

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-465
NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2013

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 12 CRS 017119

LEONARD ANTONIO GIVENS

Appeal by defendant from judgment entered 8 August 2012 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 6 November 2013.

Attorney General Roy Cooper, by Assistant Attorney General Carole Biggers, for the State.

WAIT LAW, P.L.L.C., by John L. Wait, for defendant.

ELMORE, Judge.

On 9 April 2012, a grand jury indicted Leonard Antonio Givens (defendant) on charges of felony breaking and entering, felony larceny after breaking and entering, felony possession of stolen goods, conspiracy to commit breaking and entering, and habitual felon. On 20 August 2012, a jury found defendant guilty of felony breaking and entering, felony larceny after breaking and entering, felony possession of stolen goods, and

conspiracy to commit breaking and entering. Defendant admitted to his status of being a habitual felon, and the trial court arrested judgment on the charge of felony possession of stolen goods. Judge Eric L. Levinson sentenced defendant to a minimum of 100 months and a maximum of 138 months imprisonment in the North Carolina Department of Corrections. Defendant entered notice of appeal in open court after receiving his sentence.

The sole issue before us on appeal is whether defendant was afforded effective assistance of counsel at trial. Defendant argues that defense counsel was ineffective because he 1) elicited inadmissible hearsay testimony, 2) failed to object to inadmissible hearsay evidence, and 3) failed to object when the State offered its video and audio evidence. We dismiss this issue without prejudice to defendant's right to file a motion for appropriate relief pursuant to N.C. Gen. Stat. 15A-1415 (2011).

When raising claims of ineffective assistance of counsel, the "accepted practice" is to bring these claims in post-conviction proceedings, rather than on direct appeal. *State v. Dockery*, 78 N.C. App. 190, 192, 336 S.E.2d 719, 721 (1985). Here, defendant has "prematurely asserted his ineffective assistance of counsel claim" by directly appealing to this

Court. *State v. Stroud*, 147 N.C. App. 549, 556, 557 S.E.2d 544, 548 (2001) (quotation and citation omitted).

Defendant raises potential questions regarding defense counsel's trial strategy. However, from the record it is unclear whether counsel was making tactical decisions or if his actions were in fact ineffective. As such, we are unable to address the merits of defendant's argument. To best resolve this issue, an evidentiary hearing available through a motion for appropriate relief is our suggested mechanism. *Id.*; see also *State v. Ware*, 125 N.C. App. 695, 697, 482 S.E.2d 14, 16 (1997) (dismissing the defendant's appeal where the issues could not be determined from the record and concluding that to "properly advance these arguments, defendant must move for appropriate relief pursuant to G.S. 15A-1415[] and G.S. 15A-1420[]"). "Upon the filing of a motion for appropriate relief, the trial court will determine the motion and make appropriate findings of fact." *Ware*, 125 N.C. App. At 697, 482 S.E.2d at 16. Accordingly, defendant's appeal is dismissed without prejudice.

Dismissed.

Judges McCULLOUGH and DAVIS concur.

Report per Rule 30(e).

