

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-800

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

STATE OF NORTH CAROLINA

v.

Wake County
No. 07 CRS 75867

MILTON BENEOMAR MOORE

Appeal by defendant from judgment entered 9 January 2008 by Judge Michael C. Morgan in Wake County Superior Court. Heard in the Court of Appeals 10 December 2008.

Attorney General Roy A. Cooper, III, by Assistant Attorney General LaToya A. Powell, for the State.
Michele Goldstein, for defendant-appellant.

PER CURIAM.

Milton Beneomar Moore ("defendant") appeals the superior court's ruling on his transfer appeal, as well as his convictions for assault with a deadly weapon inflicting serious injury and robbery with a dangerous weapon. For the following reasons, we dismiss the appeal.

On 24 October 2007, defendant was in juvenile court on charges of assault with a deadly weapon with intent to kill inflicting serious injury and robbery with a dangerous weapon. The State moved the court to transfer jurisdiction of his juvenile delinquency case to superior court in order that he could be tried

as an adult. On 30 October 2007, his case was transferred. Defendant appealed the transfer order to the superior court.

Defendant's appeal of the transfer order was heard in superior court on 9 January 2008. In open court, the trial court affirmed the transfer from juvenile court to superior court. Defendant then pled guilty to one count of the lesser included offense of assault with a deadly weapon inflicting serious injury and one count of robbery with a dangerous weapon. For the robbery charge, defendant was sentenced to an active term of imprisonment of thirty-eight to fifty-five months in the custody of the Department of Correction. Upon the expiration of that sentence, defendant was to begin a period of thirty-six months of supervised probation, suspending an active term of twenty to thirty-three months for the assault charge. The trial court filed its ruling on the transfer appeal on 25 January 2008. Defendant appeals.

The State has filed a motion to dismiss the appeal, arguing that pursuant to *State v. Evans*, 184 N.C. App. 736, 646 S.E.2d 859 (2007), defendant has no right of appeal. We agree.

In *Evans*, a panel of this Court held that it lacked jurisdiction to hear the appeal because after pleading guilty the defendant had no right of appeal pursuant to statute and had not petitioned for a writ of *certiorari*. *Id.* at 739, 646 S.E.2d at 860. Pursuant to North Carolina General Statutes, section 15A-1444, a criminal defendant who has pled guilty in superior court "is not entitled to appellate review as a matter of right . . . but

he may petition the appellate division for review by writ of certiorari." N.C. Gen. Stat. § 15A-1444(e) (2007).

[A] defendant who has pled guilty has only the right to appeal the following issues: (1) whether the sentence is supported by the evidence (if the minimum term of imprisonment does not fall within the presumptive range); (2) whether the sentence results from an incorrect finding of the defendant's prior record level under N.C. Gen. Stat. § 15A-1340.14 or the defendant's prior conviction level under N.C. Gen. Stat. § 15A-1340.21; (3) whether the sentence constitutes a type of sentence not authorized by N.C. Gen. Stat. § 15A-1340.17 or § 15A-1340.23 for the defendant's class of offense and prior record or conviction level; (4) whether the trial court improperly denied the defendant's motion to suppress; and (5) whether the trial court improperly denied the defendant's motion to withdraw his guilty plea.

State v. Carter, 167 N.C. App. 582, 584, 605 S.E.2d 676, 678 (2004) (citing *State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003)). Whether a juvenile case was properly transferred to superior court is not included among the statutorily permitted bases for appeal.

The provision of the juvenile code permitting appeal to the Court of Appeals of a transfer order also fails to provide such a right of appeal. North Carolina General Statutes, section 7B-2603(d) provides that "[t]he superior court order [upholding the transfer decision] shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court." N.C. Gen. Stat. § 7B-2603(d) (2007). This provision provides merely that if an appeal may be taken to the Court of Appeals, it may not be taken

until there is a final determination of the matter in superior court. Here, although there has been a final determination, there is no right of appeal because defendant pled guilty in superior court.

Unlike the defendant in *Evans*, defendant in this case has filed a petition for a writ of *certiorari*. We deny the petition.

Pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure, we may issue a writ of *certiorari* (1) "when the right to prosecute an appeal has been lost by failure to take timely action," (2) "when no right of appeal from an interlocutory order exists," or (3) to review "an order of the trial court denying a motion for appropriate relief." N.C. R. App. P. 21(a)(1) (2007). Here, defendant's right to appeal was not lost by his failure to act in a timely manner, but because he pled guilty in superior court. There is a right of appeal from this interlocutory order - it is to the superior court - which right defendant exercised. Defendant has not filed a motion for appropriate relief. Therefore, there are no grounds upon which we may issue a writ of *certiorari* in this case.

For the forgoing reasons, defendant's appeal is dismissed and his petition for a writ of *certiorari* is denied.

Dismissed.

Panel consisting of:

Judges HUNTER, Robert C., ELMORE, and JACKSON.

Report per Rule 30(e).