

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA15-559

Filed: 15 December 2015

Wake County, No. 13 CRS 224312

STATE OF NORTH CAROLINA

v.

TIMOTHY SCOTT

Appeal by Defendant from judgments entered 30 September 2014 by Judge Robert H. Hobgood in Superior Court, Wake County. Heard in the Court of Appeals 3 December 2015.

*Attorney General Roy Cooper, by Special Deputy Attorney General James A. Wellons, for the State.*

*Adrian M. Lapas for Defendant-Appellant.*

McGEE, Chief Judge.

Timothy Scott (“Defendant”) was convicted by a jury on 30 September 2014 of felonious breaking or entering and felonious larceny after breaking or entering. The State’s evidence from trial tended to show that, on 22 May 2013, Defendant and two other individuals broke into the home of Christopher and Julia Trotto and stole a Microsoft Xbox, some Xbox games and accessories, a jar of money, and several pieces

STATE V. SCOTT

*Opinion of the Court*

of Ms. Trotto's jewelry. Defendant was ordered to pay the Trottos \$4,000.00 in restitution. Defendant appeals.

As a preliminary matter, we must determine whether we have jurisdiction to reach the merits of Defendant's appeal. To invoke this Court's jurisdiction, a criminal defendant must give notice of appeal in accordance with Rule 4 of the North Carolina Rules of Appellate Procedure. N.C.R. App. P. 4. "[W]hen a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal." *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320 (2005). Pursuant to Rule 4, a defendant in a criminal action may take appeal by either (1) "giving oral notice of appeal at trial," or (2) "filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment[.]" N.C.R. App. P. 4(a). Written notice of appeal must "specify the party or parties taking the appeal[.]" "designate the judgment or order from which appeal is taken and the court to which appeal is taken[.]" and "be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record." N.C.R. App. P. 4(b). Service of the notice of appeal must be made in compliance with Rule 26 of the North Carolina Rules of Appellate Procedure. N.C.R. App. P. 4(c).

In the present case, there is no indication Defendant gave oral notice of appeal at trial. Instead, Defendant filed two documents with the Wake County Clerk of

STATE V. SCOTT

*Opinion of the Court*

Superior Court on 8 October 2014, stating only that he would like to “reopen” his case, although the two documents do not refer to any specific case number. These “notices” do not designate the judgment from which appeal is taken, nor do they specify the court to which appeal is taken. There also is no indication in the record that Defendant served either of these documents on the State. Therefore, Defendant has failed to give proper notice of appeal. *See* N.C.R. App. P. 4.

Moreover, Defendant has neither filed a petition for writ of certiorari nor requested that we treat his brief as such. We therefore decline to consider the merits of Defendant’s brief under Rule 21 of the North Carolina Rules of Appellate Procedure. *See* N.C.R. App. P. 21 (“The petition [for writ of certiorari] shall contain . . . a statement of the reasons why the writ should issue[.]”); *State v. Inman*, 206 N.C. App. 324, 325–26, 696 S.E.2d 567, 568–69 (2010) (dismissing an appeal where the defendant failed to ask for certiorari in accordance with Rule 21). Having failed to invoke this Court’s jurisdiction, Defendant’s appeal is dismissed.

DISMISSED.

Judges HUNTER, JR. and DILLON concur.

Report per Rule 30(e).