

NO. 119P21

TWENTY-TWO A DISTRICT

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA )

v. )

MADERKIS DEYAWN ROLLINSON )

From Iredell County

\*\*\*\*\*

STATE'S RESPONSE TO DEFENDANT'S  
PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF NORTH CAROLINA

NOW COMES the State of North Carolina, by and through the undersigned counsel, and responding to defendant’s petition for discretionary review under N.C.G.S. § 7A-31, requests that defendant’s petition be denied. In support of this response, the State shows the following.

PROCEDURAL HISTORY

Defendant Maderkis Rollinson was indicted on two counts of assault with a deadly weapon on a government official, possession of up to one-half ounce of marijuana, possession of marijuana paraphernalia, possession with intent to sell and deliver (“PWISD”) a Schedule II Controlled Substance,

maintaining a vehicle for keeping and selling controlled substances, possession of cocaine, and having attained habitual felon status. (R pp 8-11, 14)

On 13 May 2019, defendant waived his right to a jury trial and a bench trial was held in Iredell County Superior Court before the Honorable Mark Klass. (T pp 4-5; R pp 52-55) The trial court dismissed one count of assault with a deadly weapon on a government official for insufficient evidence. (T pp 123-24; R pp 58-59) The trial court found defendant guilty of the remaining charges. (T p 135; R p 60)

Defendant also waived his right to a jury trial and requested a bench trial to determine whether he had attained habitual felon status and signed a Waiver of Jury Trial form. (T p 136; R pp 61-63) After a hearing, the trial court found defendant guilty of attaining habitual felon status. (T pp 143-44) The court consolidated defendant's convictions for judgment and sentenced defendant as a habitual felon to 101-134 months in prison. (R pp 66-69) Defendant gave notice of appeal in open court following the entry of judgment. (T p 144; R p 69)

Defendant's brief was filed on 18 July 2020 and the State's brief was filed on 21 September 2020. The matter was heard by the Court of Appeals without oral argument on 27 January 2021. In an unpublished opinion, filed 22 March 2021, the Court of Appeals affirmed defendant's convictions, but remanded the

matter for resentencing. State v. Rollinson, 2021-NCCOA-58. Defendant filed a Petition for Discretionary Review before this Court on 7 April 2021.

### **STATEMENT OF THE FACTS**

The factual basis for defendant's charges and convictions are not material to the resolution of the issues set forth in the Petition for Discretionary Review, but are set forth in full in the Court of Appeals opinion in State v. Rollinson, 2021-NCCOA-58.

### **REASONS WHY THIS COURT SHOULD DENY DEFENDANT'S PETITION FOR DISCRETIONARY REVIEW**

#### **I. THE TRIAL COURT PERSONALLY ADDRESSED DEFENDANT BEFORE HE WAIVED HIS RIGHT TO A JURY TRIAL AND HIS WAIVER WAS BOTH KNOWING AND VOLUNTARY.**

##### **A. The Case Does Not Involve Legal Principles Of Major Significance To The Jurisprudence Of This State.**

Petitioner petitions this Court for discretionary review under N.C.G.S. § 7A-31 asserting that the issues presented involve legal principles of major significance to the jurisprudence of the State and are likely to be in conflict with a decision of this Court. For the following reasons, the State respectfully submits that this Court should deny discretionary review.

Pursuant to N.C.G.S. § 7A-31 and Rule 15 of the Rules of Appellate Procedure:

certification may be made by the Supreme Court after determination of the cause by the Court of Appeals when in the opinion of the Supreme Court: (1) The subject matter of the appeal has significant public interest, or (2) The cause involves legal principles of major significance to the jurisprudence of the State, or (3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

N.C.G.S. § 7A-31(c).

“Under this statute this Court, is to review only those cases of substantial general or legal importance or in which review is necessary to preserve the integrity of precedent established by this Court.” Peaseley v. Va. Iron, Coal & Coke Co., 282 N.C. 585, 592, 194 S.E.2d 133, 139 (1973) (emphasis added). This case does not present such substantial importance, nor is review necessary to preserve the integrity of precedent established by this Court.

