

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-309

NORTH CAROLINA COURT OF APPEALS

Filed: 20 October 2009

STATE OF NORTH CAROLINA

v.

Cleveland County
No. 06 CRS 57804

CARROLL MACAUTHUR WILLIAMS

Appeal by defendant from judgment entered 30 October 2008 by Judge Forrest D. Bridges in Superior Court, Cleveland County. Heard in the Court of Appeals 19 October 2009.

Attorney General Roy Cooper, by Assistant Attorney General Gregory P. Roney, for the State.

J. Edward Yeager, Jr. for defendant-appellant.

WYNN, Judge.

On 16 July 2007, Defendant Carroll Macauthur Williams was indicted on charges of possession with intent to sell or deliver cocaine and possession of drug paraphernalia. Following a trial, Defendant was convicted on both counts and sentenced to a term of ten to twelve months' imprisonment. Defendant's sentence was suspended and he was placed on supervised probation for thirty months. Defendant appeals.

The sole issue on appeal is whether there was sufficient evidence to sustain Defendant's convictions. However, Defendant

never made a motion to dismiss the charges at trial. Under Rule 10(b)(3) of the North Carolina Rules of Appellant Procedure, "[a] defendant in a criminal case may not assign as error the insufficiency of the evidence to prove the crime charged unless he moves to dismiss the action . . . at trial." N.C. R. App. P. 10(b)(3) (2008). Although Defendant relies on N.C. Gen. Stat. § 15A-1446(d)(5) (2007) to contend that appellate review is proper without a motion during trial, "[t]o the extent that N.C.G.S. 15A-1446(d)(5) is inconsistent with N.C. R. App. P. 10(b)(3), the statute must fail." *State v. Stocks*, 319 N.C. 437, 439, 355 S.E.2d 492, 493 (1987) (citation omitted). Because Defendant did not make a motion to dismiss at trial, he has waived his right to appellate review of this issue. Accordingly, we dismiss this appeal.

Dismissed.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e)