

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-801

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
Nos. 07 CRS 233910;  
07 CRS 62016

COREY EUGENE MOORE

Appeal by defendant from judgments entered 12 December 2008 by Judge David S. Cayer in Mecklenburg County Superior Court. Heard in the Court of Appeals 18 November 2009.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General E. Michael Heavner, for the State.*

*Robert W. Ewing, for defendant-appellant.*

JACKSON, Judge.

Corey Eugene Moore ("defendant") was convicted of one count of failure to comply with the sex offender registration law and of having attained the status of an habitual felon on 12 December 2008. From a judgment and commitment order sentencing defendant within the presumptive range to a term of 168 to 211 months imprisonment in the North Carolina Department of Correction, defendant appeals. For the reasons set forth below, we hold no error.

On 25 March 2002, defendant was convicted of third-degree rape in the State of New York. Defendant subsequently moved to North Carolina, and on 18 January 2005 at the Mecklenburg County Sheriff's Office ("Sheriff's Office"), defendant registered as a sex offender.

On 9 March 2006, Kelli E. Hartis ("Hartis"), an employee of the Sheriff's Office responsible for maintaining sex offender registration files for Mecklenburg County, received a letter from defendant verifying his current address as 1331 Abbey Place, number 13, Charlotte, North Carolina. On 19 June 2007, Hartis noted that defendant confirmed that his current address was 1331 Abbey Place.

On 17 July 2007, Deputy Robert Sherwin ("Deputy Sherwin") attempted to verify defendant's residency at 1331 Abbey Place. Tabitha Moore ("Moore"), defendant's sister, gave Deputy Sherwin a statement that defendant did not live at that address and that he never had lived with her.

On 5 September 2007, Detective Philip B. Rainwater of the Charlotte Mecklenburg Police Department ("Detective Rainwater") spoke with defendant, and after advising defendant of his rights, defendant waived those rights in writing. On the waiver of rights form, defendant listed his address as 5141 Speyside Court.

On 1 October 2007, a grand jury returned a true bill of indictment stating that "on or about" 17 July 2007, defendant "unlawfully, willfully and feloniously" registered as a sex offender by "knowingly submit[ting] under false pretense the information required concerning his current address." On 8 October

2007, a grand jury returned a true bill of indictment stating that defendant is an habitual felon.

Defendant's case came on for hearing at the 10 December 2008 Criminal Session of Superior Court of Mecklenburg County. At trial, the court granted the State's motion to amend the indictment to change the date of the alleged offense from 17 June 2007 to 19 June 2007. On 11 December 2008, a jury found defendant guilty of failing to comply with the sex offender registration requirements. On 12 December 2008, a jury found defendant guilty of having attained the status of an habitual felon. Upon the jury's verdicts, the trial court entered a judgment and commitment order sentencing defendant to 168 to 211 months imprisonment. Defendant appeals.

On appeal, defendant argues that the trial court erred by denying defendant's motion to dismiss for insufficiency of the evidence. However, defendant failed to preserve this question for appellate review.

It is well-established that we "will not consider arguments based upon matters not presented to or adjudicated by the trial court.'" *State v. Forte*, 360 N.C. 427, 438, 629 S.E.2d 137, 145 (quoting *State v. Haselden*, 357 N.C. 1, 10, 577 S.E.2d 594, 600, cert. denied, 540 U.S. 988, 157 L. Ed. 2d 382 (2003)), cert. denied, 549 U.S. 1021, 166 L. Ed. 2d 413 (2006). See *State v. Freeman*, 185 N.C. App. 408, 413-14, 648 S.E.2d 876, 881 (2007) (dismissing the defendant's assignment of error as to the trial court's denial of his motions to dismiss because his motions "were

based *specifically* on his contention that the State failed to prove that the crime alleged occurred in North Carolina[,]” rather than “on insufficiency of the evidence in general.”) (citations omitted), *appeal dismissed*, 362 N.C. 178, 657 S.E.2d 663 (2008), *distinguished on other grounds by State v. Ward*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 681 S.E.2d 354, 369-71 (2009) (analyzing rules relevant to lay opinion and expert opinion testimony with respect to visual and chemical identification of marijuana, crack cocaine, and powder cocaine) (citations omitted). *See also* N.C. R. App. P. 10(b)(1) (2007).