In his Petition, defendant does not show that this case involves legal principles of major significance to the jurisprudence of the state. Rather, defendant argues that the Court of Appeals opinion was error by essentially repeating the same arguments he made in the Court of Appeals. However, the mere allegation of error below is not the standard for this Court granting discretionary review.

In this case, defendant waived his right to a jury trial pursuant to N.C.G.S. § 15A-1201. N.C.G.S. § 15A-1201(b) sets forth the procedure for a

defendant to waive his constitutional right to a jury trial and provides in relevant part:

A defendant accused of any criminal offense for which the State is not seeking a sentence of death in superior court may, knowingly and voluntarily, in writing or on the record in the court and with the consent of the trial judge, waive the right to trial by jury. When a defendant waives the right to trial by jury under this section, the jury is dispensed with as provided by law, and the whole matter ... shall be heard and judgment given by the court.

N.C.G.S. § 15A-1201(b).

“The decision to grant or deny the defendant’s request for a bench trial shall be made by the judge who will actually preside over the trial.” N.C.G.S. § 15A-1201(d). Before consenting to a defendant’s waiver of the right to a trial by jury, the trial judge shall . . . :

(1) Address the defendant personally and determine whether the defendant fully understands and appreciates the consequences of the defendant’s decision to waive the right to trial by jury. [...]

N.C.G.S. § 15A-1201(d) (emphasis added).

Upon calling the case for trial on 13 May 2019, the prosecutor informed the court that it was her understanding that defendant wished to have a bench trial instead of a jury trial, and asked the court to have a colloquy with defendant. (T p 4) The prosecutor then explained that defendant was charged with two counts of assault with a deadly weapon on a government official;



possession of marijuana; possession of marijuana paraphernalia; PWISD cocaine; maintaining a vehicle; possession of cocaine; and having attained habitual felon status. (T p 4) Immediately thereafter, the following transpired:

[COURT]: Mr. Rollinson, if you will stand up, please. [[Mr. Rollinson] stands]

[COURT]: Do you understand you're charged with the charges she just read to you?

[MR. ROLLINSON]: Yes, sir.

[COURT]: Do you understand you have a right to be tried by a jury of your peers?

[MR. ROLLINSON]: Yes, sir.

[COURT]: At this time you wish to waive your right to a jury and have this heard as a bench trial by me?

[MR. ROLLINSON]: Yes, sir.

[COURT]: If you will sign the appropriate form.

(T pp 4-5)

That same day, defendant, defense counsel, and the court signed form AOC-CR-405, titled "Waiver of Jury Trial." (R pp 52-53) The form declared that defendant provided notice of his intent to waive a jury trial in accordance with N.C.G.S. § 15A-1201(c) by giving "notice on the record in open court[.]" (R pp 52-53) Defendant does not raise any issue with this waiver in his Petition.

At the close of all evidence, the court granted defendant's motion to dismiss one count of assault with a deadly weapon on a government official. (T pp 123-24; R pp 58-59) The court found defendant guilty of one count of assault with a deadly weapon on a government official, possession of up to one-half ounce of marijuana, possession of marijuana paraphernalia, PWISD a Schedule II Controlled Substance, maintaining a vehicle for keeping and selling controlled substances, and possession of cocaine. (T p 135; R p 60)

After the court announced its verdict on the substantive charges, the prosecutor informed the court that defendant had been indicted as a habitual felon. (T pp 135-36) The prosecutor then informed the trial court that she believed that defendant's prior waiver had waived his right to a jury trial but inquired whether the trial court thought an additional colloquy was required. The trial court then decided to address defendant, and did so as follows:

[COURT]: I'll do that. At this point in the trial it's a separate trial. The jurors are coming back to hear the habitual felon matter, *or you can waive your right to a jury* trial and we can proceed.

[DEFENSE COUNSEL]: Just one second, please, your Honor.

[Brief pause]

[DEFENSE COUNSEL]: ... [A]fter speaking with my client on an habitual felon hearing, trial, he is not requesting a jury trial on that matter and is comfortable with a bench trial.

