An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-930

Filed: 20 March 2018

Forsyth County, Nos. 16 CRS 3468, 53940

STATE OF NORTH CAROLINA

v.

EDWARD ROSS

Appeal by Defendant from judgment entered 12 January 2017 by Judge Susan E. Bray in Forsyth County Superior Court. Heard in the Court of Appeals 12 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Mollie L. Cozart, for the State.

Paul F. Herzog for Defendant-Appellant.

INMAN, Judge.

Edward Ross ("Defendant") appeals from a judgment entered upon jury verdicts finding him guilty of felony breaking and entering, felony larceny, and possession of drug paraphernalia, and his subsequent guilty plea to obtaining the status of an habitual felon. After careful review, we find no error.

Factual and Procedural History

Defendant was indicted on one count each of breaking and entering, felony larceny, and possession of drug paraphernalia, and having attained the status of habitual felon. Following the jury verdict, the trial court consolidated Defendant's convictions into a single judgment and sentenced Defendant as an habitual felon to a mitigated term of 80 to 108 months of imprisonment. Defendant gave oral notice of appeal in open court.

Analysis

1. Appellate Jurisdiction

Defendant filed a petition for writ of certiorari with this Court on 2 October 2017, out of concern that his trial counsel's oral notice of appeal was premature because it was given after the jury returned its verdicts but before Defendant's plea to obtaining habitual felon status and the trial court's entry of judgment. *See State v. Robinson*, 236 N.C. App. 446, 448, 763 S.E.2d 178, 179-80 (2014), *aff'd as modified*, 368 N.C. 402, 777 S.E.2d 755 (2015); *see also* N.C. R. App. P. 21(a)(1) ("The writ of certiorari may be issued in appropriate circumstances by either appellate court 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 . . . ."). On 13 October 2017, the State filed a motion to dismiss Defendant's appeal, arguing that by pleading guilty to obtaining the status of an habitual felon, Defendant waived his right to appeal that conviction. The State further argues Defendant's appeal must be

dismissed because there is no explicit statutory authority allowing him to appeal the trial court's denial of the motions to dismiss he made at trial.

Contrary to the State's argument, Defendant is not merely appealing from the trial court's denial of his motions to dismiss. Defendant is appealing from the criminal judgment entered upon the jury's verdicts and his plea. In his brief on appeal, Defendant's appellate counsel identified the denials of Defendant's motions to dismiss as potential issues, but concedes he could find no meritorious argument to present to this Court on those issues and has filed a brief pursuant to *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). Defendant is not attempting to raise any issues to which he does not have an appeal of right, and we accordingly deny the State's motion to dismiss Defendant's appeal. Nevertheless, we must dismiss Defendant's appeal because of his improper oral notice of appeal. *See Robinson*, 236 N.C. App. at 448, 763 S.E.2d at 180. In the interest of justice and in our discretion, we allow Defendant's petition for writ of certiorari to permit Defendant an appeal from his criminal judgment. *See id.* at 448, 763 S.E.2d at 180.

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* and *Kinch* 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 any written arguments on his own behalf with this Court, and a reasonable time for him to have done so has expired.

Conclusion

In accordance with *Anders* and *Kinch*, we have fully examined the record and are unable to find any possible prejudicial error. Accordingly, we find no prejudicial error in Defendant's trial or the judgment entered upon his convictions.

NO ERROR.

Judges BRYANT and HUNTER concur.

Report per Rule 30(e).