

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-551

NORTH CAROLINA COURT OF APPEALS

Filed: 20 October 2009

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 08 CRS 202517

HARRY LEE BUTLER

Appeal by defendant from judgment entered 21 November 2008 by Judge Robert P. Johnston in Superior Court, Mecklenburg County. Heard in the Court of Appeals 19 October 2009.

Attorney General Roy Cooper, by Assistant Attorney General William B. Crumpler, for the State.

J. Edward Yeager, Jr. for defendant.

WYNN, Judge.

Defendant Harry Lee Butler appeals from judgment entered 21 November 2008 pursuant to a guilty plea to one count of common law robbery. In accordance with the plea agreement, the trial court sentenced Defendant to a term, within the presumptive range, of twenty-nine to thirty-five months imprisonment. Defendant now appeals.

Defendant's appellate counsel has filed a brief in which he states he "is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal[,] and requests that this Court conduct a full examination of the record on appeal

for possible prejudicial error. In accordance with the holdings 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), counsel wrote a letter to Defendant on 13 May 2009, advising him of counsel's inability to find error, counsel's request for this Court to conduct an independent review of the record, and Defendant's right to file his own arguments directly with this Court. Counsel has also sent Defendant a copy of counsel's brief to this Court, copies of the transcript, and the record. After careful review, we hold that Defendant's counsel has fully complied with *Anders* and *Kinch*.

Defendant also has filed several documents with this Court, which he denominates as motions for appropriate relief, and which we will treat as Defendant's *pro se* brief. In his written arguments, Defendant asserts: (1) trial counsel induced him to plead guilty by giving him misleading information; (2) trial counsel did not stipulate to the accuracy of his prior record level; (3) trial counsel failed to provide him with accurate discovery material and failed to file a request for discovery with this Court; (4) trial counsel failed to demand a probable cause hearing; (5) he did not have a reasonable amount of time to review the discovery materials provided to him prior to the plea hearing; (6) this Court should order the State to provide Defendant with discovery materials; and (7) he was falsely accused and vindictively prosecuted in that the crime he committed only amounted to misdemeanor larceny rather than common law robbery.

Pursuant to N.C. Gen. Stat. § 15A-1444 (2007), a defendant who has entered a guilty plea has a right to appeal only the following issues: (1) whether the sentence is supported by the evidence, but only 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 or prior conviction level; (3) whether the sentence contains a type of sentence not authorized 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 for the defendant's class of offense and prior record or conviction level; (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).

Here, Defendant pled guilty and was sentenced within the presumptive range; his appeal of right is statutorily limited. Because none of Defendant's arguments involve issues for which he has an appeal of right, we find Defendant's arguments to be outside the scope of our review.

We note that notwithstanding the request by Defendant's counsel that we review this matter for errors under *Anders*, Defendant's counsel argues that, at the plea proceedings, the trial court "failed to either obtain a stipulation to the factual basis or to make any findings on the record that there was a factual

basis of the plea." Recognizing this issue may not be raised on appeal from a judgment entered upon a guilty plea when the sentence entered falls within the presumptive range and is pursuant to a written plea arrangement, counsel asks this Court to treat his brief as a petition for writ of certiorari and consider this issue on its merits.

While a defendant may petition this Court for review under section 15A-1444(e), N.C. R. App. P. 21 (2008) limits our review:

The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order existed, or for review pursuant to N.C. Gen. Stat. 15A-1422(c)(3) of an order of the trial court denying a motion for appropriate relief.

Having found none of these circumstances to be present in Defendant's case, we decline to treat counsel's brief as a petition for writ of certiorari and consider this issue on the merits.

No error.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).