An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-442

Filed: 17 April 2018

Lee County, No. 93 CRS 2782

STATE OF NORTH CAROLINA

v.

CHAD ANSON ROSS

Appeal by Defendant from order entered 28 November 2016 by Judge C. Winston Gilchrist in Superior Court, Lee County. Heard in the Court of Appeals 16 October 2017.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Daniel L. Spiegel, for Defendant-Appellant.

McGEE, Chief Judge.

Chad Anson Ross ("Defendant") appeals from the trial court's order denying his post-conviction motion to locate and preserve evidence and for DNA testing under N.C. Gen. Stat. § 15A-269. We affirm.

Defendant was convicted on 3 November 1993 of the first-degree murder of James Wilson Redwine ("Redwine"), and was sentenced to life imprisonment. On direct appeal, our Supreme Court held that Defendant received a fair trial free from prejudicial error. *State v. Ross*, 338 N.C. 280, 288, 449 S.E.2d 556, 562 (1994).

The evidence at trial showed that Defendant and Alfred Creque ("Creque") encountered Redwine outside a billiard hall in Jonesboro, North Carolina, on the night of 24 March 1993. After arguing with Defendant and Creque and using a racial epithet,[1] Redwine got into a cab with a friend and "told Creque and [D]efendant to follow him." *Ross*, 338 N.C. at 282, 449 S.E.2d at 559. Defendant and Creque followed the cab to a convenience store, where Defendant, Creque, and Redwine resumed their argument. Redwine's friend said he was going home and left the convenience store. Defendant and Redwine continued to argue and engaged in a "brief fistfight" before Redwine approached Creque and hit him in the face. *Id.* Defendant then again fought with Redwine "for a few minutes." *Id.* When Redwine started toward Creche a second time,

> [D]efendant reached into the driver's side of the car [the car in which Defendant and Creque had arrived at the convenience store] and pulled out a .38 pistol from behind the seat. [Redwine] apparently saw the weapon and turned his back to [D]efendant. Defendant shot [Redwine] in the back one time. [Defendant] and Creque then got into the car and drove to Creque's house.

[1] Redwine was white; both Defendant and Creque are black. *Ross*, 338 N.C. at 282, 449 S.E.2d at 559.

> [Redwine] died as a result of complications due to the gunshot wound. At the time of [Redwine's] death, he had a blood alcohol level of .16 on the breathalyzer scale.

Id. Defendant later gave a statement in which he "acknowledged that [Redwine] was unarmed and walking away from [D]efendant when [D]efendant shot him in the back." *Id.* at 283, 449 S.E.2d at 560.

Defendant filed a motion dated 20 September 2016 to locate and preserve evidence and for post-conviction DNA testing pursuant to N.C. Gen. Stat. § 15A-269 (2017). In his motion, Defendant sought DNA testing of a gun, articles of clothing, and other items allegedly collected by detectives of the Lee County Sheriff's Office. Defendant claimed the items had not previously been subjected to DNA testing and that the results of such testing "would prove that [he] was NOT the perpetrator of the crime but because his physical image, hearsay testimony adjudicated the crime to him."

By order entered 28 November 2016, the trial court summarily denied Defendant's motion, finding that it "fails to make [a] showing that DNA testing would be material to [] Defendant's defense." Pursuant to his statutory right of appeal, N.C. Gen. Stat. § 15A-270.1 (2017), Defendant filed timely notice of appeal.

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." Counsel asks that this Court conduct its own review of the record for

possible prejudicial error pursuant to the decisions in *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). Counsel has demonstrated 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 by providing Defendant with the documents necessary for him to do so. Defendant has not filed any *pro se* arguments with this Court, and a reasonable time for him to do so has passed.

The State contends the protections provided in *Anders* and *Kinch* do not apply to an appeal from an order denying post-conviction DNA testing under N.C. Gen. Stat. § 15A-270.1. For the reasons stated in our opinion in *State v. Velasquez-Cardenas*, __ N.C. App. __, __ S.E.2d __ (2018) (COA17-422), filed concurrently with this opinion, we disagree.

We have reviewed the record for possible prejudicial error and agree with counsel that the appeal is wholly frivolous. The order of the trial court is hereby affirmed.

AFFIRMED.

Judge CALABRIA concurs.

Judge DILLON concurs with separate opinion.

Report per Rule 30(e).

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DILLON, Judge, concurring.

I concur in the result reached by the majority. I write separately for the same reasons I wrote separately in *State v. Velasquez-Cardenas* (COA17-422).