

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-517  
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Wilkes County  
No. 09-CRS 1501-1536

FREDERICK WELLS BRASON, III

Appeal by Defendant from order entered 10 November 2010 by  
Judge Richard L. Doughton in Wilkes County Superior Court.

Heard in the Court of Appeals 27 October 2011.

*Attorney General Roy Cooper, by Assistant Attorney General  
Derrick C. Mertz, for the State.*

*Charlotte Gail Blake, for Defendant-appellant.*

HUNTER, JR., Robert N., Judge.

Frederick Wells Brason, III ("Defendant") was indicted on 27 July 2009 for one count of disseminating obscenity to a minor, five counts of attempted first degree sexual offense with a child, five counts of indecent liberties, and 30 counts of second degree sexual exploitation of a minor. Defendant filed a pretrial motion to suppress all evidence obtained based on an allegedly unconstitutional and illegal search of his home. The

trial court denied Defendant's motion to suppress after a hearing on 10 November 2010. Defendant pled guilty on all counts pursuant to a plea agreement on 15 November 2010. The plea agreement noted Defendant's intention to appeal the trial court's denial of his motion to suppress. Defendant also gave oral notice of his intent to appeal the denial of his motion to suppress at the conclusion of the sentencing hearing. Defendant did not appeal from his final judgment. Defendant filed a petition for writ of certiorari with this Court on 7 October 2011.

This Court recently addressed this precise issue in *State v. Miller*, \_\_\_ N.C. App. \_\_\_, 696 S.E.2d 542 (2010). In *Miller*, analogous to the case at bar, this Court dismissed a defendant's appeal where the defendant preserved his right to appeal from a denial of his motion to suppress but did not appeal from his judgment of conviction. *Id.* at \_\_\_, 696 S.E.2d at 543. As this Court stated in *State v. McBride*, 120 N.C. App. 623, 626, 463 S.E.2d 403, 405 (1995), "[t]he two forms of notice serve different functions, and performance of one does not substitute for completion of the other." In another recent decision, this Court held that because "defendant [] only appealed from the denial of his motion to suppress, and not from his final

judgment, we have no jurisdiction to hear this appeal." *State v. Taylor*, \_\_\_ N.C. App. \_\_\_, 694 S.E.2d 522 (2010) (unpublished opinion); accord *State v. Turner*, 305 N.C. 356, 289 S.E.2d 368 (1982); and *State v. Tate*, 300 N.C. 180, 265 S.E.2d 223 (1980). For these reasons, this Court does not have jurisdiction to hear Defendant's appeal. Defendant's subsequent petition for certiorari is dismissed.

Dismissed.

Judges THIGPEN and MCCULLOUGH concur.

Report 30(e).