

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-16

No. COA21-385

Filed 4 January 2022

Pitt County, Nos. 18 CRS 53654, 54341

STATE OF NORTH CAROLINA

v.

JAMES ARTHUR ACKLIN, Defendant.

Appeal by Defendant from order entered 10 November 2020 by Judge Jeffery B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 14 December 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Caden William Hayes, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for Defendant.

GRIFFIN, Judge.

¶ 1

Defendant appeals an order denying his motion for appropriate relief (“MAR”), in which Defendant requested relief from his conviction and sentence entered upon an *Alford* plea to the charge of felony obstruction of justice. Defendant argues on appeal that the court should have vacated this conviction because the charging indictment was fatally defective. Upon review, we conclude the indictment failed to

allege an essential element of common law felony obstruction of justice. We vacate Defendant's sentence and plea agreement, and remand for a new disposition.

I. Factual and Procedural Background

¶ 2 The material facts are not disputed. The Record tends to establish the following:

¶ 3 The State and Defendant entered into a plea agreement. The plea agreement allowed Defendant to “plead to Obstruction of Justice in lieu of the Failure to Register as a Sex Offender, Obtain Property by False Pretense, and three (3) counts of Misdemeanor Larceny for two (2) judgments.” The State agreed to “dismiss the remaining charges and the[n] not proceed with a Habitual Felon Indictment.”

¶ 4 The indictment charging Defendant with common law felony obstruction of justice stated that Defendant

unlawfully, willfully, and feloniously did with deceit and intent to defraud, fail to notify the Pitt County Sheriff's Office within (3) three business days of his release from the Pitt County Detention Facility as required by Article 27A of Chapter 14 of the General Statutes for individuals required to register.

¶ 5 On 19 August 2019, Defendant pleaded guilty, pursuant to *Alford*, to this charge, to one charge of obtaining property by false pretenses, and to three charges of misdemeanor larceny. The other six pending charges against Defendant were dismissed pursuant to the plea agreement.

¶ 6 The trial court sentenced Defendant to 20-33 months for the felony obstruction of justice conviction, with credit given for 208 days spent in confinement. For the other four convictions, the trial court sentenced Defendant to 20-33 months, with the sentence to begin at the expiration of Defendant's sentence for felony obstruction of justice. Defendant was sentenced at Prior Record Level VI. The trial court also ordered Defendant to pay court costs and attorney's fees for both judgments.

¶ 7 Defendant appealed *pro se* on 26 August 2019. Appellate counsel was appointed for Defendant. On 23 June 2020, Defendant voluntarily withdrew his appeal.

¶ 8 On 2 November 2020, Defendant filed a *pro se* MAR. The trial court summarily denied his MAR on 10 November 2020.

¶ 9 Defendant filed a *pro se* petition for writ of certiorari with this Court on 23 February 2021, requesting review of the order denying his MAR. This Court allowed Defendant's petition.

II. Analysis

¶ 10 Defendant argues that the indictment charging him with common law felony obstruction of justice was fatally defective. We agree; the indictment failed to allege an essential element of the crime.

A. Preservation

¶ 11 Defendant argues on appeal that the trial court lacked subject matter

jurisdiction to accept Defendant’s *Alford* plea because the indictment which charged him with common law felony obstruction of justice was fatally defective. An MAR based on the trial court’s alleged lack of subject matter jurisdiction “may be asserted by a defendant ‘any time’ after verdict.” *State v. Sturdivant*, 304 N.C. 293, 308, 283 S.E.2d 719, 729 (1981) (citations omitted); *see also* N.C. Gen. Stat. § 15A-1415 (2019) (allowing motions for appropriate relief “made more than 10 days after entry of judgment” if “[t]he trial court lacked jurisdiction . . . over the subject matter”).

¶ 12 The State argues that, prior to this current appeal, Defendant did not actually allege a lack of subject matter jurisdiction, and that his appeal should therefore be dismissed.¹ Assuming without deciding that Defendant failed to raise this issue before the trial court and in his MAR, the issue is nonetheless preserved. “[T]he failure of a criminal pleading to charge the essential elements of the stated offense is an error of law which may be corrected upon appellate review even though no corresponding objection, exception or motion was made in the trial division.” *Sturdivant*, 304 N.C. at 308, 283 S.E.2d at 729; *see also State v. Corey*, 373 N.C. 225, 232, 237, 835 S.E.2d 830, 835, 838 (2019) (stating that “we are obligated to determine, on our own motion, the extent to which the trial court and this Court had jurisdiction over this matter”) (vacating and remanding in part because the indictment

¹ The State has also filed a motion to dismiss Defendant’s appeal. We deny the State’s motion.

underlying a criminal conviction was fatally defective).

