

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-1574
NORTH CAROLINA COURT OF APPEALS

Filed: 4 September 2012

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 07 CRS 245994-95

JOSEPH ALAN LAMBERT

Appeal by Defendant from order entered 16 May 2011 by Judge Hugh B. Lewis in Superior Court, Mecklenburg County. Heard in the Court of Appeals 14 August 2012.

Attorney General Roy Cooper, by Assistant Attorney General John R. Green, Jr., for the State.

Anne Bleyman for Defendant-Appellant.

McGEE, Judge.

Joseph Alan Lambert (Defendant) was indicted for possession of heroin and possession of drug paraphernalia on 20 July 2009. Defendant filed a pre-trial motion on 18 December 2009, seeking to suppress evidence obtained during the search and seizure of his automobile, after which search, Defendant was arrested. The trial court entered an order denying Defendant's motion to

suppress on 16 May 2011. Defendant preserved his right to appeal from the denial of his motion to suppress.

Defendant pleaded guilty as charged on 11 July 2011. The trial court sentenced Defendant to a term of six to eight months' imprisonment for possession of heroin, but suspended the sentence and placed Defendant on supervised probation for thirty months. Defendant was sentenced to thirty-five days imprisonment for possession of drug paraphernalia. Defendant appeals.

In open court, after judgment was entered, Defendant's counsel stated: "Your Honor, at this time we would respectfully enter our appeal on the motion to suppress." Defendant also filed a written notice of appeal dated 11 July 2011 and titled: "Notice Of Intent To Appeal From Denial Of Motion To Suppress[.]" In this written notice of appeal, Defendant stated that he was giving "notice of his intention to appeal the denial of [his] motion to suppress Defendant made his intention to appeal from the denial of his motion to suppress known to the State and to the [c]ourt prior to pleading guilty as required in order to preserve his right to appeal."

In *State v. Miller*, 205 N.C. App. 724, 696 S.E.2d 542 (2010), this Court addressed a similar situation in which the defendant pleaded guilty following the denial of his motion to

suppress and subsequently filed written notice of appeal "from the denial of [his] motion to suppress." *Miller*, 205 N.C. App. at 725, 696 S.E.2d at 542. The defendant "did not appeal from his judgment of conviction." *Id.* This Court observed that: "'An order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty.'" *Id.* (quoting N.C. Gen. Stat. § 15A-979(b)(2009)).

This Court then concluded that, because the defendant in *Miller* "failed to appeal from the judgment of conviction[,] . . . our Court d[id] not have jurisdiction to consider [d]efendant's appeal." *Id.* This Court noted that "[a]lthough [d]efendant preserved his right to appeal by filing his written notice of intent to appeal from the denial of his motion to suppress, he failed to appeal from his final judgment, as required by N.C.G.S. § 15A-979(b)." *Id.*, 696 S.E.2d at 543. We therefore dismissed the defendant's appeal. *Id.* at 726, 696 S.E.2d at 543; accord *State v. Audrey*, ___ N.C. App. ___, 722 S.E.2d 798, *disc. review denied*, 726 S.E.2d 832 (2012) (unpublished) (holding notice of appeal proper where defendant gave written notice of appeal only from the denial of his motion to suppress but, "in contrast to *Miller*, the record before us indicates that defendant in this case gave oral notice of appeal

after the trial court entered judgment. Moreover, unlike his written notice of appeal, defendant did not limit his oral notice of appeal to the court's denial of his motion to suppress.").

In the present case, both Defendant's oral and written notices of appeal were limited to the denial of his motion to suppress. The record does not indicate that Defendant appealed his final conviction, as required by N.C. Gen. Stat. § 15A-979(b) (2011). We are therefore without jurisdiction to hear Defendant's appeal and must dismiss it. *Miller*, 205 N.C. App. at 726, 696 S.E.2d at 543.

Dismissed.

Judges STEELMAN and ERVIN concur.

Report per Rule 30(e).