

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-390

Filed 5 November 2024

Alamance County, Nos. 22CRS322496 23CRS51

STATE OF NORTH CAROLINA

v.

JERRY EUGENE TURNER

Appeal by defendant from judgment entered 30 January 2023 by Judge Rebecca W. Holt in Alamance County Superior Court. Heard in the Court of Appeals 27 September 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General, Eric J. Meehan, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David S. Hallen, for the defendant-appellant.*

PER CURIAM.

Jerry Eugene Turner (“Defendant”) appeals from a judgment entered after he plead guilty to felony speeding to flee/elude arrest with a motor vehicle, assaulting a law enforcement officer inflicting injury, possession of drug paraphernalia, and two counts of felonious restraint. We dismiss Defendant’s appeal.

## **I. Background**

Defendant attempted to flee a traffic stop with two occupants inside his car in October 2022. Defendant pled guilty to felony speeding to flee/elude arrest with a motor vehicle, assaulting a law enforcement officer inflicting injury, and two counts of felonious restraint pursuant to a plea agreement in exchange for the State's dismissal of one count of possession of drug paraphernalia. Defendant was sentenced as a prior record level IV offender within the presumptive range, to an active sentence to 140 to 180 months. Defendant appealed.

## **II. *Anders* Brief**

Counsel appointed to represent Defendant on appeal "is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal" and asks this Court to conduct its own review of the record for possible prejudicial error. Counsel has shown to the satisfaction of this Court that counsel has complied with the requirements of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). Counsel has advised Defendant of his right to file written arguments with this Court and provided to him the documents necessary to do so. Defendant has not filed any documents on his own behalf with this Court and a reasonable time for him to have done so has expired.

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:

STATE V. TURNER

*Opinion of the Court*

- (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.

N.C. Gen. Stat. § 15A-1444(a2) (2023).

The State contends the record on appeal is complete and free of prejudicial errors. Our review of the record on appeal confirms Defendant's prior record level calculation was correct, and his sentence falls within the presumptive range for a prior record level IV for the Class C felony. *See* N.C. Gen. Stat. § 15A-1340.17 (2023).

Defendant has brought forth the no issues on appeal. "If a defendant who has pled guilty does not raise the specific issues enumerated in subsection (a2) and does not otherwise have a right to appeal, his appeal should be dismissed." *State v. Hamby*, 129 N.C. App. 366, 369, 499 S.E.2d 195, 196 (1998) (citation omitted).

Defendant stipulated, his prior record level was IV in his plea agreement. Defendant's counsel signed and Defendant acknowledged each statement on the agreement. In open court, Defendant was informed and accepted he could be sentenced to a maximum of 180 months and that the actual sentence imposed would

be “left up” to the court. Defendant brought forth no issues on appeal, and if he had done so, he could have only brought those enumerated in N.C. Gen. Stat. § 15A-1444(a2).

### **III. Conclusion**

We have fully examined the record to determine whether any issues of arguable merit appear therefrom, in accordance with *Anders* and *Kinch*. *Anders*, 386 U.S. 738, 18 L. Ed. 2d 493; *Kinch*, 314 N.C. 99, 331 S.E.2d 665. We discern no prejudicial error and conclude the appeal is wholly frivolous. Defendant’s appeal is dismissed. *It is so ordered.*

DISMISSED.

Panel consisting of Judges STROUD, TYSON, and WOOD.

Report per Rule 30(e).