[PROSECUTOR]: Your Honor, I'm ready to proceed.

[COURT]: Go ahead.

(T p 136) Defendant, defense counsel, and the court signed another form AOC-CR-405, titled "Waiver of Jury Trial" with regard to the habitual felon trial. (R pp 61-62) This form re-affirmed defendant's understanding and appreciation of the consequences of his decision to waive his right to a trial by jury, thus confirming his knowing and voluntary waiver of his right to a jury trial on the charge of habitual felon. Defendant now seeks to Petition this Court's review only as to this second waiver of a jury trial on the issue of habitual felon. However, defendant fails to acknowledge that he had also already been personally addressed and fully advised regarding his decision to waive his right to a trial by jury at the beginning of the trial of his original charges the day before.

In his Petition, defendant contends that the Court of Appeals erred in affirming his waiver, arguing that trial court did not personally address the defendant as required by statute. However, it is clear from the transcript cited above that the trial court did personally address the defendant to determine whether he wished to be tried by a jury or have a bench trial. Before making a decision, defendant conferred with his attorney in court. While defendant

himself did not then personally convey to the trial court his decision to waive his right to a jury trial (reached after conferring on the matter with his attorney), his attorney confirmed and conveyed to the trial court defendant's decision to waive his right to a jury trial in defendant's presence and on his behalf. Defendant did not object to his attorney conveying his wishes to the court when his attorney did so in his presence, nor did defendant indicate to the trial court in any way that his counsel's response was not in accordance with his wishes. Further, defendant affirmed his decision to waive his right to a jury trial under oath on the waiver form he signed that same day. (T pp 135-36; R pp 61-62)

Accordingly, the Court of Appeals properly noted that the trial court personally addressed defendant regarding his desire to waive his right to a jury trial prior to the trial on the charge of obtaining habitual felon status. Further, the Court of Appeals recognized that once the trial court personally addressed defendant to inquire of his desire to waive his right to a jury trial, nothing prevented defendant's counsel from conveying defendant's informed decision to waive his right to a jury trial on his behalf following his consultation with his client on the issue. Further, it is very clear from the transcript that defendant's counsel was conveying defendant's own stated position on waiving a jury trial, and not presenting counsel's own desire or position on the issue.

Finally, defendant has never expressly alleged or argued that he was not properly advised of the consequences of his waiver or that he did not actually wish to waive his right to a jury trial. The Court of Appeals recognized this fact, noting that defendant has not alleged any ineffective assistance of counsel.

In his Petition, defendant alleges that the Court of Appeals erred in determining that he properly waived his right to a jury trial by arguing that the statutory mandates of N.C.G.S. § 15A-1201 were not met under the facts and procedure used in this case. However, it is important to note that this case does not involve an objective interpretation of the statute at issue by the trial court, which could have an impact on the jurisprudence of the state. Rather, the issue in this case involved a subjective application of the statute to the facts and procedure used in this case. As such, the Court of Appeals unpublished opinion in this case has no precedential value, and has a little application to other cases. Thus, this case does not present a substantial impact on the jurisprudence of the state.

**B. The Court Of Appeals' Opinion Is Not In Conflict With The Prior Opinions Of This Court.**

Next, defendant argues that the trial court's unpublished opinion conflicts with prior opinions of this Court. This argument is also without merit.

In support of his arguments, defendant argues that the Court of Appeals' opinion in this case conflicts with this Court's opinions in State v. Pruitt and State v. Bullock. His contention rests on his allegation that the trial court did not personally address him as required by statute, and addressed his counsel instead. However, it is clear that the trial court addressed him personally to determine if he intended to waive his right to a jury trial. (T pp 135-36) Defendant then consulted with his attorney before making his decision, and his counsel then conveyed defendant's decision to the trial court. Defendant's contention seems to be that when a trial court personally addresses a defendant pursuant to N.C.G.S. § 15A-1201, that statute also requires defendant to personally respond to the trial court's address and prohibits his counsel from conveying his decisions to the trial court on his behalf. However, that statute does not contain that requirement.

