

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-1185

Filed: 18 July 2017

Orange County, Nos. 12CRS53311, 52087; 13CRS50096; 15CRS267

STATE OF NORTH CAROLINA,

v.

RAMONE J. ALSTON, Defendant.

Appeal by defendant from judgments entered 29 April 2016 by Judge R. Allen Baddour in Orange County Superior Court. Heard in the Court of Appeals 10 July 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Jessica V. Sutton, for the State.

Guy J. Loranger for defendant-appellant.

BERGER, Judge.

On October 28, 2013, Ramone J. Alston (“Defendant”) pleaded guilty in Orange County Superior Court, pursuant to a plea agreement, to two counts of breaking or entering, two counts of larceny after breaking or entering, and one count each of felony fleeing to elude arrest and resisting a public officer. Defendant was sentenced to three consecutive terms of ten to twenty-one months of imprisonment; the

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sentences were suspended, and Defendant was placed on supervised probation for thirty-six months. The plea transcript for this case indicates that Defendant admitted to the existence of the aggravating factor that he was on probation at the time these offenses were committed.

On May 6, 2014, Defendant pleaded guilty in Guilford County Superior Court, pursuant to a plea agreement, to felony fleeing to elude arrest and felony possession of marijuana. The trial court sentenced Defendant to a single term of eight to nineteen months of imprisonment. This sentence was suspended, and the trial court placed Defendant on supervised probation for thirty months.

On September 17, 2015, the State filed a probation violation report alleging Defendant had violated the terms and conditions of his probation by testing positive for marijuana and admitting to the use of marijuana. Defendant was confined to the Orange County jail for two days for this violation.

On December 30, 2015, the State filed additional probation violation reports alleging Defendant had yet again violated the terms and conditions of his probation. Defendant's probation officer stated that Defendant tested positive for marijuana on November 4, 2013, January 30, 2014, and December 19, 2014; failed to report for scheduled office visits on November 5, 2014, May 20, 2015, and September 9, 2015; was not at his residence at curfew on September 8, 2015 and September 10, 2015; failed to pay monies owed pursuant to the Orange County judgment; failed to reside

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in his mother's home; and committed new criminal offenses of cruelty to animals, possession of stolen goods, assault with a deadly weapon inflicting serious injury, and attempted murder, as well as multiple traffic offenses. On March 10, 2016, the State filed addendums to include allegations that in 2014, Defendant violated his probation by committing additional criminal offenses of possession of stolen goods and cruelty to animals.

On April 29, 2016, the trial court held a probation violation hearing in Orange County Superior Court. Defendant denied the allegations in the violation reports. Investigator David Britt with the Chapel Hill Police Department, Deputy Troy Williams with the Orange County Sheriff's Department, and Irene Fipps, manager of Orange County Animal Control, testified regarding the pending possession of stolen goods and cruelty to animals charges cited in the probation violation reports. Defendant's probation officer testified consistent with the violation reports that Defendant failed drug screens by testing positive for marijuana, missed scheduled office visits, and no longer resided with his mother.

The trial court found that Defendant willfully violated various terms of his probation without lawful excuse, and that Defendant had committed criminal offenses relating to possession of stolen goods and cruelty to animals as alleged in the probation violation report addendums. The trial court revoked Defendant's probation

and activated his suspended sentences. Defendant entered written notice of appeal on May 13, 2016.

On March 17, 2017, Defendant filed a petition for writ of certiorari in this Court seeking to preserve his right to appellate review due to a defect in his notice of appeal. Specifically, Defendant conceded that he failed to serve his notice of appeal on the State. We additionally note that Defendant's notice of appeal failed to designate the court to which appeal was taken or the judgment being appealed. *See* N.C.R. App. P. 4(b). Nevertheless, in our discretion pursuant to N.C.R. App. P. 21(a)(1), we allow Defendant's petition for writ of certiorari in order to review the trial court's judgments.

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 this Court to 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 him with the documents necessary for him to do so. Defendant has not filed any written arguments on his own behalf with this Court, and a reasonable time in which he could have done so has passed.

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There is, however, a clerical error in the trial court's judgments. The judgments entered in 12CRS52087 and 13CRS50096 indicate that Defendant violated his probation as alleged in paragraph number three of the December 30, 2015 probation violation reports. However, following the probation revocation hearing, the trial court found that the State did not proceed as to these allegations. Accordingly, we remand for the correction of this clerical error. *See State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696-97 (2008).

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. We have been unable to find any possible prejudicial error and conclude that the appeal is wholly frivolous.

AFFIRMED; REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).