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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-539

Filed: 16 June 2020

Montgomery County, Nos. 13 CRS 50233; 15 CRS 51395

STATE OF NORTH CAROLINA

v.

RODERIC ELDON HOUSE

Appeal by defendant from judgment entered 7 March 2018 by Judge V. Bradford Long and certiorari review of a separate 7 March 2018 judgment revoking defendant's probation entered by Judge Long, all orders entered in Montgomery County Superior Court. Heard in the Court of Appeals 26 May 2020.

*Attorney General Joshua H. Stein, by Associate Attorney General Elizabeth B. Jenkins, for the State.*

*Forrest Firm, P.C., by Patrick S. Lineberry, for defendant-appellant.*

BRYANT, Judge.

Defendant Roderic Eldon House appeals from a judgment entered upon his guilty plea to driving while impaired ("DWI"). Defendant has also filed a petition for writ of certiorari seeking review of a separate judgment revoking his probation, which was entered the same day as his DWI judgment. We affirm both judgments.

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On 8 November 2015, defendant was involved in a one-car accident. The trooper, who responded to the accident, noted that defendant's breath had a strong odor of alcohol and that defendant had fallen asleep after being placed in the trooper's patrol car. At the time of the accident, defendant's driver's license was revoked due to a previous DWI conviction. Defendant was issued a citation for DWI and driving while license revoked for the prior impaired driving ("DWLR").

When the accident occurred, defendant was on probation after pleading guilty to attempted trafficking in opium on 15 July 2015 in Montgomery County file number 13 CRS 50233. Following defendant's plea to that offense, the trial court entered a judgment suspending an active sentence of 17 to 30 months and placing defendant on supervised probation for 24 months.

On 4 May 2016, defendant was convicted of DWLR in an unrelated case. On 10 January 2017, defendant's probation officer filed a violation report alleging that defendant had absconded from probation, committed a new criminal offense, and committed other technical violations. Defendant was later convicted of an unrelated DWI in October 2017.

On 11 January 2018, defendant was found guilty in Montgomery County file number 15 CR 51395 of DWI and DWLR in district court based on the 8 November 2015 incident. The court sentenced defendant to 36 months of imprisonment. Defendant appealed to superior court for a trial *de novo*.

On 7 March 2018, defendant pled guilty in superior court to DWI and DWLR in 15 CRS 51395. Defendant also admitted to the existence of two grossly aggravating factors: (1) he had three prior DWI convictions within seven years before the date of offense and (2) his license was revoked for a prior DWI conviction at the time of the offense. Prior to sentencing, the trial court conducted a hearing on defendant's probation violations in 13 CRS 50233. Defendant admitted he had knowingly violated the terms of his probation.

The trial court entered two separate judgments. The court revoked defendant's probation for attempted trafficking of opium and activated his suspended sentence in 13 CRS 50233. The activated sentence was ordered to run concurrently with any sentence that defendant was currently serving. For the DWI conviction in 15 CRS 51395, the trial court sentenced defendant to 36 months in the Misdemeanant Confinement Program to run consecutively to any sentence defendant was currently serving. On 9 March 2018, defendant filed written notice of appeal from the DWI judgment in 15 CRS 51395.

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Initially, we address defendant's petition for writ of certiorari. Defendant's written notice of appeal, which was drafted and filed by his trial counsel, sought to appeal "the Judgment and Commitment entered 7 March 2018 by the Hon. V. Bradford Long." As noted above, the trial court entered two judgments on that date

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—the judgment revoking defendant’s probation in file number 13 CRS 50233 and the DWI judgment entered in file number 15 CRS 51395. However, the notice of appeal listed only the latter file number. As a result, defendant never appealed from the judgment revoking his probation in 13 CRS 50233. Since defendant had a right to appeal this judgment and lost that right through no fault of his own, in the exercise of our discretion, we allow the petition for writ of certiorari and review the judgment revoking defendant’s probation. *See State v. Hammonds*, 218 N.C. App. 158, 163, 720 S.E.2d 820, 823 (2012) (“Because, in this case, it is readily apparent that defendant has lost his appeal through no fault of his own, but rather as a result of sloppy drafting of counsel and because a failure to issue a writ of certiorari would be manifestly unjust, we exercise our discretion to allow defendant’s petition for writ of certiorari and address the merits of defendant’s appeal.”).

Counsel appointed to represent defendant on appeal “is unable to identify an 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 providing him with the documents necessary for him to do so. Defendant has not filed any written arguments.

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In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therein. We have been unable to find any possible prejudicial error and conclude that the appeal is wholly frivolous. We, therefore, affirm both judgments.

AFFIRMED.

Judges TYSON and YOUNG concur.

Report per Rule 30(e).