

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1103

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

STATE OF NORTH CAROLINA

v.

Johnston County
Nos. 02 CRS 54284, 6247

TERRY LEE HOLDER

Appeal by defendant from judgment entered 22 March 2006 by Judge Steve A. Balog in Johnston County Superior Court. Heard in the Court of Appeals 22 January 2007.

Attorney General Roy Cooper, by Assistant Attorney General Tina Lloyd Hlabse, for the State.

James N. Freeman, Jr., for defendant-appellant.

MARTIN, Chief Judge.

On 13 January 2003, defendant pled guilty to selling cocaine and attaining the status of an habitual felon. Defendant was sentenced from the mitigated range to a term of 80 to 105 months imprisonment. On appeal, this Court remanded for resentencing after finding that the record lacked proof that defendant had stipulated to his prior record level. *State v. Holder*, 165 N.C. App. 706, 601 S.E.2d 331 (unpublished, No. COA03-524, 3 Aug. 2004).

At resentencing, the State presented evidence that defendant

committed the offense while on probation. Based upon this evidence, the trial court added a point to defendant's prior record level point calculation. The trial court then found that defendant had nine prior record level points for a prior record level of IV, and again sentenced defendant from the mitigated range to a term of 80 to 105 months imprisonment. On appeal, this Court concluded that the trial court erred by adding a point to defendant's prior record level for committing the offense while on probation without first submitting the issue to a jury. *State v. Holder*, ___ N.C. App. ___, 626 S.E.2d 876 (unpublished, No. COA05-414, 7 Mar. 2006). Accordingly, the matter was again remanded for resentencing.

The trial court resentenced defendant on 22 March 2006. Defendant stipulated in writing to having eight prior record level points and to being a Level III felon. The trial court then sentenced defendant as a Level III felon from the mitigated range to the same term of 80 to 105 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 he has complied with the requirements of *Anders v. California*, 386 U.S. 738, 744, 18 L. Ed. 2d 493, 498, *reh'g denied*, 388 U.S. 924, 18 L. Ed. 2d 1377 (1967), and *State v. Kinch*, 314 N.C. 99, 102, 331 S.E.2d 665, 666-67 (1985), by advising defendant of his right to

file written arguments with this Court and providing him with the documents necessary for him to do so.

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 arguable merit appear therefrom. We have been unable to find any possible prejudicial error and conclude that the appeal is wholly frivolous.

No error.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).