

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-432

No. COA22-17

Filed 21 June 2022

Cabarrus County, No. 19 CRS 50671

STATE OF NORTH CAROLINA

v.

KIQUAN FREEMAN

Appeal by defendant by writ of certiorari from judgment entered 20 July 2021 by Judge Martin B. McGee in Cabarrus County Superior Court. Heard in the Court of Appeals 24 May 2022.

Attorney General Joshua H. Stein, by Assistant Attorneys General Allison Newton and Christopher A. Brown, for the State.

Richard Croutharmel for defendant-appellant.

ZACHARY, Judge.

¶ 1

Defendant Kiquan Freeman appeals from a judgment entered upon his *Alford* plea.¹ Counsel for Defendant filed an *Anders* brief, and Defendant filed a *pro se* brief.

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, 27 L. Ed. 2d 162, 171 (1970); *State v. Baskins*, 260 N.C. App. 589, 592 n.1, 818 S.E.2d 381, 387 n.1 (2018), *disc. review denied*, 372 N.C. 102, 824 S.E.2d 409 (2019).

After careful review, we affirm.

¶ 2

On 19 July 2021, Defendant entered into a plea agreement with the State pursuant to which Defendant’s two charges of discharging a weapon into an occupied dwelling and one charge of possession of marijuana paraphernalia were consolidated into one active sentence. The trial court subsequently entered judgment in accordance with the plea agreement, sentencing Defendant to a term of 60 to 84 months in the custody of the North Carolina Division of Adult Correction. With Defendant’s agreement, the court entered a civil judgment against Defendant for restitution; it also entered a civil judgment against Defendant for costs and court appointed attorneys’ fees. Defendant filed written notice of appeal on 28 July 2021, but he failed to serve it on the State.

¶ 3

In light of this defective notice of appeal, Defendant filed a petition for writ of certiorari with this Court on 9 February 2022. Pursuant to Rule 21(a)(1) of the North Carolina Rules of Appellate Procedure, this Court possesses the authority to allow a petition for writ of certiorari and review an order or judgment entered by the trial court “when the right to prosecute an appeal has been lost by failure to take timely action[.]” N.C.R. App. P. 21(a)(1). The State does not contend that it has been misled by Defendant’s failure to serve the notice of appeal. It is within this Court’s discretion to issue a writ of certiorari under these circumstances where the appellee has not been misled by the appellant’s mistake. *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.” (citation and internal quotation marks omitted)).

¶ 4 Thus, in our discretion, we allow Defendant’s petition for writ of certiorari and proceed to address the merits of his arguments. *See State v. Rowe*, 231 N.C. App. 462, 465–66, 752 S.E.2d 223, 225–26 (2013) (allowing the defendant’s petition for writ of certiorari where he failed to designate the court to which appeal was being taken and did not serve notice of appeal on the State).

¶ 5 Counsel appointed to represent Defendant on appeal has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, *reh’g denied*, 388 U.S. 924, 18 L. Ed. 2d 1377 (1967), indicating that he was “unable to identify any issues with sufficient merit to support relief on appeal.” Counsel requests that this Court conduct its own review of the record for possible prejudicial error. Counsel has also demonstrated to the satisfaction of this Court that he has 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 arguments with this Court and providing him with the documents necessary to do so.

¶ 6 Defendant has filed a *pro se* brief with this Court, but his proposed issues either (1) fail to embrace the limited issues for which he has an appeal of right

following his *Alford* plea, *see* N.C. Gen. Stat. § 15A-1444(a1)–(a2) (2021), or (2) have no merit, based on our careful review of the record. Thus, Defendant is not entitled to relief on these bases.

¶ 7

“Under our review pursuant to *Anders* and *Kinch*, we must determine from a full examination of all the proceedings whether the appeal is wholly frivolous.” *State v. Frink*, 177 N.C. App. 144, 145, 627 S.E.2d 472, 473 (2006) (citation and internal quotation marks omitted). As required by *Anders* and *Kinch*, we have conducted a full examination of the record for any issue with arguable merit. We have been unable to find any error, and we conclude that this appeal presents no issue that might entitle Defendant to relief. Accordingly, we affirm the judgment entered in this case.

AFFIRMED.

Judges INMAN and JACKSON concur.

Report per Rule 30(e).