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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-1038

Filed 16 May 2023

Carteret County, Nos. 21 CRS 52881-82

STATE OF NORTH CAROLINA

v.

JOHN DOUGLAS CANOY

Appeal by Defendant from judgment entered 6 June 2022 by Judge Clint D. Rowe in Carteret County Superior Court. Heard in the Court of Appeals 26 April 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Victor A. Unnone, III, for the State.

Phoebe W. Dee, for the Defendant-Appellant.

WOOD, Judge.

John Douglas Canoy (“Defendant”) appeals from a judgment entered upon his guilty plea to possession of methamphetamine and possession of drug paraphernalia. After a careful and full examination of the record to determine whether any issues of arguable merit appear, we are unable to find any possible prejudicial error and conclude

this appeal is wholly frivolous and subject to dismissal. Accordingly, the appeal is dismissed.

I. Factual and Procedural Background

On 17 November 2021, an Atlantic Beach Police Officer conducted a welfare check on a driver who had been reported to be sitting in a parked car in a parking lot for “about two hours” with the car’s headlights on. The responding police officer found Defendant asleep in his vehicle and observed a glass pipe in the driver’s side door compartment. Believing that the glass pipe provided probable cause, the responding officer searched the vehicle and located a baggy containing 0.3 grams of a white crystal substance inside a cigarette box found inside of the vehicle. Defendant denied that the glass pipe and the suspected methamphetamine were his. Subsequently, Defendant was arrested on charges of possession of methamphetamine and possession of drug paraphernalia.

On 2 December 2021, Defendant signed a Bill of Information, charging him with possession of methamphetamine, acknowledging receipt. The box on the Bill of Information for the District Court of Carteret County was checked but the matter was assigned a “CRS” file number placing the matter in the Superior Court. The same day, Defendant signed a Transcript of Plea, in which he agreed to plead guilty to possession of methamphetamine in exchange for receiving a Conditional Discharge pursuant to N.C. Gen. Stat. § 90-96, with 12 months of supervised probation in Randolph County, his county of residence.

On 7 December 2021, Defendant signed a second Bill of Information, charging him with possession of drug paraphernalia. This charge was added to the Plea Transcript that Defendant had previously signed. Defendant appeared that same day before the Carteret County Superior Court where he entered guilty pleas to both charges. After Defendant pleaded guilty, and, in accordance with the terms of the signed Plea Transcript, the trial court found that he was eligible for a Conditional Discharge under N.C. Gen. Stat. § 90-96 and placed Defendant on 12 months of supervised probation. As special conditions to his probation, the trial court ordered Defendant to “follow all regular/drug conditions of probation; drug test at least monthly”; obtain TASC¹ within 90 days and follow recommended treatment; “not to possess/consume alcohol or controlled substances”; “remain gainfully employed at least 20 hours per week”; and gave the option to transfer his probation to Randolph County.

In March 2022, a Carteret County probation officer filed a Probation Violation Report alleging Defendant had violated the terms of his probation. Specifically, the violation report alleged that: (1) Defendant admitted to using methamphetamine and tested positive for the substance on 17 February 2022; (2) Defendant failed to provide any proof of employment; and (3) while in Craven County District Court on 17

¹ The North Carolina Treatment Accountability for Safer Communities (TASC) Network provides care management services to people with substance abuse or mental illness who are involved in the justice system.

February 2022, Defendant was convicted of criminal contempt for being under the influence of drugs while in the courtroom and was given a 10 day sentence at that time.

On 6 June 2022, a hearing was held before Carteret County Superior Court regarding Defendant's probation violations. At the hearing, Defendant admitted to violating the terms of his Conditional Discharge. The trial court revoked the Conditional Discharge and entered judgment against him. Defendant was sentenced to 6-17 months' imprisonment, suspended for 24 months of supervised probation. The trial court ordered Defendant to adhere to all regular terms and conditions of supervised probation. The trial court also ordered Defendant to complete a TASC assessment within 60 days and complete any treatment recommendations; not possess or consume any controlled substances unless prescribed for him; find and maintain employment of at least 30 hours per week and, if not met, complete 25 hours of community service; and follow a curfew between the hours of 7 p.m. and 7 a.m. for the first 6 months of probation. Defendant filed written notice of appeal on 10 June 2022.

