

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-404

NORTH CAROLINA COURT OF APPEALS

Filed: 6 November 2007

STATE OF NORTH CAROLINA

v.

Caldwell County
Nos. 02 CRS 9566-75

KRISTEN M. ROSS

Court of Appeals

Appeal by defendant from judgments entered 7 July 2006 by Judge Beverly T. Beal in Caldwell County Superior Court. Heard in the Court of Appeals 17 September 2007.

Attorney General Lucy Cooper by Assistant Attorney General Amy C. Kunstling, for the State.

Slip Opinion

Russell J. Hollers III, for defendant-appellant.

ELMORE, Judge.

On 15 October 2002, Kristen M. Ross (defendant) pled guilty to twenty-one counts of obtaining property by false pretenses. The trial court found as factors in aggravation that defendant took advantage of a position of trust or confidence to commit the offense, N.C. Gen. Stat. § 15A-1340.16(d)(15) (2005), and that the victim was very old, N.C. Gen. Stat. § 15A-1340.16(d)(11) (2005). The trial court then sentenced defendant within the aggravated range to ten consecutive terms of ten to twelve months in prison.

Defendant's sentences were suspended and she was placed on supervised probation for sixty months. Defendant did not appeal.

On 30 December 2002, probation violation reports were filed alleging that defendant had violated several terms of her probation. Defendant absconded and the probation violation hearing was not held until 8 September 2005. Defendant admitted to violating her probation. The trial court found that defendant willfully violated the terms of her probation and revoked her probation. However, the trial court expressed concern that defendant's original sentence might be in violation of *Blakely v. Washington*, 542 U.S. 296, 159 L. Ed. 2d 403, *reh'g denied*, 542 U.S. 961, 159 L. Ed. 2d 851 (2004). The trial court continued the matter. On 7 July 2006, the trial court considered defendant's arguments pursuant to *Blakely* as a motion for appropriate relief. The trial court denied the motion and activated defendant's suspended sentences.

On appeal, the sole issue before the Court is whether defendant can attack the aggravated sentences imposed and suspended in the 15 October 2002 trial court judgments based on *Blakely* by appealing from the 7 July 2007 trial court judgments revoking her probation and activating her sentences. Our Supreme Court recently held in a similar case that the defendant's appeal constituted an "impermissible collateral attack on the original judgments," and that *Blakely* was inapplicable. *State v. Holmes*, 361 N.C. 410, 413, 646 S.E.2d 353, 355 (2007). *Holmes* is indistinguishable from the instant case. Accordingly, for the reasons stated in *Holmes*, we affirm.

Affirmed.

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Judges WYNN and BRYANT concur.

Report per Rule 30(e).