

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

No. COA22-892

Filed 18 April 2023

Wake County, No. 19 CRS 200245

STATE OF NORTH CAROLINA

v.

ERNEST DENNIS BROWN, Defendant.

Appeal by Defendant from judgment entered 15 March 2022 by Judge Winston Miller Rozier in Wake County Superior Court. Heard in the Court of Appeals 22 March 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Caden W. Hayes, for the State.

Richard Croutharmel for Defendant.

GRIFFIN, Judge.

Defendant Ernest Dennis Brown appeals from a judgment entered after he pled guilty to second-degree murder. Defense counsel filed an *Anders* brief on behalf of Defendant, asking this Court to conduct an independent review of the proceedings to determine whether any meritorious issues exist.

On 28 January 2019, Defendant was indicted for first-degree murder, larceny

of a motor vehicle, and attaining habitual felon status. On 15 March 2022, Defendant entered a plea agreement, in which he agreed to plead guilty to second-degree murder, in exchange for dismissal of the remaining felony charges pending against him. The trial court accepted the plea agreement and entered judgment in accordance with its terms, sentencing Defendant in the mitigated range of felony Class B1, prior record level VI, to an active sentence of 386 to 476 months' in prison. On 28 March 2022, Defendant filed notice of appeal.

Counsel for Defendant 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), asking this Court to conduct a full and independent review of the record to determine whether any meritorious issue or reversible error exists. In his brief, Defendant's counsel presented one potential issue: Whether the trial court erred in sentencing Defendant as a class B1 felon where he should have been sentenced as a class B2 felon pursuant to N.C. Gen. Stat. § 14-17(b)(1).¹

Pursuant to *Anders* and *Kinch*, we must conduct a full examination of the proceedings to determine whether the defendant's appeal is wholly frivolous. *Anders*,

¹ On 31 January 2023, the State filed a "Motion to Dismiss Appeal," contending that Defendant failed to allege grounds for which he is permitted to appeal following a guilty plea. Although Defendant pled guilty, he is entitled, as a matter of right, to appeal certain enumerated grounds, including the issue of whether the sentence imposed upon him contains a type of sentence disposition not authorized for his class of offense and prior record or conviction level. See N.C. Gen. Stat. § 15A-1444(a2)(2) (2021). We deny the State's motion to dismiss, but do limit our full and independent review of Defendant's case to the enumerated grounds permissible following his plea of guilty.

386 U.S. at 744; *Kinch*, 314 N.C. at 102, 331 S.E.2d at 667. “In carrying out this duty, we [] review 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 (citation omitted).

We have conducted a full and independent examination of the record as required by *Anders* and *Kinch* and conclude the record contains no meritorious issue entitling Defendant to relief. Further, although Defendant’s counsel presented a potential issue regarding Defendant’s sentencing, based on our review of the record, the proposed issue lacks merit. Defendant is therefore not entitled to relief on the issue proposed by Defendant’s counsel. We hold the record contains no meritorious issue entitling Defendant to relief. As such, we conclude the appeal is wholly frivolous and dismiss the appeal.

DISMISSED.

Judges TYSON and FLOOD concur.

Report per Rule 30(e).