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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-724

Filed: 16 April 2019

Pitt County, Nos. 16 CRS 52599-600

STATE OF NORTH CAROLINA

v.

JERIMIAH DYWONTAE MORRIS

Appeal by defendant from judgments entered 6 November 2017 by Judge Jeffery B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 8 April 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Hugh A. Harris, for the State.*

*Cooley Law Office, by Craig M. Cooley, for defendant-appellant.*

ARROWOOD, Judge.

Defendant appeals from two judgments entered upon his *Alford* plea. We affirm the judgments but remand for correction of a clerical error in the judgment entered in file number 16 CRS 52600.

I. Background

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On 27 June 2016, a grand jury indicted defendant on two counts of first degree statutory sexual offense and two counts of taking indecent liberties with a child (“indecent liberties”) in file numbers 16 CRS 52599 and 52600. On 6 November 2017, defendant entered an *Alford* plea to the two counts of indecent liberties in exchange for the State’s dismissal of the remaining charges in 16 CRS 52599-600 and similar charges pending against him in file numbers 16 CRS 52601-603. *See North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed. 2d 162 (1970).

In 16 CRS 52599, the trial court sentenced defendant within the presumptive range as a prior record level I to an active prison term of 15 to 27 months. In 16 CRS 52600, the court imposed a consecutive sentence of 15 to 27 months’ imprisonment, suspended the sentence, and placed defendant on 48 months of supervised probation to begin upon his release from incarceration in 16 CRS 52599. The court also ordered defendant to register as a sex offender for a period of thirty years. Defendant filed timely notice of appeal.

II. Discussion

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. He shows to the satisfaction of this Court that he 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 filed no *pro se* arguments, and a reasonable time for him to do so has passed.

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. The trial court's judgments are therefore affirmed.

However, we have identified a clerical error on the judgment entered in file number 16 CRS 52600. Specifically, the caption of the form "JUDGMENT SUSPENDING SENTENCE – FELONY PUNISHMENT" contains an "x" in the box indicating a community punishment rather than an intermediate punishment. Under structured sentencing, a community punishment is not authorized for the crime of indecent liberties, which is a Class F felony. N.C. Gen. Stat. §§ 14-202.1(b), 15A-1340.17(c) (2017).

In suspending defendant's prison sentence in 16 CRS 52600, the trial court was required to impose an intermediate punishment pursuant to N.C. Gen. Stat. § 15A-1340.17(c). We are satisfied the court made a clerical error in marking the wrong box in the judgment's caption. *See generally In re D.D.J.*, 177 N.C. App. 441, 444, 628 S.E.2d 808, 811 (2006) ("Generally, clerical errors include mistakes such as inadvertent checking of boxes on forms . . . or minor discrepancies between oral

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rulings and written orders.” (citations omitted)); *see also State v. Adkins*, \_\_ N.C. App. \_\_, 809 S.E.2d 924, 2018 WL 944758, \*4 (2018) (unpublished) (“conclud[ing] the court’s marking of the wrong box in the caption was a mere clerical error”); *State v. Allen*, 249 N.C. App. 376, 381, 790 S.E.2d 588, 591-92 (2016). Accordingly, we remand for correction of this clerical error.

AFFIRMED; REMANDED FOR CORRECTION OF CLERICAL ERROR IN 16  
CRS 52600.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).