

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-1535
NORTH CAROLINA COURT OF APPEALS

Filed: 21 August 2012

STATE OF NORTH CAROLINA

v. Guilford County
Nos. 11 CRS 66308-09
ERIC SEDELL TAYLOR 11 CRS 66858, 66860

Appeal by defendant from judgments entered 29 March 2011 by Judge James M. Webb in Guilford County Superior Court. Heard in the Court of Appeals 11 June 2012.

Roy Cooper, Attorney General, by Kimberly N. Callahan, Assistant Attorney General, for the State.

Jon W. Myers for the defendant.

THIGPEN, Judge.

On 29 March 2011, defendant entered a plea of guilty to three counts of breaking or entering and one count of attempted breaking or entering. The trial court imposed three consecutive terms of 8 to 10 months active imprisonment for the breaking or entering convictions, as well as a suspended term of 6 to 8 months, with 60 months of supervised probation, for the attempted breaking or entering conviction. The court ordered

that the probationary sentence be served at the expiration of defendant's active sentences. Defendant appeals.

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

Defendant has filed two *pro se* briefs in which he claims: (1) he was denied effective assistance of counsel; (2) his guilty plea was not knowingly and voluntarily entered; and (3) he was erroneously sentenced outside the presumptive range for his class of offenses and prior record level.

Defendant's first two arguments are not properly before this Court. Defendant's right to appeal is limited because he entered a guilty plea. "[A] defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty . . . unless he is appealing sentencing issues or the

denial of a motion to suppress.” *State v. Nance*, 155 N.C. App. 773, 774, 574 S.E.2d 692, 693 (2003). The first two issues raised by defendant do not fit into any of the authorized categories which may be raised on direct appeal following a guilty plea. See N.C. Gen. Stat. § 15A-1444(a1), (a2), (e) (2011). Therefore, we decline to review defendant’s first two arguments.

Defendant’s third argument may be raised on direct appeal following a guilty plea; however, this claim is lacking in merit. In accordance with his plea arrangement, defendant stipulated to a prior record level of II. Defendant was convicted of three Class H felonies (breaking or entering) and one Class I felony (attempted breaking or entering). Defendant received three active sentences of 8 to 10 months for the Class H felonies and one intermediate suspended sentence of 6 to 8 months for the Class I felony. All four sentences are within the presumptive range for the class of felony and defendant’s prior record level. See N.C. Gen. Stat. § 15A-1340.17(c), (d) (2011). Therefore, we find no support for defendant’s third argument on appeal.

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear

therefrom or whether the appeal is wholly frivolous. Because defendant has raised only issues which are meritless or which he is not entitled to raise on direct appeal, we conclude the appeal is wholly frivolous. Furthermore, we have examined the record for possible prejudicial error and found none.

Lastly, the State has filed a motion to dismiss defendant's appeal on the ground that defendant cannot show any statutory authority for his appeal from judgments entered upon a guilty plea. Because we have conducted an *Anders* review of defendant's appeal and found no error, we deny the State's motion to dismiss.

NO ERROR.

Chief Judge Martin and Judge Steelman concur.

Report per Rule 30(e).