

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-50

Filed 05 September 2023

Cleveland County, No. 20 CRS 53451

STATE OF NORTH CAROLINA

v.

DARRON OMAR GILL, Defendant.

Appeal by defendant from judgment entered 31 May 2022 by Judge George C. Bell in Cleveland County Superior Court. Heard in the Court of Appeals 9 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Erin Hukka, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Franke, for Defendant-Appellant.

CARPENTER, Judge.

Darron Omar Gill (“Defendant”) appeals from judgment entered upon his guilty plea to driving while impaired. Appellate counsel for Defendant filed an *Anders* brief on Defendant’s behalf, requesting this Court conduct an independent review of the trial proceedings to determine whether any meritorious issue exists.

After careful review, we find only one matter from which Defendant has a right to appeal: the trial court's denial of Defendant's motion to suppress. With respect to this issue, we conclude Defendant's appeal is wholly frivolous. Accordingly, we dismiss the appeal.

I. Background

On 5 April 2022 in Cleveland County District Court, Defendant pleaded guilty to driving while impaired and appealed to the Cleveland County Superior Court. On 25 May 2022, Defendant filed a motion to suppress in the superior court, challenging the stop of his vehicle. On 26 May 2022, the Honorable Forrest D. Bridges heard arguments on Defendant's motion to suppress and, ultimately, denied his motion.

On 31 May 2022, a plea hearing was conducted before the Honorable George C. Bell where Defendant pleaded guilty to driving while impaired and stipulated to the factual basis for the plea agreement, which the State summarized without objection from defense counsel. As part of his plea arrangement, Defendant reserved his right to appeal the denial of his motion to suppress.

Defendant stipulated to the grossly aggravating factor that he had a prior conviction involving driving while impaired, which occurred within seven years of the offense in this appeal. Defendant also stipulated to the aggravating factor that he "had an alcohol concentration of at least 0.15[.]" Judge Bell imposed a Level Two punishment and sentenced Defendant to twelve months of imprisonment, which was suspended, as well as twenty-four months of supervised probation. Additionally,

Defendant was ordered to serve an active sentence of seven days as part of a special probation. Defendant gave oral notice of appeal.

II. Discussion

Defendant's appellate counsel filed a no-merit brief to this Court 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). Accordingly, counsel requests this Court to review the record for possible prejudicial error. We note counsel complied with the requirements of *Anders* and *Kinch* by advising Defendant of his right to submit his own written arguments to this Court and by providing Defendant with copies of the documents necessary to do so. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400, 17 L. Ed. 2d. at 498; *Kinch*, 314 N.C. at 102, 331 S.E.2d at 666–67. Defendant has not filed his own written arguments with this Court, and a reasonable time in which he could have done so has passed.

“[P]ursuant 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 quotation marks omitted). Appellate counsel has raised two potential issues for our review: (1) whether Defendant's sentence was legally correct; and (2) whether there was reasonable suspicion for the officer to stop Defendant's vehicle.

As a preliminary matter, we consider whether Defendant has a statutory right to appellate review in light of his guilty plea. In her appellant brief, appellate counsel

contends this Court has jurisdiction to address Defendant's appeal pursuant to N.C. Gen. Stat. § 15A-1444(a2) (2021). We disagree.

Because Defendant entered a guilty plea to a misdemeanor offense in superior court, his right of appeal would typically be limited to the issue of whether the sentence imposed:

- (1) Results from an incorrect finding of the defendant's prior record level under [N.C. Gen. Stat. §] 15A-1340.14 or the defendant's prior conviction level under [N.C. Gen. Stat. §] 15A-1340.21;
- (2) Contains a type of sentence disposition that is not authorized by [N.C. Gen. Stat. §] 15A-1340.17 or [N.C. Gen. Stat. §] 1340.23 for the defendant's class of offense and prior record or conviction level; or
- (3) Contains a term of imprisonment that is for a duration not authorized by [N.C. Gen. Stat. §] 15A-1340.17 or [N.C. Gen. Stat. §] 15A-1340.23 for the defendant's class of offense and prior record or conviction level.

N.C. Gen. Stat. § 15A-1444(a2)(1)–(3).

