

NO. COA21-144

FIFTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From New Hanover</u>
)	
JAQUALYN ROBINSON)	

MOTION TO DISMISS APPEAL

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES
OF THE NORTH CAROLINA COURT OF APPEALS

The State of North Carolina, by and through Nicholas R. Sanders,
Assistant Attorney General, respectfully requests that this Court enter an
order dismissing the appeal in this case. In support of this motion the
undersigned shows as follows:

PROCEDURAL HISTORY

For a full description of the procedural and factual history of this case,
the State respectfully refers this Court to its appellee brief, filed
simultaneously with the instant motion to dismiss the appeal.

REASONS WHY THE APPEAL SHOULD BE DISMISSED

A guilty-pleading defendant generally lacks the right to appeal judgments upon conviction. N.C.G.S. § 15A-1444(e) (2019). However, “[a]n order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty.” N.C.G.S. § 15A-979(b) (2019). “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, 344 N.C. 623, 476 S.E.2d 106 (1996).

“[W]hen a defendant intends to appeal from the denial of a suppression motion pursuant to this section, 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.” State v. Tew, 326 N.C. 732, 735, 392 S.E.2d 603, 605 (1990); see also McBride, 120 N.C. App. at 625, 463 S.E.2d at 404 (“Pursuant to this statute, a defendant bears the burden of notifying the state and the trial court during plea negotiations of the intention to appeal the denial of a motion to suppress, or the right to do so is waived after a plea of guilty. The rule in this state is that notice must be specifically given.” (internal citations omitted)).

Here, Defendant has waived his right to appeal the trial court’s order denying his motion to suppress. Defendant’s motion to suppress was denied

after a hearing, and he subsequently pled guilty to two charges pursuant to a plea agreement with the State. Defendant did not “give notice of his intention to the prosecutor and to the court before plea negotiations [were] finalized” that he would appeal the denial of the motion to suppress. See Tew, 326 N.C. at 735, 392 S.E.2d at 605. It was not until a day after the trial court accepted Defendant’s plea and sentenced Defendant that Defendant informed the State and the trial court of his intent to appeal. (T p. 84) Accordingly, Defendant has waived his right to appeal the trial court’s order, and his appeal should be dismissed. See Tew, 326 N.C. at 735, 392 S.E.2d at 605; McBride, 120 N.C. App. at 625, 463 S.E.2d at 404.

CONCLUSION

WHEREFORE, the State of North Carolina respectfully requests that this Court enter an order dismissing Defendant’s appeal.

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Electronically submitted this the 6th day of July, 2021.

JOSHUA H. STEIN
ATTORNEY GENERAL

Electronically Submitted
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing MOTION TO DISMISS APPEAL upon the DEFENDANT by electronic mail, addressed to his ATTORNEY OF RECORD as follows:

Sarah Holladay
Email: sarah@holladaylawoffice.com

Electronically submitted this the 6th day of July, 2021.

Electronically Submitted
Nicholas R. Sanders
Assistant Attorney General