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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1238

Filed: 5 July 2017

Guilford County, Nos. 15 CRS 24403, 71890

STATE OF NORTH CAROLINA

v.

CORNELIUS DELANE BENTON

Appeal by defendant from judgment entered 7 June 2016 by Judge David L. Hall in Guilford County Superior Court. Heard in the Court of Appeals 19 June 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Andrew L. Hayes, for the State.*

*Winifred H. Dillon for defendant.*

DIETZ, Judge.

Defendant Cornelius Delane Benton appeals his sentence after entering a guilty plea. He contends that his sentence violates the Eighth Amendment. As explained below, because Benton pleaded guilty, this Court lacks jurisdiction to address this issue on direct appeal. We decline to issue a writ of certiorari because, in light of existing precedent, Benton's issue is not so extraordinary that it warrants

review on direct appeal through a writ of certiorari. Accordingly, we dismiss this appeal for lack of appellate jurisdiction.

### **Facts and Procedural History**

On 18 May 2015, the State charged Benton with felony possession of cocaine and misdemeanor possession of marijuana. The State later charged Benton with attaining habitual felon status.

Benton filed a pretrial motion to dismiss and a pretrial motion to suppress, both of which were denied by the trial court following a hearing. Benton later reached a plea deal with the State and, on 7 June 2016, entered an *Alford* plea to felony possession of cocaine and attaining habitual felon status. The State dismissed the marijuana charge. The trial court sentenced Benton to 36 to 56 months in prison, which was within the presumptive range for a habitual felon with Benton's criminal history and prior record level. Benton timely appealed, challenging the length of his sentence.

### **Analysis**

The State moved to dismiss this appeal, arguing that Benton's right to appeal following a guilty plea is limited and the only issue Benton asserts on appeal—an Eighth Amendment challenge—is not an issue for which a right to appeal exists. As explained below, we agree that this Court lacks jurisdiction to consider this issue on direct appeal.

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“The right to appeal in a criminal proceeding is purely statutory.” *State v. China*, 150 N.C. App. 469, 473, 564 S.E.2d 64, 68 (2002). A defendant who enters a plea of guilty has no right to appeal from the judgment except for a narrow set of sentencing issues and a previously preserved denial of a motion to suppress. *See* N.C. Gen. Stat. § 15A-1444(a1), (a2), (e) (2015).

Benton concedes that he has no statutory right to appeal based on his Eighth Amendment challenge. But he asks this Court to exercise its discretion to grant a writ of certiorari. N.C. Gen. Stat. § 15A-1444(e) (2015); N.C. R. App. P. 21. We are reluctant to issue a writ of certiorari permitting direct review of issues that otherwise would not be reviewable on direct appeal because of a guilty plea. Permitting review by certiorari in these circumstances “could damage the integrity of the plea bargaining process” by undermining the finality that the State secures when a defendant pleads guilty.<sup>1</sup> *State v. Harris*, \_\_ N.C. App. \_\_, \_\_, 776 S.E.2d 554, 556 (2015). Here, Benton’s Eighth Amendment argument appears weak at best; indeed, our State’s appellate courts repeatedly have rejected claims that harsh sentencing enhancements for habitual offenders violate the Eighth Amendment’s prohibition on cruel and unusual punishment. *See, e.g., State v. Todd*, 313 N.C. 110, 117, 326 S.E.2d 249, 253 (1985); *State v. Cummings*, 174 N.C. App. 772, 776, 622 S.E.2d 183, 185-86 (2005). Because we do not believe Benton’s issues on appeal present the sort of

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<sup>1</sup> And, of course, there are means of post-conviction review that exist precisely because asserting these issues on direct appeal is not permitted.

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extraordinary circumstances that warrant review by writ of certiorari, we decline to issue the writ.

**Conclusion**

We dismiss this appeal for lack of appellate jurisdiction.

DISMISSED.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).