

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-393

NORTH CAROLINA COURT OF APPEALS

Filed: 4 September 2007

STATE OF NORTH CAROLINA

v.

Wilson County  
No. 04 CRS 53088

CHRISTIAN SAMUEL FELIX

# Court of Appeals

Appeal by defendant from judgment entered 26 September 2006 by Judge Frank R. Brown in Superior Court, Wilson County. Heard in the Court of Appeals 27 August 2007.

*Attorney General Roy Cooper, by Assistant Attorney General LaToya B. Powell, for the State*

# Slip Opinion

*Appellate Defender Staples Hughes, by Assistant Appellate Defender Daniel Shatz, for defendant-appellant.*

WYNN, Judge.

North Carolina law requires that “no person may be put to answer a felony charge in the Superior Court except by indictment[.]”<sup>1</sup> Here, Defendant Christian Samuel Felix was indicted for murder and subsequently entered a guilty plea to the offense of accessory after the fact to voluntary manslaughter. Because we conclude, and the State concedes, that the indictment for murder was insufficient to meet the statutory requirements for

---

<sup>1</sup> N.C. Gen. Stat. § 15A-923 (2005).

a judgment on Defendant's guilty plea, we arrest judgment and vacate his guilty plea.

On 12 September 2005, Defendant was indicted for murder for events that took place on or about 25 April 2003. In connection with those charges, Defendant entered a guilty plea to the offense of accessory after the fact to voluntary manslaughter on 26 September 2006. The trial court sentenced him to an active prison term of twenty-one to twenty-six months.

Defendant now appeals, arguing that the trial court erred by (I) imposing a judgment convicting Defendant of accessory after the fact to voluntary manslaughter in the absence of an indictment charging him with that offense, and (II) denying Defendant's motion to strike his guilty plea after the trial court imposed a sentence different than that contained in the plea agreement. Because we find the first issue to be dispositive of Defendant's appeal, we decline to address his second argued assignment of error. We also note that the State agrees with Defendant's first assignment of error, conceding that the indictment was insufficient.

Under North Carolina law, "no person may be put to answer a felony charge in the Superior Court except by indictment . . . , or, when represented by counsel, by waiver of indictment" accompanied by an information filed pursuant to North Carolina General Statute § 15A-923 (2005). *State v. Brown*, 21 N.C. App. 87, 88, 202 S.E.2d 798, 799 (1974); see also N.C. Const. art. I, § 22; N.C. Gen. Stat. § 15A-642 (2005). However, an indictment will also support a conviction for a lesser-included offense of the charged crime, as

well as for an attempt to commit the charged crime or a lesser-included offense thereof. N.C. Gen. Stat. § 15-170 (2005).

Here, Defendant was indicted for murder but pled guilty to being an accessory after the fact to voluntary manslaughter. Although manslaughter is a lesser-included offense of murder, *State v. Thomas*, 325 N.C. 583, 591, 386 S.E.2d 555, 559 (1989), "the offense of accessory after the fact is not a lesser included offense of the principal crime." *Brown*, 21 N.C. App. at 88, 202 S.E.2d at 799 (1974) (citing *State v. McIntosh*, 260 N.C. 749, 133 S.E.2d 652 (1963), cert. denied, 377 U.S. 939, 12 L. Ed. 2d 302 (1964)); see also *State v. Jewell*, 104 N.C. App. 350, 353-54, 409 S.E.2d 757, 759-60 (1991) ("Being the principal to a crime and being an accessory after the fact to that crime are two separate and distinct offenses."), aff'd per curiam, 331 N.C. 379, 416 S.E.2d 3 (1992).

Defendant did not waive indictment in the instant case, nor did the State prepare an information charging him as an accessory after the fact to murder. Without a valid pleading, the trial court had no jurisdiction to accept Defendant's guilty plea. Accordingly, we vacate Defendant's guilty plea and arrest the judgment. See *Brown*, 21 N.C. App. at 89, 202 S.E.2d at 799 ("Because the trial court did not have jurisdiction, the judgment must be arrested.").

Judgment arrested.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).