

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-409

Filed: 17 November 2015

Vance County, No. 13 CRS 52194

STATE OF NORTH CAROLINA

v.

TIMOTHY WAYNE HARP, JR.

Appeal by defendant from judgment entered 12 November 2014 by Judge George W. Abernathy in Vance County Superior Court. Heard in the Court of Appeals 2 November 2015.

Attorney General Roy Cooper, by Assistant Attorney General Stuart M. Saunders, for the State.

Don Willey for defendant-appellant.

HUNTER, JR., Robert N., Judge.

Timothy Wayne Harp, Jr. (“Defendant”) appeals from a judgment entered upon his conviction for carrying a concealed gun. Defendant argues the trial court erroneously required him to pay jail fees. After careful review, we find no error.

On 12 November 2014, a jury convicted Defendant for carrying a concealed gun. The trial court sentenced Defendant to a term of 6 to 17 months imprisonment, but suspended all but 45 days of the sentence and placed Defendant on supervised

STATE v. HARP

Opinion of the Court

probation for 24 months. The trial court further provided if Defendant was in compliance with his probation for 12 months, his probation could be switched to unsupervised. The trial court also ordered Defendant to pay \$334.50 in court costs, \$1,920.00 in attorney's fees, and \$1,880.00 for "Appt. Fee/Misc." Defendant appeals.

Defendant's sole argument on appeal is that the imposition of the \$1,880.00 in jail fees, set as a monetary condition of his probation, was erroneous where it was provided for in the written judgment but not imposed at sentencing. We are not persuaded.

Defendant was ordered to serve 45 days active imprisonment followed by a term of probation. Defendant does not contest that he was present in open court when the trial court imposed this sentence. Instead, Defendant argues that the jail fees were illegal because they were not imposed in open court. However, pursuant to N.C. Gen. Stat. § 7A-313,

[p]ersons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable to the county or municipality maintaining the jail at the same per diem rate paid by the Division of Adult Correction of the Department of Public Safety to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts.

N.C. Gen. Stat. § 7A-313 (2013). Thus, the imposition of jail fees "was a non-discretionary byproduct of the sentence that was imposed in open court" and did not constitute a "substantive change" in defendant's sentence. *State v. Arrington*, 215 N.C. App. 161, 167–68, 714 S.E.2d 777, 782 (2011) (citing *State v. Crumbley*, 135 N.C.

STATE v. HARP

Opinion of the Court

App. 59, 66, 519 S.E.2d 94, 99 (1999)). We conclude that the imposition of these fees did not constitute punishment. *See State v. Brown*, 110 N.C. App. 658, 659, 430 S.E.2d 433, 434 (1993) (conditions constituting punishment include fines and imprisonment; conditions not constituting punishment include requirements to pay the costs of the court). Therefore, we conclude that the trial court did not err by imposing these fees outside of Defendant's presence.

NO ERROR.

Chief Judge McGee and Judge Dillon concur.

Report per Rule 30(e).