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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-458

Filed: 6 December 2016

Caldwell County, No. 12 CRS 1563

STATE OF NORTH CAROLINA

v.

MARIAN OLIVIA CURTIS

Appeal by the State from order entered 16 February 2016 by Judge Michael D. Duncan in Caldwell County Superior Court. Heard in the Court of Appeals 18 October 2016.

Attorney General Roy Cooper, by Assistant Attorney General Christopher W. Brooks, for the State.

Wilson, Lackey & Rohr, P.C., by Timothy J. Rohr, for defendant-appellee.

CALABRIA, Judge.

For the reasons stated in *State v. Turner*, ___ N.C. App. ___, ___ S.E.2d ___, COA16-656 (2016), we affirm the trial court's dismissal of the charge against defendant.

I. Factual and Procedural Background

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On 1 August 2012, Marian Olivia Curtis (“defendant”) received a citation for driving while impaired. Defendant was arrested and brought before a magistrate, who issued a magistrate’s order. Defendant was also charged with misdemeanor possession of a Schedule II controlled substance and driving left of center. Defendant was never charged via indictment, presentment, or warrant.

On 21 April 2015, defendant filed an objection to trial on citation and motion for statement of charges, and motion to dismiss, alleging that the statute of limitations established by N.C. Gen. Stat. § 15-1 had expired on the citation, and that any new pleading by the State would be barred by the statute of limitations. That same day, Judge Amy S. Walker (“Judge Walker”), a District Court Judge in Caldwell County, held a hearing in response to defendant’s motions. Judge Walker entered a preliminary indication, holding that the statute of limitations barred prosecution of defendant. The State appealed to superior court.

On 1 October 2015, the superior court affirmed Judge Walker’s preliminary indication, citing the explicit language of N.C. Gen. Stat. § 15-1, and our Supreme Court’s decision in *State v. Underwood*, 244 N.C. 68, 92 S.E.2d 461 (1956). Thereafter, Judge Walker issued a final order of dismissal. The State appealed this dismissal, and on 16 February 2016, the Superior Court of Caldwell County entered an order affirming the dismissal.

The State appeals.

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II. Analysis

The procedural and legal issues presented by this case are identical to those presented in *State v. Turner*, ___ N.C. App. ___, ___ S.E.2d ___, COA16-656 (2016), which was heard contemporaneously. As such, we adopt the reasoning in *Turner*, and hold that the trial court did not err in granting defendant's motion to dismiss.

AFFIRMED.

Judges BRYANT and STEPHENS concur.

Report per Rule 30(e).