

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-1228

NORTH CAROLINA COURT OF APPEALS

Filed: 20 May 2008

STATE OF NORTH CAROLINA

v.

RENALDO D. METCALF

Davidson County
Nos. 99CRS10290,
00CRS2113, 11490,
53700, 01CRS55733,
55736, 55737

Appeal by defendant from judgment entered 15 August 2001 by Judge W. Erwin Spainhour in Davidson County Superior Court. Heard in the Court of Appeals 5 May 2008.

Attorney General Roy Cooper, by Assistant Attorney General Catherine F. Jordan, for the State.

Richard E. Jester for defendant appellant.

McCULLOUGH, Judge.

Between the dates of 29 November 1999 and 13 August 2001, a grand jury indicted defendant, Renaldo D. Metcalf, for the following offenses: possession of a firearm by a felon; possession of marijuana with the intent to sell or distribute; possession of cocaine with the intent to sell or distribute; felony speeding to elude arrest; felony escape from a local jail; assault with a deadly weapon on a government official; and first-degree kidnapping. The charges of felony escape, assault of a government official, and kidnapping were committed on 25 July 2001, when

defendant and another inmate escaped from the Davidson County jail by overcoming an officer with a broken broom handle, forcing the officer into an open area, and handcuffing the officer to a fence before fleeing.

On 15 August 2001, defendant pled guilty to all pending charges pursuant to a plea agreement. The plea agreement provided that each of the offenses would be consolidated under the first-degree kidnapping charge and that defendant would receive a sentence in the aggravated range of a minimum of 113 months to a maximum of 145 months. This aggravated sentence was based on defendant's stipulation to the aggravating factor that the kidnapping offense was committed for the purpose of effecting an escape from custody.

Though defendant did not file an appeal from his conviction, on 7 February 2007, this Court allowed defendant's petition for writ of certiorari for the purpose of reviewing any sentencing issues within defendant's appeal of right pursuant to N.C. Gen. Stat. § 15A-1444(a1) (2007). In the appeal now before us, defendant contends that the aggravating factor to which he stipulated was improperly used to support the aggravated sentence imposed under the plea agreement. Specifically, defendant contends that the aggravating factor of having committed the offense of kidnapping to effect an escape could not be used when defendant was also entering a plea to the crime of felony escape.

As an initial matter, defendant has failed to cite any authority that would support his position, as required by N.C. R.

App. P. 28(b)(6) (2008) ("The body of the argument . . . shall contain citations of the authorities upon which the appellant relies."). We conclude that defendant has waived his right to bring this challenge on appeal. A defendant waives his right to appellate review of the trial court's consideration of an aggravating factor where he fails to object at the sentencing hearing, fails to assert plain error, or fails to direct this Court to any rule or law that would preserve his assignment of error without an objection. *State v. Degree*, 110 N.C. App. 638, 643, 430 S.E.2d 491, 494 (1993); see also N.C. R. App. P. 10(b)(1) (2008) (requiring objection to preserve error for appellate review).

In the case before us, not only did defendant fail to object to the use of the challenged aggravating factor, he stipulated to its application. Defendant has not cited any law that supports our review of his assignment of error without appellant having taken proper steps to preserve it. Consequently, we conclude that this issue is not properly before the Court. See *State v. Oliver*, 334 N.C. 513, 531, 434 S.E.2d 202, 211 (1993) (holding that by stipulating to the validity of a prior conviction, defendant waived his right to appellate review of the trial court's use of such conviction as an aggravating factor); *State v. Little*, 163 N.C. App. 235, 243, 593 S.E.2d 113, 118 (2004) (holding that defendant waived his right to appellate review of the improper use of aggravating factors at sentencing because he did not object to the alleged error at the sentencing hearing), *disc. review denied*, 358

N.C. 736, 602 S.E.2d 366 (2004), *appeal dismissed*, 359 N.C. 855, 619 S.E.2d 857 (2005).

With respect to the remaining issue discussed by defendant in his appellate brief, defendant has "acknowledge[d] that relief for this assignment [of error] is not available" on the basis of a recent opinion from our Supreme Court. Consequently, we deem this argument abandoned.

Affirmed.

Judges HUNTER and STEELMAN concur.

Report per Rule 30(e).