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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-815

Filed 7 May 2024

Beaufort County, Nos. 21 CRS 51209, 51220

STATE OF NORTH CAROLINA

v.

JAMES LAVALLE SPEIGHT

Appeal by Defendant from judgments entered 8 February 2023 by Judge L. Lamont Wiggins in the Superior Court of Beaufort County. Heard in the Court of Appeals 5 March 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kristin J. Uicker, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for Defendant.

WOOD, Judge.

James Lavalle Speight (“Defendant”) appeals from a judgment entered upon his guilty plea to possession with intent to sell cocaine and trafficking in cocaine by possession. Appellant counsel for Defendant is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks that this Court conduct its own review of the record for possible prejudicial error. After a

full examination of the record, we are unable to find any possible prejudicial error and conclude this appeal is wholly frivolous. Accordingly, we find no error with the trial court's judgment.

I. Factual and Procedural Background

On 7 February 2023, Defendant was indicted by the Beaufort County grand jury for possession with intent to sell and deliver cocaine, possession of drug paraphernalia, trafficking in cocaine by possession, and other charges that were later dropped. The possession charge was based on a video-recorded sale by Defendant to a confidential informant on 24 August 2021. A lab confirmed the substance sold was .81 grams of cocaine. On 10 September 2021, a search warrant was executed for Defendant's home. Officers found a green leafy substance, digital scales, and a plastic bag containing smaller bags of white powder and white rocks. The trafficking charge arose from the white substance found in Defendant's home, which was confirmed by a lab as 36.32 grams of cocaine.

On 8 February 2023, Defendant accepted a guilty plea to possession with intent to sell cocaine and trafficking in cocaine by possession in exchange for the State dismissing the charge of habitual felon. At the plea hearing, the trial court reviewed with Defendant the terms of the plea agreement, the charges he faced, and the rights he was giving up by pleading guilty. The court confirmed with Defendant that the plea was voluntary and that he fully understood his decision. After accepting the plea, the trial court sentenced Defendant to a term of 35-51 months for trafficking in

cocaine by possession, along with a \$50,000.00 fine. The trial court also sentenced Defendant to a consecutive term of 20-33 months for possession with intent to sell. Additionally, the trial court ordered lab fees of \$1200.00, attorney's fees of \$856.00, and restitution of \$60.00 to the sheriff's department as a civil judgment.

After sentencing, the following conversation took place:

COURT: Do you have anything you need to address, sir?

DEFENSE: Judge, my client would address the Court. He says that that was not the agreement he had, that it would be consecutive. And what I was explaining to him is that the plea offer was for an open plea on those two charges.

COURT: All right. It was. Step aside.

Defendant, later that day, reentered court and gave timely, oral notice of appeal during the same session of court.

II. Analysis

Counsel appointed to represent Defendant on appeal has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), indicating she "is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal." Accordingly, appellate counsel asks this Court to conduct its own review of the record for possible prejudicial error.

Anders review is a procedural protection measure for a defendant when his appellate counsel believes an appeal is frivolous. *Anders*, 386 U.S. at 744. Our Supreme Court adopted this instruction in *State v. Kinch*, 314 N.C. 99, 331 S.E.2d

665 (1985).

[I]f counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished [to] the indigent and time allowed him to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires.

Anders, 386 U.S. at 744. Accordingly, our task is to review the record and determine whether any issues of arguable merit exist.

Counsel shows to the satisfaction of this Court she complied with the requirements of *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), by advising Defendant of his right to file written arguments with this Court and providing him with a copy of the documents pertinent to his appeal. Counsel also provided us with her letter to Defendant in which she indicated that she was unable to find legal error in this case and notified Defendant of the means to file his own brief and offered Defendant additional assistance.

Defendant has not filed any written arguments with this Court, and a reasonable time for him to do so has passed. However, under *Anders* review, we have jurisdiction to conduct a limited review even if a defendant pleaded guilty and

“brought forward no issues on appeal.” *State v. Hamby*, 129 N.C. App. 366, 369, 499 S.E.2d 195, 196 (1998). Counsel directed this Court to potential issues on appeal for our independent review, which she concluded were non-meritorious. After a full examination of the record and these issues, we find no issue that Defendant could raise with arguable merit.

Counsel addressed issues that involve whether Defendant’s plea was knowing, voluntary, and intelligent, and whether there was sufficient factual basis to support the plea. However, as a result of Defendant’s guilty plea, our review for potential error is only available in limited circumstances. *See* N.C. Gen. Stat. § 15A-1444(e) (2023) (“[e]xcept as provided in subsections (a1) and (a2) of this section . . . the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty.”)

Under subsection 15A-1444(a2)

A defendant who has entered a plea of guilty or no contest to a felony or misdemeanor in superior court is entitled to appeal as a matter of right the issue of whether the sentence imposed:

- (1) Results from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;
- (2) Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-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 G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level.

Id. Therefore, we must only address whether Defendant's sentence resulted from a correct finding of his prior record level, whether the sentence was authorized, and whether the sentence terms were within the guidelines for the class of offense and record level. We find that Defendant's prior record was properly calculated, and he was sentenced in conformance with the sentencing guidelines. We further note that the sentence imposed upon Defendant by the trial court was consistent with the terms of the plea agreement entered by Defendant.

We have fully examined the record for any issue with arguable merit. We have been unable to find any error and conclude that this appeal presents no issue entitling Defendant to relief.

III. Conclusion

Pursuant to our duty under *Anders* and *Kinch*, we have fully examined the Record to determine whether any issues of arguable merit exist. We are unable to find any issues with sufficient merit to support any meaningful argument on appeal. Therefore, we conclude the appeal is wholly frivolous.

NO ERROR.

Judges ZACHARY and THOMPSON concur.

Report per Rule 30(e).