

COURT OF APPEALS OF NORTH CAROLINA

State v. McKoy

No. COA25-195 · No. COA25-195 · Decided December 3, 2025

SUMMARY

The North Carolina Court of Appeals held that the trial court improperly entered judgment for felony possession of marijuana because the jury was not instructed that it had to find possession of more than 1.5 ounces. The court treated the verdict as one for misdemeanor simple possession of marijuana, vacated the felony conviction, and remanded for resentencing while leaving the defendant's other convictions undisturbed.

CASE DETAILS

COURT	Court of Appeals of North Carolina
WRITING FOR THE COURT	Judge Tobias Hampson; Judge Zachary; Judge Wood
JURISDICTION	North Carolina Court of Appeals
DECIDED	December 3, 2025
DOCKET	COA25-195
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from superior-court judgments entered after a jury convicted him of multiple offenses, including felony possession of a Schedule VI controlled substance (marijuana).
STANDARD OF REVIEW	The court reviewed whether the trial court improperly entered judgment and imposed sentence for an offense on which the jury was not instructed. The court treated the issue as a sentencing error, which is generally preserved for appellate review without a trial objection.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the North Carolina Court of Appeals.
PARTIES	Darion Tyquan McKoy v. State of North Carolina

TOPICS

- jury instructions
- lesser included offense instructions
- sentencing
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court erred by entering judgment and sentencing Defendant for felony possession of marijuana when the jury was instructed only on the elements of simple possession and was not instructed to determine whether Defendant possessed more than 1.5 ounces.

HOLDINGS

1. When the trial court does not instruct the jury that possession of more than 1.5 ounces of marijuana is required for felony possession, the instruction submits the lesser offense of simple possession of marijuana rather than felony possession.
2. The issue was reviewable as a sentencing error because Defendant challenged the trial court's entry of judgment for an offense the jury was not instructed to decide, rather than challenging the jury instruction itself.

KEY QUOTATIONS

“Therefore, the jury found Defendant guilty of Simple Possession of Marijuana. Consequently, the trial court erred in sentencing Defendant on Felony Possession of Marijuana.” (at 6)

“Accordingly, for the foregoing reasons, we vacate Defendant’s conviction for Felony Possession of a Schedule VI Controlled Substance (Marijuana) in the consolidated Judgment in 23 CRS 287860 and remand for resentencing on the misdemeanor offense of Simple Possession of Marijuana.” (at 6)

FACTUAL BACKGROUND

McKoy was charged with numerous offenses, including felony possession of marijuana. The trial court instructed the jury that the State had to prove knowing possession of marijuana but did not instruct the jury that felony possession required possession of more than 1.5 ounces. The verdict sheet likewise identified only possession of a Schedule VI controlled substance, without specifying the amount.

PROCEDURAL HISTORY

McKoy was indicted on twenty-five charges and pleaded not guilty. The jury was instructed on twenty-four charges and returned guilty verdicts on eight, including felony possession of marijuana. The superior court consolidated seven convictions into one judgment and sentenced McKoy; he timely appealed, challenging only the felony-marijuana conviction and resulting sentence.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate Defendant's conviction for felony possession of a Schedule VI controlled substance (marijuana) in the consolidated judgment in 23 CRS 287860 and remand for resentencing on misdemeanor simple possession of marijuana. Defendant's other convictions remain undisturbed.

CASES CITED

- State v. Gooch, 307 N.C. 253, 297 S.E.2d 599 (1982)
- State v. Davis, 283 N.C. App. 328, 871 S.E.2d 580, 2022 WL 1311660 (2022) (unpublished)
- State v. Fleming, 247 N.C. App. 812, 786 S.E.2d 760 (2016)
- State v. Curmon, 171 N.C. App. 697, 615 S.E.2d 417 (2005)
- State v. Stokes, 367 N.C. 474, 756 S.E.2d 32 (2014)
- State v. Hardy, 242 N.C. App. 146, 774 S.E.2d 410 (2015)
- State v. Moore, 327 N.C. 378, 395 S.E.2d 124 (1990)