As set forth above, while defendant himself did not personally convey to the trial court his decision to waive his right to a jury trial when addressed by the trial court (reached after conferring on the matter with his attorney in court), his attorney conferred defendant's decision to waive his right to a jury trial in defendant's presence and on his behalf. Defendant did not object to his attorney conveying his wishes to the court when his attorney did so in his presence, nor did defendant indicate to the trial court in any way that his

counsel's response was not in accordance with his wishes. Further, defendant affirmed his decision to waive his right to a jury trial under oath on the waiver form he signed. (T pp 135-36; R pp 61-62) Thus, defendant was personally addressed and conveyed his wishes to the trial court through his attorney and this issue is without merit.

1. Defendant Was Personally Addressed By The Trial Court And The Court Of Appeals' Opinion In This Case Does Not Conflict With State v. Sinclair.

Next, defendant argues that the Court of Appeals' opinion in this case conflicts with this Court's opinion in State v. Sinclair, 301 N.C. 193, 270 S.E.2d 418 (1980). In Sinclair, the defendant was the subject of fourteen (14) indictments, each containing one count of forgery and one count of uttering a forged instrument. All of the indictments arose from the same material set of facts. The State consolidated only six (6) of the indictments for trial. Defendant was found guilty of all charges in the six indictments despite the fact that there was insufficient evidence of guilt before the jury. Defendant then entered a no contest plea to the remaining eight (8) indictments, which was accepted by the trial court. Prior to judgment being entered, defendant moved to withdraw her pleas, but her motion was denied. On appeal, the Court of Appeals held that there was insufficient evidence to find that defendant was guilty and that the charges in the six indictments should have been dismissed.

However, it upheld defendant's no contest plea to the remaining eight (8) indictments, even though it acknowledged that they arose from the same facts that were insufficient to find her guilty of the charges before the jury. Its opinion rested on the fact that defendant had signed a transcript of plea. This Court overturned the Court of Appeals finding that there was insufficient evidence in the record to form a factual basis for a guilty or no contest plea. This Court noted that the defendant in Sinclair had signed a transcript of plea, but that document likewise contained no factual basis for the plea. This Court held that there must be some factual basis for the plea agreement.

Defendant cites Sinclair for the proposition that defendant's signing a waiver of right to jury trial form is not a valid substitute for the trial court addressing defendant personally. However, Sinclair did not address this issue. Not only is Sinclair not analogous to this case, defendant's argument regarding the applicability of Sinclair presumes that the trial court did not personally address defendant in this case, which it did as set forth above. Thus, this case presents no conflict with Sinclair and this issue is without merit.



**II. THE COURT OF APPEALS DID NOT ERR IN FINDING THAT DEFENDANT WAS NOT PREJUDICED BY ANY ERROR OF THE TRIAL COURT REGARDING HIS WAIVER OF HIS RIGHT TO TRIAL BY JURY.**

Defendant next asks this Court to grant his Petition on the grounds that the Court of Appeals opinion is contrary to this Court's prior opinions. This issue is also without merit and this Court should deny the Petition.

At the outset, defendant argues that the Court of Appeals opinion is contrary to this Court's prior opinions finding that a jury trial conducted before an improperly constituted jury constitutes structural error. However, that was not the issue before the Court of Appeals in this case. Rather, the issue in this case is whether or not the trial court complied with N.C.G.S. § 15A-1201 when it allowed defendant to waive his right to a jury trial.

In support of his arguments, defendant cites to several cases such as State v. Wilson, 363 N.C. 478, 681 S.E.2d 325 (2009); State v. Poindexter, 353 N.C. 440, 545 S.E.2d 414 (2001); State v. Bunning, 346 N.C. 253, 485 S.E.2d 290 (1997) and State v. Hudson, 280 N.C. 74, 185 S.E.2d 189 (1971). However, all of these cases dealt with improperly constituted juries and were decided prior to the North Carolina Constitution being amended to allow defendants to waive their right to a jury trial and prior to N.C.G.S. § 15A-1201 being enacted.