II. Analysis

Defendant's appellate counsel, "after repeated examination of the record, review of relevant law, and consultation with attorneys within the Office of the Appellate Defender" has not "identif[ied] an issue with sufficient merit to support a meaningful argument for relief on direct appeal[.]" and thus, requests this Court to

review the record on appeal for any issues of merit, pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). **(App Br p 4-5).**

Pursuant to *Anders*, appellate counsel has filed a brief addressing any arguable assignments of error and provided Defendant with copies of the brief, record, and transcript. *Kinch*, 314 N.C. at 102, 331 S.E.2d at 666-67. Appellant counsel has supplied Defendant with the necessary documents to conduct his own review of the case in compliance with *Anders* and *Kinch*. Defendant has not filed a *pro se* brief with this Court.

This Court conducts “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 (citation omitted). Defendant’s appellate counsel presents the following legal considerations: (1) whether the trial court had jurisdiction over the initial case when the signed Bills of Information indicated District Court rather than Superior Court; (2) whether the trial court had jurisdiction over Defendant’s probation violation; and (3) whether the trial court possessed the authority to revoke Defendant’s Conditional Discharge after he violated the conditions of his probation. We conclude these arguments lack merit and are wholly frivolous.

In this case, the record shows that the District Court box, rather than the

Superior Court box, was checked on both Bills of Information signed by Defendant. However, the Transcript of Plea, signed by Defendant, denotes the case as a Superior Court matter. Additionally, Defendant and his trial counsel appeared repeatedly in Superior Court on these matters without trial counsel raising any objection. Further, N.C. Gen. Stat. § 7A-271 provides “the superior court has exclusive, original jurisdiction over all criminal actions not assigned to the district court division by this Article, except that the superior court has jurisdiction to try a misdemeanor: . . . [w]hich may be properly consolidated for trial with a felony under G.S. 15A-926.” Because the charged felony offense and misdemeanor are based on the same act or transaction, these charges were properly consolidated and thus, properly before Carteret County Superior Court. N.C. Gen. Stat. § 15A-926 (2022). We presume the District Court boxes were inadvertently marked on the Bills of Information, but mistakenly checking District rather than Superior Court does not constitute a fatal variance. Thus, the Carteret County Superior Court had jurisdiction over the initial case.

Additionally, the Carteret County Superior Court has jurisdiction over Defendant’s probation violation. § 15A-1344(a) designates which courts have authority to terminate, modify, or revoke conditions of probation and states that jurisdiction over probation violations include the superior courts “where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides.” § 15A-1344(a). In this case, the Carteret County Superior Court

could alter and revoke Defendant's conditions of probation because the sentence of probation had been imposed by it.

Finally, the Carteret County Superior Court has the authority to revoke a defendant's Conditional Discharge once he violates the terms and conditions of Conditional Discharge. Section 90-96(a) authorizes the trial court to "enter an adjudication of guilt and proceed as otherwise provided" when a defendant who has been granted a Conditional Discharge violates the terms or conditions of his probation. Thus, the Superior Court acted within the scope of its authority when it revoked Defendant's Conditional Discharge, "entered an adjudication of guilt and proceeded as otherwise provided."

Our thorough review of the record revealed no arguable issues. Accordingly, we hold the trial court did not err in revoking Defendant's Conditional Discharge after Defendant violated his probation and did not err in sentencing Defendant based upon his convictions of possession of methamphetamine and possession of drug paraphernalia.

III. Conclusion

We have fully examined the record to determine whether any issues of arguable merit appear, are unable to find any possible prejudicial error, and conclude this appeal is wholly frivolous and subject to dismissal. *See Anders*, 386 U.S. 738, 18 L. Ed. 2d 493; *Kinch*, 314 N.C. at 106. Accordingly, Defendant's appeal is dismissed.

STATE V. CANOY

Opinion of the Court

DISMISSED.

Judges DILLON and FLOOD concur.

Report per Rule 30(e).