

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-967

Filed: 6 June 2017

Beaufort County, Nos. 13 CRS 52807, 15 CRS 50645, 50906, 51228

STATE OF NORTH CAROLINA

v.

JEREMY TETTERTON

Appeal by defendant from judgment entered 6 April 2016 by Judge Wayland J. Sermons, Jr., in Beaufort County Superior Court. Heard in the Court of Appeals 8 May 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Charlene Richardson, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender John F. Carella, for defendant-appellant.*

ZACHARY, Judge.

On 6 April 2016, defendant Jeremy Tetterton pleaded guilty pursuant to a plea agreement to two counts of robbery with a dangerous weapon, one count of assault with a deadly weapon with intent to kill, and indecent exposure. In accordance with the terms of the plea agreement, the trial court consolidated the convictions into one

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judgment for purposes of sentencing, and ordered defendant to pay restitution in the amount of \$2,641.81. Sentencing was left to the discretion of the trial court, and the court sentenced defendant to a term of 73 to 100 months' imprisonment

On 22 April 2016, defendant filed a *pro se* letter seeking to appeal the judgment. The trial court appointed counsel, and defendant subsequently perfected the appeal. On 28 November 2016, defendant filed a petition for writ of certiorari. Defendant recognized that his notice of appeal was defective in that it was filed two days after the fourteen-day deadline, did not designate the court to which appeal was taken, and may not have been served on the State prior to filing. N.C. R. App. P. 4(a) and (b). In our discretion, we grant defendant's petition for writ of certiorari for the purpose of reviewing the judgment entered.

Counsel appointed to represent defendant has been unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has also shown to the satisfaction of this Court that he has complied with the requirements 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), by advising defendant of his right to file written arguments with this Court and providing defendant with the documents necessary for him to do so.

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In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. By virtue of his guilty plea, defendant's right to appeal was limited to the sentencing issues set forth in N.C. Gen. Stat. § 15A-1444(a1)-(a2) (2015). In this case, defendant was assessed two points for a felony breaking or entering, and one point for misdemeanor larceny, with both convictions having been entered on the same day. Pursuant to N.C. Gen. Stat. § 15A-1340.14(d) (2015), only the more serious conviction could be counted in defendant's prior record level calculation. As a result, defendant should have been assigned three, rather than four, prior record points. Nevertheless, the deduction of one point results in no change in his prior record level, and defendant was correctly sentenced in the presumptive range for a Class D, Level II felony. Accordingly, we find no prejudicial error in the judgment entered in this case.

NO PREJUDICIAL ERROR.

Judges BRYANT and DAVIS concur.

Report per Rule 30(e).