

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-771

Filed: 16 June 2020

Wake County, No. 17 CRS 212338-40; 17 CRS 3667

STATE OF NORTH CAROLINA

v.

DAVID PHILLIP SHACKLEFORD

Appeal by defendant from judgments entered 12 February 2019 by Judge A. Graham Shirley in Wake County Superior Court. Heard in the Court of Appeals 26 May 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Norlan Graves, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Sterling Rozear, for defendant-appellant.

TYSON, Judge.

David Phillip Shackelford (“Defendant”) appeals from judgments entered upon his *Alford* plea to possession with intent to sell or deliver cocaine and possession with intent to sell or deliver marijuana. We affirm.

I. Background

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Wake County Sheriff's Deputies conducted a "knock and talk" at a residence on Rabbit Grove Lane in Knightdale on 30 June 2017. Two officers approached the residence and saw Defendant outside on the porch with a dog. Defendant took the dog inside the residence and returned to meet the officers.

As the officers spoke with Defendant, one officer observed a small, clear bag containing what appeared to be marijuana beneath a coffee table inside of the residence. The other officer observed "a black scale and a small baggie of what appeared to be cocaine" on the coffee table. The officers asked for consent to search the residence, which Defendant denied to them. Defendant told the officers to obtain a warrant. The officers detained Defendant and his girlfriend while they sought a warrant and resumed their search of the residence once they obtained it.

Defendant was indicted for possession with intent to sell or deliver cocaine, possession of drug paraphernalia for marijuana, maintaining a dwelling for keeping or selling controlled substances, possession of a firearm by a felon, two counts of possession with intent to sell or deliver marijuana, and for having attained the status of an habitual felon. Defendant filed a motion to suppress the evidence discovered prior to the officers' obtaining the warrant, alleging he did not consent to the initial search of the residence.

The trial court heard testimony on Defendant's motion to suppress. The officers testified Defendant was asked if they could enter the residence and Defendant

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held the front door open as they entered. They testified they stopped as soon as they walked in and observed the marijuana and cocaine from the entryway to the residence, at which point they asked Defendant for consent to search the residence. After Defendant's demand for a search warrant, the officers secured and served the warrant and searched the residence.

Defendant testified he asked the officers if they had a warrant when they first requested to enter the residence. Defendant testified one of the officers pushed him in the chest to move past him and entered the residence, at which point she saw the marijuana and cocaine and signaled for the other officers to follow. Defendant testified he repeatedly asked the officers to obtain a search warrant before they eventually did. Defendant's girlfriend also testified that she had heard Defendant ask the officers for a warrant and observed one of the officers push past him to enter the residence.

The trial court denied Defendant's motion to suppress. Defendant subsequently entered an *Alford* plea to one count of possession with intent to sell or deliver cocaine and one count of possession with intent to sell or deliver marijuana, while preserving his right to appeal the denial of his motion to suppress. The State dismissed the remaining charges as well as other, unrelated charges as part of the plea agreement.

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The trial court accepted Defendant's *Alford* plea and determined he was a prior record level IV offender for sentencing purposes. The trial court sentenced Defendant to an active term of 9 to 20 months in prison for possession with intent to sell or deliver cocaine, and a consecutive active sentence of 6 to 17 months in prison for possession with intent to sell or deliver marijuana.

Defendant filed his written notice of appeal with this Court on 14 February 2019. Defendant's notice of appeal specifies the trial court's denial of his motion to suppress as the order from which he appeals. Defendant has also filed a petition for writ of certiorari with this Court.

II. Petition for Writ of Certiorari

Defendant acknowledges he failed to give notice of appeal from the judgments entered upon his *Alford* plea, which makes his notice of appeal deficient. *See State v. Miller*, 205 N.C. App. 724, 725, 696 S.E.2d 542, 542 (2010). Defendant requests this Court issue its writ of certiorari to allow an appeal to review the trial court's denial of his motion to suppress. He asserts the deficiency in his notice of appeal was not attributable to him and the State has not been prejudiced. *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.").

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Defendant argues this Court has granted certiorari in prior cases where trial counsel indicated a defendant's intent to appeal the denial of a motion to suppress prior to the entry of a guilty plea, but had failed to enter notice of appeal from the underlying judgment. *See, e.g., State v. Smith*, 246 N.C. App. 170, 175, 783 S.E.2d 504, 508 (2016). The State has moved to dismiss Defendant's appeal due to the deficiency in his notice of appeal.

In the exercise of our discretion under N.C. R. App. P. 21(a), we allow Defendant's petition for writ of certiorari. The State's motion to dismiss the appeal is denied.

III. Anders v. California

Counsel appointed to represent Defendant on appeal 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.

Counsel has 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 by providing him with the documents necessary for him to do so. Defendant failed to file a *pro se* brief with this Court.

IV. Conclusion

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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 errors and conclude that the appeal is wholly frivolous. The judgment appealed from is affirmed.

AFFIRMED.

Judges BRYANT and YOUNG concur.

Report per Rule 30(e).