

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-106
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v. Catawba County
Nos. 11 CRS 4537
11 CRS 51882

JAMES SAMUEL HILL, JR.,
Defendant.

Appeal by defendant from judgments entered 14 August 2012 by Judge W. Robert Bell in Catawba County Superior Court. Heard in the Court of Appeals 29 October 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Victoria L. Voight, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Jon H. Hunt and Assistant Appellate Defender Benjamin Dowling-Sendor, for defendant-appellant.

GEER, Judge.

Defendant James Samuel Hill, Jr. appeals from his convictions of robbery with a dangerous weapon and possession of a firearm by a felon. Following a trial, the jury found defendant guilty of both charges. On 14 August 2012, the trial court sentenced defendant to a presumptive-range term of 111 to 143 months imprisonment for robbery with a dangerous weapon and

to a consecutive, presumptive-range term of 22 to 27 months imprisonment for possession of a firearm by a felon.

We must first address our jurisdiction over this appeal. Defendant did not give oral notice of appeal at trial, but he timely filed two pro se documents, the first captioned "MOITION [sic] OF APPEAL," and the second titled "NOTICE OF APPEAL." The handwritten document captioned "MOITION [sic] OF APPEAL" sets out in relevant part: defendant's name and signature; the county and court from which defendant appealed; the district attorney's name and the relevant prosecutorial district; a certificate of service; and four file numbers, two of which pertain to the judgments entered against him on 14 August 2012 and two of which do not. However, this document fails to comply with Rule 4 of the North Carolina Rules of Appellate Procedure, governing notices of appeal in criminal cases, by erroneously stating defendant was appealing from a "VEDICT [sic] OF the JURY" rather than the judgments entered on 14 August 2012. See N.C.R. App. P. 4(b) (providing notice of appeal "shall designate the judgment or order from which appeal is taken").

Similarly, the form document titled "NOTICE OF APPEAL" fails to comply with Rule 4 because it erroneously provides that appeal is taken to "Superior Court" and that the appeal is from a single file number not associated with either of defendant's

14 August 2012 judgments, and because it fails to state the judgments from which defendant appeals. See N.C.R. App. P. 4(b) (providing notice of appeal "shall designate the judgment or order from which appeal is taken and the court to which appeal is taken"). Further, although it states appeal was from a robbery with a dangerous weapon charge, this form document does not mention the possession of a firearm by a felon charge. See *id.*

Given these deficiencies, defendant filed a petition for writ of certiorari seeking to preserve his right to appellate review of the judgments. Defendant asserts that, together, his pro se notices of appeal demonstrate his timely intent to appeal from the trial court's judgments.

"[W]hen a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal." *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320 (2005). However, a writ of certiorari may be issued 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." N.C.R. App. P. 21(a)(1). Having been found guilty by a jury, defendant had a right of appeal pursuant to N.C. Gen. Stat. § 7A-27(b) (2011) and § 15A-1444(a) (2011). Therefore, we dismiss defendant's appeal but exercise our

discretion to allow his petition for writ of certiorari to review the trial court's judgments.

Counsel appointed to represent defendant on appeal has been unable to identify any issue with sufficient merit to support a meaningful argument for relief 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, 87 S. Ct. 1396 (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 defendant with the documents necessary 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* and *Kinch*, we have fully examined the record to determine whether defendant's appeal is wholly frivolous, and we conclude that the appeal is wholly frivolous.

No error.

Judges ERVIN and DILLON concur.

Report per Rule 30(e).