NO. COA06-394

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

STATE OF NORTH CAROLINA

v. McDowell County
No. 04 CRS 52927

MARK LEWIS TATE

Appeal by defendant from judgment entered 7 December 2005 by Judge Laura J. Bridges in McDowell County Superior Court. Heard in the Court of Appeals 2 October 2006.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Kathleen U. Baldwin, for the State.

M. Victoria Jayne, for defendant-appellant.

JACKSON, Judge.

Mark Lewis Tate ("defendant") appeals from a judgment entered upon his guilty plea for possession of cocaine. The trial court sentenced defendant to a suspended term of six to eight months imprisonment and placed him on supervised probation for thirty-six months. Defendant gave notice of appeal in open court.

On appeal, defense counsel's sole assignment of error requests "that the Court review the record and transcript of proceedings to determine if any reversible error was committed by the trial court, pursuant to *Anders v. California*, 386 U.S. 738 (1967)." Defense

counsel has shown to the satisfaction of this Court that she has complied with the requirements of *Anders*, 386 U.S. 738, 18 L. Ed. 2d 493, 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 to do so. Defendant has not filed any written arguments, and a reasonable time for him to have done so has passed.

Under our review "[p]ursuant to *Anders* and *Kinch*, we must determine from a full examination of all the proceedings whether the appeal is wholly frivolous." *State v. Hamby*, 129 N.C. App. 366, 367-68, 499 S.E.2d 195, 195-96 (1998). In carrying out this duty, we will review the legal points appearing in the record, transcript, and briefs, not for the purpose of determining their merits (if any) but to determine whether they are wholly frivolous. Upon a full and careful review of the record, we conclude the appeal is wholly frivolous.

In addition to seeking review pursuant to *Anders*, defense counsel asserts that defendant's sentence exceeds the presumptive range for his Class I felony and record level III, and that "the imposition of the suspended sentence in the aggravated range rather tha[n] the presumptive range should be modified." We note, however, that "[t]he submission . . . of isolated '*Anders* issues' for the appellate court to research is not a viable course of action" when perfecting a criminal appeal. *State v. Barton*, 335 N.C. 696, 712, 441 S.E.2d 295, 304 (1994). If counsel believes that an issue of arguable merit appears in the record, she should

not file an *Anders* brief. *See id.* at 711, 441 S.E.2d at 303 (quoting *State v. Wynne*, 329 N.C. 507, 522, 406 S.E.2d 812, 820 (1991)). Nonetheless, we find no merit to this claim, inasmuch as defendant's suspended sentence of six to eight months falls squarely within the applicable presumptive range under North Carolina General Statutes, section 15A-1340.17(c)-(d) (2005).

Accordingly, we find no error.

NO ERROR.

Chief Judge MARTIN and Judges CALABRIA concur.

Report per Rule 30(e).