

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-993

Filed: 19 December 2017

Forsyth County, No. 13CRS062582

STATE OF NORTH CAROLINA

v.

VINCENT LINNELL CHANCELLOR, Defendant.

Appeal by defendant from order entered 2 June 2016 by Judge John O. Craig in Superior Court, Forsyth County and judgment entered on or about 17 March 2016 by Judge John O. Craig III in Superior Court, Forsyth County. Heard in the Court of Appeals 4 April 2017.

*Attorney General Josh Stein, by Assistant Attorney General Jonathan D. Shaw, for the State.*

*Sharon L. Smith, for defendant-appellant.*

STROUD, Judge.

Defendant purports to appeal from an order denying his motion to suppress and his judgment for impaired driving. Defendant's motion to suppress was heard immediately before his trial and defendant failed to preserve any right to appeal the

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denial of his motion to suppress or to give oral notice of appeal from his conviction.

Defendant's notice reads

Now comes VINCENT LINELL CHANCELLOR, by and through counsel, and hereby respectfully gives notice to the court of the filing of Defendant's appeal to the Court of Appeals pursuant to N.C.G.S. § 15A-1444.

Defendant's written notice of appeal fails to "designate the judgment or order" from which he is appealing or any judgment or order at all. *See* N.C. App. P. 4(b) ("The notice of appeal required to be filed and served by subdivision(a)(2) of this rule . . . shall designate the judgment or order from which appeal is taken[.]") "Our Supreme Court has said that a jurisdictional default, such as a failure to comply with Rule 4, precludes the appellate court from acting in any manner other than to dismiss the appeal." *State v. Hammonds*, 218 N.C. App. 158, 162, 720 S.E.2d 820, 823 (2012) (citation and quotation marks omitted). "While this Court has held that a mistake in designating the judgment should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be fairly inferred *from the notice* and the appellee is not misled by the mistake," *id.* at 162, 720 S.E.2d at 823 (2012) (emphasis added) (citation, quotation marks, and brackets omitted), here, defendant is not attempting to appeal from just a judgment but also a pre-trial order.

In addition, one of defendant's arguments on appeal addresses trial counsel's failure to preserve an appeal on the denial of defendant's motion to suppress, but counsel to this Court also failed to properly appeal the judgment. After the initial

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record was filed with this Court, defendant moved to amend the record on appeal; the motion was allowed, but defendant still did not correct any defects in the notice of appeal. Defendant has also failed to petition this Court for a writ of certiorari. In his brief, defendant does request in one sentence that we review his motion to suppress pursuant to Rule 2 of the Rules of Appellate Procedure, but states no basis for finding manifest injustice and again fails to mention his judgment.<sup>1</sup> *See generally* N.C. App. P. 2. Because defendant failed to file a proper notice of appeal or to petition for certiorari on either the pre-trial order or the judgment, we have no jurisdiction and dismiss the appeal. *See generally* N.C. App. P. 4; *Hammonds*, 218 N.C. App. at 162, 720 S.E.2d at 823.

DISMISSED.

Judges BRYANT and DAVIS concur.

Report per Rule 30(e).

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<sup>1</sup> We also note that despite the defects in the notice of appeal, we have reviewed the case thoroughly and find no manifest injustice, since defendant's substantive arguments would fail.