

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA04-153

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2004

THE STATE OF NORTH CAROLINA

v.

CHRISTOPHER RAY BAKER,

Iredell County
Nos. 98 CRS 8538-8540
98 CRS 13466

Appeal by defendant from judgments entered 21 January 1999 by Judge Preston Cornelius in Iredell County Superior Court. Heard in the Court of Appeals 29 November 2004.

Attorney General Roy Cooper, by Special Deputy Attorney General John R. Corne, for the State.

Teeter Law Firm, by Kelly Scott Lee, for defendant-appellant.

STEELMAN, Judge.

Defendant was charged with felonious breaking and entering and larceny, felonious breaking and entering of a motor vehicle and misdemeanor larceny, felonious larceny, and having attained the status of habitual felon. All of the substantive charges arose out of a 28 April 1998 incident at Hubbard Farms. The jury found defendant guilty of all of the substantive charges, and defendant thereafter admitted to having attained the status of habitual felon.

The trial court calculated defendant to have a prior record

level of III, and sentenced him to consecutive sentences in the presumptive range: (1) to 116 to 149 months imprisonment for the breaking and entering of a motor vehicle and larceny; and (2) to 93 to 121 months for the breaking and entering and larceny after breaking and entering. The trial judge also sentenced defendant to forty-five days imprisonment for the misdemeanor larceny conviction. Defendant appeals.

Defendant's first assignment of error reads as follows:

Did the trial court err in sentencing Defendant as an Habitual Felon to two consecutive sentences when there was only one indictment for Habitual Felon?

Defendant has specifically abandoned this assignment of error, conceding that binding precedent holds "that a separate habitual felon indictment is not required for each predicate substantive felony indictment." *State v. Patton*, 342 N.C. 633, 636, 466 S.E.2d 708, 710 (1996).

Defendant then proceeds to argue under his first assignment of error that the trial court incorrectly determined his sentencing level under the Structured Sentencing Act (Chapter 15A, Article 81B). Rule 10(a) of the Rules of Appellate Procedure provides: "Except as otherwise provided herein, the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10." N.C. R. App. P. 10(a). An assignment of error must be specific. It is intended to direct both the opposing party and the appellate court to an error made by the trial judge. It is not intended to be an umbrella, covering any argument which may pop into the head of

appellate counsel when writing a brief.

There being no assignment of error pertaining to the computation of defendant's record level, this issue is not properly before this Court. This assignment of error is without merit.

Defendant has failed to bring forth his remaining assignments of error and they are, therefore, deemed abandoned. N.C.R. App. P. 28(b)(6).

NO ERROR.

Judges HUNTER and ELMORE concur.

Report per Rule 30(e).