that he understood that he would be sentenced in the judge's discretion. He further indicated that he understood the total maximum possible sentence in his case was 60 months plus an additional 300 days. In its discretion, the trial court consolidated the two felonies and sentenced defendant to a term of ten to twelve months imprisonment. When the trial court proceeded to enter the remaining two judgments, defendant made his purported motion to withdraw his guilty plea. It is clear that defendant's motion resulted from his dissatisfaction with his sentences. Thus, his motion to withdraw his guilty plea could only be granted to avoid manifest injustice. *Id.* Defendant cites no injustice that he would suffer should he not be allowed to withdraw his motion, and none is apparent on the record. Accordingly, the assignment of error is overruled.

No error.

Judges McGEE and HUNTER concur.

Report per Rule 30(e).