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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-829

Filed: 2 June 2020

Moore County, Nos. 17 CRS 50881, 648

STATE OF NORTH CAROLINA

v.

THOMAS CLINTON JUDD, JR.

Appeal by defendant from judgment entered 6 May 2019 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 27 April 2020.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Sandra Wallace-Smith, for the State.*

*Mary McCullers Reece for defendant.*

PER CURIAM.

On 6 May 2019, Defendant Thomas Clinton Judd, Jr. pleaded guilty to charges of failure to report a new address as a sex offender and having attained the status of a habitual felon pursuant to a plea agreement. The terms of his plea agreement provided that he would be sentenced as a Level VI felon with twenty prior record level points. In return, the State stipulated to the existence of a mitigating factor and agreed Judd should be sentenced to a term of 87 to 117 months of imprisonment, at

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the bottom of the mitigated range. The State further agreed to dismiss an additional charge of failure to return written verification as a registered sex offender. After conducting a colloquy, the trial court sentenced Judd in accordance with the specific terms of the plea agreement.

On 20 May 2019, Judd filed a handwritten, *pro se* notice of appeal. On 24 September 2019, he filed a petition for a writ of certiorari. Judd concedes that his notice of appeal does not comply with Rule 4 of the North Carolina Rules of Appellate Procedure because he failed to designate the judgment from which appeal was being taken and because it was not served on the State. We additionally note that Judd failed to designate the Court to which appeal was taken. Despite these errors, Judd asks this Court to grant his petition.

It is well-established that without proper notice of appeal, this Court does not acquire jurisdiction to review the appeal. *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320 (2005). However, this Court has previously granted certiorari despite technical defects in a notice of appeal. *See State v. Crawford*, 225 N.C. App. 426, 427, 737 S.E.2d 768, 769 (2013) (granting the defendant's petition for a writ of certiorari even though she failed to serve her *pro se* notice of appeal on the State). In our discretion, we allow Judd's petition for a writ of certiorari for the purpose of reviewing the judgment entered.

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Judd's appointed counsel has been unable to identify any issue to support a meaningful argument for relief and asks this Court to conduct its own review of the record for possible prejudicial error. Counsel has shown to the satisfaction of this Court that she has complied with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising Judd of his right to file written arguments with this Court and providing him with the documents necessary for him to do so. Judd exercised his right and filed his own brief with this Court on 12 November 2019.

Judd argues that the trial court lacked jurisdiction to prosecute him because the indictment was fatally defective, that he received ineffective assistance of trial counsel, and that his guilty plea was not freely, knowingly, and voluntarily entered. The State moves to dismiss the appeal on the basis that, because Judd pleaded guilty, he only 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); *see also State v. Hamby*, 129 N.C. App. 366, 369, 499 S.E.2d 195, 196 (1998) (conducting *Anders* review although the defendant pleaded guilty and “brought forward no issues on appeal”). Accordingly, we deny the State's motion.

Judd contends that the trial court lacked jurisdiction to enter judgment against him because his indictment for failure to report a new address as a sex offender was

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fatally defective. “[W]hen an indictment is alleged to be facially invalid, thereby depriving the trial court of jurisdiction, the indictment may be challenged at any time.” *State v. McGee*, 175 N.C. App. 586, 587–88, 623 S.E.2d 782, 784 (2006); *see also State v. Frink*, 177 N.C. App. 144, 147, 627 S.E.2d 472, 474 (2006) (vacating judgment due to a defective indictment following a guilty plea and upon *Anders* review).

Here, Judd was charged by indictment with violating N.C. Gen. Stat. § 14-208.11(a)(2). This Court has held that an indictment sufficiently charges a violation of Section 14-208.11(a)(2) if it alleges: (1) defendant is a person required to register; (2) defendant changes his address; and (3) defendant fails to notify the last registering sheriff of the change of address within three business days of the change. *State v. Fox*, 216 N.C. App. 153, 156–57, 716 S.E.2d 261, 264–65 (2011). The indictment in this case alleged that Judd:

unlawfully, willfully and feloniously did, as a person required by Article 27A of Chapter 14 of the North Carolina General Statutes to register as a sex offender, knowingly and with the intent to violate the provisions of that Article, having been convicted of sexual battery, fail to register with the Sheriff of Moore County of a new address or fail to notify the last registering sheriff of a change in address within three days of moving from his residence . . . to an unknown location.

The indictment is couched in the language of the statute and gave him reasonable notice of the offense charged. *See State v. Singleton*, 85 N.C. App. 123, 126, 354 S.E.2d 259, 262 (1987) (“[a]n indictment couched in the language of the statute is generally

sufficient to charge the statutory offense”). Therefore, we conclude the trial court had subject matter jurisdiction and did not err by entering judgment on the charged offense.

Judd next argues that he received ineffective assistance of trial counsel and that his guilty plea was not freely, knowingly, and voluntarily entered. However, we reject these arguments because they are not issues from which Judd has an appeal of right, and we decline to review them on appeal. N.C. Gen. Stat. § 15A-1444. Judd may seek relief by filing a motion for appropriate relief with the trial court. *See* N.C. Gen. Stat. § 15A-1415.

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. As stated previously herein, by virtue of his guilty plea, Judd’s right of appeal was limited to the sentencing issues set forth in N.C. Gen. Stat. § 15A-1444(a1)–(a2). In the instant case, Judd stipulated to his prior convictions and prior record level and received the sentence specifically provided for in his plea agreement. Furthermore, he was correctly sentenced from the mitigated range for a Class C, Level VI felony offense. *See* N.C. Gen. Stat. § 15A-1340.17(c), (d). Accordingly, we find no prejudicial error.

AFFIRMED.

Panel consisting of Judges DILLON, DIETZ, and MURPHY.

Report per Rule 30(e).