An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1048

Filed: 20 March 2018

Forsyth County, Nos. 16 CRS 462, 57012, 57072

STATE OF NORTH CAROLINA

v.

DONTAY JACQUES WILDS

Appeal by Defendant from judgment entered 6 April 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 Kimberly N. Callahan, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Andrew DeSimone, for Defendant-Appellant.

INMAN, Judge.

Dontay Jacques Wilds ("Defendant") appeals from a judgment entered upon his guilty plea. For the reasons stated herein, we affirm.

Factual and Procedural History

On 28 November 2016, Defendant was indicted for assault with a deadly weapon with the intent to kill inflicting serious injury, possession of cocaine, and

possession of a firearm by a convicted felon. On 6 April 2017, Defendant pleaded guilty, pursuant to a plea agreement, to all three charges. The plea agreement provided that in exchange for Defendant's guilty plea, the offenses would be consolidated for judgment and the parties would stipulate to at least one mitigating factor: early acceptance of responsibility. The trial court accepted the plea and sentenced Defendant to 100 to 132 months of imprisonment.

On 16 April 2017, Defendant filed a *pro se* letter seeking to "file an appeal for Case file numbers 16cr057012, 16cr057072[.]"

Analysis

1. Appellate Jurisdiction

On 3 October 2017, Defendant's appointed appellate counsel filed a petition for writ of certiorari asking this Court to review the trial court's judgment notwithstanding the defects in Defendant's *pro se* notice of appeal. *See* N.C.R. App. P. 21(a)(1). Counsel acknowledged that Defendant's notice of appeal was not served upon the State and it did not designate the court to which appeal was taken. *See* N.C.R. App. P. 4(a) and (b).

In *State v. Ragland*, 226 N.C. App. 547, 739 S.E.2d 616, *disc. review denied*, 367 N.C. 220, 747 S.E.2d 548 (2013), our Court noted that "a party upon whom service of notice of appeal is required may waive the failure of service by not raising the issue by motion or otherwise and by participating without objection in the appeal." *Id.* at

552, 739 S.E.2d at 620 (citation and quotation marks omitted). It also stated that "[an appellant's] failure to designate this Court in its notice of appeal is not fatal to the appeal where the [appellant's] intent to appeal can be fairly inferred and the [appellees] are not mislead [sic] by the [appellant's] mistake." *Id.* at 553, 739 S.E.2d at 620 (citation and quotation marks omitted).

Here, because the State has not raised the issue of lack of service of the notice of appeal by motion or otherwise, and has participated without objection in the appeal by filing its brief, any objection to the lack of service has been waived. In addition, because Defendant's intent to appeal is clear, and since this Court is the only court with jurisdiction to hear Defendant's appeal, it can be fairly inferred Defendant intended to appeal to this Court. Thus, the defects in Defendant's notice of appeal do not warrant dismissal of this appeal. Accordingly, the petition for writ of certiorari is dismissed as moot.

2. Discussion

Counsel for Defendant has been unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks this Court to conduct a full examination 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 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 do so has passed.

Because Defendant entered a plea of guilty and neither preserved the right to appeal the denial of a motion to suppress nor moved to withdraw his guilty plea, his right of appeal is limited to the sentencing issues set forth in N.C. Gen. Stat. § 15A-1444(a1) and (a2) (2017). *See* N.C. Gen. Stat. § 15A-1444(e) (2017). The record demonstrates that Defendant stipulated to prior convictions resulting in twelve prior record level points and a corresponding prior record level IV. The record also shows that his active sentence fell within the presumptive range for a prior record level IV offender convicted of a Class C felony. *See* N.C. Gen. Stat. § 15A-1340.17(c), (e) (2017); *see also* N.C. Gen. Stat. § 15A-1444(a1) (allowing appeal of sentence "only if the minimum sentence of imprisonment does not fall within the presumptive range for the Defendant's prior record or conviction level and class of offense[]").

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. We conclude that the appeal is wholly frivolous.

Conclusion

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

AFFIRMED.

Judges BRYANT and HUNTER concur.

Report per Rule 30(e).