

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-797
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

STATE OF NORTH CAROLINA

v.

New Hanover County
No. 11 CRS 52484

BRYAN LEE BRINK

Appeal by defendant from judgment entered 29 November 2011 by Judge Charles H. Henry in New Hanover County Superior Court. Heard in the Court of Appeals 26 November 2012.

Roy Cooper, Attorney General, by Rebecca E. Lem, Assistant Attorney General, for the State.

Reece & Reece, by Mary McCullers Reece, for defendant-appellant.

MARTIN, Chief Judge.

On 7 April 2011, defendant Bryan Lee Brink pled guilty to delivery of a Schedule I controlled substance and was placed on twenty-four months of supervised probation. Defendant's probation officer filed violation reports, each alleging multiple probation violations, on 5 August 2011 and 21 October 2011. On 29 November 2011, the trial court held a probation

violation hearing, found defendant to be in willful violation of his probation, and revoked defendant's probation. Defendant appeals.

At the outset, we note the North Carolina Rules of Appellate Procedure require a criminal defendant to give oral notice of appeal at trial or to file written notice of appeal within fourteen days of the entry of judgment. N.C. R. App. P. 4. In this case, the trial transcript does not indicate defendant gave oral notice of appeal, and defendant's written notice of appeal was filed on 19 December 2011, more than fourteen days after entry of judgment. Defendant acknowledges he failed to give timely notice of appeal. Accordingly, we must dismiss defendant's appeal. *State v. McCoy*, 171 N.C. App. 636, 615 S.E.2d 319, *appeal dismissed*, 360 N.C. 73, 622 S.E.2d 626 (2005).

However, on 2 August 2012, defendant filed a petition for writ of certiorari seeking a belated appeal pursuant to N.C. R. App. P. 21. Defendant had a statutory right to appeal from the judgment revoking probation pursuant to N.C. Gen. Stat. § 15A-1347 (2011) and N.C. Gen. Stat. § 7A-27 (2011), and lost that right to appeal through failure to take timely action. Accordingly, we allow the petition for writ of certiorari to

permit a belated appeal from the judgment revoking defendant's probation.

Counsel appointed to represent defendant on appeal 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 she 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 not filed any written arguments on his own behalf with this Court and a reasonable time in which he could have done so has passed. In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. We have been unable to find any possible prejudicial error and conclude that the appeal is wholly frivolous.

Affirmed.

Judges STROUD and HUNTER, JR. concur.

Report per Rule 30(e).