An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-445

Filed: 15 January 2019

Surry County, Nos. 15 CRS 692, 694

STATE OF NORTH CAROLINA

v.

JOE ROBERT REYNOLDS, Defendant.

Appeal by Defendant from judgment entered 2 November 2017 by Judge Anderson D. Cromer in Surry County Superior Court. Heard in the Court of Appeals 20 December 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General William P. Hart, Jr., for the State.

Office of the Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for defendant-appellant.

Joe Roberts Reynolds, pro se.

HUNTER, JR., Robert N., Judge.

Joe Robert Reynolds ("Defendant") appeals from judgment entered by the trial court on remand from our decision in *State v. Reynolds*, ___ N.C. App. ___, 800 S.E.2d

702, (2017), *disc. review denied*, 370 N.C. 693, 811 S.E.2d 159 (2018) ("*Reynolds II*"). We find no error.

I. Factual and Procedural Background

In 2013, Defendant was indicted for, and convicted of, failing to register as a sex offender in violation of N.C. Gen. Stat. § 14-208.11(a)(1) (2017) and attaining the status of an habitual felon. In *State v. Reynolds*, 241 N.C. App. 657, 775 S.E.2d 695, 2015 WL 3791731 (2015) (unpublished) ("*Reynolds I*"), "this Court vacated defendant's convictions concluding North Carolina General Statute § 14-208.11(a)(1) 'logically applies only to individuals who are registering for the first time and not to defendant, who was already registered.' " *Reynolds II*, ___ N.C. App. at ___, 800 S.E.2d at 704 (quoting *Reynolds I*, 2015 WL 3791731 at *2).

In 2015, following our decision in *Reynolds I*, Defendant was indicted for, and convicted of, failure to report a change of address as a registered sex offender, in violation of N.C. Gen. Stat. § 14-208.11(a)(2) (2017), failure to report in person to the sheriff's office as a registered sex offender, in violation of N.C. Gen. Stat. § 14-208.11(a)(7) (2017), and attaining habitual felon status. On 5 November 2015, the trial court consolidated Defendant's two substantive convictions for judgment and sentenced him as an habitual felon with a prior record level ("PRL") VI to an active prison term of 117 to 153 months imprisonment.

In *Reynolds II*, this Court held Defendant's separate convictions under N.C. Gen. Stat. § 14-208.11(a)(2) and (7) amounted to double jeopardy, inasmuch as "in this particular instance *both* § 14-208.11(a)(2) and (a)(7) required defendant to inform the sheriff of his change of address pursuant to the requirements in [N.C. Gen. Stat.] § 14-208.9(a)." *Reynolds II*, ___ N.C. App. at ___, 800 S.E.2d at 705. Discerning "no legal or practical difference between the two subsections as applied here[,] . . . we vacate[d] one of defendant's convictions under North Carolina General Statute § 14-208.11 and remand[ed] for defendant to be resentenced on the remaining conviction." *Id.* at ___, 800 S.E.2d at 706.

On remand from *Reynolds II*, the trial court held a resentencing hearing on 2 November 2017 and entered judgment on Defendant's conviction of failing to report a new address under N.C. Gen. Stat. § 14-208.11(a)(2) as an habitual felon. The trial court found as a mitigating factor that Defendant had a support system in the community and sentenced him within the mitigated range based on his PRL VI to an active prison term of 87 to 117 months. Defendant filed *pro se* notice of appeal from the judgment on 15 November 2017.

II. Jurisdiction

Counsel appointed to represent Defendant on appeal has petitioned this Court to review the judgment by writ of *certiorari*, acknowledging defects in Defendant's *pro se* notice of appeal. *See* N.C. R. App. P. 21(a)(1) (2018). Specifically, Defendant's

notice fails to identify the judgment from which his appeal is taken, *see* N.C. R. App. P. 4(b) (2018), whether by the superior court file number, the entering judge, or the correct date of entry.[1] The notice also fails to designate the court to which the appeal is taken, *see id.*, and lacks a proper proof of service under N.C. R. App. P. 4(c) and 26(c). The State did not respond to Defendant's petition and has participated in the appeal without objection. In our discretion, we allow Defendant's petition to consider the merits of his appeal. *See State v. Hill*, 227 N.C. App. 371, 374, 741 S.E.2d 911, 914 (2013).

III. Analysis

Counsel appointed to represent Defendant is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks this Court to conduct its own review of the record for possible prejudicial error. She shows to the satisfaction of this Court her compliance 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), in 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 filed *pro se* arguments challenging his conviction under N.C. Gen. Stat. § 14-208.11(a)(2) on the ground he did not experience a "change of address" within the meaning of the statute. Defendant further claims, without elaboration,

[1] The notice erroneously lists the judgment's date of entry as 31 October 2017.

his conviction was the product of "ineffective counsel." He asks his "remaining sentence be vacated."

We conclude Defendant's arguments are not properly before this Court on appeal from the resentencing judgment entered on 2 November 2017. In *Reynolds II*, this Court reviewed, and upheld, Defendant's conviction and remanded to the trial court solely for a new sentencing hearing. *See Reynolds II*, ___ N.C. App. at ___, 800 S.E.2d at 708 ("Since we are vacating one conviction, we remand for resentencing. As to all other issues, we find no error."). Because Defendant's arguments do not pertain to the sentence he received on remand, they are dismissed.

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

IV. Conclusion

For the foregoing reasons and after a full examination of the record, we find no prejudicial error or meritorious argument for appeal.

NO ERROR.

Chief Judge McGEE and Judge INMAN concur.

Report per Rule 30(e).