

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-45

NORTH CAROLINA COURT OF APPEALS

Filed: 7 July 2009

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 06 CRS 246080, 246083-84

KENNETH ANTONIO JONES

Appeal by defendant from judgment entered 27 August 2008 by Judge William Z. Wood in Mecklenburg County Superior Court. Heard in the Court of Appeals 17 June 2009.

Attorney General Roy Cooper, by Assistant Attorney General Kathryn J. Thomas for the State.

Kevin P. Bradley for defendant-appellant.

ELMORE, Judge.

Defendant was found guilty by a jury of attempted robbery with a dangerous weapon, resisting a public officer, and fleeing to elude arrest with a motor vehicle. The trial court consolidated the charges for sentencing and defendant was sentenced in the presumptive range to 124 to 158 months' imprisonment. From the judgment entered, defendant appeals.

Defendant was indicted on the charge of robbery with a dangerous weapon under N.C. Gen. Stat. § 14-87. Prior to jury selection, the State moved to amend the indictment to charge attempted robbery with a dangerous weapon. Defendant did not

object and the motion to amend was allowed. Subsequently, defendant was found guilty of attempted robbery with a dangerous weapon.

On appeal, defendant argues that the trial court erred in imposing a sentence for a Class D felony after the State amended the indictment to charge the lesser included offense of attempted robbery with a dangerous weapon. In support of his argument, defendant cites N.C. Gen. Stat. § 14-2.5 which provides:

Unless a different classification is expressly stated, an attempt to commit a misdemeanor or a felony is punishable under the next lower classification as the offense which the offender attempted to commit.

N.C. Gen. Stat. § 14-2.5 (2007). Specifically, defendant contends that attempted robbery with a dangerous weapon must be classified as a Class E felony. We disagree.

N.C. Gen. Stat. § 14-87 states:

Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully *takes or attempts to take personal property* from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. § 14-87 (2007) (emphasis added).

Clearly, “[b]y the terms of G.S. 14-87 an attempt to rob another of personal property, made with the use of a dangerous weapon, whereby the life of a person is endangered or threatened,

is, itself, a completed crime and is punishable to the same extent as if the property had been taken as intended." *State v. Price*, 280 N.C. 154, 157, 184 S.E.2d 866, 869 (1971) (citation omitted). Accordingly, the trial court did not err and this assignment of error is overruled.

No error.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).