

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-223
NORTH CAROLINA COURT OF APPEALS

Filed: 21 August 2012

STATE OF NORTH CAROLINA

v.

Cleveland County
Nos. 06 CRS 58033, 07 CRS 2291

HOYLE LEE MINCEY

Appeal by defendant from judgment entered 15 November 2011
by Judge James L. Baker, Jr. in Cleveland County Superior Court.
Heard in the Court of Appeals 6 August 2012.

*Attorney General Roy Cooper, by Assistant Attorney General
Robert Croom, for the State.*

*Law Offices of John R. Mills, by John R. Mills, for
defendant-appellant.*

MARTIN, Chief Judge.

Defendant Hoyle Lee Mincey appeals from a judgment entered
based upon jury verdicts finding him guilty of felonious
breaking and entering, felonious larceny, felonious possession
of stolen property, and having attained the status of habitual
felon. The trial court arrested judgment on defendant's
conviction for felonious possession of stolen property,

consolidated defendant's remaining convictions for judgment, and sentenced defendant as a habitual felon to a term of 168 to 211 months imprisonment. Defendant gave notice of appeal in open court.

Defendant now argues the trial court erred in sentencing him as a habitual felon because the indictment charging him with having attained the status of habitual felon alleged a misdemeanor conviction as one of the required three felony convictions. Defendant argues the first of the three alleged felonies in the indictment is only a misdemeanor. However, the indictment clearly alleges the offense at issue is a felony:

(1) That on or about 10/3/1981 in the Superior Court of Cleveland County, the defendant was convicted of the felony offense of breaking and/or entering and larceny against the State of North Carolina, N.C.G.S. 14-54 and 14-72 with the commission date of 7/21/1981, case number 81CRS9144
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The State entered into evidence a true copy of the judgment entered in file number 81 CRS 9144, which establishes that defendant entered a guilty plea to the felony "offense(s) of breaking, entering and larceny" in violation of N.C. Gen. Stat. §§ 14-54(a), -72(b). There is an error in the indictment as the judgment in file number 81 CRS 9144 was entered on 3 November 1981, rather than 3 October 1981, but at trial the trial court

properly allowed the amendment of the indictment to correct the erroneous date of conviction. See *State v. Hargett*, 148 N.C. App. 688, 693, 559 S.E.2d 282, 286 (holding that an amendment to correct a conviction date on a habitual felon indictment does not constitute a substantial change to the indictment), *disc. review improvidently allowed*, 356 N.C. 423, 571 S.E.2d 583 (2002). We note that during discovery, the State provided defendant with a copy of a misdemeanor conviction entered in file number 81 CRS 9143 on the same day as the judgment entered in file number 81 CRS 9144, and did not provide defendant with a copy of the judgment entered in file number 81 CRS 9144. However, this mistake does not invalidate the indictment charging defendant with having attained the status of habitual felon. See *State v. Bowens*, 140 N.C. App. 217, 225, 535 S.E.2d 870, 875 (2000) ("The essential purpose of an habitual felon indictment is to give a defendant notice he is being charged as an habitual felon so he may prepare a defense as to having a charge of the three listed felony convictions."), *disc. review denied*, 353 N.C. 383, 547 S.E.2d 417 (2001). Defendant's argument is overruled.

No error.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).