An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-835

Filed: 6 February 2018

Craven County, No. 15 CRS 50778

STATE OF NORTH CAROLINA

v.

SHELTON VAN LILLY

Appeal by defendant from judgment entered 7 February 2017 by Judge Benjamin G. Alford in Craven County Superior Court. Heard in the Court of Appeals 2 January 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Amy Kunstling Irene, for the State.

Richard Croutharmel for defendant-appellant.

BRYANT, Judge.

Where we are unable to find any possible prejudicial error, we conclude defendant's appeal is wholly frivolous and affirm the trial court's judgment.

Defendant Shelton Van Lilly appeals from a judgment entered 7 February 2017 upon his guilty plea to second-degree murder. In accordance with defendant's plea arrangement with the State, the trial court sentenced defendant to a term of 276

to 344 months' imprisonment. Defendant filed a *pro se* written notice of appeal on 24 February 2017.

We first address whether defendant's appeal is properly before this Court. Defendant filed his notice of appeal on 24 February 2017, seventeen days after entry of the trial court's judgment. Defendant's notice of appeal was untimely filed pursuant to Rule 4 of the North Carolina Rules of Appellate Procedure, and we thus allow the State's motion to dismiss defendant's appeal. *See* N.C. R. App. P. 4(a) (2017) (requiring notice of appeal to be filed within fourteen days after entry of judgment); *see also State v. Hammonds*, 218 N.C. App. 158, 162, 720 S.E.2d 820, 823 (2012) ("[A] jurisdictional default, such as a failure to comply with Rule 4, precludes the appellate court from acting in any manner other than to dismiss the appeal." (citation omitted)).

Recognizing that defendant's *pro se* written notice of appeal did not conform with the requirements of Rule 4, defendant's appellate counsel filed a petition for writ of certiorari with this Court on 30 August 2017. Counsel argues defendant's failure to comply with Rule 4 should not be held against him, given defendant's incarceration and that he mailed the notice of appeal from prison only one day after the deadline imposed by Rule 4. In our discretion, we allow defendant's petition for writ of certiorari to review his criminal judgment.

Defendant's appellate counsel states he is 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 shows 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 to do so. Defendant has not filed any *pro se* arguments with this Court and a reasonable time for him to have done so has passed.

In accordance with *Anders* and *Kinch*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. We are unable to find any possible prejudicial error and conclude defendant's appeal is wholly frivolous. Accordingly, we affirm the trial court's judgment.

AFFIRMED.

Judges HUNTER, JR., and INMAN concur.

Report per Rule 30(e).