

IN THE SUPREME COURT OF NORTH CAROLINA

No. 617PA05-2

FILED: 28 AUGUST 2009

STATE OF NORTH CAROLINA

v.

CURLEY JACOBS and BRUCE LEE MCMILLIAN

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 668 S.E.2d 346 (2008), remanding defendant's case for resentencing following defendant's appeal from judgments entered on 29 September 2003 by Judge Gary L. Locklear in Superior Court, Robeson County. The Court of Appeals reconsidered this case following this Court's opinion reported at 361 N.C. 565, 648 S.E.2d 841 (2007), vacating in part and reversing in part and remanding a decision by the Court of Appeals reported at 174 N.C. App. 1, 620 S.E.2d 204 (2005). Heard in the Supreme Court 5 May 2009.

Roy Cooper, Attorney General, by Derrick C. Mertz, Assistant Attorney General, for the State-appellant.

C. Scott Holmes for defendant-appellee Curley Jacobs.

PER CURIAM.

Both parties have conceded that *State v. Tucker*, 357 N.C. 633, 588 S.E.2d 853 (2003), is controlling and was incorrectly applied by the Court of Appeals in this case. Accordingly, the decision of the Court of Appeals is vacated and the case is remanded to that court for reconsideration of the issue of harmless error consistent with *State v. Blackwell*, 361

N.C. 41, 638 S.E.2d 452 (2006), *cert. denied*, 550 U.S. 948 (2007).

VACATED AND REMANDED.

Justice TIMMONS-GOODSON took no part in the consideration or decision of this case.