

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1378

Filed: 3 July 2018

Pender County, No. 16 CRS 51012

STATE OF NORTH CAROLINA

v.

LESLIE ANNE SMITH

Appeal by defendant from judgment entered 30 May 2017 by Judge Phyllis M. Gorham in Pender County Superior Court. Heard in the Court of Appeals 4 June 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General B. Carrington Skinner IV, for the State.*

*The Law Office of Sterling Rozear, PLLC, by Sterling Rozear, for defendant-appellant.*

BRYANT, Judge.

Where defendant is not entitled to a direct appeal following her guilty plea, we dismiss defendant's appeal. We also deny defendant's petition for writ of certiorari.

Defendant Leslie A. Smith was charged with driving while impaired ("DWI"), speeding, and possession of less than one-half ounce of marijuana in Pender County on 6 June 2016. Appearing *pro se* in Pender County District Court on 9 August 2016,

defendant was found guilty of all charges. Defendant appealed to Superior Court and was appointed counsel.

The matter was brought before the Honorable Phyllis M. Gorham, Judge presiding, on 30 May 2017. Defendant entered an *Alford* plea of guilty to DWI, and the State dismissed the remaining charges. Defendant was found to be a Level Two for DWI sentencing purposes and sentenced to 12 months in the Misdemeanor Confinement Program. That sentence was suspended, and defendant was placed on supervised probation for 24 months. Defendant filed a *pro se* notice of appeal on 7 June 2017, and an “Addendum to Notice of Appeal on 26 June 2017.” Defendant filed a petition for writ of certiorari on 21 February 2018.

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On appeal, defendant contends that the trial court erred in accepting her *Alford* plea of guilty because she was not fully aware of the direct consequences. Specifically, defendant argues her plea was not voluntarily, intelligently, or understandingly given because she was not informed her license would be revoked after pleading guilty to a DWI charge. We disagree.

“A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.” *Boykin v. Alabama*, 395 U.S. 238, 242, 23 L. Ed. 2d 274, 279 (1969). “Nonetheless, an *Alford* plea constitutes a guilty plea in the same way that a

plea of nolo contendere or no contest is a guilty plea.” *State v. Alston*, 139 N.C. App. 787, 792, 534 S.E.2d 666, 669 (2000).

“The right to appeal in a criminal proceeding is purely statutory.” *State v. Shoff*, 118 N.C. App. 724, 725, 456 S.E.2d 875, 876 (1995) (citing *Abney v. United States*, 431 U.S. 651, 656, 52 L. Ed. 2d. 651, 658 (1977)). Under the North Carolina General Statutes Section 15A-1444(a2), a defendant, who seeks an appeal of a guilty plea as *a matter of right*, is limited to certain circumstances in which it can be brought (i.e., sentencing issues, denial of a motion to suppress or after unsuccessful attempt to withdraw guilty plea). N.C. Gen. Stat. § 15A-1444(a2) (2017) (emphasis added). Outside of these limited circumstances, a defendant who has entered a guilty plea to a criminal charge is not entitled to appellate review as a matter of right. However, a defendant “may petition the appellate division for review by writ of certiorari where he otherwise does not have a statutory right of appeal.” *State v. Sale*, 232 N.C. App. 662, 665, 754 S.E.2d 474, 477 (2014) (citing N.C. Gen. Stat. § 15A-1444(e)).

Here, defendant’s contention that the trial court erred in accepting her guilty plea does not fall within any of the provisions which support a basis for appellate review as a matter of right. Therefore, we dismiss defendant’s appeal. Apparently recognizing she was not entitled to an appeal of right, defendant filed a writ of certiorari asking this Court to use its discretion and grant review of this issue. However, we decline to exercise discretion to allow a writ of certiorari.

STATE V. SMITH

*Opinion of the Court*

Defendant's appeal is DISMISSED; Defendant's petition for certiorari is denied.

Chief Judge MCGEE and Judge STROUD concur.

Report per 30(e).