

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-617

Filed 15 October 2024

Watauga County, Nos. 15 CRS 541, 15 CRS 50683

STATE OF NORTH CAROLINA

v.

AVERY TYREZ FORNEY

Appeal by defendant from order entered 29 January 2024 by Judge Gary M. Gavenus in Watauga County Superior Court. Heard in the Court of Appeals 27 September 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Lisa R. Atwater, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for defendant-appellant.*

PER CURIAM.

Defendant was convicted of conspiracy to traffic in heroin, trafficking in heroin by possession, and trafficking in heroin by transportation. Defendant later filed a motion for postconviction DNA testing, which the trial court denied. Defendant filed a *pro se* written notice of appeal that failed to comply with the North Carolina Rules

of Appellate Procedure. Defendant then filed a petition for writ of *certiorari*, which we hereby grant to allow us to review Defendant's appeal.

Defendant's counsel filed a no-merit brief on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Kinch*, 314 N.C. 99 (1985), and requested that this Court conduct an independent examination of the record for any prejudicial error. Defendant's counsel refers this Court to the following issues which may support Defendant's appeal: (1) whether the trial court improperly denied Defendant's motion for post-conviction DNA testing, and (2) whether the trial court erred in denying appointment of counsel to assist Defendant in his motion for post-conviction DNA testing.

Defendant's counsel shows to the satisfaction of this Court that she has complied with the requirements of *Anders* and *Kinch*. Counsel has advised Defendant of his right to file supplemental arguments with this Court and provided him with the documents necessary to do so. Defendant has not filed with this Court any arguments on his own behalf and a reasonable time to have done so has passed.

After conducting a full and independent examination of the record, including the potential issues presented by Defendant's counsel, we are unable to find any prejudicial error and conclude that this appeal is wholly frivolous. Accordingly, we dismiss Defendant's appeal as frivolous.

DISMISSED.

Panel consisting of Judges STROUD, TYSON and WOOD.

STATE V. FORNEY

*Opinion of the Court*

Report per Rule 30(e).