

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-569

Filed: 2 June 2020

New Hanover County, No. 15 CRS 53204

STATE OF NORTH CAROLINA

v.

DEANDRE LAVON WILDER

Appeal by defendant from judgment entered 5 December 2018 by Judge W. Allen Cobb, Jr. in New Hanover County Superior Court. Heard in the Court of Appeals 13 May 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Sage A. Boyd, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for defendant-appellant.

TYSON, Judge.

Deandre Lavon Wilder (“Defendant”) appeals from an order finding him in violation of his probation. We affirm.

I. Background

STATE V. WILDER

Opinion of the Court

Defendant pleaded guilty to possession of heroin pursuant to a plea agreement, on 11 October 2017. The trial court sentenced Defendant to a term of 5 to 15 months in prison, suspended for 24 months of supervised probation. On 20 August 2018, Defendant's probation officer filed a probation violation report and cited Defendant with four probation violations.

The trial court held a hearing on Defendant's probation violations listed in the probation violation report on 7 November 2018. Defendant's probation officer testified Defendant had tested positive that afternoon for both cocaine and marijuana.

The trial court inquired about Defendant's ability to proceed, given the test results. Defendant's counsel reported Defendant was "talking gibberish" and was having "mild mental problems." The trial court found Defendant in contempt for willfully appearing in court while under the influence of cocaine and marijuana, based on both the positive drug screen and Defendant's in-court conduct. The trial court sentenced Defendant to 30 days in the New Hanover County Jail. Defendant did not enter oral or written notice of appeal.

The trial court also continued Defendant's probation violation hearing until 5 December 2018. At the probation hearing the State alleged the four probation violations from the 20 August 2018 probation violation report. The trial court found Defendant had violated the conditions of his probation and modified the probation to

add a special condition he serve a 30-day split sentence. On 11 December 2018, Defendant gave written notice of appeal.

II. Petition for Writ of Certiorari

Defendant acknowledges that he failed to give timely notice of appeal and has filed a petition for writ of certiorari, requesting our discretion to allow his petition and review his 7 November 2018 contempt finding. *See* N.C. R. App. P. 21(a) (A “writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]”).

“A petition for the writ [of certiorari] must show merit or that error was probably committed below. *Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Rouson*, 226 N.C. App. 562, 563-64, 741 S.E.2d 470, 471, *disc. review denied*, 367 N.C. 220, 747 S.E.2d 538 (2013) (internal quotation marks and citation omitted). Defendant has failed to show any good cause for issuance of the writ. In the exercise of our discretion, we deny Defendant’s petition for writ of certiorari. *Id.*

III. Anders Brief

Defendant’s counsel asserts she is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal. She requests this Court

to conduct its own review of the record of the 5 December probation violation hearing for possible prejudicial errors.

Counsel has 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 necessary for him to do so. Defendant did not file a *pro se* brief with this court.

IV. Conclusion

In accordance with *Anders* and *Kinch*, we fully examined the record to determine whether any issues of arguable merit appear therefrom or whether the appeal is wholly frivolous. We have reviewed the record for possible prejudicial errors and have found none. The trial court's order modifying Defendant's probation is affirmed. *It is so ordered.*

AFFIRMED.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).