

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA01-1135

NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2002

STATE OF NORTH CAROLINA

v.

JARVIS DEANGELO BROADNAX

Rockingham County  
Nos. 97CRS6763, 97CRS12486  
98CRS5402-09, 98CRS5707,  
00CRS1241-44

Appeal by defendant from judgments entered 17 August 2000 by Judge Peter M. McHugh in Rockingham County Superior Court. Heard in the Court of Appeals 28 May 2002.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Teresa L. White, for the State.*

*Craig M. Blitzer for defendant-appellant.*

HUNTER, Judge.

On 14 March 2001, counsel for defendant filed a record on appeal (COA01-355) with this Court seeking review of fifteen judgments in which Judge Peter M. McHugh revoked defendant's probation and activated his sentences. The State filed a motion on 30 April 2001 seeking dismissal of the appeal due to the absence of the required judgments from the record on appeal. See N.C.R. App. P. 9(a)(3)(g). Counsel for defendant did not file a response, and this Court dismissed the appeal by order entered 22 May 2001. On 10 September 2001, counsel for defendant filed the present record on appeal (COA01-1135) seeking review of the same fifteen

judgments. Because defendant lost his appeal of right as to those fifteen judgments when his initial appeal (COA01-355) was dismissed on 22 May 2001, this Court directed counsel for defendant by an order entered 8 March 2002 to "submit a statement of reasons as to why this Court should treat this purported appeal as a petition for writ of certiorari."

"The writ of certiorari may be issued . . . when the right to prosecute an appeal has been lost by failure to take timely action." N.C.R. App. P. 21(a)(1). A petitioner must show both merit to the contentions that he would present on appeal and excusable neglect. *State v. Angel*, 194 N.C. 715, 716, 140 S.E. 727, 728 (1927). On 15 March 2002, counsel for defendant filed a petition for writ of certiorari seeking review of those judgments. In his petition, counsel contends "the State is not prejudiced by the granting of this Writ," and "the interests of justice and judicial economy will be served if this Honorable Court grant [sic] defendant's petition." The State in its response argues the petition should be denied because defendant found no error by the trial court in his purported appeal and has sought review pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, *reh'g denied*, 388 U.S. 924, 18 L. Ed. 2d 1377 (1967). See also *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985).

Pursuant to this Court's order of 8 March 2002, counsel for defendant has included three judgments which were omitted from the present record on appeal. Counsel for defendant brought forward one question in his purported appeal, but presented no arguments in

defendant's brief. He stated he had "tirelessly and assiduously researched the record on appeal and the transcripts in this matter and [had] been unable to find any issue of merit to argue before this Honorable Court on behalf of the defendant/appellant." Counsel for defendant has substantially complied with the holdings in *Anders* and *Kinch*. Upon our review of the entire record and of the assignment of error noted in the record, we find the appeal to be wholly frivolous. Because defendant has failed to show any merit to the contentions which he now seeks to present on appeal, we deny defendant's petition for writ of certiorari and dismiss defendant's purported appeal.

Appeal dismissed.

Judges MARTIN and BRYANT concur.

Report per Rule 30(e).