An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-294-2

Filed: 6 February 2018

Nash County, No. 13 CRS 54109

STATE OF NORTH CAROLINA

v.

CHRISTOPHER ANGELO WHITEHEAD

On remand by order of the North Carolina Supreme Court on 1 November 2017 in *State v. Whitehead*, __ N.C. __, 805 S.E.2d 680 (2017), remanding this Court's decision filed 6 December 2016 for reconsideration in light of the Supreme Court's opinion in *State v. Brice*, __ N.C. __, 806 S.E.2d 32 (2017). Case originally appealed by defendant from judgment entered 18 November 2015 by Judge Marvin K. Blount, III in Nash County Superior Court.

Attorney General Roy Cooper, by Assistant Attorney General Oliver G. Wheeler, IV, for the State.

Unti & Smith, PLLC, by Sharon L. Smith, for defendant.

DIETZ, Judge.

This case comes before us on remand from the North Carolina Supreme Court to reconsider our previous decision in light of the Supreme Court's decision in *State v. Brice*, __ N.C. __, 806 S.E.2d 32 (2017).

On remand, this Court entered an order inviting the parties to submit supplemental briefing addressing *Brice*'s impact on this appeal. The State submitted a supplemental brief asserting that "this case is materially indistinguishable from *Brice*, the decision there is controlling," and under *Brice* there is no error in the trial court's judgment.

Whitehead did not submit a supplemental brief. We interpret Whitehead's decision not to submit a supplemental brief as a concession that there are no non-frivolous arguments to distinguish this case from *Brice*. Having reviewed the record on our own initiative, we agree. Accordingly, under *Brice*, we find no error in the trial court's judgment.

NO ERROR.

Chief Judge McGEE and Judge TYSON concur.

Report per Rule 30(e).