

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-476

NORTH CAROLINA COURT OF APPEALS

Filed: 17 November 2009

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
Nos. 08CRS208250-51

MARCUS HARDEN,  
Defendant.

Appeal by defendant from judgment entered on or about 29 October 2008 by Judge Clifton E. Johnson in Superior Court, Mecklenburg County. Heard in the Court of Appeals 26 October 2009.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Marc X. Sneed, for the State.*

*Michele Goldman, for defendant-appellant.*

STROUD, Judge.

Upon review of an appeal pursuant to *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, 331 S.E.2d 665 (1985), we conduct an independent review of the record for possible prejudicial error. After careful review, we find that the record discloses no prejudicial error. Therefore, we affirm the judgment of the trial court.

Marcus Xavier Harden ("defendant") was convicted of possession of drug paraphernalia and possession of less than a half an ounce of marijuana in District Court, Mecklenburg County on 2 July 2008.

Defendant appealed to superior court. Defendant filed a motion to suppress evidence seized from him on the night of his arrest. The matter came on for hearing on 29 October 2008. After hearing evidence on the motion to suppress, the trial court denied the motion. Defendant thereafter pleaded guilty as charged. As part of the plea agreement, he specifically reserved his right to appeal the denial of his motion to suppress. The trial court accepted the plea, consolidated the charges, and entered judgment. Defendant was sentenced to one active term of forty-five days confinement, but was given credit for forty-five days time served. From the judgment entered, defendant appeals. In her brief, defendant's appellate counsel states that after careful examination she "is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal." She requests this Court to conduct an independent examination of the record for possible prejudicial error.

In accordance with the holdings of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), counsel wrote to defendant on 19 May 2009, advising defendant of appellate counsel's inability to find error, of counsel's request for this Court to conduct an independent review of the record, and of defendant's right to file his own arguments directly with this Court. Counsel attached to the letter a copy of the record, the hearing transcript, and the brief filed by counsel. Defendant has not filed his own written arguments.

Where a defendant entered a guilty plea in superior court, the defendant's appeal is limited to the following issues: (1) whether the sentence imposed is supported by the evidence (if the minimum term of imprisonment does not fall within the presumptive range); (2) whether the sentence imposed results from an incorrect finding of the defendant's prior record level pursuant to 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 imposed 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 pursuant to N.C. Gen. Stat. § 15A-979(b); and (5) whether the trial court improperly denied the defendant's motion to withdraw his guilty plea. N.C. Gen. Stat. § 15A-1444 (2007); *State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003).

Pursuant to *Anders* and *Kinch*, therefore, we must fully examine the record for possible prejudicial error under N.C. Gen. Stat. § 15A-1444. Appellate counsel has specifically directed our attention to issues regarding the denial of the motion to suppress. After careful review of the record, we find no error in the trial court's decision to deny the motion to suppress. Further, we note that defendant was found to have a prior conviction level one based on no prior convictions, and he was sentenced within the acceptable range of active punishment for his conviction level and class of

misdemeanor offense. We therefore find no error in defendant's sentencing.

Accordingly, we find no prejudicial error in defendant's judgment and commitment pursuant to N.C. Gen. Stat. § 15A-1444.

Affirmed.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).