

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-210

NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2005

STATE OF NORTH CAROLINA

v.

Guilford County
No. 94 CRS 11821; 20097

JOHNNIE ROWE

Appeal by defendant from judgment entered 23 January 2004 by Judge Henry E. Frye, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 15 November 2005.

Attorney General Roy Cooper, by Assistant Attorney General Christopher W. Brooks, for the State.

Jon W. Myers for defendant-appellant.

STEELMAN, Judge.

Defendant, Johnnie Rowe, appeals the trial court's order finding him in criminal contempt and issuing a pre-filing injunction prohibiting him from filing any further motions for appropriate relief. For the reasons discussed herein, we affirm.

On 19 September 1994, defendant was indicted for felonious larceny and felonious possession of stolen property, as well as being an habitual felon. In January 1995, defendant filed a motion to suppress, which the trial court denied. Defendant subsequently pled guilty to possession of stolen property and being an habitual felon. Defendant was sentenced to twenty-five years imprisonment.

On appeal, this Court affirmed the trial court's denial of defendant's motion to suppress. *State v. Rowe*, 121 N.C. App. 789, 467 S.E.2d 910 (1996) (COA95-582)(unpublished).

Since defendant's 1995 conviction and 1996 appeal, he has filed at least twenty-four post-conviction motions. These filings include six motions for appropriate relief (MAR) with the Guilford County Superior Court, twelve writs and four other petitions with this Court, and two writs with the Supreme Court. All of these filings dealt with defendant's 1995 conviction and sentence and addressed the same matters. These filings repeatedly dealt with issues defendant had previously raised and had been ruled upon in both the trial court, as well as the appellate courts.

On 14 April 1999, defendant filed a MAR in the Guilford County Superior Court attacking the validity of his sentence for being an habitual felon. By order filed 16 June 1999, the trial court denied defendant's petition and further ordered that he was prohibited from filing any more MARs or any paper writing seeking relief in this action. The court also held defendant was procedurally barred from raising this issue pursuant to MAR because he could have previously done so. Defendant did not appeal this order. He did, however, file additional MARs in superior court. On 16 September 2002, defendant filed another MAR with the superior court contending the indictment was insufficient to sustain a conviction for felonious possession of stolen goods. The superior court concluded defendant's indictment was valid and that his motion was procedurally barred pursuant to N.C. Gen. Stat. § 15A-

1419(a)(1) because he had numerous opportunities to adequately raise this issue in prior motions and had failed to do so. The trial court again ordered that defendant was prohibited from filing any more MARs or any paper writing seeking relief in this action. The court also held defendant was procedurally barred from raising this issue because he could have previously done so. Defendant did not appeal this order.

Defendant filed yet another MAR with the superior court on 6 November 2003 asserting his sentence was inappropriate. The State moved for the trial court to issue an order for defendant to show cause why he should not be held in contempt for violation of the 1999 and 2002 orders prohibiting him from filing further MARs. On 23 January 2004, the trial court conducted a hearing on the order to show cause. Defendant was present at the hearing and represented by counsel. During the hearing, defendant acknowledged he had filed numerous motions in the various courts. He also admitted he received copies of the 1999 and 2002 court orders prohibiting him from filing further MARs, but denied understanding the meaning of those orders. At the close of the evidence, defense counsel made a motion to dismiss, which the trial judge denied. The trial court found defendant's actions in filing the subsequent motions were willful, deliberate, and in violation of the court's prior orders. The judge held defendant in indirect criminal contempt. The court sentenced defendant to a thirty-day active sentence to run concurrently with his current sentence. In addition, the trial court summarily dismissed defendant's MAR for:

(1) being procedurally barred under N.C. Gen. Stat. § 15A-1419(a)(1) in that defendant had numerous opportunities to raise this issue in previous MARs; and (2) for being in direct violation of the 1999 and 2002 orders. The trial court then ordered that defendant was prohibited from filing any more MARs in this action, that is, MARs related to his 1995 felony conviction and corresponding sentence. Defendant appeals.

In defendant's first argument, he contends the trial court's order prohibiting defendant from filing further motions for appropriate relief or any paper writing seeking such relief in this case violated his constitutional right to access to the courts.

Defendant did not raise this constitutional issue before the trial court, and the trial court did not have an opportunity to rule upon it. As a result, this argument is not properly before this Court for review. *Anderson v. Assimos*, 356 N.C. 415, 416, 572 S.E.2d 101, 102 (2002); N.C. R. App. P. 10(b)(1).

In defendant's second argument, he contends the trial court erred in holding him in indirect criminal contempt when he failed to receive notice as required by N.C. Gen. Stat. § 5A-15.

"[T]he 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). Defendant failed to include this assignment of error in the record on appeal. Therefore, this issue is not properly before this Court.

In defendant's third argument, he contends the trial court erred in holding him in willful contempt for failing to comply with the terms of the previous orders when he filed subsequent MARs. We disagree.

Criminal contempt is the "[w]illful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution." N.C. Gen. Stat. § 5A-11(a)(3) (2005). Willful disobedience has been defined as conduct which imports "knowledge and stubborn resistance." *McKillop v. Onslow County*, 139 N.C. App. 53, 61-62, 532 S.E.2d 594, 600 (2000). Willfulness also connotes a "bad faith disregard for authority and the law." *Forte v. Forte*, 65 N.C. App. 615, 616, 309 S.E.2d 729, 730 (1983). "In contempt proceedings, the trial judge's findings of fact are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing on their sufficiency." *O'Briant v. O'Briant*, 313 N.C. 432, 436-437, 329 S.E.2d 370, 374 (1985) (reviewing criminal contempt proceedings).

The record contains sufficient evidence to support the trial court's finding that defendant acted willfully when he violated the two prior court orders. At the hearing defendant admitted he received both of the previous orders prohibiting him from filing any more MARs in Guilford County Superior Court stemming from his 1995 conviction. Defendant's testimony demonstrates he understood the meaning of these orders, but purposefully chose to ignore them. This argument is without merit.

In defendant's fourth and final argument, he contends the trial court erred in denying his motion to dismiss made at the close of the all the evidence. Where the trial judge sits as the trier of fact, there is little point in making a motion to dismiss at the close of all the evidence since at this point in the proceedings the judge will determine the facts in any event. See *Helms v. Rea*, 282 N.C. 610, 619, 194 S.E.2d 1, 7 (1973). In the instant case, the trial judge entered judgment on the merits. Therefore, defendant's motion and the judge's ruling thereon was irrelevant. See *Menzel v. Metrolina Anesthesia Assoc.*, 66 N.C. App. 53, 56-57, 310 S.E.2d 400, 402 (1984). This argument is without merit.

AFFIRMED.

Judges WYNN and JOHN concur.

Report per Rule 30(e).