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NO. COA06-564

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

STATE OF NORTH CAROLINA

v.

JOSEPH JAMES GOUGE

Yancey County
Nos. 03 CRS 50912
03 CRS 50929-31

STATE OF NORTH CAROLINA

v.

PATRICK SCOTT GOUGE

Appeals by defendants from judgments entered 18 October 2005 by Judge Richard L. Doughton in Yancey County Superior Court. Heard in the Court of Appeals 11 December 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Robert C. Montgomery, for the State.

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender Constance E. Widenhouse, for defendants-appellants.

LEVINSON, Judge.

On 17 October 2005, defendants Joseph James Gouge and Patrick Scott Gouge (collectively, "defendants") each pled guilty to second-degree murder and robbery with a dangerous weapon in Yancey County Superior Court. After accepting defendants' pleas, Judge Richard L. Doughton sentenced Joseph Gouge at the top of the

presumptive range to a prison term of 157 to 198 months for second-degree murder and a consecutive prison term of 64 to 86 months for robbery with a dangerous weapon. Judge Doughton consolidated the charges against Patrick Gouge for sentencing and sentenced him at the top of the presumptive range to a prison term of 157 to 198 months. Defendants appeal. For the reasons set out below, we affirm.

Defendants' appellate counsel states she "is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal for either of the two defendants." As such, defense counsel asks this Court to fully review the record for possible prejudicial error. Defense counsel also brought forward and argued eleven assignments of error relating to Joseph Gouge and ten assignments of error relating to Patrick Gouge to fulfill her obligation to refer this Court to "anything in the record that might arguably support the appeal[.]"

Defense counsel has shown to the satisfaction of this Court that she has complied with the requirements of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, *reh'g denied*, 388 U.S. 924, 18 L. Ed. 2d 1377 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising defendants of their right to file written arguments with this Court and providing them with the documents necessary for them to do so. Defendants have not filed any written arguments on their own behalf with this Court, and a reasonable time in which they could have done so has passed.

In accordance with *Anders* and *Kinch*, we must fully examine the

record to determine whether any issues of arguable merit appear therefrom or whether the appeal is wholly frivolous. At the outset, we note that because defendants pled guilty and were sentenced within the presumptive range, their appeal is limited. Specifically, under N.C. Gen. Stat. § 15A-1444, a defendant who has pled guilty has a right to appeal only the following issues: (1) whether the sentence is supported by the evidence (if the minimum term of imprisonment does not fall within the presumptive range); (2) whether the sentence 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 contains a type of sentence not authorized by N.C. Gen. Stat. § 15A-1340.17 or § 15A-1340.23 for the defendant's class of offense and prior record or conviction level; (4) whether the sentence contains a term of imprisonment that is for a duration 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 under N.C. Gen. Stat. § 15A-1444(a2)(3); (5) whether the trial court improperly denied the defendant's motion to suppress; or (6) whether the trial court improperly denied the defendant's motion to withdraw his guilty plea. *State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003).

We have reviewed the entire record for possible prejudicial error under Section 15A-1444 of the North Carolina General Statutes and have found none. Indeed, defendants were sentenced within the

applicable presumptive range for their class of offense(s) at the lowest possible prior record level. Further, the record fails to show that the trial court denied a motion to suppress evidence prior to the entry of defendants' guilty pleas or that the trial court denied a motion to withdraw defendants' guilty pleas. Accordingly, we find no error.

No error.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).