

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-693

Filed: 16 April 2019

Bladen County, Nos. 15 CRS 50819-20

STATE OF NORTH CAROLINA

v.

LORENZO GERARD HENRY

Appeal by defendant from judgment entered 3 October 2017 by Judge Douglas B. Sasser in Bladen County Superior Court. Heard in the Court of Appeals 8 April 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Marilyn Fuller, for the State.*

*Julie C. Boyer for defendant-appellant.*

ARROWOOD, Judge.

Defendant appeals from judgment entered upon his guilty plea to felony possession of a schedule VI controlled substance and possession of drug paraphernalia. We affirm.

I. Background

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On 8 September 2015, defendant was indicted on charges of possession with intent to manufacture, sell and/or deliver marijuana (“PWIMSD”), felony possession of a schedule VI controlled substance, and misdemeanor possession of drug paraphernalia. On 15 August 2016, defendant entered into a plea agreement pursuant to which: (1) he pled guilty to the charges of felonious possession of marijuana and possession of drug paraphernalia; (2) the charges were conditionally discharged pursuant to N.C. Gen. Stat. § 90-96, prosecution was deferred, and he was placed on supervised probation for 24 months; and (3) the PWIMSD charge was dismissed.

On 17 January 2017, the State filed probation violation reports alleging that defendant had violated the terms of his probation by testing positive for marijuana, failing to complete community service, being in arrears, and failing to attend his scheduled appointment with Treatment Accountability for Safer Communities (“TASC”). The State filed a second violation report on 6 June 2017 after defendant again tested positive for marijuana. The State filed a third violation report on 8 August 2017 after defendant was discharged from TASC due to non-compliance.

A hearing was held on 12 September 2017, at which time Judge Sasser found that defendant committed each of the charged violations. He revoked defendant’s probation in accordance with N.C. Gen. Stat. § 90-96 and permitted the State to reinstate the charges and resume prosecution. On 3 October 2017, the trial court

sentenced defendant to a term of 5 to 15 months of imprisonment, suspended defendant's sentence, and placed him on 24 months of supervised probation. On 12 October 2017, Judge Sasser signed appellate entries after finding "defendant has given Notice of Appeal" and counsel was appointed to represent defendant on appeal.

## II. Discussion

On 24 October 2018, defendant filed a petition for *writ of certiorari*. Defendant's appellate counsel stated that, in preparing the record on appeal, she had found no evidence that defendant had given timely notice of appeal as required by N.C.R. App. P. 4. Thus, to the extent defendant had lost his right of appeal by failure to take timely action, counsel requests this Court to allow his appeal to proceed by *writ of certiorari* pursuant to N.C.R. App. P. 21(a)(1). In our discretion, we allow defendant's petition for *writ of certiorari* in order to review the trial court's judgment.

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 this Court to conduct its own review of the record for possible prejudicial error. Counsel has also shown to the satisfaction of this Court that she 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

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necessary for him to do so. Defendant has not filed any written arguments with this Court, and a reasonable time in which he could have done so has passed.

The State moved to dismiss defendant's appeal on the basis that, because defendant pled guilty, he has a limited right to appeal. We note, however, that even in guilty plea cases, a defendant convicted of a felony has a statutory right to appellate review of certain aspects of the judgment. *See* N.C. Gen. Stat. § 15A-1444(a1)-(a2) (2017); *see also State v. Hamby*, 129 N.C. App. 366, 369-70, 499 S.E.2d 195, 196-97 (1998) (conducting *Anders* review although the defendant pled guilty and "brought forward no issues on appeal"). Accordingly, we deny the State's motion.

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. By virtue of his guilty plea, defendant's right of appeal was limited to the sentencing issues set forth in N.C. Gen. Stat. § 15A-1444(a1)-(a2). Here, defendant stipulated to his prior conviction and prior record level. Furthermore, defendant was correctly sentenced from the presumptive range for a Class I, level one felony offense. Accordingly, we find no prejudicial error, conclude the appeal is wholly frivolous, and affirm the judgment entered.

AFFIRMED.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).