

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-1196

Filed: 19 September 2017

Randolph County, Nos. 09 CRS 5778, 5782; 11 CRS 50457, 50696

STATE OF NORTH CAROLINA

v.

DEMETRIAS DESHAUN HEADEN

Appeal by defendant from judgments entered 23 May 2016 by Judge Stanley L. Allen in Randolph County Superior Court. Heard in the Court of Appeals 9 August 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Larissa S. Williamson, for the State.

Kimberly P. Hoppin for defendant.

DIETZ, Judge.

Defendant Demetrias Deshaun Headen appeals from judgments revoking his probation for, among other grounds, committing the Class 2 misdemeanor offense of carrying a concealed weapon. As explained below, Headen did not properly appeal the trial court's judgments revoking his probation. As a result, we lack appellate jurisdiction and must dismiss this appeal. We decline to issue a writ of certiorari

because Headen's argument with respect to his probation revocation is meritless. Because Headen's appeal is not properly before this Court, we cannot entertain his motion for appropriate relief and dismiss that motion without prejudice to pursue it in the trial court.

Facts and Procedural History

In 2011 and 2014, Defendant Demetrius Deshaun Headen was placed on probation for various drug charges, as well as for charges of simple assault and resisting a public officer. On 8 March 2016, Headen's probation officer filed a probation violation report alleging that Headen violated various conditions of his probation. Headen admitted the violations. The trial court revoked Headen's probation on various grounds, including his commission of the Class 2 misdemeanor offense of carrying a concealed weapon, for which he was convicted and sentenced while on probation. On the judgment forms revoking Headen's probation, the trial court checked a box indicating that "[e]ach violation is, in and of itself, a sufficient basis upon which this Court should revoke probation."

Three days after the court announced the judgment in open court, Headen made a *pro se*, oral notice of appeal. Headen did not file a written notice of appeal.

Analysis

I. Appellate Jurisdiction

When a criminal defendant "has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal." *State v. McCoy*, 171 N.C. App. 636, 638,

615 S.E.2d 319, 320 (2005). Here, Headen made a *pro se*, oral notice of appeal three days after the trial court announced its judgment revoking his probation. Although Rule 4 of the North Carolina Rules of Appellate Procedure permits a defendant to give “oral notice of appeal at trial,” this oral notice of appeal was not made “at trial.” Thus, we agree with the State that Headen’s notice of appeal is defective. Headen acknowledges this defect with his notice of appeal and asks this Court to exercise its discretion and issue a writ of certiorari to permit appellate review. We thus address whether this case is suitable for review by writ of certiorari.

II. Petition for Writ of Certiorari

This Court has discretion to allow a petition for a writ of certiorari “to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action.” N.C. R. App. P. 21(a). A writ of certiorari is not intended as a substitute for a notice of appeal. If this Court routinely issued a writ of certiorari in every case in which the appellant failed to properly appeal, it would render meaningless the rules governing the time and manner of noticing appeals. Instead, as our Supreme Court has explained, “[a] petition for the writ must show merit or that error was probably committed below.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959). Accordingly, this Court typically will exercise its discretion to issue a writ of certiorari only where the appellant has asserted a potentially meritorious issue that warrants appellate review.

This is not one of those cases. Headen appeals the trial court’s revocation of his probation. A trial court’s revocation of probation “must be upheld if it is correct upon any theory of law, and thus it should not be set aside merely because the court gives a wrong or insufficient reason for it.” *State v. Hancock*, __ N.C. App. __, __, 789 S.E.2d 522, 525 (2016). Under N.C. Gen. Stat. § 15A-1344(a), a trial court can revoke probation if the defendant commits a new crime while on probation, so long as it is not a Class 3 misdemeanor. Headen does not dispute that, while on probation, he was convicted and sentenced for carrying a concealed weapon, a Class 2 misdemeanor. Indeed, Headen admitted at the probation revocation hearing that he violated his probation by committing this new offense. Moreover, the trial court indicated in the judgment that this violation, standing alone, was “a sufficient basis upon which this Court should revoke probation.” Therefore, the trial court properly revoked Headen’s probation.

Because Headen’s challenge to his probation revocation is meritless, this case is not suited for appellate review by writ of certiorari. *Grundler*, 251 N.C. at 189, 111 S.E.2d at 9. Accordingly, in our discretion, we deny Headen’s petition for a writ of certiorari.

III. Motion for Appropriate Relief

Headen also filed a motion for appropriate relief with this Court. Under N.C. Gen. Stat. § 15A-1418(a), a defendant may move for appropriate relief directly in the

STATE V. HEADEN

Opinion of the Court

appellate division when a case is already pending there for appellate review. Because we dismiss Headen's appeal for lack of appellate jurisdiction and deny his petition for certiorari because the issue he sought to raise on appeal is meritless, we must dismiss his motion for appropriate relief. *State v. Waters*, 122 N.C. App. 504, 505, 470 S.E.2d 545, 546 (1996) ("Because we have determined that defendant's appeal is not properly before this Court, we are without jurisdiction to entertain his motion for appropriate relief, and the motion must be dismissed."). As the Court explained in *Waters*, this dismissal "in no way prejudices defendant's right . . . to file a motion for appropriate relief in the trial court, which is the preferred forum for addressing his claim." *Id.*

Conclusion

We dismiss this appeal for lack of appellate jurisdiction. Defendant's petition for a writ of certiorari is denied. Defendant's motion for appropriate relief is dismissed without prejudice.

DISMISSED.

Judges ELMORE and ARROWOOD concur.

Report per Rule 30(e).