An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-998

Filed: 20 March 2018

Rockingham County, Nos. 13 CRS 1901-02, 2076

STATE OF NORTH CAROLINA

v.

TIMOTHY O'BRIAN TERRY

Appeal by Defendant from judgments entered 28 February 2017 by Judge R. Stuart Albright in Rockingham County Superior Court. Heard in the Court of Appeals 12 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Laura H. McHenry, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for Defendant-Appellant.

INMAN, Judge.

Timothy O'Brian Terry ("Defendant") appeals from judgments entered upon the revocation of his probation. After careful review, we affirm the trial court.

Factual and Procedural History

On 28 May 2014, Defendant entered an *Alford* plea to three counts of selling or delivering cocaine, three counts of possession with intent to sell or deliver cocaine, and one count each of felony possession of cocaine, misdemeanor injury to real property, and misdemeanor resisting a public officer. The trial court consolidated the convictions into three judgments and sentenced Defendant to three consecutive terms of nineteen to thirty-two months of imprisonment. The trial court imposed an active sentence in the first judgment, but suspended the two remaining sentences and placed Defendant on twenty-four months of supervised probation. Defendant was released from serving his active sentence on 23 December 2015.

Probation violation reports were filed on 7 November 2016 and 5 January 2017, alleging Defendant had violated the terms and conditions of his probation by committing the new criminal offenses of driving without a motorcycle endorsement, resisting a public officer, and driving while impaired. After a hearing on 28 February 2017 in superior court, at which Defendant admitted committing the alleged violations, the court found Defendant willfully violated the terms of his probation as alleged in the violation reports and entered judgments activating his suspended sentences. Defendant filed a timely *pro se* notice of appeal from the judgments entered.

Analysis

1. Appellate Jurisdiction

We first address whether Defendant's *pro se* notice of appeal is sufficient to bring his appeal within the jurisdiction of this Court. Rule 4 of the North Carolina Rules of Appellate Procedure provides that a defendant may appeal from a criminal judgment entered against him by "filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment . . . ." N.C. R. App. P. 4(a)(2). A written notice of appeal must also "designate the judgment or order from which appeal is taken and the court to which appeal is taken . . . ." N.C. R. App. P. Rule 4(b).

Defendant timely filed his notice of appeal on 9 March 2017, using a form intended for the appeal of district court judgments to the superior court for a trial *de novo*. The form includes the correct primary file numbers of the judgments and the date his case was tried. However, the form states that Defendant wished to appeal from "probation violation" "case(s)" that were tried in district court, rather than the judgments entered. The form also does not state to which court the appeal is taken and was not served on the State. Based on these deficiencies, we must dismiss Defendant's appeal. *See State v. Johnson*, ___ N.C. App. ___, ___, 782 S.E.2d 549, 552 (2016).

Concerned that Defendant's *pro se* notice of appeal was insufficient to confer jurisdiction over the appeal to this Court, Defendant's appellate counsel filed a petition seeking review of the judgments through issuance of a writ of certiorari. In

our discretion, we allow Defendant's petition for the purpose of reviewing the trial court's judgments revoking his probation. *See* N.C. R. App. P. 21(a)(1); *see also State v. Hill*, 227 N.C. App. 371, 374, 741 S.E.2d 911, 914, *appeal dismissed and disc. rev. denied*, 367 N.C. 223, 747 S.E.2d 578 (2013).

2. Discussion

Counsel appointed to represent Defendant on appeal has been unable to identify any issue with sufficient merit to support a meaningful argument for relief, and asks this Court to conduct its own review of the record for possible prejudicial error. Counsel has 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 to do so.

Defendant has not filed any written arguments on his own behalf, and a reasonable time within which he could 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 to exist. Having identified no possible prejudicial error, we affirm the trial court's judgments revoking Defendant's probation and activating his suspended sentences.

Conclusion

For the foregoing reasons, we affirm the trial court's judgments.

AFFIRMED.

Judges BRYANT and HUNTER concur.

Report per Rule 30(e).