

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-231

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2006

STATE OF NORTH CAROLINA

v.

JOHNNY STEVEN ROWE, JR.,
Defendant.

Henderson County
Nos. 05 CRS 728
05 CRS 51617
05 CRS 51630
05 CRS 51633

Appeal by defendant from judgments entered 2 November 2005 by Judge Christopher M. Collier in the Superior Court in Henderson County. Heard in the Court of Appeals 10 July 2006.

Attorney General Roy Cooper, by Assistant Attorney General John G. Barnwell, for the State.

Carol Ann Bauer, for defendant-appellant.

HUDSON, Judge.

On 2 November 2005, Johnny Steven Rowe, Jr. ("defendant") pled guilty upon an *Alford* plea to first degree kidnapping, felonious breaking or entering, second-degree sexual offense, and attempted second-degree rape in Henderson County Superior Court. Defendant was sentenced to three consecutive sentences within the presumptive range. Defendant appeals.

Defendant's appellate counsel states she "is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal." As such, defense counsel asks this

Court to fully review the record for possible prejudicial error. Defense counsel also requests that this Court treat defendant's brief as a petition for writ of certiorari and consider whether defendant received ineffective assistance of counsel and whether his plea was an informed choice.

Defense counsel has 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 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* and *Kinch*, we must fully examine the record to determine whether any issues of arguable merit appear therefrom or whether the appeal is wholly frivolous. At the outset, we note that because defendant pled guilty and was sentenced within the presumptive range, defendant's appeal is limited. Specifically, under N.C. Gen. Stat. § 15A-1444, a defendant who has pled guilty has a right to appeal only the following issues: (1) whether the sentence is supported by the evidence (if the minimum term of imprisonment does not fall within the presumptive range); (2) whether the sentence results from an incorrect finding of the defendant's prior record level under N.C. Gen. Stat. § 15A-1340.14 or the defendant's prior conviction level

under N.C. Gen. Stat. § 15A-1340.21; (3) whether the sentence contains a type of sentence not authorized by N.C. Gen. Stat. § 15A-1340.17 or § 15A-1340.23 for the defendant's class of offense and prior record or conviction level; (4) whether the sentence contains a term of imprisonment that is for a duration not authorized by N.C. Gen. Stat. § 15A-1340.17 or N.C. Gen. Stat. § 15A-1340.23 for the defendant's class of offense and prior record or conviction level under N.C. Gen. Stat. § 15A-1444(a2)(3); (5) whether the trial court improperly denied the defendant's motion to suppress; or (6) whether the trial court improperly denied the defendant's motion to withdraw his guilty plea. *State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003). In accordance with *Anders*, we have conducted our own examination of the record for possible prejudicial error under Section 15A-1444 of the North Carolina General Statutes and have found none.

Defendant assigns as error on appeal only that he received ineffective assistance of trial counsel. This assignment of error does not fall within any of the categories set out above and, thus, is outside this Court's limited review. Accordingly, we dismiss this assignment of error without prejudice to defendant's right to seek post-trial relief by filing a motion for appropriate relief with the trial court. *State v. Long*, 354 N.C. 534, 540, 557 S.E.2d 89, 93 (2001). We further decline to treat defendant's brief as a petition for writ of certiorari.

No error in part, dismissed without prejudice in part.

Judges MCCULLOUGH and STEELMAN concur.

Report per Rule 30(e).