Nevertheless, “the specific enumerated statutory avenues of appeal” found in N.C. Gen. Stat. § 15A-1444(a2) are inapplicable to Defendant, who pleaded guilty to impaired driving. *State v. Shaw*, 236 N.C. App. 453, 455, 763 S.E.2d 161, 162 (2014); see N.C. Gen. Stat. § 15A-1340.10 (2021) (explaining the structured sentencing provisions of Article 81B “appl[y] to criminal offenses in North Carolina, other than impaired driving under [N.C. Gen. Stat. §] 20-138.1”). Consequently, Defendant may not appeal from the trial court's imposition of Level Two punishment and sentencing

for the impaired driving offense, which were entered under N.C. Gen. Stat. § 20-179. *See* N.C. Gen. Stat. § 20-179(c), (h) (2021); *see also* N.C. Gen. Stat. § 15A-1340.10. We therefore dismiss Defendant’s appeal as it relates to sentencing. *See Shaw*, 236 N.C. App. at 455, 763 S.E.2d at 162; N.C. Gen. Stat. § 15A-1340.10.

We next consider the second issue proposed by appellate counsel: whether there was reasonable suspicion for the officer to conduct an investigatory stop of Defendant’s vehicle. In other words, appellate counsel asks this Court to review whether the trial court erred in denying Defendant’s motion to suppress, in which Defendant argued the law enforcement officer lacked reasonable suspicion to stop his vehicle.

Defendant is entitled to appellate review as a matter of right from “[a]n order finally denying [his] motion to suppress evidence”—despite a judgment being entered upon his plea of guilty. *See* N.C. Gen. Stat. § 15A-979(b) (2021) (allowing review of a court’s denial of a motion to suppress “upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty”). In his plea agreement, Defendant expressly reserved his right to appeal the denial of his motion to suppress, which allows Defendant to exercise the statutory right to appeal from the suppression order. *See State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979), *cert. denied*, 446 U.S. 941, 100 S. Ct. 2164, 64 L. Ed. 2d 795 (1980); *see also* N.C. Gen. Stat. § 15A-979(b).

Also as part of Defendant’s plea arrangement, Defendant stipulated to the

State’s summary of the factual basis for the plea, which indicated Defendant committed “a number of traffic violations,” justifying the stop of his vehicle. Hence, Defendant stipulated that he was operating his vehicle in an unlawful manner, which—when viewed from the perspective of a reasonable officer—gave the stopping officer reasonable suspicion to warrant a brief, investigatory stop of Defendant’s vehicle. *See State v. Campbell*, 359 N.C. 644, 664, 617 S.E.2d 1, 14 (2005) (“An investigatory stop must be justified by a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.”) (citations and quotation marks omitted), *cert. denied*, 547 U.S. 1073, 126 S. Ct. 1773, 164 L. Ed. 2d 523 (2006).

Moreover, in its order denying Defendant’s motion to suppress, the trial court made specific factual findings—to which Defendant did not object—supporting the trial court’s conclusion that the stopping officer had reasonable, articulable suspicion to justify the stop of Defendant’s vehicle. *See State v. Biber*, 365 N.C. 162, 167–68, 712 S.E.2d 874, 878 (2011) (explaining unchallenged findings of fact are binding on appeal and may provide the requisite support for a conclusion of law). For these reasons, we conclude Defendant’s appeal is “wholly frivolous.” *See Frink*, 177 N.C. App. at 145, 627 S.E.2d at 473; *see also Anders*, 386 U.S. at 744, 87 S. Ct. at 1400, 18 L. Ed. 2d at 498; *Kinch*, 314 N.C. at 102, 331 S.E.2d at 667. Accordingly, we dismiss the appeal.

III. Conclusion

In accordance with *Anders* and *Kinch*, we have fully examined the record for

STATE V. GILL

Opinion of the Court

any issue with arguable merit. After a complete review, we conclude Defendant fails to present any justiciable, non-frivolous issue on appeal. Therefore, we dismiss the appeal.

DISMISSED.

Judges TYSON and FLOOD concur.

Report per Rule 30(e).