

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA11-1161
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v.

Buncombe County
No. 08 CRS 55739

CHARLES THOMAS MILLER

On writ of certiorari to review judgment entered 3 March 2009 by Judge C. Phillip Ginn in Buncombe County Superior Court. Heard in the Court of Appeals 17 January 2012.

Attorney General Roy Cooper, by Assistant Attorney General Kathleen N. Bolton, for the State.

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender Barbara S. Blackman, for defendant-appellant.

HUNTER, Robert C., Judge.

Charles Thomas Miller ("defendant") was charged with possession with intent to sell or deliver cocaine. Defendant filed a motion to suppress evidence seized from him on the day he was arrested. Evidence was heard at a hearing held on 3 March 2009, after which the trial court denied the motion in a written order. Defendant subsequently pled guilty. The trial

court entered judgment and sentenced defendant to a suspended term of ten to 12 months, and placed defendant on supervised probation for 36 months. On 7 September 2010, this Court granted certiorari to review the judgment entered upon defendant's conviction.

Defendant's counsel has filed a brief on defendant's behalf in which she states that "[a]fter close examination of the record and review of the relevant law, counsel is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal." She seeks to have this Court "conduct a full examination of the record for possible prejudicial error and to determine if any justiciable issue has been overlooked by counsel."

In accordance with the holdings of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), counsel wrote to defendant on 30 September 2011, advising defendant: of her inability to find errors to raise on appeal; of counsel's request for this Court to conduct an independent review of the record; and of defendant's right to file his own arguments directly with this Court. Counsel attached to the letter a copy of the record, the

transcript, and the brief filed by counsel. Defendant has not filed his own written arguments.

Where a defendant entered a guilty plea in superior court, the defendant's appeal is limited to the following issues: (1) whether the sentence imposed is supported by the evidence (if the minimum term of imprisonment does not fall within the presumptive range); (2) whether the sentence imposed results from an incorrect finding of the defendant's prior record level under N.C. Gen. Stat. § 15A-1340.14 or the defendant's prior conviction level under N.C. Gen. Stat. § 15A-1340.21; (3) whether the sentence imposed constitutes a type of sentence not authorized by N.C. Gen. Stat. § 15A-1340.17 or N.C. Gen. Stat. § 15A-1340.23 for the defendant's class of offense and prior record or conviction level; (4) whether the trial court properly denied the defendant's motion to suppress pursuant to N.C. Gen. Stat. § 15A-979(b); and (5) whether the trial court improperly denied the defendant's motion to withdraw his guilty plea. N.C. Gen. Stat. § 15A-1444(e) (2009); *State v. Jamerson*, 161 N.C. App. 517, 528-29, 588 S.E.2d 545, 546-47 (2003).

Pursuant to *Anders* and *Kinch*, we must fully examine the record for possible prejudicial error under N.C. Gen. Stat. § 15A-1444. Appellate counsel has specifically directed our

attention to issues regarding the denial of the motion to suppress, as well as the determination of the prior record level and imposition of the sentence. After careful review of the record, we find no error in the trial court's decision to deny the motion to suppress and find no error in defendant's judgment and sentence. Since we determine that there are no justiciable issues upon which relief may be granted, this appeal is wholly frivolous. *Anders*, 386 U.S. at 744, 18 L. Ed. 2d at 498.

Affirmed.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).