

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-438

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Bladen County
No. 11 CRS 50176

MILLIE ANN THOMPSON,
Defendant.

On writ of certiorari to review judgment entered 11 December 2012 by Judge Paul L. Jones in Bladen County Superior Court. Heard in the Court of Appeals 7 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General Peggy S. Vincent, for the State.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for defendant-appellant.

BRYANT, Judge.

Defendant seeks review of her conviction for felony worthless check by petition for writ of certiorari. Defendant's petition was occasioned by defendant's improper notice of appeal, as the notice of appeal lacked proof of service, did not

designate the judgment from which the appeal was taken, or contain counsel's signature. See N.C.R. App. P. 4 (2011). Since defendant's intent to appeal the judgment can be fairly inferred from the notice, we allow defendant's petition pursuant to N.C.R. App. P. 21(a)(1) (2011) and proceed to the merits of her appeal.

Defendant first challenges the trial court's jurisdiction on the ground that the indictment failed to allege an essential element of felony worthless check under N.C. Gen. Stat. § 14-107(a), (d) (2011). Although the indictment charged that defendant passed a check knowing that she did not have sufficient funds in the bank to cover it, our Supreme Court has long held that a worthless check indictment must also allege the defendant lacked *sufficient credit* at the issuing bank to satisfy the check. *State v. Edwards*, 190 N.C. 322, 325, 130 S.E. 10, 11 (1925) (construing an earlier but similar version of the worthless check statute); accord *State v. Banks*, 206 N.C. 479, 480, 174 S.E. 306, 307 (1934). Unable to distinguish the current version of the worthless check statute from those addressed in the case law, the State concedes error. See N.C.G.S. § 14-107(a) (requiring "that the maker or drawer of [the check] has not sufficient funds on deposit in or credit

with the bank or depository with which to pay the check or draft upon presentation") (emphasis added).

We agree with the parties that "[t]he indictment is fatally defective in that, while charging insufficient funds on deposit, it makes no reference whatever to a want of credits" *Edwards*, 190 N.C. at 325, 130 S.E. at 11 (citation and internal quotation marks omitted). Therefore, the judgment before us is void and must be vacated. See *State v. Wagner*, 356 N.C. 599, 601, 572 S.E.2d 777, 779 (2002).

Having determined that the trial court lacked jurisdiction in this cause, we do not address defendant's remaining argument.

Vacated.

Judges HUNTER, Robert C., and McCULLOUGH concur.

Report per Rule 30(e).