

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-752

Filed: 19 March 2019

Watauga County, Nos. 03 CRS 1720, 50689, 50728

STATE OF NORTH CAROLINA

v.

JOSEPH DONALD KOPE, JR.

Appeal by defendant from order entered 22 December 2017 by Judge Gary M. Gavenus in Watauga County Superior Court. Heard in the Court of Appeals 25 February 2019.

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

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant-appellant.*

BRYANT, Judge.

Joseph Donald Kope, Jr. (“defendant”) appeals from an order denying his motion for post-conviction DNA testing. After careful review, we affirm.

On 2 August 2004, defendant pled guilty pursuant to a plea agreement to first-degree murder, robbery with a dangerous weapon, assault on a law enforcement

STATE V. KOPE

*Opinion of the Court*

officer with a firearm, felony breaking and entering, and felony larceny. In exchange for his guilty plea, the State agreed not to seek the death penalty and dismissed several additional pending charges. The trial court sentenced defendant to life imprisonment and consecutive terms of 51 to 71 and 22 to 36 months of imprisonment. Defendant did not appeal.

On 22 April 2016, defendant filed *pro se* motions to locate and preserve evidence and for post-conviction DNA testing pursuant to N.C. Gen. Stat. § 15A-269. On 13 September 2016, the trial court entered an order requiring the preservation of evidence. On 7 October 2016, the trial court appointed counsel for defendant. On 3 April 2017, defendant, through counsel, filed an amended motion for post-conviction DNA testing. On 22 December 2017, the trial court entered an order denying defendant's motion for post-conviction DNA testing. Defendant filed written notice of appeal on 10 January 2018.

On 24 August 2018, defendant filed a petition for writ of certiorari in recognition of the fact that his notice of appeal was untimely and did not indicate service upon the State. *See* N.C.R. App. P. 4 (2019). In our discretion, we grant defendant's petition for writ of certiorari.

Counsel appointed to represent defendant has been 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.

STATE V. KOPE

*Opinion of the Court*

Counsel has also shown 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 for him to do so. Defendant has failed to file any written arguments with this Court, and a sufficient amount of time for him to do so has passed.

In accordance with *Anders* and *Kinch*, we have fully examined the record to determine whether any issues of arguable merit appear therein. We have been unable to find any possible prejudicial error and conclude that defendant's appeal is wholly frivolous. Accordingly, we affirm the trial court's order denying defendant's motion for post-conviction DNA testing.

AFFIRMED.

Judges TYSON and ARROWOOD concurs.

Report per Rule 30(e).