

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-560

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

STATE OF NORTH CAROLINA

v.

JOHN HENRY TILLMAN,
Defendant.

Richmond County
Nos. 00 CRS 4531-37,
4584-89, 6224-30

Appeal by defendant from judgment entered 25 October 2000 by Judge Jack Hooks, Jr. in Richmond County Superior Court. Heard in the Court of Appeals 11 March 2002.

Attorney General Roy Cooper, by Assistant Attorney General Catherine C. Woodard, for the State.

Margaret Creasy Ciardella for defendant-appellant.

BRYANT, Judge.

Defendant pled guilty to thirteen counts of obtaining property by false pretenses. Additionally, defendant was indicted on seven counts of being a habitual felon, and defendant admitted his habitual felon status as to each count. The trial court made findings of aggravating and mitigating factors, and determined that the factors in mitigation outweighed the factors in aggravation and that a sentence in the mitigated range was justified. The trial court consolidated the offenses for judgment and defendant was sentenced to a term of 101 to 131 months imprisonment. Defendant appeals.

Counsel appointed to represent defendant has been unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has also shown to the satisfaction of this Court that she 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 this Court and providing him with the documents pertinent to his appeal.

Defendant has not filed any written arguments on his own behalf with this Court and a reasonable time in which he could have done so has passed. In accordance with *Anders*, we have fully examined the record to determine whether any issues of prejudicial error appear therefrom.

Our review of the record discloses no prejudicial error, however we do find what appears to be clerical errors in the judgment. First, the indictments and the transcript make clear that defendant admitted his habitual felon status, but the judgment erroneously states that defendant is a violent habitual felon. Second, the determination of aggravating and mitigating factors erroneously states that the court found that factors in aggravation outweighed the factors in mitigation, when in fact the court found the opposite. The error is obvious in light of the fact that the trial court found there to be no aggravating factors. Since

defendant was properly sentenced as a habitual felon to a sentence in the mitigated range of punishment, these clerical errors caused no prejudice to defendant.

Other than these clerical errors, we have been unable to find any possible prejudicial error and conclude that the appeal is wholly frivolous. Accordingly, we remand the matter to the trial court so the judgment can be corrected to properly reflect defendant's status as a habitual felon, not a violent habitual felon, and to reflect the trial court's determination that factors in mitigation outweighed the factors in aggravation, and that a mitigated sentence was justified.

No error; remanded for correction of clerical errors.

Judges WYNN and THOMAS concur.

Report per Rule 30(e).