An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-571

Filed: 6 February 2018

Alamance County, Nos. 05 CRS 59299–311, 59366–373

STATE OF NORTH CAROLINA

v.

JASON LEWIS RIGGINS

Appeal by defendant from order entered 19 July 2016 by Judge G. Wayne Abernathy in Alamance County Superior Court. Heard in the Court of Appeals 2 January 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Sherri H. Lawrence, for the State.

Richard Croutharmel for defendant-appellant.

BRYANT, Judge.

Where defendant moved to locate and preserve evidence for post-conviction DNA testing ten years after entry of his guilty pleas and where in his brief on appeal of the order denying his motion defendant states an inability to identify an issue of sufficient merit to support a meaningful argument for relief, we affirm the trial court's order denying defendant's motion for post-conviction DNA testing.

On 5 July 2006, defendant entered a guilty plea to 10 counts of felony child abuse by sexual act, 10 counts of first-degree child sexual offense, and 10 counts of taking indecent liberties with a child. In return for his guilty plea, the State agreed to dismiss 10 counts of first-degree rape of a child and to the consolidation of defendant's convictions into a single judgment for sentencing. The trial court accepted defendant's plea and sentenced defendant pursuant to his arrangement with the State to a single term of 336 to 413 months' imprisonment. Defendant did not appeal.

On 17 June 2016, defendant filed a "Motion to Locate and Preserve Evidences and Motion for Post-Conviction DNA Testing" with the superior court, seeking DNA testing of multiple items allegedly collected during the investigation of his offenses. By order entered 21 June 2016, the superior court ordered the Alamance County Sheriff's Office to determine whether evidence still existed from defendant's case. The Sheriff's Office responded to the order with a letter dated 23 June 2016, in which it informed the court that no physical evidence associated with defendant was in its possession. The superior court summarily denied defendant's motion by order entered 19 July 2016. Defendant appeals.

Counsel appointed to represent defendant on appeal 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.[1] 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 *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 therein. We have been unable to find any possible prejudicial error and conclude that defendant's appeal is wholly frivolous. Accordingly, we affirm the trial court's order denying defendant's motion to locate and preserve evidence and motion for post-conviction DNA testing.

AFFIRMED.

Judges HUNTER, JR., and INMAN concur.

Report per Rule 30(e).

[1] Defendant's appellate counsel does note that there appears to be a discrepancy between the offenses to which defendant pled guilty and the offenses listed on the judgment entered against him. Defendant's judgment is not before this Court in his instant appeal, and thus, we cannot consider this claim. If defendant believes there is an error in his judgment, he may raise the claim in a motion for appropriate relief filed in the superior court.