An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-145

No. COA 21-185

Filed 1 March 2022

Cleveland County, No. 19 CRS 581

STATE OF NORTH CAROLINA

v.

PAMELA DENISE BROOKS, Defendant.

Appeal by Defendant from judgment entered 28 September 2020 by Judge Athena Fox Brooks in Cleveland County Superior Court. Heard in the Court of Appeals 19 October 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Ann Stone, for the State.

Benjamin J. Kull for Defendant-Appellant.

INMAN, Judge.

¶ 1 On 27 August 2018, Defendant pleaded guilty to two felony drug offenses and was placed on supervised probation. Defendant then committed and was convicted of two new felony drug offenses, leading to the revocation of her probation. Defendant now petitions this Court for a writ of certiorari to conduct a review of the judgment revoking her probation under *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493

(1967). We allow Defendant's petition and, following *Anders* review, hold the appeal is wholly frivolous.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 Defendant pleaded guilty to two felony drug offenses on 27 August 2018 and was sentenced to six to seventeen months imprisonment. Consistent with the plea deal reached with the State, Defendant's sentence was suspended for eighteen months of supervised probation. Her probation officer filed a violation report on 13 November 2019, alleging four probation violations. The State and Defendant consented to resolve these violations by a twelve-month extension of her probation, and the trial court entered an order to that effect on 28 January 2020.

¶ 3 On 3 March 2020, less than two months into her extended probation, Defendant was convicted of two new felony drug offenses. Her probation officer filed a violation report based on these convictions on 1 June 2020, and the trial court held a revocation hearing on 28 September 2020. At the outset of that hearing, Defendant waived a formal reading of the violation report and admitted to the violation; the State then tendered Defendant's probation officer, who told the trial court that Defendant was convicted of felony possession of cocaine and felony possession of methamphetamine on 3 March 2020. The State recommended that the trial court revoke Defendant's probation based on this violation, and the trial court did so at the conclusion of the hearing. A written judgment consistent with that ruling was

entered later that day. The trial court also filed appellate entries on that date, though no oral notice of appeal appears in the hearing transcript.

¶ 4 In addition to the above filings, the record on appeal includes a handwritten letter from Defendant to an unidentified clerk's office. That letter, dated the day after Defendant's revocation hearing, requests an appeal of her probation revocation. That letter largely fails to conform with the written notice of appeal requirements imposed by Rule 4 of the North Carolina Rules of Appellate Procedure, including mandating service on the State and identifying the court to which the appeal is taken. N.C. R. App. P. 4(a)-(b) (2021).

¶ 5 Recognizing that Defendant failed to give proper oral or written notice of appeal from the probation revocation judgment, Defendant's appellate counsel filed a petition for writ of certiorari with this Court on 22 April 2021. Contemporaneously therewith, counsel also filed a brief—with notice by mail to Defendant—seeking *Anders* review, as counsel had examined the record, transcript, and relevant law but was "unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal." Counsel's brief, consistent with his obligation under *Anders* to refer this Court to "anything in the record that might arguably support the appeal," 386 U.S. at 744, 18 L. Ed. 2d at 498, directs us to consider: (1) the abuse of discretion standard applicable to probation revocation; and (2) caselaw recognizing that probation may be revoked for commission of a new offense. *See, e.g.*, *State v.*

Melton, 258 N.C. App. 134, 136-37, 811 S.E.2d 678, 680-81 ("A trial court may only revoke a defendant's probation in circumstances when the defendant: (1) commits a new criminal offense, in violation of N.C. Gen. Stat. § 15A-1343(b)(1) . . . .").

II. ANALYSIS

¶ 6 This Court may issue a writ of certiorari in its discretion "when the right to prosecute an appeal has been lost by failure to take timely action." N.C. R. App. P. 21(a)(1) (2021). In our discretion, we grant Defendant's petition to pursue an *Anders* review. *See, e.g.*, *State v. Robinson*, 2021-NCCOA-533, ¶ 9 (allowing a petition for writ of certiorari based on the defendant's failure to timely notice an appeal to conduct an Anders review).

¶ 7 This Court has summarized *Anders* appeals as follows:

> In 1967, the United States Supreme Court held that an attorney for an indigent criminal defendant, who after a conscientious examination of the record believes an appeal of his client's conviction would be "wholly frivolous," may so advise the appellate court in a brief to that court "referring to anything in the record that might arguably support the appeal." *Anders v. California*, 386 U.S. 738, 744, 18 L.Ed.2d 493, 498 (1967); *see State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). The appellate court, after a full examination of the proceedings, is to then decide whether the appeal is wholly frivolous or has some merit. *Anders*, 386 U.S. at 744, 18 L.Ed.2d at 498; *Kinch*, 314 N.C. at 102, 331 S.E.2d at 667. The *Anders* brief, as it has come to be known, is grounded in the due process and equal protection clauses of the United States Constitution and assures an indigent defendant the "same rights and opportunities on appeal . . . as are enjoyed by those persons

> who are in a similar situation but are able to afford the retention of private counsel." *Anders*, 386 U.S. at 744–45, 18 L.Ed.2d at 498–99.

In re May, 153 N.C. App. 299, 301, 569 S.E.2d 704, 706-07 (2002).

¶ 8 We are satisfied that Defendant's appellate counsel has complied with the requirements of *Anders* and *Kinch*. Having fully examined the record for issues of arguable merit, and given that it is well within a trial court's discretion to revoke a defendant's probation for the commission of a new offense, *Melton*, 258 N.C. App. at 136-37, 811 S.E.2d at 680-81, we are unable to find any possible prejudicial error and hold that this appeal is wholly frivolous.

PETITION FOR WRIT OF CERTIORARI ALLOWED; NO ERROR.

Chief Judge STROUD concurs.

Judge GORE concurs.

Report per Rule 30(e).