

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-1545

NORTH CAROLINA COURT OF APPEALS

Filed: 4 August 2009

STATE OF NORTH CAROLINA

v. Guilford County
No. 04 CRS 86217
LAMONT DARRELL CARTER 05 CRS 24059

Appeal by Defendant from judgment entered 10 July 2008 by Judge Richard W. Stone in Guilford County Superior Court. Heard in the Court of Appeals 19 May 2009.

Attorney General Roy Cooper, by Assistant Attorney General Chris Z. Sinha, for the State.

Kevin P. Bradley, for Defendant.

BEASLEY, Judge.

Defendant (Lamont Carter) appeals from judgment entered 10 July 2008 for larceny from the person. We find no error.

On 11 May 2006 Defendant was convicted by a Guilford County jury of common law robbery and conspiracy to commit common law robbery. Defendant pled guilty to habitual felon status. Defendant appealed to this Court, which issued its opinion on 2 October 2007 in *State v. Carter*, 186 N.C. App. 259, 650 S.E.2d 650 (2007), *disc. review denied*, ___ N.C. ___, 668 S.E.2d 341

(2008) (*Carter I*). In *Carter I*, we held that the evidence at trial was insufficient to submit the charge of common law robbery to the jury, vacated Defendant's conviction of that offense, and remanded for entry of judgment for larceny from the person.

"[L]arceny from the person differs from robbery in that larceny from the person lacks the requirement that the victim be put in fear." . . . [W]e find substantial evidence was presented for all the elements of larceny from the person, and as such remand this case for sentencing on that basis.

Carter I, 186 N.C. App. at 264-65, 650 S.E.2d at 653-54 (quoting *State v. Buckom*, 328 N.C. 313, 317, 401 S.E.2d 362, 365 (1991)).

Following remand the Defendant was sentenced on 10 July 2008 to a prison term of 84 to 110 months for larceny from the person. From this sentence, Defendant appeals.

In *Carter I*, this Court vacated Defendant's conviction for common law robbery and remanded for sentencing for the offense of larceny from the person. Defendant now asserts that this Court erred in *Carter I*, and that this Court's remand holding (1) violated his state and federal constitutional rights, and; (2) violated the provisions of N.C. Gen. Stat. § 15A-1447 (2007).

However, even assuming, *arguendo*, that this Court had erred in *Carter I*, we would have no authority to correct the error.

"Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court." . . . [T]he panel is bound by that prior decision until it is overturned by a higher court.

State v. Jones, 358 N.C. 473, 487, 598 S.E.2d 125, 133-34 (2004) (quoting *In re Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989)). "[I]t is not within our authority to overturn a precedent set by this Court, which is the sole province of our Supreme Court." *O'Connor v. Zelinske*, ___ N.C. App. ___, ___, 668 S.E.2d 615, 621 (2008).

Because neither of Defendant's arguments asserts an error within our authority to correct or overrule, Defendant has failed to demonstrate any error by the trial court.

No error.

Judges WYNN and STROUD concur.

Report per Rule 30(e).