An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-35

Filed: 18 September 2018

Wake County, No. 14CRS211534

STATE OF NORTH CAROLINA

v.

JASON ROBERT VICKERS, Defendant.

Appeal by Defendant from order entered 2 October 2017 by Judge Donald W. Stephens in Wake County Superior Court. Heard in the Court of Appeals 8 August 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Kimberly N. Callahan, for the State.

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

DILLON, Judge.

Jason Robert Vickers ("Defendant") appeals from an order entered by the trial court denying his motion to locate and preserve evidence for DNA testing.

In this matter, Defendant simultaneously filed with the trial court two motions: (1) a motion for post-conviction DNA testing of certain items and (2) a

motion to locate and preserve those items. The trial court denied both motions by separate opinions. Defendant appealed each order separately, and both appeals were pending before this Court earlier this year.

We heard the first appeal (COA 17-1216) this past May, and on 7 August 2018 we filed an opinion in that appeal which affirmed the trial court's order denying Defendant's motion for post-conviction DNA testing. Specifically, in that appeal, we concluded that Defendant had failed to show how DNA testing of the items he listed in his motions would be material to his defense. We further held that it was Defendant's burden, pursuant to N.C. Gen. Stat. § 15A-268, to contact custodial agencies for an inventory of items.

In this present appeal (COA 18-35), Defendant challenges the trial court's denial of his motion to locate and preserve the items listed in his motion for DNA testing. But in our 7 August 2018 opinion, we held that the items Defendant sought to test would not be material to his defense. Therefore, we dismiss this present appeal as moot.

DISMISSED AS MOOT.

Judges DAVIS and INMAN concur.

Report per Rule 30(e).