

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-701

No. COA 18-26-3

Filed 18 October 2022

Johnston County, Nos. 14CRS55188, 15CRS53276

STATE OF NORTH CAROLINA

v.

VAN BUREN KILLETTE, SR.

Appeal by Defendant from judgment entered 6 July 2017 by Judge Thomas H. Lock in Johnston County Superior Court. Heard in the Court of Appeals 20 September 2018, with opinion issued 2 October 2018. Remanded to this Court by order of the North Carolina Supreme Court on 19 August 2019 to reconsider Defendant's petition for discretionary review with opinion issued 5 November 2019. Remanded to this Court by opinion of the North Carolina Supreme Court issued 17 June 2022. *State v. Killette*, 381 N.C. 686, 873 S.E.2d 317, 2022-NCSC-80 (2022). On review in the Court of Appeals by reconvening order of the Supreme Court issued 7 July 2022 and entered in this Court 8 July 2022.

*Attorney General Joshua H. Stein, by Assistant Attorney General Nancy Dunn Hardison, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katy Dickinson-Schultz, for defendant-appellant.*

## PER CURIAM.

¶ 1

The facts giving rise to this appeal are set forth in detail in this Court’s first opinion. *State v. Killette*, 261 N.C. App. 774, 818 S.E.2d 646, 2018 WL 4701970 (2018) (unpublished). Defendant moved to suppress evidence seized during two searches. Both motions were denied by the trial court. On 6 July 2017, Defendant entered an *Alford* plea pursuant to agreement with the State. Following sentencing and the entry of judgment, Defendant filed notice of appeal. Defendant’s appellate counsel also filed a petition for writ of certiorari (“PWC”) with this Court.

¶ 2

This Court dismissed Defendant’s appeal, holding that: (1) he had forfeited his right to appeal by failing to provide notice of his intention to appeal to the prosecutor and court prior to negotiations being finalized; and, (2) this Court lacked authority under Rule 21 of the North Carolina Rules of Appellate Procedure to issue the writ. The Supreme Court remanded for reconsideration in light of *State v. Ledbetter*, 371 N.C. 192, 814 S.E.2d 39 (2018) and *State v. Stubbs*, 368 N.C. 40, 770 S.E.2d 74 (2015) (Rule 21 does not limit appellate jurisdiction to issue a writ of certiorari), and instructed this Court to exercise its discretion in deciding whether to allow or deny Defendant’s petition.

¶ 3

Upon remand, this Court again denied Defendant’s petition, holding that it was “without authority to grant a writ of certiorari.” *State v. Killette*, 268 N.C. App.

254, 258, 834 S.E.2d 696 (2019) (citation omitted) (Killette II). The Supreme Court vacated that decision, noting that its prior decisions “should have made it clear that the Court of Appeals possessed jurisdiction and authority to exercise its discretion in reviewing and deciding to allow or deny defendant’s petition.” *State v. Killette*, 381 N.C. 686, 690, 873 S.E.2d 317, 319 2022-NCSC-80, ¶ 14 (2022) (Killette III).

¶ 4           Upon remand, and in the exercise of our discretion we have again reviewed Defendant’s petition and find Defendant has demonstrated no merit or prejudice. *See State v. Robinson*, 148 N.C. App. 422, 428, 560 S.E.2d 154, 159 (2002) (holding warrantless search of probationer’s home by probation officer on anonymous tip of illegal activity “clearly furthered the supervisory goals of probation” and was thus constitutionally reasonable); *State v. Smith*, 346 N.C. 794, 798, 488 S.E.2d 210, 213 (1997) (recognizing consent to search a probationer’s home as “a special situation excepted from the warrant requirement”).

¶ 5           In the exercise of our discretion, Defendant’s PWC is denied, and his appeal is dismissed. *See State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959); *State v. Ricks*, 378 N.C. 737, 741, 862 S.E.2d 835, 839, 2021-NCSC-116, ¶7 (2022) (holding that certiorari is purely a discretionary writ).

DISMISSED.

Panel consisting of Judges Tyson, Inman, and Jackson.

Report per Rule 30(e).