

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA20-141

Filed: 17 November 2020

Wilson County, No. 18 CRS 52943

STATE OF NORTH CAROLINA

v.

MARVIN SENTEL ALSTON

Appeal by defendant by writ of certiorari from judgment entered 12 September 2019 by Judge Walter H. Godwin, Jr., in Wilson County Superior Court. Heard in the Court of Appeals 7 October 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Robert C. Ennis, for the State.*

*Winifred H. Dillon for defendant-appellant.*

ZACHARY, Judge.

On 8 August 2018, Defendant Marvin Sentel Alston, a registered sex offender, notified the Wilson County Sheriff's Office that his address had changed to that of a homeless shelter. Later that day, Sheriff's Office personnel contacted the shelter to verify Defendant's address, and learned that Defendant stayed at the shelter one night and did not return. Defendant was not located until January 2019. On 30

January 2019, Defendant was arrested for failing to report a change of address as a sex offender.

On 4 September 2019, Defendant pleaded guilty pursuant to a plea agreement to felony common-law obstruction of justice. In accordance with the terms of the plea agreement, the State dismissed the charge of failing to report a change of address as a sex offender, and sentencing was left to the discretion of the trial court. The trial court entered judgment and sentenced Defendant to a term of 6 to 17 months in the custody of the North Carolina Division of Adult Correction.

Two days later, on 6 September 2019, Defendant filed a *pro se* letter seeking to appeal the judgment. The trial court appointed appellate counsel. On 23 June 2020, Defendant filed a petition for writ of certiorari as an alternative basis for our review. Defendant acknowledges that his notice of appeal was defective in that it was unsigned, did not “designate the judgment . . . from which appeal [was] taken and the court to which appeal [was] taken,” and may not have been served on the State prior to filing. N.C.R. App. P. 4(a)-(b); *see State v. Locklear*, 259 N.C. App. 374, 375-76, 816 S.E.2d 197, 200 (2018). In our discretion, we allow Defendant’s petition for writ of certiorari for the purpose of reviewing the judgment entered.

Counsel appointed to represent Defendant 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 also 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 Defendant with the documents necessary for him to do so.

In accordance with *Anders*, we have fully examined the record to determine whether there are any issues of arguable merit. By virtue of Defendant's guilty plea, our review for potential error is limited to those issues set forth in N.C. Gen. Stat. § 15A-1444(a1)-(a2) (2019). *See State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003).

Defendant's counsel directs our attention to a possible issue on appeal: "whether there was a sufficient factual basis of deceit or intent to defraud to raise a charge of obstruction of justice from a misdemeanor to a felony." This argument is without merit.

A trial court "may not accept a plea of guilty . . . without first determining that there is a factual basis for the plea." N.C. Gen. Stat. § 15A-1022(c). "In order to convict a [d]efendant of the common law offense of obstruction of justice, the State is required to demonstrate that [the d]efendant has committed an act that prevented, obstructed, impeded or hindered public or legal justice." *State v. Cousin*, 233 N.C. App. 523, 530, 757 S.E.2d 332, 338 (citation omitted), *disc. review denied*, 367 N.C. 521, 762 S.E.2d

446 (2014). The common-law offense is elevated to a Class H felony if the defendant is shown to have acted “with deceit and intent to defraud.” *Id.*; see N.C. Gen. Stat. § 14-3(b).

Here, Defendant’s counsel has not provided any specific argument challenging the factual basis of Defendant’s guilty plea. Moreover, the record establishes that there was indeed a sufficient factual basis for Defendant’s plea. See *State v. Collins*, 221 N.C. App. 604, 606, 727 S.E.2d 922, 925 (2012); *State v. Blount*, 209 N.C. App. 340, 344-45, 703 S.E.2d 921, 925 (2011). This argument is overruled.

Defendant has not filed any written arguments on his own behalf with this Court, and a reasonable time in which he could have done so has passed. As required by *Anders* and *Kinch*, we have conducted a full examination of the record for any issue with arguable merit. We have been unable to find any error, and we conclude that this appeal is wholly frivolous, presenting no issue that might entitle Defendant to relief. Accordingly, we affirm the judgment entered in this case.

AFFIRMED.

Judges BERGER and BROOK concur.

Report per Rule 30(e).