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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1024

Filed: 31 December 2020

Mecklenburg County, No. 18 CRS 26399

STATE OF NORTH CAROLINA

v.

TAURUS WAYNE POUNCEY

Appeal by defendant from judgment entered 25 April 2019 by Judge William R. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 17 November 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Peter A. Regulski and Special Deputy Attorney General Jonathan P. Babb, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for defendant-appellant.*

ZACHARY, Judge.

Defendant Taurus Wayne Pouncey appeals from a judgment entered upon his guilty plea. Counsel for Defendant filed an *Anders* brief, and Defendant filed a *pro se* brief. After careful review, we affirm.

On 22 April 2018, a law enforcement officer filed a juvenile petition alleging that Defendant was a delinquent juvenile for committing the offense of first-degree

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murder. On 16 May 2018, additional juvenile petitions were filed alleging that Defendant was a delinquent juvenile for committing the offenses of conspiracy to commit robbery with a dangerous weapon, robbery with a dangerous weapon, and conspiracy to commit first-degree murder. Following a probable cause hearing in Mecklenburg County District Court on 30 October 2018, the trial court entered an order finding probable cause to believe Defendant committed the charged offenses, one of which, first-degree murder, is a Class A felony. The trial court therefore ordered that the case be transferred to superior court.

On 7 January 2019, a grand jury returned an indictment against Defendant for first-degree murder. Thereafter, Defendant entered into a plea arrangement with the State. In accordance with the plea arrangement, on 25 April 2019, Defendant pleaded guilty to second-degree murder, and the State dismissed the charges of conspiracy to commit robbery with a dangerous weapon, robbery with a dangerous weapon, and conspiracy to commit first-degree murder. The trial court sentenced Defendant to 240–300 months’ imprisonment in the custody of the North Carolina Division of Adult Correction, with a credit for time served of 371 days. Defendant gave oral notice of appeal in open court.

Defendant concedes that his right to appeal following his guilty plea is limited, and that he has no right of appeal from the district court’s section 7B-2200 finding of probable cause and transfer of the case to superior court. Accordingly, on 4 December

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2019, defense counsel filed a petition for writ of certiorari seeking review of the district court's finding of probable cause and transfer of Defendant's case to superior court. See N.C. Gen. Stat. § 15A-1444(e) (2019) (stating that "[e]xcept as provided in subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty . . . has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty . . . to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari"). In our discretion, we deny Defendant's petition for certiorari.

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 him with the documents necessary for him to do so.

Defendant has filed a *pro se* brief in this Court, arguing that the evidence "points towards the crime being in the nature of manslaughter instead of second-Degree murder," and that therefore his sentence should be "lessened to the

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sentencing level of the actual crime commit[t]ed.” By virtue of his guilty plea, Defendant’s right of appeal is limited by N.C. Gen. Stat. § 15A-1444 to the following: (1) whether a sentence with a minimum term of imprisonment that falls outside of the statutory presumptive range is supported by the evidence; (2) whether the sentence results from an incorrect finding of Defendant’s prior record level under section 15A-1340.14 or Defendant’s prior conviction level under section 15A-1340.21; (3) whether the sentence is of a type or duration not authorized by sections 15A-1340.17 or 15A-1340.23 for Defendant’s class of offense and prior record or conviction level; (4) whether the trial court improperly denied Defendant’s motion to suppress, *see* N.C. Gen. Stat. § 15A-979(b); and (5) whether the trial court improperly denied Defendant’s motion to withdraw his guilty plea. *State v. Jamerson*, 161 N.C. App. 527, 528–29, 588 S.E.2d 545, 546–47 (2003). Defendant’s argument does not pertain to an issue for which he has an appeal of right pursuant to section 15A-1444, and thus, Defendant is not entitled to relief on this basis.

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 error, and we conclude that the appeal is wholly frivolous. The record demonstrates that Defendant stipulated that he had no prior convictions, resulting in zero prior record level points and a corresponding prior record level I. The active sentence ordered by the trial court fell within the presumptive range for a

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prior record level I offender convicted of a Class B1 felony. *See* N.C. Gen. Stat. § 15A-1340.17(c), (e). Finally, there is no indication in the record of the trial court's denial of either a motion to suppress or a motion to withdraw Defendant's guilty plea.

Accordingly, we find no prejudicial error, conclude that the appeal is wholly frivolous, and affirm the judgment entered by the trial court.

AFFIRMED.

Judges DIETZ and COLLINS concur.

Report per Rule 30(e).