An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-823

Filed: 20 March 2018

Vance County, No. 13 CRS 051770

STATE OF NORTH CAROLINA

v.

CLARENCE ADRIAN ROYSTER

Appeal by Defendant from judgment entered 4 January 2017 by Judge Henry W. Hight, Jr., in Vance County Superior Court. Heard in the Court of Appeals 12 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Kimberly N. Callahan, for the State.

Halscott Megaro, by Patrick Michael Megaro, for Defendant-Appellant.

INMAN, Judge.

Clarence Adrian Royster ("Defendant") appeals from a judgment entered upon his plea of no contest to statutory rape. After careful review, we dismiss Defendant's appeal.

Factual and Procedural History

On 8 July 2013, Defendant was indicted for two counts of statutory rape, incest with a child, contributing to the delinquency of a minor, and taking indecent liberties with a child. On 10 February 2014, Defendant was indicted for giving alcoholic beverages to a person under the age of 21 years old. On 30 December 2016, Defendant filed a "Motion to Dismiss for Failure to Provide Defendant with a Speedy Trial, Untimely and Incomplete Discovery and Due Process Violations." After a 3 January 2017 hearing, the trial court denied the motion. The trial commenced the same day. During a morning recess, Defendant indicated he would plead no contest to one count of statutory rape. After Defendant entered his plea and the State dismissed the remaining charges, the trial court sentenced Defendant to 240 to 348 months of imprisonment. Defendant filed written notice of appeal on 17 January 2017.

Analysis

Defendant raises two issues on appeal. First, Defendant contends that the trial court erred in denying his motion to dismiss, which was raised on the basis of an alleged violation of Defendant's constitutional right to a speedy trial. Second, Defendant contends that he was denied effective assistance of counsel because his trial counsel failed to seek out relevant evidence in preparing a defense. In response, the State contends that Defendant's appeal is not properly before this Court. We agree with the State.

1. State's Motion to Dismiss

Section 15A-1444 of the North Carolina General Statutes governs when a defendant may appeal following a plea of guilty or no contest. Our court has held that

> [a] defendant who pleads guilty has a right of appeal limited to the following:
>
> > 1. Whether the sentence "is supported by the evidence." This issue is appealable only if his minimum term of imprisonment does not fall within the presumptive range. N.C. Gen. Stat. § 15A-1444(a1) ([2015]);
> >
> > 2. Whether the sentence "[r]esults from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21." N.C. Gen. Stat. § 15A-1444(a2)(1) ([2015]);
> >
> > 3. Whether the sentence "[c]ontains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level." N.C. Gen. Stat. § 15A-1444(a2)(2) ([2015]);
> >
> > 4. Whether the sentence "[c]ontains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level." N.C. Gen. Stat. § 15A-1444(a2)(3) ([2015]);
> >
> > 5. Whether the trial court improperly denied defendant's motion to suppress. N.C. Gen. Stat. §§ 15A-979(b) ([2015]), 15A-1444(e) ([2015]);
> >
> > 6. Whether the trial court improperly denied defendant's motion to withdraw his guilty plea. N.C.

Gen. Stat. § 15A-1444(e).

State v. Jamerson, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003).

Defendant's contention that the trial court erred in denying his motion to dismiss is not cognizable on appeal from a guilty plea. "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *State v. Reynolds*, 298 N.C. 380, 395, 259 S.E.2d 843, 852 (1979) (quoting *Tollett v. Henderson*, 411 U.S. 258, 267, 36 L. Ed. 2d 235, 243 (1973)), *cert. denied*, 446 U.S. 941, 64 L. Ed. 2d 795 (1980).

In his reply brief, Defendant asks that this Court treat his appeal as a petition for writ of certiorari. However, regardless of whether this Court has the authority to issue the writ of certiorari to review Defendant's appeal, Defendant's request that we treat his appeal as a petition for writ of certiorari does not meet the procedural requirements for petitioning the Court for a writ of certiorari. *See* N.C. R. App. P. 21 (2017). Thus, Defendant's appeal on this issue is not properly before this Court.

We are also unable to review Defendant's second contention that he received ineffective assistance of trial counsel when his counsel failed to seek out relevant evidence. This Court will not entertain claims of inadequate investigation in the absence of some evidence of what a thorough investigation would have revealed or

how the alleged failure to investigate affected the proceeding. *State v. Adams*, 156 N.C. App. 318, 325, 576 S.E.2d 377, 382 (2003). There is no such evidence in the record. Even assuming, *arguendo*, that this issue were properly before this Court for appellate review, *see* N.C. Gen. Stat. §§ 15A-979(b) & 15A-1444(a2), the record is not sufficiently complete to determine whether Defendant's claim of ineffective assistance of counsel has merit. *See State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001) (holding ineffective assistance of counsel claims may be decided on direct review only where no further investigation is required). While we dismiss Defendant's claim of ineffective assistance of counsel, we do so without prejudice to his right to seek post-trial relief by filing a motion for appropriate relief with the trial court. *State v. Long*, 354 N.C. 534, 540, 557 S.E.2d 89, 93 (2001). Having presented no other issues for this Court to review, Defendant's appeal is hereby dismissed.[1]

Conclusion

For the foregoing reasons, we dismiss Defendant's appeal.

DISMISSED.

Judges BRYANT and HUNTER concur.

Report per Rule 30(e).

[1] The State's motion to dismiss the appeal is hereby allowed.