IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 15-496

Filed: 17 November 2015

Buncombe County, No. 13 CRS 61090-91

STATE OF NORTH CAROLINA

v.

ERWIN LYNN JARVIS

Appeal by defendant from judgments entered 29 September 2014 by Judge Marvin P. Pope in Buncombe County Superior Court. Heard in the Court of Appeals 2 November 2015.

Attorney General Roy Cooper, by Assistant Attorney General Jane L. Oliver, for the State.

Edward Eldred for defendant-appellant.

HUNTER, JR., Robert N., Judge.

Defendant pled guilty on 8 September 2014 to two counts of second degree murder. The court conducted a sentencing hearing on 29 September 2014. As a stipulated aggravating factor, the court found that the offenses were committed during a course of conduct involving violence to more than one person. As mitigating factors, the court found Defendant: (1) was suffering from a mental condition that was insufficient to constitute a defense but significantly reduced defendant's

culpability for the offense; (2) acted under strong provocation; (3) has been a person of good character or has had a good reputation in the community in which he lives; (4) has accepted responsibility for his criminal conduct; (5) has a support system in the community; and (6) has a positive employment history or is gainfully employed. The court found that the factors in mitigation outweighed the factor in aggravation. The court entered judgments imposing two active prison terms of a minimum of 192 months and a maximum of 243 months to run consecutively. Defendant filed written notice of appeal on 10 October 2014.

Defendant's appointed counsel filed a brief on Defendant's behalf in which he states that after carefully reviewing the trial court file, the transcript and relevant legal authority, and consulting with Defendant, Defendant's trial attorney, and an attorney in the Office of the Appellate Defender, he "is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal." Counsel proposed two issues in the record on appeal but he acknowledges "he cannot in good faith argue that either of those issues, or any other issue, constitutes a reversible error in this case."

Counsel asks this Court to review the record pursuant to *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) for possible prejudicial error he may have overlooked. Counsel provided this Court with a copy of a letter he wrote to Defendant in which he advised Defendant of

his right to file supplemental arguments directly with this Court. Counsel provided Defendant with a copy of the brief filed by counsel, and copies of the record on appeal and transcript. Counsel also instructed Defendant to notify this Court immediately if he desired to file his own written arguments, and provided Defendant with this Court's mailing address Defendant has not filed his own written arguments.

To fulfill his obligation of referring this Court to anything in the record on appeal which may arguably support the appeal, counsel notes that the court did not find Defendant's requested statutory factor in mitigation of sentence that Defendant supports his family. Counsel acknowledges that because different inferences could be drawn from the evidence, the court was not required to make this finding. *See, State v. Mabry,* 217 N.C. App. 465, 473, 720 S.E.2d 697, 703 (2011) (holding court did not err in failing to find as a mitigating factor that the defendant supported her family when the "evidence did not so clearly establish that defendant supports her family such that no other reasonable inference could be drawn").

We conclude counsel has complied with the requirements of *Anders* and *Kinch.* After conducting independent review of the record, we are unable to find possible error to support meaningful relief on appeal. We conclude the appeal is wholly frivolous. We affirm the judgments.

AFFIRMED.

Chief Judge McGee and Judge Dillon concur.

Report per Rule 30(e).