An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-1203

Filed: 5 June 2018

Columbus County, No. 12 CRS 674

STATE OF NORTH CAROLINA

v.

MARQUICE ALEXANDER ANTONE, Defendant.

Appeal by Defendant from judgment and commitment entered 2 June 2016 by Judge James G. Bell in Columbus County Superior Court. Heard in the Court of Appeals 19 April 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Peter A. Regulski, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for Defendant-Appellant.

INMAN, Judge.

Marquice Alexander Antone ("Defendant") appeals from a judgment and commitment following a jury verdict finding Defendant guilty of first-degree murder. The sole issue in this appeal is whether Defendant was improperly sentenced under an ex post facto law—the revised sentencing statute N.C. Gen. Stat. § 15A-1340.19A,

et seq. (2012). In light of the recent decision by the North Carolina Supreme Court in *State v. James*, __ N.C. __, __ S.E.2d __, (2018), upholding the statute as constitutional and specifically rejecting the ex post facto argument, we affirm Defendant's sentence to life imprisonment with the possibility of parole.

Factual and Procedural History

In May 2012, when he was sixteen years old, Defendant was indicted for first-degree murder and robbery with a dangerous weapon.

In 2014, a jury found Defendant guilty on the robbery charge and found Defendant guilty on the first-degree murder charge based on two theories—malice, premeditation, and deliberation and felony murder. The trial court arrested judgment on the armed robbery conviction and sentenced Defendant on the first-degree murder conviction to life in prison without the possibility of parole—the harshest punishment allowed for a juvenile offender convicted of first-degree murder on a basis other than the felony murder rule. Defendant appealed to this Court.

In 2015, this Court affirmed Defendant's convictions, but remanded the case to the trial court for resentencing because the record did not reflect whether the trial court had considered the presence of any mitigating factors that could justify a sentence of life with the possibility of parole rather than life without parole as

required by a revised sentencing statute.[1] On remand, before arguing factors in mitigation, Defendant's trial counsel argued that applying the sentencing statute, N.C. Gen. Stat. § 15A-1340.19A, *et seq.*, to Defendant's case would violate the constitutional prohibition against ex post facto laws, and that because the previous version of the sentencing statute for juveniles convicted of first-degree murder had been superseded, Defendant should be sentenced for second-degree murder pursuant to N.C. Gen. Stat. § 14-17—the remaining constitutionally valid sentence in effect at the time Defendant committed his offenses. The trial court rejected defense counsel's argument and proceeded with the sentencing hearing.

At the new sentencing hearing, Defendant presented evidence of mitigating factors in support of a sentence of life in prison with the possibility of parole. On 2 June 2016, the trial court sentenced Defendant to life in prison with the possibility of parole. Defendant timely appealed.

Analysis

At issue is whether the application of N.C. Gen. Stat. § 15A-1340.19A, *et seq.* to Defendant violated the constitutional prohibition against ex post facto laws, and

[1] The sentencing statute, N.C. Gen. Stat. § 15A-1340.19A, *et seq.*, was enacted in July 2012, replacing N.C. Gen. Stat. § 14-17 (2005), to comply with the United States Supreme Court's decision in *Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed. 2d 407 (2012), holding that mandatory sentences of life imprisonment without the possibility of parole for juveniles convicted of committing homicides violated the Eighth Amendment's prohibition against cruel and unusual punishments and mandated that sentencing judges consider such offenders' "youth and attendant characteristics" before imposing such a sentence.

whether Defendant should have been sentenced as a class B2 felon for second-degree murder pursuant to N.C. Gen. Stat. § 14-17.

The Supreme Court in *James*, affirming in part this Court's decision, squarely addressed this issue and determined that the "defendant's challenge to the validity of [N.C. Gen. Stat. § 1340.19A, *et seq.*] as an impermissible ex post facto law is without merit." *James*, __ N.C. at __, __ S.E.2d at __. Accordingly we are compelled to reject Defendant's argument that his sentence was an unconstitutional imposition of ex post facto punishment. We therefore affirm Defendant's sentence.

AFFIRMED.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).