

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-360
NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

STATE OF NORTH CAROLINA

v. Mecklenburg County
Nos. 12 CRS 235086, 235088,
MICHAEL ANGELO GADDY 235090

Appeal by defendant from judgment entered 26 June 2013 by Judge H. William Constangy in Mecklenburg County Superior Court. Heard in the Court of Appeals 10 November 2014.

Attorney General Roy Cooper, by Assistant Attorney General J. Aldean Webster, III, for the State.

Charlotte Gail Blake for defendant-appellant.

ELMORE, Judge.

On 20 August 2012, defendant was indicted by a Mecklenburg County grand jury for trafficking by possession of more than four but less than fourteen grams of heroin, possession with intent to sell or deliver a controlled substance, maintaining a dwelling for keeping controlled substances, and possession of drug paraphernalia. Defendant filed a pre-trial motion to suppress all evidence, which was denied by the trial court. On

26 June 2013, defendant entered an *Alford* plea to all charges and reserved his right to appeal the denial of his motion to suppress. The trial court consolidated the charges for judgment and sentenced defendant to 70-93 months imprisonment. Defendant gave notice of appeal in open court.

Defendant argues the trial court erred in sentencing him to 70-93 months for his Class F drug trafficking conviction when the mandatory sentence for defendant's date of offense was 70-84 months. We agree.

Our Supreme Court has stated that "[t]rial courts are required to enter criminal judgments in compliance with the sentencing provisions in effect at the time of the offense." *State v. Whitehead*, 365 N.C. 444, 447, 722 S.E.2d 492, 495 (2012) (citation omitted). In this case, defendant was charged with trafficking by possession of more than four but less than fourteen grams of heroin with an offense date of 9 August 2012. Pursuant to N.C. Gen. Stat. § 90-95(h)(4)(a) (2011), a defendant "shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months[.]" Although the General Assembly later changed the required sentence for Class F trafficking convictions to 70-93, the change applied to offenses committed on or after 1 December

2012. See 2012 N.C. Sess. Laws, ch. 188. Since defendant committed his offenses prior to 1 December 2012, the trial court erred in sentencing defendant to 70-93 months. Accordingly, we remand the matter for resentencing.

Remanded for resentencing.

Judges STEELMAN and DILLON concur.

Report per Rule 30(e).