

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-92

Filed: 18 September 2018

Burke County, Nos. 16CRS001231, 17CRS00296

STATE OF NORTH CAROLINA

v.

THOMAS VICTOR RINEHART

Appeal by defendant from judgment entered 15 August 2017 by Judge Robert C. Ervin in Superior Court, Burke County. Heard in the Court of Appeals 27 August 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Brenda Eaddy, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Hannah H. Love, for defendant-appellant.*

STROUD, Judge.

Defendant appeals from judgment entered upon his guilty plea to felony breaking and entering and attaining habitual felon status. We remand for resentencing.

STATE V. RINEHART

*Opinion of the Court*

Because all of defendant's issues on appeal are regarding sentencing, we need not summarize his underlying crimes. We first address defendant's two pending motions before this Court. First, defendant requests that we issue a writ of certiorari to review his judgment due to defects in his notice of appeal. In our discretion, we allow defendant's petition for writ of certiorari. *See generally Luther v. Seawell*, 191 N.C. App. 139, 142, 662 S.E.2d 1, 3 (2008) ("This Court does have the authority pursuant to North Carolina Rule of Appellate Procedure 21(a)(1) to treat the purported appeal as a petition for writ of certiorari and grant it in our discretion." (citations and quotation marks omitted)). Second, defendant has moved to amend his brief and asked to withdraw his second argument on appeal; we allow that motion and consider only defendant's first argument on appeal.

Defendant's argument has four substantive sub-parts. In the first sub-part defendant contends that the trial court erroneously calculated his sentencing points. The State concedes error acknowledging to this Court:

A review of the sentencing chart shows that indeed, the trial court miscalculated Defendant's sentencing points when it assigned four points for two class I felonies that were also counted for Defendant's habitual felon status. Accordingly, Appellee concedes this issue, and agrees that this matter should be remanded back to the trial court for appropriate sentencing. *See, State v. Gentry*, 135 N.C. App. 107, 519 S.E.2d 68 (1999), where this Court reversed and remanded a matter wherein the Defendant was incorrectly sentenced.

We remand for resentencing.

STATE V. RINEHART

*Opinion of the Court*

The remaining sub-parts of defendant's argument also address alleged sentencing errors. On the second sub-part defendant contends the trial court failed to check an appropriate box required for his sentencing as stated on the judgment. The State merely contends, "there is no requirement in N.C. Gen. Stat. § 15A-1340.149 that the court either state this finding out loud or check a box at the bottom of the worksheet." We disagree with the State: "It is universally recognized that a court of record has the inherent power and *duty to make its records speak the truth.*" *State v. Cannon*, 244 N.C. 399, 403, 94 S.E.2d 339, 342 (1956) (emphasis added). We are remanding for resentencing as noted above, so there is no need to address any of defendant's remaining arguments, but on remand the trial court should ensure that all of the required findings and conclusions are reflected on the judgment.

REMANDED FOR RESENTENCING.

Judges DIETZ and MURPHY concur.

Report per Rule 30(e).