

IN THE SUPREME COURT OF NORTH CAROLINA

No. 484PA05

FILED: 28 JUNE 2007

STATE OF NORTH CAROLINA

v.

CRAIG CLIFFORD WISSINK

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 172 N.C. App. 829, 617 S.E.2d 319 (2005), finding no error in part in judgments entered 1 April 2004 by Judge Knox V. Jenkins in Superior Court, Cumberland County, but remanding for resentencing on defendant's conviction for discharging a firearm into occupied property. Heard in the Supreme Court 7 May 2007.

*Roy Cooper, Attorney General, by Daniel P. O'Brien, Assistant Attorney General, for the State-appellant.*

*M. Alexander Charns for defendant-appellee.*

PER CURIAM.

Although the Court of Appeals addressed several issues in its opinion, we allowed review solely for consideration of whether the trial court's finding of defendant's probationary status constituted error under *Blakely v. Washington*, 542 U.S. 296, 159 L. Ed. 2d 403 (2004), and whether defendant had knowingly and voluntarily stipulated to his probationary status. The decision of the Court of Appeals to remand for resentencing is reversed, and we remand this case to that court for reconsideration of these two issues in light of our decisions in

*State v. Hurt*, 361 N.C. 325, 330, 643 S.E.2d 915, 918 (2007) (holding "a judge may not find an aggravating factor on the basis of a defendant's admission unless that defendant personally or through counsel admits the necessary facts or admits that the aggravating factor is applicable") and *State v. Blackwell*, 361 N.C. 41, 44, 49-51, 638 S.E.2d 452, 455, 458-59 (2006) (explaining that *Blakely* error is subject to harmless error review), *cert. denied*, \_\_\_ U.S. \_\_\_, \_\_\_ L. Ed. 2d \_\_\_, 75 U.S.L.W. 3609 (2007). The Court of Appeals opinion remains undisturbed in all other respects.

REVERSED IN PART AND REMANDED.