¶ 13 Defendant's *Alford* plea did not waive his right to appeal. "[A] defendant may challenge the sufficiency of the indictment despite having knowingly and voluntarily pled guilty to the charge." *State v. Blount*, 209 N.C. App. 340, 343, 703 S.E.2d 921, 924 (2011) (citation omitted).

B. Standard of Review

¶ 14 "We review subject matter jurisdiction *de novo*." *State v. Stallings*, 271 N.C. App. 148, 153, 843 S.E.2d 310, 314 (2020) (citation omitted).

C. Sufficiency of Indictment

¶ 15 "It is elementary that a valid bill of indictment is essential to the jurisdiction of the trial court to try an accused for a felony." *Sturdivant*, 304 N.C. at 308, 283 S.E.2d at 729 (citations omitted). "The indictment must allege all essential elements of the offense to be charged[.]" *State v. Preston*, 73 N.C. App. 174, 176, 325 S.E.2d 686, 688 (1985) (citations omitted).

¶ 16 Defendant was charged with common law felony obstruction of justice. "At common law it is an offense to do any act which prevents, obstructs, impedes or hinders public or legal justice." *In re Kivett*, 309 N.C. 635, 670, 309 S.E.2d 442, 462 (1983) (citation and internal quotation marks omitted). "The elements of common law felonious obstruction of justice are: (1) the defendant unlawfully and willfully; (2) obstructed justice; (3) with deceit and intent to defraud." *State v. Ditenhafer*, 373

N.C. 116, 128, 834 S.E.2d 392, 400 (2019) (quoting *State v. Cousin*, 233 N.C. App. 523, 537, 757 S.E.2d 332, 342–43 (2014)).

¶ 17 Here, the indictment failed to allege an essential element of common law felony obstruction of justice: that Defendant obstructed, prevented, impeded, or hindered justice. This omission of an essential element was fatal. *See State v. Bartley*, 156 N.C. App. 490, 499, 577 S.E.2d 319, 324–25 (2003) (stating that “an indictment is fatally defective when the indictment fails on the face of the record to charge an essential element of the offense” (citation omitted)).

¶ 18 The charging document’s caption was the only part of the document that contained the words “obstruction of justice.” This caption was insufficient to correct the indictment. *See State v. Billinger*, 213 N.C. App. 249, 257, 714 S.E.2d 201, 207 (2011) (citing *State v. Bennett*, 271 N.C. 423, 425, 156 S.E.2d 725, 726 (1967) (per curiam)) (rejecting the state’s argument that the indictment was sufficient because the caption contained the omitted essential element).

¶ 19 Because the indictment failed to include an essential element of the charge of common law felony obstruction of justice, the trial court lacked subject matter jurisdiction to accept Defendant’s *Alford* plea to the charge. We must vacate Defendant’s conviction. *See State v. Oldroyd*, 271 N.C. App. 544, 548, 843 S.E.2d 478, 481 (2020) (citation omitted) (stating that “an invalid indictment requires our Court to vacate any conviction based upon it”).

D. Effect on Plea Agreement

¶ 20 Defendant was charged and convicted of common law felony obstruction of justice pursuant to a plea agreement. Through this appeal, “Defendant has elected to repudiate a portion of his agreement.” *State v. Rico*, 218 N.C. App. 109, 122, 720 S.E.2d 801, 809 (Steelman, J., dissenting), *rev’d per curiam for reasons stated in dissent*, 366 N.C. 327, 734 S.E.2d 571 (2012).

¶ 21 “[W]here part of a plea agreement is repudiated, the entirety of the plea must be vacated.” *Oldroyd*, 271 N.C. App. at 545, 843 S.E.2d at 479; *see also Rico*, 218 N.C. App. at 122, 720 S.E.2d at 809 (Steelman, J., dissenting) (citation omitted) (“Defendant cannot repudiate in part without repudiating the whole.”); *see also State v. Fox*, 34 N.C. App. 576, 579, 239 S.E.2d 471, 473 (1977) (“Where a defendant elects not to stand by his portion of a plea agreement, the State is not bound by its agreement to forego the greater charge.”). We therefore are required to vacate the entire underlying plea agreement and remand for a new disposition.

III. Conclusion

¶ 22 For the foregoing reasons, we vacate the plea agreement and the two judgments entered upon Defendant’s conviction, and remand for a new disposition.

VACATED AND REMANDED.

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).