

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-1292

NORTH CAROLINA COURT OF APPEALS

Filed: 7 July 2009

STATE OF NORTH CAROLINA

v.

Edgecombe County
Nos. 07 CRS 51898, 51903

ANDRE DEMITRIUS VINES

Appeal by defendant from judgments entered 1 July 2008 by Judge Frank R. Brown in Edgecombe County Superior Court. Heard in the Court of Appeals 8 April 2009.

Attorney General Roy Cooper, by Assistant Attorney General Derrick C. Mertz, for the State.

Lisa Skinner Lefler for defendant-appellant.

McGEE, Judge.

Defendant was indicted on 9 July 2007 for first-degree murder, first-degree rape, and first-degree arson. Pursuant to a plea agreement, Defendant entered a guilty plea to second-degree murder and first-degree arson on 1 July 2008, and the State agreed to dismiss the first-degree murder and first-degree rape charges. As part of the agreement, Defendant stipulated that he had a prior record level of III for sentencing purposes, that the aggravating factors outweighed the mitigating factors, and that Defendant would be sentenced in the aggravated range. Finally, the parties agreed to a sentence of 276 to 341 months active imprisonment for the

second-degree murder charge and to a consecutive sentence of 129 to 164 months active imprisonment for the first-degree arson charge. The trial court accepted Defendant's plea, and it made written findings of fact as to the aggravating factors and entered two judgments imposing the sentences specified in the plea agreement. Defendant appeals from these judgments.

Pursuant to Rule 4 of the North Carolina Rules of Appellate Procedure, to appeal a criminal conviction, a defendant "may take appeal by (1) giving oral notice of appeal at trial, or (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties *within 14 days after entry of the judgment[.]*" N.C.R. App. P. 4(a) (emphasis added). "[W]hen a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal." *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320, *appeal dismissed*, 360 N.C. 73, 622 S.E.2d 626 (2005) (citing *State v. McMillian*, 101 N.C. App. 425, 427, 399 S.E.2d 410, 411 (1991)). "[C]ompliance with the requirements of Rule 4(a)(2) is jurisdictional and cannot simply be ignored by this Court." *Id.* (citing *O'Neill v. Bank*, 40 N.C. App. 227, 230, 252 S.E.2d 231, 233-34 (1979)).

In the case before us, Defendant did not give oral notice of appeal at trial. Defendant's written notice of appeal was filed with the Edgecombe County Clerk of Superior Court on 16 July 2008, more than fourteen days after entry of the trial court's judgments on 1 July 2008. Because Defendant did not give timely notice of appeal, we are without jurisdiction to hear the appeal and must

dismiss it.

Assuming *arguendo* that this Court has jurisdiction to consider Defendant's appeal, Defendant's appellate counsel has submitted a brief on appeal pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), informing this Court that counsel has been unable to locate any appealable issues in Defendant's case. In compliance with *Anders* and *Kinch*, Defendant's counsel informed Defendant that she could identify no appealable issues, and further informed Defendant that he could file supplemental arguments with this Court if he so chose. Defendant has not filed any supplemental materials with this Court.

Additionally, Defendant's counsel has asked this Court to review the record and transcript in this case to determine if we can identify any appealable issues. We have thoroughly reviewed the record and transcripts, and can identify no prejudicial errors in the proceedings before the trial court.

Dismissed.

Judges HUNTER, Robert C. and BEASLEY concur.

Report per Rule 30(e).