



## State v. Coffin

615 S.E.2d 738 (2005) | Cited 1 times | Court of Appeals of North Carolina | July 19, 2005

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

Defendant (Rodney Earl Coffin) pled guilty to second degree murder for shooting and killing his girlfriend, Bonnie Bassett. In a statement given to the police, defendant admitted that following an argument he shot Bassett in the back of the head while she was asleep in the couple's bed. The trial court found, as an aggravating factor, that the defendant took advantage of a position of trust or confidence to commit the offense and imposed an aggravated sentence of 210 to 261 months imprisonment.

Defendant appealed from the judgment imposing sentence, contending that there was insufficient evidence to support the trial court's finding that the defendant took advantage of a position of trust. While his appeal was pending, defendant also filed a Motion for Appropriate Relief challenging the constitutionality of his sentence under *Blakely v. Washington*, 542 U.S. 296, 159 L.Ed. 2d 403 (2004).

We first address defendant's Motion for Appropriate Relief, in which he asserts that his sentence is unconstitutional under *Blakely* because the trial court enhanced his sentence based on aggravating factors which were not submitted to a jury and found to exist beyond a reasonable doubt. This Court is the appropriate forum for the motion, and the issue it raises may be determined on the basis of the materials before us. See N.C.G.S. § 15A-1418(a) and (b) (2003).

Defendant contends he is entitled to a new sentencing hearing pursuant to *Blakely v. Washington*, 542 U.S. 296, 159 L.Ed. 2d 403 (2004). We agree.

In the instant case, defendant's sentence was aggravated based on a finding that "[he] took advantage of a position of trust or confidence to commit the offense." The trial court sentenced defendant to an aggravated term of 210 to 261 months. However, the aggravating factor was not found beyond a reasonable doubt by a jury, and it was not admitted by defendant. Accordingly, defendant's Motion for Appropriate Relief is granted, and this case is remanded for imposition of a sentence that comports with *Blakely* and *State v. Allen*, \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (No. 485PA04)(filed 1 July 2005).

The Motion for Appropriate Relief is granted.

Remanded for resentencing.



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Judges HUNTER and CALABRIA concur.

Report per Rule 30(e).

