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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-872

Filed 6 August 2024

Macon County, No. 22 CRS 294917

STATE OF NORTH CAROLINA

v.

ADAM RANDOLPH SACKMAN, Defendant.

Appeal by Defendant from judgment entered 11 April 2023 by Judge William H. Coward in Macon County Superior Court. Heard in the Court of Appeals 17 April 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Allison J. Newton, for the State.

Attorney Richard Croutharmel, for Defendant-Appellant.

CARPENTER, Judge.

Adam Randolph Sackman (“Defendant”) appeals from judgment entered after his guilty plea to trafficking opium or heroin by transportation. On appeal, Defendant’s appellate counsel (“Appellate Counsel”) filed an *Anders* brief because he was “unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal,” and requested that this Court conduct an independent

review of the record to determine if any meritorious issues were overlooked and if any reversible error exists. Defendant also filed his own supplemental arguments, which included arguments concerning: the transcript being limited to his plea colloquy; related motion to withdraw arguments; ineffective assistance of counsel; and a general attack on the fairness of *Anders* procedures for defendants. After careful review, we discern no non-frivolous issues, and we dismiss the appeal.

I. Factual & Procedural Background

On 12 December 2022, a Macon County grand jury indicted Defendant for: possessing a firearm on educational property; possessing a firearm by a felon; manufacturing, selling, distributing, or possessing a controlled substance within 1,000 feet of a school; trafficking opium or heroin by transportation; trafficking opium or heroin by possession; trafficking methamphetamine by transportation; trafficking methamphetamine by possession; felony possession of a schedule I controlled substance; maintaining a vehicle for controlled substances; and felony fleeing to elude arrest with a motor vehicle.

On 11 April 2023, the trial court conducted a plea hearing where Defendant agreed to plead guilty to trafficking opium or heroin by transportation in exchange for State's dismissal of all other charges. Defendant did not object to the State's factual basis. Pursuant to the plea agreement, the trial court accepted Defendant's guilty plea to trafficking opium or heroin by transportation and dismissed the remaining charges. Defendant did not offer, nor did the State engage in, any

substantial assistance to mitigate or otherwise justify a reduction in sentencing. So the trial court was constrained to sentence Defendant under the applicable drug-trafficking laws. The trial court sentenced Defendant to between 225 and 282 months in prison, which was within the presumptive range of Class C felony trafficking. The trial court also imposed a civil judgment for: \$745.50 in court costs, a \$500,000 fine, and \$530 in court-appointed attorney fees. Defendant gave notice of appeal in open court.

II. Discussion

Appellate Counsel filed a no-merit brief with 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). Therein, Appellate Counsel requests that we review the record for possible prejudicial error below. Appellate Counsel complied with the requirements of *Anders* and *Kinch* by providing Defendant with a copy of the *Anders* brief, the trial transcript, the record on appeal, the mailing address of this Court, and advising Defendant of his right to file his own supplemental arguments. *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. After requesting two extensions to file his supplemental arguments, which we granted, Defendant timely filed his supplemental arguments on 30 January 2024.

Defendant asserts this Court has limited jurisdiction over an appeal from a guilty plea under N.C. Gen. Stat. § 15A-1444(a1)–(a2) (2023). Because Defendant

was sentenced within the presumptive range, however, only N.C. Gen. Stat. § 15A-1444(a2) is applicable. As a result, Defendant's right to appeal is limited to 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.

Id. § 15A-1444(a2).

Appellate Counsel's brief indicates he was unable to identify any issues with sufficient merit to support a meaningful argument for relief. Nevertheless, Appellate Counsel directs our attention to two potential issues for our review: (1) whether the trial court abused its discretion by failing to continue sentencing so Defendant could attempt to provide substantial assistance to reduce his sentence; or (2) whether Defendant suffered a due-process violation when the State refused to engage in substantial-assistance negotiations. Based on our careful review of the record, neither of the proposed issues have merit because the State is not required to engage in substantial-assistance negotiations; the trial court is not required to continue a

sentencing hearing to provide an opportunity to engage in such negotiations; and, even if the State does engage in negotiations, the trial court is not required to reduce Defendant's sentence. *See* N.C. Gen. Stat. § 90-95(h)(5) (2023); *see also State v. Perkerol*, 77 N.C. App. 292, 301, 335 S.E.2d 60, 66 (1985) (stating that the substantial assistance statute is "permissive, not mandatory"); *State v. Kamtsiklis*, 94 N.C. App. 250, 260, 380 S.E.2d 400, 405 (1989) ("In addition, we hold that the trial court is not required, as a matter of law, to continue a sentencing hearing so that the defendant may be afforded an opportunity to provide the State with substantial assistance."). Defendant is therefore not entitled to relief on these bases.

While Defendant filed a pro se appellant brief with this Court, none of his proposed issues pertain to sentencing procedures or duration, and therefore do not provide a basis for reversal on our limited *Anders* review of Defendant's guilty plea. *See* N.C. Gen. Stat. § 15A-1444(a2).

III. Conclusion

As required by *Anders* and *Kinch*, we have conducted a full examination of the record for any issue with arguable merit. We have been unable to find any error, and we conclude that Defendant's appeal presents no non-frivolous issues. Accordingly, we dismiss Defendant's appeal.

DISMISSED.

Judges WOOD and GORE concur.

Report per Rule 30(e).