

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1055

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v.

WILLIAM NATHANIEL RAYNOR,  
Defendant.

Hertford County  
Nos. 99 CRS 1291-1295,  
99 CRS 1533,  
99 CRS 2482

On writ of certiorari to review judgment entered 20 March 2000 by Judge James R. Vosburgh in Hertford County Superior Court. Heard in the Court of Appeals 22 April 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Sandra Wallace-Smith, for the State.*

*Charles A. Moore for defendant-appellant.*

HUDSON, Judge.

Defendant William Nathaniel Raynor entered an *Alford* plea to possession of firearm by convicted felon, possession of weapon of mass death and destruction, malicious maiming of an eye, attempted murder, malicious castration of privy member, robbery with a dangerous weapon, and assault with deadly weapon with intent to kill inflicting serious injury. *See North Carolina v. Alford*, 400 U.S. 25, L. Ed. 2d 162 (1970). The trial court consolidated the charges, and sentenced defendant as a B1 felon to a presumptive term of 334-410 months imprisonment. Defendant seeks appellate

review by writ of certiorari. In addition, defendant, through counsel, filed a motion for appropriate relief, which is also pending before the Court.

Counsel appointed to represent defendant has filed a brief in which he indicates, "[a]fter a careful and conscientious review of the record on appeal, and the assignment of errors previously made, counsel is unable to determine any error which would be prejudicial or reversible error as to those assignments of error." He asks that this Court conduct its own review of the record for possible prejudicial error 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).

We note, however, that counsel cursorily argues in his brief, as he does in the pending motion for appropriate relief, that defendant was improperly sentenced as a Class B1 instead of a Class B2 felon. This argument, along with a request for review by the Court under *Anders*, "presents an inconsistent and effectively hybrid appeal that is improper and subject to dismissal by this Court." *State v. Grady*, 136 N.C. App. 394, 398, 524 S.E.2d 75, 78, *appeal dismissed and disc. rev. denied*, 352 N.C. 152, 544 S.E.2d 232 (2000). While there is no error in defendant's conviction, it does appear that there is indeed error in defendant's sentence. Accordingly, we elect to consider the appeal.

N.C. Gen. Stat. § 14-17 (1999) provides that murder is a Class A felony. Under N.C. Gen. Stat. § 14-2.5 (1999), an attempt to commit a Class A felony is punishable as a Class B2 felony. As the

State concedes, defendant, who was sentenced in a consolidated judgment for attempted murder, should have been sentenced as a Class B2 felon, and not as a B1 felon.

This matter is, therefore, remanded for re-sentencing. In light of our holding in this regard, defendant's motion for appropriate relief is dismissed as moot.

Remanded for re-sentencing; motion for appropriate relief dismissed.

Judges GREENE and TYSON concur.

Report per Rule 30(e).