

IN THE SUPREME COURT OF NORTH CAROLINA

No. 574PA03

FILED: 7 OCTOBER 2004

STATE OF NORTH CAROLINA

v.

MICHAEL KEITH HOLDEN

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 160 N.C. App. 503, 586 S.E.2d 513 (2003), setting aside judgments entered upon defendant's conviction of two counts of first-degree statutory rape of a child under thirteen years of age by Judge Jerry R. Tillett on 16 January 2002 in Superior Court, Gates County, and awarding defendant a new trial. Heard in the Supreme Court on 14 September 2004.

Roy Cooper, Attorney General, by Amy C. Kunstling, Assistant Attorney General, for the State-appellant.

Rudolph A. Ashton, III and Kirby H. Smith, III for defendant-appellee.

Thomas F. Loflin, III and Seth H. Jaffe, Managing Attorney, on behalf of American Civil Liberties Union of North Carolina Legal Foundation, Inc., amicus curiae.

PER CURIAM.

The members of the Court are equally divided, with three members voting to affirm and three members voting to reverse the decision of the Court of Appeals.¹ Accordingly, the

¹ At the time this case was heard and decided, the Court consisted of only six members, due to the retirement of Associate Justice Orr on 31 July 2004.

decision of the Court of Appeals is left undisturbed and stands without precedential value. See *Crawford v. Commercial Union Midwest Ins. Co.*, 356 N.C. 609, 572 S.E.2d 781 (2002); *Robinson v. Byrd*, 356 N.C. 608, 572 S.E.2d 781 (2002).

AFFIRMED.