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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-34

Filed: 5 September 2017

Lenoir County, Nos. 15 CRS 668-671, 1175, 50953, 51096

STATE OF NORTH CAROLINA

v.

DAVID SHANNON GOFF, Defendant.

Appeal by defendant from judgments entered 15 February 2016 by Judge John E. Nobles in Lenoir County Superior Court. Heard in the Court of Appeals 10 August 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Derrick C. Mertz, for the State.

Gilda C. Rodriguez for defendant.

ZACHARY, Judge.

Defendant David Shannon Goff appeals from judgments entered upon his guilty plea to various criminal charges, including attaining habitual felon status. For the reasons that follow, we find no prejudicial error, conclude that defendant's appeal is wholly frivolous, and affirm the judgments.

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On 18 November 2015, defendant pleaded guilty pursuant to a plea agreement to felony sale or delivery of cocaine, common law robbery, two counts of felony sale or delivery of methamphetamine, and three counts of having attained the status of an habitual felon. Approximately four months later, on 15 February 2016, the Honorable John E. Nobles entered judgments upon defendant's guilty plea. Judge Nobles sentenced defendant to two consecutive sentences of 101 to 134 months' imprisonment. The first sentence was based on one count of felony sale or delivery of methamphetamine as well as one count of attaining habitual felon status. The second sentence was predicated upon a consolidated judgment for the remaining charges.

Defendant's appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967), indicating that she "is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal[.]" and requesting that this Court conduct its own review of the record for possible prejudicial error. Counsel has also complied with the requirements of *Anders* 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 this Court and by providing him with the documents necessary for him to do so. However, defendant did not file any written arguments within a reasonable period of time.¹

¹ Defendant did file with this Court on 9 August 2010 a document entitled "Defendant[s] Response[.]" in which defendant raises one issue that purportedly could warrant reversal of the judgment entered upon his guilty plea. We conclude that defendant's submission to this Court is

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The State has filed a motion to dismiss this appeal, the basis of which is defendant's limited right to appeal from his guilty plea. However, given that defense counsel has applied for limited review under *Anders*, the State's motion is denied. *See State v. Hamby*, 129 N.C. App. 366, 369-70, 499 S.E.2d 195, 196-97 (1998) (conducting *Anders* review even though the defendant pleaded guilty and "brought forward no issues on appeal").

Our review pursuant to *Anders* and *Kinch* requires us to "determine from a full examination of all the proceedings whether the appeal is wholly frivolous." *Id.* at 367-68, 499 S.E.2d at 195-96. Because defendant entered a plea of guilty and neither appealed the denial of a motion to suppress nor the denial of a motion to withdraw the guilty plea, his right of appeal is limited to the sentencing issues set forth in N.C. Gen. Stat. § 15A-1444(a1) and (a2). *See* N.C. Gen. Stat. § 15A-1444(e). Here, defendant stipulated, through trial counsel, to his prior convictions and his prior record level. Moreover, defendant's sentences fell within the presumptive range for a Class C felon at a prior record level V. *See* N.C. Gen. Stat. § 15A-1340.17 (2015).

After a full examination of the record, we find no possible prejudicial error and conclude that defendant's appeal is wholly frivolous. Accordingly, we affirm the judgment entered.

untimely. In addition, as explained below, defendant's appeal is limited to the sentencing issues set forth in N.C. Gen. Stat. § 15A-1444(a1) and (a2). Because the issue raised by defendant does not fall under the purview of either subsection, it is not properly before us.

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AFFIRMED.

Judge DILLON concurs and Judge BERGER, JR. concurs by separate opinion.

Report per Rule 30(e).

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BERGER, Judge, concurring in separate opinion.

I concur that Defendant’s appeal is wholly frivolous. However, pursuant to N.C. Gen. Stat. § 15A-1444 and *Anders v. California*, 386 U.S. 738, 744, 18 L. Ed. 2d 493, 498 (1967) (If a court “finds [an appeal wholly frivolous] it may . . . dismiss the appeal insofar as federal requirements are concerned[.]”), after this Court finds that the appeal is wholly frivolous, I would dismiss Defendant’s appeal.