

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-891

Filed: 15 December 2020

Rockingham County, Nos. 18 CRS 924, 50950

STATE OF NORTH CAROLINA

v.

STEPHEN TRYONE FOSTER

Appeal by defendant from judgment entered 15 May 2019 by Judge Richard S. Gottlieb in Superior Court, Rockingham County. Heard in the Court of Appeals 3 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Amber I. Davis, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for defendant-appellant.

STROUD, Judge.

Defendant appeals following his *Alford* plea to one count of indecent liberties with a minor and one count of attempted statutory sex offense with a minor under 15. Defendant argues the “trial court lacked subject-matter jurisdiction to accept and enter judgment on Mr. Foster’s guilty plea where the alleged victim was identified in

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the indictments only as ‘A.G.’”. Defendant’s oral notice of appeal was not timely, and he has submitted a petition for writ of certiorari. However, Defendant’s appeal must be dismissed as it is not properly before this Court.

“A defendant’s right to appeal a conviction is purely statutory.” *State v. Davis*, 227 N.C. App. 572, 574, 742 S.E.2d 640, 641 (2013) (quoting *State v. Santos*, 210 N.C. App. 448, 450, 708 S.E.2d 208, 210 (2011)). In his brief, Defendant alleges the following grounds for appellate review, “Mr. Foster appeals from a final judgment of the Superior Court in Rockingham County pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444.” Neither statute gives Defendant the right to appeal following a plea of guilty in this case. *See* N.C. Gen. Stat. §§ 7A-27(b), 15A-1444 (2019).

(b) Except as provided in subsection (a) of this section, appeal lies of right directly to the Court of Appeals in any of the following cases:

(1) From any final judgment of a superior court, *other than one based on a plea of guilty or nolo contendere*, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court martial under G.S. 127A-62.

N.C. Gen. Stat. § 7A-27(b)(1) (emphasis added).

(a2) A defendant *who has entered a plea of guilty* or no contest to a felony or misdemeanor in superior court is entitled to appeal as a matter of right the issue of whether the sentence imposed:

(1) Results from an incorrect finding of the defendant’s prior record level under G.S. 15A-

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1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;
(2) Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or
(3) Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level.

N.C. Gen. Stat. § 15A-1444(a2)(1)-(3) (emphasis added).

Defendant "did not lose his right to appeal due to 'failure to take timely action,'" *State v. Royster*, 239 N.C. App. 196, 201, 768 S.E.2d 196, 199 (2015), and we deny his petition and grant the State's motion to dismiss. The proper procedure through which Defendant may challenge the validity of the indictment following a guilty plea is by a motion for appropriate relief under North Carolina General Statute § 15A-1415(b)(2) with the trial court or a petition for a writ of habeas corpus.

DISMISSED.

Judges BRYANT and MURPHY concur.

Report per Rule 30(e).