

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-1148

Filed: 20 June 2017

Forsyth County, No. 15 CRS 053535

STATE OF NORTH CAROLINA

v.

JIMMY PHLOYKAEW, Defendant.

Appeal by defendant from judgment entered 23 May 2016 by Judge Michael D. Duncan in Forsyth County Superior Court. Heard in the Court of Appeals 30 May 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General John A. Payne, for the State.*

*Dylan J.C. Buffum for defendant-appellant.*

ELMORE, Judge.

Defendant Jimmy Phloykaew appeals from a judgment entered upon his guilty plea to manufacturing marijuana and possessing marijuana paraphernalia. We dismiss the appeal.

On 14 December 2015, defendant was indicted by a grand jury on one count of manufacturing marijuana and one count of possessing marijuana paraphernalia.

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Prior to trial, defendant moved to suppress evidence allegedly obtained from an illegal search and seizure. At the suppression hearing held on 23 May 2016 in Forsyth County Superior Court, the trial court denied defendant's motion from the bench. Defendant gave notice that he intended to appeal the denial of his suppression motion. Defendant then pled guilty to both charges. The trial court sentenced defendant to a term of five to fifteen months of imprisonment, suspended, and twenty-four months of supervised probation.

As an initial matter, we note that while defendant gave notice of his intent to appeal the trial court's denial of his suppression motion, defendant did not give notice of appeal after judgment was entered as is required by N.C. R. App. P. 4. In recognition of this fact, defendant has filed a petition for writ of certiorari as an alternate basis of review of his appeal. We deny the petition for writ of certiorari in light of the fact that defendant fails to raise any issues subject to review by this Court on direct appeal.<sup>1</sup>

In his sole argument on appeal, defendant purports to challenge the trial court's order denying his motion to suppress. However, defendant does not argue that the trial court erroneously denied the motion. Rather, defendant contends that his trial counsel provided ineffective assistance by failing to pursue a meritorious argument in support of the motion to suppress. Even assuming *arguendo* that this

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<sup>1</sup> In light of our denial of defendant's petition for writ of certiorari, the State's motion to dismiss the appeal is allowed.

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issue is properly before this Court for appellate review, *see* N.C. Gen. Stat. §§ 15A-979(b), -1444(a2) (2015), the record is not sufficiently complete to determine whether defendant's claim of ineffective assistance of counsel has merit, *see State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001) ("IAC claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required . . ."). While we dismiss defendant's claim, we do so without prejudice to his right to seek post-trial relief by filing a motion for appropriate relief with the trial court. *See id.* at 167, 557 S.E.2d at 525 ("[S]hould the reviewing court determine that IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant's right to reassert them during a subsequent MAR proceeding." (citation omitted)). Having presented no other issues for review to this Court, defendant's appeal is hereby dismissed.

DISMISSED.

Judges DIETZ and BERGER concur.

Report per Rule 30(e).