

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-554

No. COA20-467

Filed 5 October 2021

Cleveland County, No. 17CRS052463

STATE OF NORTH CAROLINA

v.

TERRY LEE MCCONNEAUGHEY

Appeal by Defendant from judgment entered 24 October 2019 by Judge Gregory R. Hayes in Cleveland County Superior Court. Heard in the Court of Appeals 10 August 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Rory Agan, for the State-Appellee.

Guy J. Loranger for Defendant-Appellant.

COLLINS, Judge.

¶ 1

Defendant Terry Lee McConneaughey appeals from judgment entered upon jury verdicts of guilty of two drug charges. Defendant filed an *Anders* brief asking this Court to conduct an independent review of the proceedings to determine whether any non-frivolous, justiciable issue exists to support his appeal. After careful review, we find no non-frivolous issue and dismiss the appeal.

I. Background

¶ 2 A jury found Defendant guilty in 2019 of sale or delivery of heroin and possession with intent to manufacture, sell or deliver heroin. The trial court entered judgments upon the jury’s verdicts, sentencing Defendant to two consecutive terms in prison. The trial court suspended the second sentence and ordered Defendant be placed on supervised probation for 36 months upon his release from incarceration. Defendant appealed.

II. Discussion

¶ 3 Defense counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), explaining that he was “unable to identify any justiciable, non-frivolous issue that could be raised in this appeal,” and requesting this Court to “conduct an independent, full examination of the record, transcript, and briefs . . . to determine whether any justiciable, non-frivolous issue has been overlooked by counsel that would merit an argument that prejudicial error occurred.”

¶ 4 The brief referred to the following issues that might arguably support the appeal:

(1) Whether the indictment charging Mr. McConneaughey with sale or delivery of heroin and possession with intent to manufacture, sell or deliver heroin contains the elements that N.C. Gen. Stat. § 15A-924 requires to confer jurisdiction on the trial court.

(2) Whether the trial court erred by allowing Chancey to testify as an expert witness for the State in forensic

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chemistry as it relates to controlled substances.

(3) Whether the trial court erred by admitting Chancey's lab report as State's Exhibit No. 6.

(4) Whether the trial court erred by denying Mr. McConneaughey's motion to dismiss the charges of sale or delivery of heroin and possession with intent to manufacture, sell or deliver heroin.

(5) Whether the trial court erred by failing to give Mr. McConneaughey's requested instruction on the testimony of a witness with immunity or quasi-immunity.

(6) Whether the trial court committed plain error by failing to give the jury an instruction on entrapment.

(7) Whether Mr. McConneaughey's sentence resulted from either an incorrect finding of his prior record level under N.C. Gen. Stat. § 15A-1340.14, contained a type of sentence disposition that was not authorized by N.C. Gen. Stat. § 15A-1340.17, or contained a term of imprisonment that was for a duration not authorized by N.C. Gen. Stat. § 15A-1340.17.

(8) Whether N.C. Gen. Stat. §§ 15A-1341(b), 15A-1342(a), and 15A-1343.2(d) permitted the trial court to place Mr. McConneaughey on supervised probation for a period of 36 months.

(9) Whether Mr. McConneaughey was deprived of his constitutional right to the effective assistance of counsel, and in particular, whether the performance of Mr. McConneaughey's counsel fell below an objective standard or reasonableness in his performance and, if so, whether Mr. McConneaughey was prejudiced by his counsel's deficient performance.

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complied with the requirements of *Anders* 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, including the record on appeal, transcript, and Defendant’s brief. *See State v. Bennett*, 102 N.C. App. 797, 800, 404 S.E.2d 4, 5 (1991). Defendant did not file any written arguments with this Court and a reasonable time for him to do so has passed.

¶ 6

In accordance with our duty under *Anders*, we have conducted “a full examination of all the proceedings[,]” including a “review [of] the legal points appearing in the record, transcript, and briefs, not for the purpose of determining their merits (if any) but to determine whether they are wholly frivolous.” *Kinch*, 314 N.C. at 102-03, 331 S.E.2d at 667. Upon our examination of all the proceedings, we conclude that the appeal is wholly frivolous, and we dismiss the appeal. *See id.* at 106, 331 S.E.2d at 669.

DISMISSED.

Judges DIETZ and GORE concur.

Report per Rule 30(e).