An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-245

No. COA21-304

Filed 5 April 2022

Wake County, Nos. 10 CRS 4678, 51075-76

STATE OF NORTH CAROLINA

v.

GREGORY AUSTIN GRIFFIN

Appeal by Defendant from order entered 10 November 2020 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 15 December 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Zachary K. Dunn, for the State-Appellee.

Appellate Defender Glenn Gerding and Assistant Appellate Defender Aaron Thomas Johnson for Defendant-Appellant.

COLLINS, Judge.

¶ 1 Defendant Gregory Austin Griffin appeals an order denying his petition for writ of habeas corpus ("Habeas Petition"). Because Defendant failed to comply with the statutory requirements of a petition for writ of habeas corpus, we affirm the trial court's order.

I. Background

¶ 2 Defendant was convicted by a jury on 9 May 2013 of breaking and entering, possession of burglary tools, and attaining habitual felon status. The trial court entered judgments upon the verdicts, sentencing Defendant to two concurrent active sentences of 146 to 185 months of imprisonment. Defendant is currently incarcerated at Pender Correctional Institution ("Pender") and projected to be released on 4 July 2025.

¶ 3 On direct appeal of his convictions, this Court concluded there had been no error in Defendant's trial or sentencing and dismissed his claim of ineffective assistance of counsel without prejudice to file a motion for appropriate relief in the trial court. *State v. Griffin*, 233 N.C. App. 239, 758 S.E.2d 706 (unpublished), *disc. rev. dismissed*, 367 N.C. 498, 757 S.E.2d 899 (2014). Defendant filed a motion for appropriate relief in the trial court on 7 May 2015, which was denied and dismissed with prejudice on 2 June 2015.

¶ 4 On 9 November 2020, Defendant, proceeding pro se, filed his Habeas Petition, alleging that his incarceration during the Covid-19 pandemic, although a lawful sentence at the time of his convictions, now amounts to cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution and Article I, Section 27 of the North Carolina Constitution. To support his argument, Defendant relies on N.C. Gen. Stat. § 17-33(2), which provides that habeas relief may

issue "[w]here, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged." N.C. Gen. Stat. § 17-33(2) (2020). Defendant asserted in his Habeas Petition that the combination of the ongoing Covid-19 pandemic; his preexisting health conditions, including chronic asthma and 28% lung functioning capacity; the crowded conditions of his confinement; and the failure of Department of Public Services, Department of Corrections, and Pender to take effective measures to mitigate the spread of the coronavirus, constitutes a "substantial event that violates [Defendant's] constitutional protections" and is grounds for relief under N.C. Gen. Stat. § 17-33(2). Defendant petitioned the trial court for "immediate relief from unlawful imprisonment" and sought either release from prison or transfer to another correctional institution where the spread of the Covid-19 virus is better controlled.

¶ 5 The trial court entered an order summarily denying Defendant's Habeas Petition on 10 November 2020. This Court granted Defendant's petition for writ of certiorari to review the trial court's order. *See Chavez v. McFadden*, 374 N.C. 458, 470, 843 S.E.2d 139, 148 (2020) ("Although no appeal as of right lies from an order entered in a habeas corpus proceeding, appellate review of such orders is available by petition for certiorari[.]") (citation omitted).

II. Discussion

¶ 6 Defendant argues that the trial court acted on misapprehensions of law and

thus erred by denying Defendant's Habeas Petition.

¶ 7 "The decision concerning whether an application for a writ of habeas corpus should be summarily denied or whether additional proceedings should be conducted based upon the issuance of the requested writ is . . . a pure question of law." *State v. Leach*, 227 N.C. App. 399, 407, 742 S.E.2d 608, 613, *disc. rev. denied*, 367 N.C. 222, 747 S.E.2d 543 (2013). Accordingly, our review of the trial court's summary denial of a petition for habeas corpus is de novo. *Id.* "Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quotation marks and citation omitted).

¶ 8 We first address the State's argument that Defendant's Habeas Petition fails to adhere to the mandatory requirements of N.C. Gen. Stat § 17-7 and therefore, the trial court's order denying Defendant's Habeas Petition should be affirmed.

¶ 10 N.C. Gen. Stat. § 17-7 mandates that a petition for habeas corpus state, in substance, as follows:

> (1) That the party, in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the place where, and the officer or person by whom he is imprisoned or restrained, naming both parties, if their names are known, or describing them if they are not known.
>
> (2) The cause or pretense of such imprisonment or restraint, according to the knowledge or belief of the applicant.

> (3) If the imprisonment is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand for such copy could not be made.
>
> (4) If the imprisonment or restraint is alleged to be illegal, the application must state in what the alleged illegality consists; and that the legality of the imprisonment or restraint has not been already adjudged, upon a prior writ of habeas corpus, to the knowledge or belief of the applicant.
>
> (5) The facts set forth in the application must be verified by the oath of the applicant, or by that of some other credible witness, which oath may be administered by any person authorized by law to take affidavits.

N.C. Gen. Stat. § 17-7 (2020).

¶ 11 If the petition fails to meet these requirements, the petition shall be denied. *See, e.g.*, *In re Brittain*, 93 N.C. 587, 588 (1885) (denying defendant's petition for the writ due to the "insuperable obstacle" of failing to meet statutory requirements); *State v. Thorpe*, 2021-NCCOA-701, ¶ 15 (denying Defendant's request for habeas relief where "[D]efendant's MAR lacks the procedural requirements set out by N.C. Gen. Stat. § 17-7, particularly subsections (1), (4), and (5)").

¶ 12 Here, Defendant's Habeas Petition fails to comply with subsections (1), (3), (4), and (5) of N.C. Gen. Stat. § 17-7. Specifically, Defendant failed to do the following: provide the name of the officer or person by whom he is imprisoned or restrained; attach the order or process by which he was detained; state that the legality of his

imprisonment has not been previously adjudicated; and swear under oath that the allegations in his petition are true. Defendant's failure to adhere to the procedural requirements set forth in N.C. Gen. Stat. § 17-7 requires the denial of Defendant's Habeas Petition. *See Thorpe*, 2021-NCCOA-701 at ¶ 15. In light of this conclusion, we do not address Defendant's remaining arguments.

III. Conclusion

¶ 13 Because Defendant failed to comply with the requirements for an application for a writ of habeas corpus as provided in N.C. Gen. Stat. § 17-7, we affirm the trial court's order denying Defendant's Habeas Petition.

AFFIRMED.

Judges DIETZ and JACKSON concur.

Report per Rule 30(e).