

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-89

Filed 3 December 2024

Stanly County, Nos. 20CRS51000, 21CRS132

STATE OF NORTH CAROLINA

v.

ISAIAH DELANTE FAGGART, Defendant.

Appeal by defendant from judgment entered 20 April 2023 by Judge Patrick Thomas Nadolski in Stanly County Superior Court. Heard in the Court of Appeals 13 August 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Jessica Nicole Price, for the State-appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for defendant-appellant.

PER CURIAM.

Defendant was indicted for felony fleeing to elude arrest and attaining habitual felon status. On 20 April 2023, a jury found defendant guilty of fleeing to elude arrest. Defendant then pled guilty to attaining habitual felon status. The trial court sentenced defendant to 74–101 months in prison.

Defendant argues he has a right to appeal under N.C.G.S. §§ 7A-27(b) and 15A-1444(a) from a final judgment entered in Superior Court, Stanly County. We disagree.

Defendant presents one issue on appeal: whether the underlying indictment for his habitual felon conviction was facially invalid. Defendant claims the trial court lacked subject matter jurisdiction to elevate his conviction to a Class D felony for sentencing because, in defendant's view, the habitual felon indictment failed to allege that he was convicted of three prior non-overlapping felonies. We determine, however, that defendant has not raised an appealable issue.

"A defendant's right to appeal a conviction is purely statutory." *State v. Corbett*, 191 N.C. App. 1, 3 (2008) (cleaned up). "[U]nder N.C.G.S. § 15A-1444(e), a defendant who has entered a plea of guilty is not entitled to appellate review as a matter of right, unless the defendant is appealing sentencing issues or the denial of a motion to suppress, or the defendant has made an unsuccessful motion to withdraw the guilty plea." *State v. Pimental*, 153 N.C. App. 69, 73 (2002) (citations omitted). While it is true that "a defendant can raise a claim that the trial court lacked subject matter jurisdiction at any time[.]" *State v. Newborn*, 384 N.C. 656, 658 (2023), "such challenge may be made in the appellate division only if and when the case is properly pending before the appellate division[.]" *State v. Absher*, 329 N.C. 264, 265 n.1 (1991).

Here, an "issue about the clarity of the charging instrument . . . does not relate to the sentencing issues set forth in [N.C.G.S.] § 15A-1444(a2)." *State v. Moore*, 156

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N.C. App. 693, 695 (2003). Defendant has not raised an “appealable issue[] related to sentence disposition or duration[.]” *id.* at 694; *see also* § 15A-1444(a1)–(a2), nor has he presented his argument “in conjunction with the denial of a motion to withdraw a guilty plea or a motion to suppress evidence[.]” *State v. Jamerson*, 161 N.C. App. 527, 529 (2003) (citations omitted).

Defendant entered a plea of guilty to the charge of attaining habitual felon status; he is not entitled to appellate review as a matter of right. We decline to permit review by writ of certiorari in the alternative.

DISMISSED.

Before a panel consisting of Chief Judge DILLON and Judges STROUD and GORE.

Report per Rule 30(e).