None of those cases involved the interpretation or application of N.C.G.S. § 15A-1201.

However, the issue of an alleged violation of N.C.G.S. § 15A-1201 has previously been adjudicated by the Court of Appeals and been brought before this Court. In State v. Swink, 252 N.C. App. 218, 797 S.E.2d 330 (2017), the Court of Appeals held in a published opinion that in order to prevail on the showing of a violation of N.C.G.S. § 15A-1201, defendant must also show that he was prejudiced by the violation:

In order to succeed with this claim, defendant would have to be able to show both that the trial court violated the statute and that such violation prejudiced him. See, e.g., State v. Ashe, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985) “[W]hen a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court’s action is preserved, notwithstanding [the] defendant’s failure to object at trial.”); see also State v. Love, 177 N.C. App. 614, 623, 630 S.E.2d 234, 240-41 (2006) “However, a new trial does not necessarily follow a violation of statutory mandate. Defendants must show not only that a statutory violation occurred, but also that they were prejudiced by this violation.” (Citations omitted)).

Id. at 221, 797 S.E.2d at 332.

Defendant also cites to the dissent in the recent Court of Appeals opinion in the case of State v. Hamer, \_\_ N.C. App. \_\_, 845 S.E.2d 846, 870 (2020). However, the Hamer case is not analogous to this case. In Hamer, the trial court did not personally address the defendant as required by N.C.G.S. § 15A-

1201 until after the State had already presented its case in chief. Here, as set forth above, defendant had already been addressed personally before the State proceeded with its case. Specifically, defendant had been personally addressed on 13 May 2019 before the trial of the original charges. Defendant then signed a waiver form under oath indicating that he had been properly advised and fully understood and appreciated the consequences of his decision to waive his right to a jury trial. (T pp 4-5; R pp 52-53) The very next day, following defendant's convictions on the original charges, but before proceeding on the habitual felon charges, the trial court again addressed defendant personally regarding his desire to waive his right to a trial. Defendant then conferred with counsel in open court, and counsel indicated to the trial court that defendant still wished to waive his right to a trial by jury. On that same date, defendant signed another waiver of counsel form under oath, indicating that he had been properly advised and understood and appreciated the consequences of his decision to waive his right to trial by jury. (T p 136; R pp 61-62) Unlike in Hamer, the defendant in this case was addressed personally and made the decision to waive his right to a jury trial before the trial had commenced. Thus, this case is not analogous to Hamer and should be treated as this Court treated Swink.

Finally, even if there were error, defendant was not prejudiced by same and same was harmless. At trial on the issue of habitual felon, the State introduced three certified, self-authenticating prior felony judgments without objection from defendant. Further, counsel for Defendant was given the opportunity to ask questions and present evidence on defendant's behalf; however, no questions were asked, and Defendant presented no evidence whatsoever in the adjudicatory stage of the habitual felon trial. Defendant even conceded in closing argument that his strategy on the habitual felon charge had been to try to get the second felony conviction set aside in a collateral proceeding, but had been unsuccessful in doing so. (T p 138) Where defendant did not object to the evidence of guilt, did not present any evidence on his own behalf, and essentially admitted to his habitual felon status by admitting his unsuccessful attempt to set aside one of the underlying felonies, he cannot show that there is any reasonable possibility of a different outcome had the matter been tried before a jury. Accordingly, this issue does not conflict with prior opinions of this Court and is without merit.

### **CONCLUSION**

This case does not involve legal principles of major significance to the jurisprudence of this state and the Court of Appeals' unpublished opinion does

not conflict with prior opinions of this Court. Accordingly, this Court should not grant discretionary review in this case.

Electronically submitted this the 19<sup>th</sup> day of April, 2021.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing RESPONSE TO DEFENDANT’S PETITION FOR DISCRETIONARY REVIEW upon the DEFENDANT by electronic mail, addressed to his ATTORNEY OF RECORD as follows:

Hannah Hall Love  
Email: hannah.h.love@nccourts.org

Electronically submitted this the 19<sup>th</sup> day of April, 2021.

Electronically Submitted  
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