An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-193

No. COA21-382

Filed 15 March 2022

Catawba County, Nos. 19CRS002639, 19CRS053322

STATE OF NORTH CAROLINA

v.

BEN WALLACE DEAN ROBINSON

Appeal by Defendant from judgment entered 22 March 2021 by Judge Jesse B. Caldwell, III, in Catawba County Superior Court. Heard in the Court of Appeals 1 December 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Alesia Balshakova, for the State-Appellee.

Mary McCullers Reece for Defendant-Appellant.

COLLINS, Judge.

¶ 1 Defendant appeals from judgment entered upon *Alford* pleas to possession of cocaine and assault with a deadly weapon inflicting serious injury. Defense counsel 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 Defendant's appeal. After careful review, we find no such issue and dismiss the

appeal.

I. Background

¶ 2 On 22 March 2021, Defendant entered an *Alford* plea[1] to charges of possession of cocaine and assault with a deadly weapon inflicting serious injury. Defendant stipulated to a prior record level of III. The trial court consolidated the offenses for judgment, found four mitigating factors, and sentenced Defendant to 20 to 36 months in prison.[2] On 25 March 2021, Defendant filed a notice of appeal.

II. Appellate Jurisdiction

¶ 3 A written notice of appeal in a criminal case must be filed with the clerk of superior court and must be served "upon all adverse parties within fourteen days after entry of the judgment[.]" N.C. R. App. P. 4(a)(2). Such a written notice of appeal "shall specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record." N.C. R. App. P. 4(b).

¶ 4 Defendant failed to designate this Court as the court to which appeal is taken

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[1] An *Alford* plea is a guilty plea in which the defendant does not admit to any criminal act, but admits that there is sufficient evidence to convince the judge or jury of the defendant's guilt. *See North Carolina v. Alford*, 400 U.S. 25, 37 (1970); *State v. Baskins*, 260 N.C. App. 589, 592 n.1, 818 S.E.2d 381, 387 n.1 (2018).

[2] The same day, the trial court entered an amended judgment to correct a clerical error in the name and class of the assault conviction.

in his *pro se* notice of appeal. Defendant also failed to serve his notice of appeal on the State. Recognizing these defects in his notice of appeal, Defendant has filed a petition for a writ of certiorari seeking this Court's review of the 22 March 2021 judgment. This Court may issue a writ of certiorari "in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]" N.C. R. App. P. 21(a)(1). In our discretion, we grant Defendant's petition and review the merits of his appeal.

III. Discussion

¶ 5 Defense counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), explaining that she was "unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal." The record discloses that Defense Counsel has complied with the requirements of *Anders* and *Kinch* by sending Defendant a letter advising him of his right to file written arguments with this Court, accompanied by copies of the record on appeal, transcript, and Defense Counsel's brief. 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 DILLON and ZACHARY concur.

Report per Rule 30(e).