

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA22-1051

Filed 19 September 2023

Guilford County, Nos. 20 CRS 66568; 20 CRS 78879; 21 CRS 79567-68

STATE OF NORTH CAROLINA

v.

LEMUEL J. JOHNSON

Appeal by Defendant from judgments entered 27 April 2022 by Judge Lora C. Cabbage in Guilford County Superior Court. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Zachary K. Dunn, for the State.

Mark L. Hayes, for the Defendant.

PER CURIAM.

On 27 April 2022, Defendant was charged with three counts of trafficking in heroin by transportation and four counts of trafficking in heroin by possession.¹ Defendant pleaded guilty to the above charges pursuant to an Alford plea. In

¹ The record includes a bill of information charging Defendant with one count each of trafficking in heroin by possession and transportation. No other bills of information or indictments are included in the record on appeal.

accordance with his plea, Defendant stipulated to being a record level IV offender, and, as a condition of his plea, agreed to “withdraw/forgo any appeal related to the denial of [his] motions to suppress in 20 CRS 66568 et al.” In exchange, the State agreed that Defendant’s offenses would be “consolidated into one class C judgment, 120 months to 156 months active in the department of adult corrections.” The trial court accepted Defendant’s plea and sentenced him according to the plea agreement on 27 April 2022.

On 10 May 2022, Defendant filed a *pro se* “motion to appeal suppression hearing” with the trial court. The notice did not name the Court to which the appeal was addressed, did not specifically designate which order was being appealed, and does not reflect that the notice was served on the State. Appellate entries were completed on 18 August 2022, and Defendant filed his brief and petition for *writ of certiorari* on 16 February 2023. Defendant requests this Court to grant his petition for *writ of certiorari* despite his failure to preserve his right to appeal the trial court’s suppression rulings pursuant to N.C. Gen. Stat. § 15A-979(b).

N.C. Gen. Stat. § 15A-979(b) permits review of an order “finally denying a motion to suppress evidence on appeal from a judgment of conviction, including a judgment entered on a guilty plea[,]” but this “statutory right to appeal is conditional, not absolute.” *State v. McBride*, 120 N.C. App. 623, 625, 463 S.E.2d 403, 404 (1995), *aff’d per curiam*, 344 N.C. 623, 476 S.E.2d 106 (1996); N.C. Gen. Stat. § 15A-979(b). When a defendant intends to appeal from the denial of his suppression motion, “he

must give notice of his intention to the prosecutor and to the court before plea negotiations are finalized; otherwise, he will waive the appeal of right provisions of the statute.” *State v. Tew*, 326 N.C. 732, 735, 392 S.E.2d 603, 605 (1990) (citation omitted).

In order to preserve the right to appeal from the denial of a motion to suppress, despite pleading guilty, a defendant must “either include in the plea transcript a statement reserving the right to appeal the motion to suppress or orally advise the trial court and the prosecutor before the conclusion of plea negotiations that the defendant intends to appeal the denial of the motion to suppress.” *State v. Robinson*, 383 N.C. 512, 518 n.1, 881 S.E.2d 260, 264 n.1 (2022) (citation omitted). Because Defendant expressly waived his ability to appeal the suppression ruling in his plea agreement and gave no such notification during the plea process so as to reserve the right to appeal the motion, Defendant has waived his right to appeal the denial of his motion to suppress.

After careful review, we conclude Defendant has failed to demonstrate merit or show that error was committed at the trial court. *See State v. Killette*, 381 N.C. 686, 691, 873 S.E.2d 317, 320 (2022). Therefore, in our discretion, Defendant’s petition for *writ of certiorari* is denied, and the State’s motion to dismiss is allowed. *See State v. Ross*, 369 N.C. 393, 400, 794 S.E.2d 289, 293 (2016). Appeal dismissed.

DISMISSED.

STATE V. JOHNSON

Opinion of the Court

Panel consisting of:

Judges WOOD, GRIFFIN, and STADING

Report per Rule 30(e).