An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-917

Filed: 17 April 2018

Catawba County, Nos. 15 CRS 1250–51

STATE OF NORTH CAROLINA

v.

JAMES MAURICE WILSON

Appeal by defendant from judgment entered 1 November 2016 by Judge Kevin M. Bridges in Catawba County Superior Court. Heard in the Court of Appeals 29 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

Cooley Law Office, by Craig M. Cooley, for defendant.

ELMORE, Judge.

Defendant appeals from a judgment entered upon his guilty plea to felony larceny and attaining habitual felon status. For the reasons stated herein, we affirm.

On 2 February 2015, defendant was indicted for felony larceny, habitual larceny, and possession of stolen goods in 15 CRS 1250, and attaining habitual felon status in 15 CRS 1251. The indictment in 15 CRS 1250 alleged that on 6 October

2014, defendant stole property from Rugged Warehouse, such property having a value of approximately fifty-eight dollars. While the value of the stolen property was less than $1,000, which commonly renders the act a misdemeanor pursuant to N.C. Gen. Stat. § 14-72(a) (2017), defendant was charged with felony larceny because he was a habitual larcenist, having been convicted of at least four larceny offenses. *See* N.C. Gen. Stat. § 14-72(b)(6)(2017); *see also State v. Patterson*, ___ N.C. App. ___, ___ n.1, 791 S.E.2d 517, 518 n.1 ("Habitual larceny raises a misdemeanor larceny to a felony if the accused has four prior misdemeanor [or felony] larcenies."), *disc. review denied*, 369 N.C. 199, 794 S.E.2d 328 (2016). On 1 November 2016, defendant pled guilty to felony larceny and habitual larceny in 15 CRS 1250 and to attaining habitual felon status in 15 CRS 1251. The State agreed to dismiss the charge of possession of stolen goods. The trial court consolidated the convictions for judgment and sentenced defendant in the mitigated range to 77 to 105 months' imprisonment. Defendant gave oral notice of appeal in open court.

On appeal, defendant's appointed counsel states that he is unable to identify any issue with sufficient merit to support a meaningful argument for relief, and he asks that this Court conduct an independent review of the record for possible prejudicial error. Counsel satisfactorily demonstrates to 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 filed *pro se* arguments with this Court and challenges the legality of his sentence. Defendant's challenge to the judgment is properly before this Court. *See* N.C. Gen. Stat. § 15A-1444(a2) (2017); *see also State v. Howell*, ___ N.C. App. ___, ___, 792 S.E.2d 898, 899 (2016) ("As defendant challenges the sentence imposed on the basis that such is not authorized by G.S. §§ 15A-1340.17 or 15A-1340.23, this appeal is properly before this Court."), *disc. review and supersedeas allowed*, 369 N.C. 536, 796 S.E.2d 789 (2017).

Defendant appears to contend that the trial court erred in enhancing his sentence on the basis of his habitual felon conviction because the facts supporting the underlying offense of larceny rendered the offense a misdemeanor rather than a felony. In support of this contention, defendant cites to *Howell*, in which this Court held that the trial court erred by enhancing the defendant's sentence for misdemeanor possession of marijuana to a Class I felony based on a prior conviction, and then to a Class E felony based on the defendant's habitual felon status. *Id.* at ___, 792 S.E.2d at 899. In so holding, this Court noted that the Controlled Substances Act did not elevate the *offense* of a Class 1 misdemeanor to a Class I felony; rather, "where a defendant commits a Class 1 misdemeanor and has a prior conviction in violation of the Act, the Class 1 misdemeanor is simply enhanced and the offense

sentenced as a Class I felony." *Id.* at ___, 792 S.E.2d at 900. Because the offense itself was not elevated to a felony, the defendant was not convicted of a felony, and the trial court therefore lacked a necessary predicate to convict the defendant of attaining habitual felon status and enhance the substantive offense. *See* N.C. Gen. Stat. § 14-7.2 (2017) ("When any person is charged by indictment with the commission of a felony under the laws of the State of North Carolina and is also charged with being an habitual felon as defined in G.S. 14-7.1, he must, upon conviction, be sentenced and punished as an habitual felon[.]"). The Court contrasted that scenario with statutes permitting a defendant to be charged with a felony offense when the defendant commits a misdemeanor and meets certain other statutory criteria to enhance the offense. *Howell*, ___ N.C. App. at ___, 792 S.E.2d at 900. In this latter scenario, the defendant is charged with and convicted of a felony offense, thereby permitting the defendant to be convicted of attaining habitual felon status. *Id.*

This case involves the latter scenario. Pursuant to N.C. Gen. Stat. § 14-72(b)(6),

> [t]he crime of larceny is a felony, without regard to the value of the property in question, if the larceny is . . . [c]ommitted after the defendant has been convicted in this State or in another jurisdiction for any offense of larceny under this section, or any offense deemed or punishable as larceny under this section, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies, or a combination thereof, at least four times.

Thus, the fact that defendant met the criteria for being a habitual larcenist meant that his underlying offense actually became a felony, rather than simply being punished as such. Having properly been charged with and convicted of felony larceny, defendant could then be convicted of attaining habitual felon status and have his sentence enhanced accordingly. Defendant's contention on appeal is without merit.

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. Our review of potential error in this case is limited to those issues authorized by N.C. Gen. Stat. § 15A-1444. *State v. Jamerson*, 161 N.C. App. 527, 528–29, 588 S.E.2d 545, 546–47 (2003). Because we are unable to find any possible prejudicial error in the judgment, we conclude that defendant's appeal therefrom is wholly frivolous. The trial court's judgment is hereby:

AFFIRMED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).