

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1215

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

STATE OF NORTH CAROLINA

v.

HARRY LEE RUSSELL

Cabarrus County
No. 04CRS016406
No. 04CRS018644

Appeal by defendant from judgment entered 19 January 2005 by Judge W. Erwin Spainhour in Cabarrus County Superior Court. Heard in the Court of Appeals 8 May 2006.

Attorney General Roy A. Cooper, III, by Assistant Attorney General John W. Congleton, for the State.

Thomas E. Fulghum for defendant-appellant.

HUNTER, Judge.

Harry Lee Russell ("defendant") was found guilty of possession of a handgun by a convicted felon and of habitual felon status. He was sentenced within the presumptive range to a minimum of 100 months and a maximum of 129 months. For the reasons stated herein, we find no error.

Defendant's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), requesting this Court to review the record for possible prejudicial error. Counsel stated in the brief that he "is unable to identify an issue with

sufficient merit to support a meaningful argument for relief on appeal." Counsel attached to the brief a copy of a letter he mailed to defendant in which he advised defendant of counsel's inability to find any prejudicial error and of defendant's right to file his own written arguments directly with this Court. Defendant has not filed his own written arguments.

Counsel refers the Court to three possible issues that might arguably support an appeal.

First, he raises the issue of whether the court erred by using one of the prior felony convictions to support both the habitual felon charge and the charge of possession of a firearm by a convicted felon. He acknowledges that in *State v. Glasco*, 160 N.C. App. 150, 160, 585 S.E.2d 257, 264 (2003), this Court held that it is not a violation of double jeopardy to use the same felony conviction to support both a charge of habitual felon and the offense of possession of a firearm by a convicted felon.

Second, defendant acknowledges the evidence is sufficient to support the convictions. A witness testified that he saw defendant carrying a small handgun in his hand. Other testimony showed that defendant had a prior conviction of felonious sale of cocaine. The testimony of a deputy clerk of superior court established that defendant had three prior felony convictions.

Third, he acknowledges that his sentence, which is within the presumptive range, is correct and comports with N.C. Gen. Stat. § 15A-1340.17 (2005) and N.C. Gen. Stat. § 15A-1340.14 (2005).

We have carefully reviewed the record on appeal. We do not find any possible error to support a meaningful appeal.

No error.

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Judges WYNN and McGEE concur.

Report per Rule 30(e).