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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-730

Filed: 20 December 2016

Greene County, Nos. 14 CRS 50719, 15 CRS 128

STATE OF NORTH CAROLINA

v.

MARCUS RANDALL BROWN

Appeal by Defendant from judgments entered 7 March 2016 by Judge Alma L. Hinton in Superior Court, Greene County. Heard in the Court of Appeals 12 December 2016.

*Attorney General Roy Cooper, by Assistant Attorney General Mary Carla Babb, for the State.*

*Andrew Yu for Defendant-Appellant.*

McGEE, Chief Judge.

Marcus Randall Brown (“Defendant”) appeals from judgments entered upon his *Alford* plea to possession of a dangerous weapon in a state penal institution and possession of a mobile telephone or other wireless communication device in a state penal institution. For the reasons set forth below, we affirm the trial court’s judgments.

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A Greene County grand jury indicted Defendant on 27 April 2015 for possession of a dangerous weapon in a state penal institution, fabricating and creating a dangerous weapon in a penal institution, and two counts of possession of a mobile telephone or other wireless communication device in a state penal institution. Defendant tendered an *Alford* plea in Greene County Superior Court on 7 March 2016 to possession of a dangerous weapon in a state penal institution and possession of a mobile telephone or other wireless communication device in a state penal institution. In exchange for Defendant's plea, the State agreed to dismiss the charge of fabricating and creating a dangerous weapon in a penal institution and one count of possession of a mobile telephone or other wireless communication device in a state penal institution, and further agreed not to pursue habitual felon status for either conviction. The trial court sentenced Defendant in the presumptive range to two consecutive terms of sixteen to twenty-nine months in prison. Defendant gave notice of appeal in open court.

Counsel appointed to represent Defendant states he is 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 shows 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

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file written arguments with this Court and providing Defendant with the documents necessary to do so.

Defendant has filed *pro se* arguments with this Court. In his *pro se* filing, Defendant makes several arguments, including *inter alia*: (1) that comments made by the prosecutor during the plea hearing were erroneous and prejudicial; (2) that Defendant's plea was not intelligently and knowingly entered; (3) Defendant's trial counsel did not provide effective assistance in that counsel failed to provide Defendant with the State's discovery materials and failed to notify Defendant that the State had destroyed the contraband discovered in Defendant's prison cell until after Defendant had tendered his plea; (4) the State prosecuted Defendant without probable cause; and (5) the convictions should have been consolidated for judgment given that all of the contraband was discovered during the course of a single search.

Defendant also contends the trial court erred by not granting his "motion to suppress/motion in limine." While our General Statutes provide criminal defendants the right to appeal the denial of a motion to suppress following a guilty plea, *see* N.C. Gen. Stat. § 15A-979(b) (2015), the record and transcript do not show that any such motion was made in this case. As such, this Court is unable to provide Defendant relief on the basis of this contention.

N.C. Gen. Stat. § 15A-1444 governs when a defendant may appeal following a plea of guilty or no contest.

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A defendant who pleads guilty has a right of appeal limited to the following:

1. Whether the sentence “is supported by the evidence.” This issue is appealable only if his minimum term of imprisonment does not fall within the presumptive range. N.C. Gen. Stat. § 15A-1444(a1) ([2015]);
2. Whether the sentence “[r]esults from an incorrect finding of the defendant’s prior record level under G.S. 15A-1340.14 or the defendant’s prior conviction level under G.S. 15A-1340.21.” N.C. Gen. Stat. § 15A-1444(a2)(1) ([2015]);
3. Whether the sentence “[c]ontains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant’s class of offense and prior record or conviction level.” N.C. Gen. Stat. § 15A-1444(a2)(2) ([2015]);
4. Whether the sentence “[c]ontains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant’s class of offense and prior record or conviction level.” N.C. Gen. Stat. § 15A-1444(a2)(3) ([2015]);
5. Whether the trial court improperly denied defendant’s motion to suppress. N.C. Gen. Stat. §§ 15A-979(b)([2015]), 15A-1444(e) ([2015]);
6. Whether the trial court improperly denied defendant’s motion to withdraw his guilty plea. N.C. Gen. Stat. § 15A-1444(e) [(2015)].

*State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003).

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In the present case, none of Defendant's *pro se* arguments pertain to any of these issues. As a result, Defendant's claims are not cognizable by this Court on direct appeal.

We note Defendant raises claims involving facts outside the record on appeal, including his allegation of ineffective assistance of counsel ("IAC"). While we dismiss Defendant's *pro se* claims, we do so without prejudice to his right to file a motion for appropriate relief ("MAR") in superior court. *See State v. Fair*, 354 N.C. 131, 167, 557 S.E.2d 500, 525 (2001) ("[S]hould the reviewing court determine that IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant's right to reassert them during a subsequent MAR proceeding.").

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. As noted above, our review of potential error in this case is limited to those issues authorized by N.C. Gen. Stat. § 15A-1444 (2015). We are unable to find any possible prejudicial error and conclude that Defendant's appeal is wholly frivolous. As a result, the trial court's judgments are affirmed.

AFFIRMED.

Judges CALABRIA and DILLON concur.

Report per Rule 30(e).