

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-467

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

STATE OF NORTH CAROLINA

v.

Forsyth County
Nos. 07 CRS 26644
07 CRS 26645

THOMAS LAMONT FRANKLIN,
Defendant.

Appeal by defendant from judgments entered 14 December 2007 by Judge V. Bradford Long in Forsyth County Superior Court. Heard in the Court of Appeals 12 January 2009.

Attorney General Roy Cooper, by Assistant Attorney General Daniel P. O'Brien, for the State.
William D. Auman for defendant-appellant.

GEER, Judge.

Defendant Thomas Lamont Franklin appeals from judgments entered revoking his probation and activating his sentences of 20 to 24 months imprisonment for attempted assault with a deadly weapon with intent to kill and 17 to 21 months for attempting to discharge a weapon into occupied property. Defendant's counsel does not cite any error by the trial court, but requests a review of the record for reversible error in accordance with *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985).

Evidence presented at the revocation hearing tended to show that defendant: (1) failed to obtain prior approval from his probation officer before changing addresses; (2) moved without prior notification or approval; and (3) failed to report as required to his probation officer. Defendant admitted violating the conditions of his probation, although he indicated that he had moved from Forsyth County to Rowan County because of a death in his family and his ability to get a job in Rowan County. The trial court revoked defendant's probation and activated his suspended sentences.

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 shown to the satisfaction of this Court that he has complied with the requirements of *Anders* and *Kinch* by advising defendant of his right to file written arguments with this Court and providing him with the documents necessary to do so.

On 21 May 2008, defendant filed correspondence with this Court arguing error with regard to his activated sentences. Specifically, defendant argues: (1) that his sentence is no longer in effect because the trial court ordered that he receive credit for time served and (2) that the trial court did not have a copy of his transcript of plea and could not assume that the active sentences were to run consecutively. Defendant has misunderstood the trial court's order that he receive credit for the time he

spent in jail awaiting trial. The credit means that defendant is deemed to have already served a portion of his prison sentence equal to the number of days he spent in jail. It reduces, but does not eliminate, his sentence. With respect to the consecutive sentences, the record indicates that the trial judge did not "assume" that the original trial judge imposed consecutive sentences, but rather, review of the court file established that the original trial judge had directed that the sentences run consecutively.

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. Finding no possible prejudicial error, we uphold the judgments of the trial court.

Affirmed.

Judges WYNN and ELMORE concur.

Report per Rule 30(e).