In the case *sub judice*, defendant argues that the trial court erred in denying his motion to dismiss because the State failed to present evidence that defendant’s conviction for third-degree rape pursuant to the laws of the State of New York was sufficient to constitute a “reportable conviction” pursuant to North Carolina General Statutes, section 14-208.6(4). *See* N.C. Gen. Stat. § 14-208.6(4) (2007). At the close of State’s evidence, defendant moved the trial court for a judgment of acquittal and offered the following in support of his motion:

Having amended the Bill of Indictment, Your Honor, to allege that the offense occurred on June the 19th of 2007, I would ask the Court to recall that Ms. Hartis testified that [the (1) New York State sentence and commitment for third-degree rape, (2) Mecklenburg County sex offender registration form, (3) letter to Hartis verifying defendant’s address at 1331 Abbey Place on 9 March 2006, and (4) notice of duty to register as a sex offender upon his release from the Mecklenburg County Jail on 19 July 2007] were *properly filed*, were timely filed, I would ask the Court to recall, and I believe it is [the

notice of duty to register as a sex offender upon his release from the Mecklenburg County Jail on 19 July 2007] that the State is most likely basing their case on, and that [notice was] . . . signed on June 19th, 2007, giving an address of 1331 Abbey Place, Charlotte, North Carolina.

I would also ask the Court to recall the testimony of Tabitha Moore. Ms. Moore was asked whether [defendant] lived there and I think her recollection was that she didn't recall or not really, but the State never specifically asked about June 19, 2007, as to whether [defendant] resided at Abbey Place, and without that degree of specificity, Your Honor, the State has not proved their case beyond a reasonable doubt[, ] and judgment for acquittal *on that reason* is appropriate.

(Emphasis added). The trial court responded: "All right. I think that is a factual issue which can be resolved by the Jury. The motion is denied."

Subsequently, at the close of all of the evidence, defendant stated, "I would renew my earlier motion as to a judgment for acquittal. I do not wish to be heard any further." The trial court denied defendant's motion, and the matter proceeded to the jury for its deliberation. Because defendant limited his motion to the presentation of evidence with respect to defendant's residence at 1331 Abbey Place, Charlotte, North Carolina on or about 19 June 2007, defendant failed to preserve properly the question now presented on appeal, and we do not address it. *See Forte*, 360 N.C. at 438, 629 S.E.2d at 145; *Freeman*, 185 N.C. App. at 413-14, 648 S.E.2d at 881.

Next, defendant argues that he was denied his constitutional right to effective assistance of counsel at trial because his trial

counsel (1) stipulated to the fact that his conviction for third-degree rape in New York State constituted a "reportable conviction" that would subject him to the Sex Offender and Public Registration Program, and (2) failed to object to the trial court's instruction to the jury that defendant's third-degree rape conviction in New York constituted a reportable conviction. We disagree.

Our Supreme Court recently explained that

[t]he components necessary to show ineffective assistance of counsel are (1) "counsel's performance was deficient," meaning it "fell below an objective standard of reasonableness," and (2) "the deficient performance prejudiced the defense," meaning "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable."

*State v. Garcell*, 363 N.C. 10, 51, 678 S.E.2d 618, 644 (quoting *Strickland v. Washington*, 466 U.S. 668, 687-88, 80 L. Ed. 2d 674, 692-94 (1984)), *cert. denied*, \_\_\_ U.S. \_\_\_, \_\_\_ L. Ed. 2d \_\_\_ (2009). See also *State v. Braswell*, 312 N.C. 553, 562-63, 324 S.E.2d 241, 248 (1985) ("expressly adopt[ing] the test set out in *Strickland v. Washington* as a uniform standard to be applied to measure ineffective assistance of counsel under the North Carolina Constitution"). Furthermore, the Supreme Court of the United States cautioned that "[j]udicial scrutiny of counsel's performance must be highly deferential[,] and that "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the

challenged action might be considered sound trial strategy." *Strickland v. Washington*, 466 U.S. 668, 689, 80 L. Ed. 2d 674, 694-95 (1984) (citation and internal quotation marks omitted).

In the case *sub judice*, defendant's counsel did not dispute defendant's obligation to register as a sex offender, but chose instead to focus his defensive strategy – and the jury's attention – on the State's purported failure to produce evidence of defendant's falsely reporting that he lived at 1331 Abbey Place on 19 June 2007. Furthermore, the State admitted into evidence (1) a sentence and commitment form from the State of New York relating to defendant's conviction for third-degree rape; (2) defendant's certified registration as a sex offender in Mecklenburg County, which defendant signed on 18 January 2005; (3) defendant's letter to Hartis on 9 March 2006 verifying his address as 1331 Abbey Place, Charlotte, North Carolina; and (4) defendant's notice of duty to register as a sex offender, which defendant signed on 19 June 2007, indicating his address as 1331 Abbey Place, Charlotte, North Carolina. In view of the evidence demonstrating defendant's repeated acknowledgment of his status as a sex offender, we cannot say that defendant has overcome the presumption against a sound trial strategy by his trial counsel's effort to focus on defendant's residence on the date of the offense. *See id.* Accordingly, defendant's contentions are without merit.

For the foregoing reasons, we hold no error.

No error.

Judges HUNTER and BRYANT concur.

Report per Rule 30(e).