An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1196

Filed: 19 June 2018

Moore County, No. 17 CRS 635

STATE OF NORTH CAROLINA

v.

CORY ALAN COLE

Appeal by defendant from order entered 1 June 2017 by Judge Reuben F. Young in Moore County Superior Court. Heard in the Court of Appeals 18 June 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Thomas J. Campbell, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for defendant-appellant.

CALABRIA, Judge.

Defendant Cory Alan Cole appeals from an order holding him in criminal contempt. We reverse.

I. Factual and Procedural Background

On 28 November 2016, a grand jury returned indictments charging defendant with two counts each of possession with intent to sell or deliver marijuana, selling

marijuana, and delivering marijuana; and one count each of possession with intent to sell or deliver a Schedule II controlled substance, selling a Schedule II controlled substance, and delivering a Schedule II controlled substance. Defendant entered a guilty plea pursuant to a plea arrangement with the State to two counts of selling marijuana on 1 June 2017. In return for defendant's plea, the State dismissed defendant's remaining charges and agreed that a "split sentence" would not be imposed. The trial court accepted defendant's plea, sentenced defendant to a suspended term of 6 to 17 months in the custody of the North Carolina Department of Adult Correction, and placed defendant on supervised probation for 24 months.

During the trial court's plea colloquy with defendant, defendant admitted to the court that he had smoked marijuana the day before while released from custody on an unsecured bond. After accepting defendant's plea and announcing its judgment against defendant, the court held the case open and ordered defendant to submit to a drug test. Defendant submitted to a drug test, and the results were positive for marijuana. The court then sentenced defendant for his convictions and also held defendant in direct criminal contempt of court because he tested positive for marijuana, for which the court ordered defendant to spend 30 days in the custody of the Moore County Sheriff. Defendant filed notice of appeal from the court's contempt order.

II. Criminal Contempt

On appeal, defendant argues: (1) the trial court erred in holding him in direct criminal contempt for his positive drug test result; (2) the trial court's findings of fact do not support its conclusion that he was in direct criminal contempt; and (3) the court violated his rights to due process by not first issuing a show cause order and holding a hearing. The State concedes that the facts of this case do not support the court's order holding defendant in direct criminal contempt, and we agree.

"Criminal contempt is imposed in order to preserve the court's authority and to punish disobedience of its orders. Criminal contempt is a crime, and constitutional safeguards are triggered accordingly." *Watson v. Watson*, 187 N.C. App. 55, 61, 652 S.E.2d 310, 315 (2007) (citation omitted), *disc. review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008). Acts amounting to criminal contempt are specifically designated by statute, *see* N.C. Gen. Stat. § 5A-11(a) (2017), and criminal contempt is direct criminal contempt when it:

> (1) Is committed within the sight or hearing of a presiding judicial official; and
>
> (2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and
>
> (3) Is likely to interrupt or interfere with matters then before the court.

N.C. Gen. Stat. § 5A-13(a) (2017).

The trial court's order states that the behavior for which defendant was being held in direct criminal contempt was: "TEST POSITIVE ON HIS COURT DATE, WHICH IS TODAY 06/01/2017[.]" Defendant did not engage in this conduct within the sight or hearing of the trial judge. In addition, defendant did not engage in this conduct in or in immediate proximity to the court room where defendant's plea proceedings were held. Finally, defendant did not interrupt or interfere with any matters before the court. Moreover, defendant's positive drug test does not fall within any of the categories set forth by statute for which a trial court may hold a person in criminal contempt. *See* N.C. Gen. Stat. § 5A-11(a). Accordingly, the trial court erred in holding defendant in criminal contempt and we reverse the court's order. Because our holding is dispositive of defendant's appeal, we need not address whether the trial court violated defendant's due process rights when it held him in contempt.

REVERSED.

Judges DAVIS and BERGER concur.

Report per Rule 30(e).