

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-180

NORTH CAROLINA COURT OF APPEALS

Filed: 7 August 2007

STATE OF NORTH CAROLINA

v.

Forsyth County
Nos. 05 CRS 42545
05 CRS 63145-46

CHRISHAWN DEWAYNE POTTER

Appeal by defendant from judgment entered 14 August 2006 by Judge Michael E. Helms in Forsyth County Superior Court. Heard in the Court of Appeals 23 July 2007.

Attorney General Roy Cooper, by Assistant Attorney General Daniel P. O'Brien, for the State.

Jon W. Myers, for defendant-appellant.

CALABRIA, Judge.

Chrishawn Dewayne Potter ("defendant") appeals from judgment entered pursuant to a guilty plea for possession/display of an altered/fictitious/revoked driver's license, resisting a public officer, possession with intent to sell or deliver cocaine trafficking in cocaine, and attaining the status of an habitual felon. The court consolidated all of the offenses for judgment and sentenced defendant to a minimum term of 133 months and a maximum term of 169 months in the North Carolina Department of Correction. We dismiss the appeal.

Defendant's counsel has filed a brief pursuant to *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), requesting this Court to review the record for possible prejudicial error. Counsel stated in the brief that he "is unable to identify appellate issues supported by law or good faith argument." Counsel attached to the brief a copy of a letter he mailed to defendant advising defendant of counsel's inability to find any error, which he defined as follows:

Lack of error means that I did not find any constitutional error, errors of law, or mistakes by judge or prosecutor that would constitute valid arguments for an appeal. An appeal is limited to errors that occur at a trial or hearing; these errors must appear from the transcript and court file alone and without the necessity for any further evidence or investigation. In your case I had no basis upon which to make any argument on direct appeal.

Counsel further advised defendant that he could file his own brief with this Court and that the brief needed to be mailed by 23 March 2007.

On 27 March 2007 defendant, *pro se*, filed a handwritten untitled document which defendant identified in the first sentence as "my Brief on Motion for Appropriate Relief while my case is in the Appellate [sic] Division under G.S. 15A-1415(b)(3)." Defendant did not make any reference to counsel's letter. Noting defendant was represented by counsel, this Court treated the document as a motion for appropriate relief and dismissed it without prejudice to having it filed through counsel.

For the purpose of deciding this appeal, we assume for the

sake of argument that the handwritten document is defendant's appellate brief pursuant to *Anders* and *Kinch*. In accordance with these cases, "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." *State v. Kinch*, 314 N.C. at 102-03, 331 S.E.2d at 667.

In the record on appeal, counsel assigns as error the court's acceptance of defendant's guilty plea without further exploring the issue of whether defendant was satisfied with the services of counsel. He also contends the court erred by finding defendant was satisfied with the services of counsel and by finding and concluding defendant voluntarily entered the plea. In his handwritten document, defendant contended his plea was involuntary because he states he was coerced into pleading guilty by counsel's threat to withdraw from representing him. He also argues counsel's assistance was ineffective because counsel refused to file any of the motions he requested. Defendant also contends in the handwritten document that the court erred (1) by enhancing due to habitual felon status the sentence for the trafficking offense; (2) in finding a factual basis for the plea; and (3) in failing to inform defendant that by pleading guilty, defendant waived his right of appeal. Defendant also challenges the stopping of a vehicle in which he was a passenger as being without probable cause and the amount of bail as being excessive.

In this state, the right to appeal in a criminal proceeding is granted solely by statute. *State v. Shoff*, 118 N.C. App. 724, 725,

456 S.E.2d 875, 876 (1995), *aff'd*, 342 N.C. 638, 466 S.E.2d 277 (1996). "Furthermore, there is no federal constitutional right obligating courts to hear appeals in criminal proceedings." *State v. Pimental*, 153 N.C. App. 69, 72, 568 S.E.2d 867, 869, *disc. review denied*, 356 N.C. 442, 573 S.E.2d 163 (2002). As provided by N.C. Gen. Stat. § 15A-1444, a defendant who has pled guilty may only raise, on appeal of right, 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 constitutes a type of sentence 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; (4) whether the trial court improperly denied the defendant's motion to suppress; N.C. Gen. Stat. § 15A-979(b) and (5) 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). Challenges to the procedures employed in accepting a guilty plea are also not within the scope of an appeal as a matter of right. *State v. Rhodes*, 163 N.C. App. 191, 193, 592 S.E.2d 731, 732 (2004).

None of the issues raised by counsel's brief and defendant's handwritten document fall within these parameters. Nothing appears

in the record before us that the trial court denied a motion to suppress or denied a motion to withdraw defendant's guilty plea. Defendant's claim of ineffective assistance of counsel is dismissed without prejudice to his right to reassert this claim in a subsequent motion for appropriate relief filed in the trial court since it can not be decided based upon the record before us and may require further factual development. *See State v. Hyatt*, 355 N.C. 642, 668, 566 S.E.2d 61, 78 (2002), *cert. denied*, 537 U.S. 1133, 154 L. Ed. 2d 823 (2003). Defendant may also raise the other claims in his subsequent motion for appropriate relief.

We find no arguable issues and, accordingly, as required by *Anders* and *Kinch*, we dismiss the appeal.

Dismissed.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).