An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-528

Filed: 19 December 2017

Lenoir County, Nos. 11CRS053057-58

STATE OF NORTH CAROLINA

v.

DARRELL WAYNE BAYSE, Defendant.

Appeal by Defendant from order entered 26 October 2016 by Judge Paul L. Jones in Lenoir County Superior Court. Heard in the Court of Appeals 7 December 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Tracy Nayer, for the State.

Appellate Defender G. Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for the Defendant.

DILLON, Judge.

Darrell Wayne Bayse ("Defendant") appeals from the trial court's order denying his "Motion to Locate and Preserve Evidences [sic] and Motion for Post-Conviction DNA Testing." We affirm.

I. Background

In March 2013, Defendant entered an *Alford* plea pursuant to a plea arrangement with the State to statutory rape of a fourteen-year-old. In exchange, the State dismissed other charges. The trial court sentenced Defendant in the presumptive range to an active sentence of 276 months to 341 months of imprisonment. Defendant did not appeal.

On 3 June 2016, Defendant filed a *pro se* "Motion to Locate and Preserve Evidences [sic] and Motion for Post-Conviction DNA Testing" in superior court. The motion listed twelve pieces of physical evidence from Defendant's case that "need to be tested and preserved for the purpose of DNA Testing. Where the results would prove that the Defendant was not the perpetrator of the crime, and the requested DNA testing is material to the Defendant's exoneration." Defendant requested the appointment of counsel to help him prosecute his motion.

On 26 October 2016, the superior court entered an order summarily denying Defendant's motion for DNA testing. The order found that "there is no basis in law or fact to allow such Motion." On 4 November 2016, Defendant filed a written notice of appeal from the superior court's order.

II. Analysis

Counsel appointed to represent Defendant on appeal has "examined the Superior Court record and relevant cases and statutes and is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal."

She asks this Court to conduct its own review of the record for possible prejudicial error. Counsel has shown to the satisfaction of this Court that she has complied with the requirements of *Anders v. California*, 386 U.S. 738 (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 him with the documents necessary for him to do so.

On 30 June 2017, Defendant filed a *pro se* brief in which he raises his own arguments. Defendant contends that he was improperly sentenced in the aggravated range and that his plea was not knowing and voluntary. These contentions do not address the trial court's order denying Defendant's motion for DNA testing, the only order currently before the Court. Accordingly, we will not consider Defendant's arguments.

In accordance with *Anders* and *Kinch*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. We have been unable to find any possible prejudicial error. Consequently, we affirm the trial court's order denying Defendant's motion for DNA testing.

AFFIRMED.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).