An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1128

Filed: 17 April 2018

Buncombe County, No. 15 CRS 424

STATE OF NORTH CAROLINA

v.

EMMANUEL DEPREE AUDREY

Appeal by defendant from order entered 11 May 2017 by Judge Marvin P. Pope, Jr., in Buncombe County Superior Court. Heard in the Court of Appeals 29 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Rebecca E. Lem, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Daniel L. Spiegel, for defendant.

ELMORE, Judge.

Defendant Emmanuel Depree Audrey appeals from an order denying his motion to locate and preserve evidence and motion for post-conviction DNA testing (the "DNA order"). After careful consideration, we affirm.

On 26 April 2016, defendant pled guilty to trafficking in methamphetamine and was sentenced to 70 to 93 months' imprisonment. On 2 February 2017, defendant filed a *pro se* motion to locate and preserve evidence and for DNA testing. The motion was denied by written order entered 11 May 2017. Defendant filed a *pro se* written notice of appeal on 22 May 2017.

On appeal from the DNA order, counsel appointed to represent defendant states that he is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel shows 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 to do so.

Defendant has not filed any documents on his own behalf with this Court and a reasonable time for him to do has expired. 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 related to the trial court's denial of defendant's motion to locate and preserve evidence and for DNA testing. We are unable to find any possible prejudicial error as to the DNA

order and conclude that defendant's appeal therefrom is wholly frivolous. As a result, the trial court's order is affirmed.

AFFIRMED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).