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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-199

No. COA20-652

Filed 4 May 2021

Lincoln County, No. 18 CRS 51896

STATE OF NORTH CAROLINA

v.

ROBERT LEE INMAN, JR., Defendant.

Appeal by Defendant from judgment entered on 28 October 2019 by Judge Robert C. Ervin in Lincoln County Superior Court. Heard in the Court of Appeals 13 April 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Stephanie C. Lloyd, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for Defendant.

JACKSON, Judge.

¶ 1

Defendant Robert Lee Inman, Jr. (“Defendant”) has filed an *Anders* brief asking this Court to conduct an independent review to determine whether the record discloses prejudicial error in his convictions of possession of methamphetamine and possession of drug paraphernalia. After careful review of the record, we find no error.

I. Factual and Procedural Background

¶ 2 On 28 January 2019, Defendant was charged by indictment with possession of methamphetamine, simple possession of a schedule IV controlled substance, and possession of drug paraphernalia. The case was called for trial on 28 October 2019 in the Criminal Session of Lincoln County Superior Court with the Honorable Robert C. Ervin presiding. After a colloquy with the trial judge, Defendant waived his right to a jury trial in open court and consented to a bench trial. During trial, the State dismissed the possession of a schedule IV charge, having not sent the substance to the state lab for analysis.

¶ 3 The testimony presented at Defendant's trial demonstrated that on 7 June 2018, Defendant was driving a truck and was pulled over by Officer J. Dunnigan due to his observations of Defendant's vehicle swerving side to side in the road, crossing the center line several times, and crossing the fog line and running into the grass. After Defendant was pulled over, Officer Dunnigan asked him to step out of the truck to check his sobriety. Officer Dunnigan noticed that Defendant appeared very nervous and began to physically shake and sweat, and Officer Dunnigan asked if he had been using narcotics.

¶ 4 Defendant denied using narcotics and denied having any drugs in the truck. Defendant consented to a search of the truck. On the passenger side of the vehicle, Officer Dunnigan found two cloth bags, one containing a blue pill bottle and the other containing a clear crystal substance, as well as a cut straw used to ingest powders.

The pills recovered were not sent to the lab, but the clear crystal substance was analyzed and was confirmed to be less than one gram of methamphetamine.

¶ 5 Following Defendant's trial, he was found guilty that same day of possession of methamphetamine and possession of drug paraphernalia. The trial court imposed a suspended sentence and placed Defendant on supervised probation for a period of 18 months. The suspended sentence included special conditions requiring Defendant to submit to 60 days of house arrest (under electronic monitoring) as well as 60 hours of community service.

¶ 6 On 6 November 2019, Defendant returned to court with counsel and gave oral notice of appeal on the record, but before a different judge. Appellate entries were filed with this Court that same day.

II. Appellate Jurisdiction

¶ 7 An appeal of right from a final judgment entered in the superior court upon conviction properly lies directly with this Court. N.C. Gen. Stat. §§ 7A-27(b), 15A-1444(a) (2019). Thus, Defendant was entitled to appeal the superior court's judgment to this Court.

¶ 8 However, there are certain deficiencies in Defendant's notice of appeal that must first be addressed. Defendant was found guilty and sentenced on 28 October 2019. He did not give oral notice of appeal in court at that time. On 6 November 2019, Defendant returned to court with counsel and gave oral notice of appeal on the

record. Appellate entries were entered that same day. However, no written notice of appeal was ever filed by Defendant.

¶ 9 Appellate Rule 4(a) requires a defendant to either provide oral notice of appeal at trial, or to file and serve a written notice of appeal within fourteen days of the date of the entry of judgment. *See* N.C. R. App. P. 4(a)(1)-(2). Here, Defendant provided oral notice of appeal over a week after his trial had concluded. Ordinarily, “when a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal” and the appeal must be dismissed. *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320-21 (2005).

¶ 10 Defendant subsequently filed a Petition for Writ of Certiorari with our Court requesting appellate review under N.C. Gen. Stat. § 15A-1444(e) and N.C. Gen. Stat. § 7A-32(c), should the Court conclude that his arguments are not within the scope of his direct appeal. In his petition, Defendant concedes that his notice may not have complied with the requirements of Appellate Rule 4, but requests that this Court nevertheless allow review because his intent to appeal was clear and because the State has not been prejudiced by the defects in his notice of appeal. In its response, the State does not identify any specific prejudice that it would suffer as a result of the defect in Defendant’s appeal, and appears not to take a position on Defendant’s request. Accordingly, we choose to exercise our discretion to allow Defendant’s petition for writ of certiorari. *See State v. Springle*, 244 N.C. App. 760, 763, 781

S.E.2d 518, 521 (2016) (“[A] defect in a notice of appeal should not result in loss of the appeal as long as the intent to appeal . . . can be fairly inferred from the notice and the appellee is not misled by the mistake.”) (internal marks and citation omitted).

III. *Anders* Brief

¶ 11 Defendant’s appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), indicating that after a close examination of the record and relevant law, she is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal. Defendant asks this Court to conduct its own review of the record for possible error.

¶ 12 Counsel has filed documentation with the Court showing that she has complied with the requirements of both *Anders* and *State v. Kinch*, 314 N.C. 99, 102, 331 S.E.2d 665, 666 (1985) (holding that defense counsel’s brief had “fully complied with *Anders*” by “stat[ing] in his brief that he found no merit in the assignments of error and request[ing] this Court to review the record for any prejudicial error”). Namely, counsel here advised Defendant in writing on 29 September 2020 of his right to file written arguments with the Court, and has provided him with a copy of the documents pertinent to his appeal, including the transcript, record on appeal and counsel’s brief.

¶ 13 Unlike the appellant in *Kinch*, Defendant here has not filed a pro se brief with this Court, and a reasonable time for him to do so has expired. *Id.* at 102, 331 S.E.2d

at 666-67. Further, as in *Kinch*, counsel for Defendant has referred us to two issues that might arguably support an appeal: (1) whether the trial court correctly handled Defendant's waiver of his right to a jury trial; and (2) whether sufficient evidence existed to support Defendant's possession convictions.

¶ 14 We agree with counsel that neither of these arguments have merit. Defendant's waiver of his right to a jury trial was in full compliance with N.C. Gen. Stat. § 15A-1201(b), as the trial judge personally addressed Defendant about his decision to waive his right to a jury trial through proper colloquy, and Defendant then executed a valid written waiver to which the State had no objection. There was also sufficient evidence to support Defendant's convictions for possession of methamphetamine and possession of drug paraphernalia. Moreover, Defendant's prior record level of III (6 points) was properly calculated and stipulated to by Defendant and the suspended sentence imposed upon him for his Class I felony conviction was within the presumptive range and was properly authorized under the applicable statutes.

IV. Conclusion

¶ 15 In accordance with our duty under *Anders* and *Kinch*, we have fully examined the record to determine whether any meritorious issues appear to exist and have found none. Defendant received a fair trial, free from prejudicial error. There is no error in the trial court's verdict or in the judgment entered thereon.

STATE V. INMAN

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Opinion of the Court

NO ERROR.

Chief Judge STROUD and Judge ARROWOOD concur.

Report per Rule 30(e).