

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-617
NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

STATE OF NORTH CAROLINA

v.

Buncombe County
No. 12 CRS 441-42

DESHONE EZEKIEL AUSTIN

Appeal by defendant from judgment entered 17 February 2014 by Judge Gary M. Gavenus in Buncombe County Superior Court. Heard in the Court of Appeals 10 November 2014.

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

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender Jason Christopher Yoder, for defendant-appellant.

ELMORE, Judge.

Defendant pled guilty on 10 October 2012 to sale of cocaine and possession with intent to the sell or deliver cocaine. The court sentenced him to a term of fifteen to thirty months and placed him on supervised probation for a period of twenty-four months. On 27 November 2012 and 18 December 2012, defendant's probation officer filed violation reports. On 24 January 2013,

the court entered an order modifying the terms and conditions of probation. On 12 June 2013, 21 June 2013 and 1 August 2013, defendant's probation officer filed additional violation reports. At the conclusion of a revocation hearing, the court found that defendant absconded from supervision. The court revoked probation and activated the sentence. Defendant appealed.

In accordance with *Anders v. California*, 386 U.S. 738, 18 L. E. 2d 493 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), defendant's appointed counsel has filed a brief in which he states that he, "after careful examination of the record, review of applicable law, and consultation with trial counsel and with colleagues in the Office of the Appellate Defender, has been unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal." Counsel asks this Court to "conduct a full examination of the record on appeal for possible prejudicial error and to determine whether any non-frivolous issue has been overlooked by counsel."

As an appendix to the brief, counsel attached a letter he wrote to defendant on 23 June 2014 in which he advised defendant that he had been unable to find any issues in defendant's case that in counsel's professional opinion would support a finding

of prejudicial error by this Court. Counsel advised defendant that he had asked this Court to conduct its own independent review of the record to determine whether counsel may have overlooked some issue meriting relief. Counsel also advised defendant that he had the right to submit his own written arguments to this Court. To assist defendant with filing his own arguments, counsel enclosed a copy of the trial transcript and record on appeal, and directed defendant to notify the clerk of this Court, at the address provided by counsel, immediately of a decision to file his own written argument, and to file written arguments as quickly as possible. Counsel also enclosed the brief filed on defendant's behalf. In this brief, counsel calls this Court's attention to three issues which counsel submits might arguably support an appeal.

First, counsel cites discrepancies between what the court stated orally in open court and what is recorded on the written judgment. Specifically, counsel notes that the court found in open court that defendant violated paragraphs 1-4, 9, and 10 of the 12 June 2013 violation report, paragraph 3 of the 21 June 2013 violation report, and paragraphs 1 and 2 of the 1 August 2013 violation report, but the written order states he violated paragraphs 1-4 of the 27 November 2012 violation report.

Counsel acknowledges that these discrepancies appear to be clerical errors. Counsel asks this Court to remand the judgment for correction of the dates and paragraph references of the violation reports. We concur with counsel that these errors are clerical in nature, "resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination." See *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000) (quoting *Black's Law Dictionary* 563 (7th ed. 1999)). We accordingly remand in accordance with *State v. Smith*, 188 N.C. App. 842, 656 S.E.2d 695 (2008) so the judgment may be corrected to reflect what was actually determined in open court as noted above.

Second, counsel asks this Court to determine whether the court abused its discretion in revoking defendant's probation for absconding. Because defendant committed the offenses of which he was convicted after 1 December 2011, his probation could be revoked upon a finding that he absconded from supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a). See *State v. Nolen*, ___ N.C. App. ___, ___, 743 S.E.2d 729, 731 (2013). Defendant does not dispute that he absconded from supervision. This argument is wholly frivolous.

Finally, counsel asks this Court to determine whether his statutory right to confrontation at a probation violation hearing was violated when the court allowed defendant's probation officer to testify, over defendant's objection, that a person at defendant's last known address told the officer that defendant no longer resided at that address. Our Supreme Court recently reiterated that hearsay evidence is admissible at probation revocation hearings when the evidence is relevant to a determination of whether the defendant violated a condition of probation. *State v. Murchison*, ___ N.C. ___, ___, 758 S.E.2d 356, 359 (2014).

Defendant has not filed any written arguments. After careful review of the record, we are unable to find error to support a meaningful appeal. We remand for correction of the clerical error in the judgment.

Remanded for correction of clerical error.

Judges STEELMAN and DILLON concur.

Report per Rule 30(e).