

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-631

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

Wayne County
No. 00 CRS 746

REMIGIO CAMPOS PINEDA

Appeal by defendant from judgment entered 15 August 2000 by Judge Paul L. Jones in Wayne County Superior Court. Heard in the Court of Appeals 24 June 2002.

Attorney General Roy Cooper, by Assistant Attorney General Steven Armstrong, for the State.

Law Offices of MacQueen & Turnage, by Benjamin M. Turnage, for defendant appellant.

TIMMONS-GOODSON, Judge.

Defendant was found guilty by a jury of trafficking in cocaine by possession and trafficking in cocaine by sale, based on evidence that he sold two ounces of cocaine to undercover police officer Billy Beamon for \$1500 on 8 December 1999. Judge Jones consolidated the offenses and sentenced defendant to thirty-five to forty-two months of imprisonment. Defendant gave notice of appeal in open court.

Counsel appointed to represent defendant on appeal has filed an *Anders* brief indicating that he is unable to identify an issue

with sufficient merit to support a meaningful argument for relief on appeal. He asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has filed documentation with the Court showing that he has complied with the requirements of *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), 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 the Court and providing him with a copy of the documents pertinent to his appeal. Defendant has exercised this right, and we address his claims below.

Defendant asserts that the trial court erred in failing to require the prosecution to introduce into evidence the scales and thermos allegedly seized from his residence. He notes that the prosecution called as witnesses only two of the six officers who participated in the search of his home. Finally, defendant argues that the failure of a confidential police informant to testify deprived him of his right to confront his accuser.

Defendant's arguments provide no basis for relief. Save for certain ethical constraints, a prosecutor enjoys complete discretion as to what witnesses to call and what physical evidence to introduce at trial. Here, the State based its case primarily upon the testimony of Beamon, who detailed his face-to-face purchase of the cocaine from defendant. The State further introduced as physical evidence the cocaine defendant sold to Beamon. To the extent defendant claims a violation of his rights

under the Confrontation Clause, we note simply that the prosecution did not rely on the confidential informant to prove its allegations. *Cf. State v. Covington*, 22 N.C. App. 250, 252, 206 S.E.2d 361, 363 (1974) ("Absent a showing of necessity for divulgence of the informant's identity, the trial court may properly refuse such requested disclosure.").

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom and whether the appeal is wholly frivolous. We conclude the appeal is frivolous. We find defendant received a fair trial free from prejudicial error.

No error.

Chief Judge EAGLES and Judges MCCULLOUGH concur.

Report per Rule 30(e).