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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1407

Filed: 17 July 2018

Greene County, Nos. 16 CRS 50024, 130

STATE OF NORTH CAROLINA

v.

ERIC CHRISTOPHER FORD

Appeal by defendant from judgment entered 19 April 2017 by Judge Richard Kent Harrell in Greene County Superior Court. Heard in the Court of Appeals 16 July 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General LaShawn S. Piquant, for the State.

Sean P. Vitrano for defendant-appellant.

DAVIS, Judge.

Eric Christopher Ford (“Defendant”) appeals from his conviction for possession of a controlled substance in a penal institution. After a thorough review of the record and applicable law, we affirm his conviction.

Factual and Procedural Background

On 23 March 2016, a grand jury indicted Defendant on charges of possession of a controlled substance in a penal institution, felony obstruction of justice, and attaining the status of a habitual felon. On 19 April 2017, Defendant entered a plea of no contest to the offense of possession of a controlled substance on jail premises. In accordance with the terms of the plea agreement, all other pending charges were dismissed. The trial court sentenced Defendant to a term of 16 to 29 months imprisonment. Defendant filed a handwritten letter attempting to give notice of appeal on 16 May 2017.

Analysis

I. Appellate Jurisdiction

As an initial matter, we must determine whether we possess jurisdiction over this appeal. The State has moved to dismiss Defendant's appeal on the basis that his notice of appeal failed to comply with certain requirements of Rule 4 of the North Carolina Rules of Appellate Procedure. Defendant filed a handwritten letter indicating his intent to appeal but failed to serve a copy of the letter on the State as required by Rule 4(c). N.C. R. App. P. 4(c). The notice of appeal also failed to designate this Court as the court to which he was appealing as required by Rule 4(b). N.C. R. App. P. 4(b). Moreover, Defendant's letter was untimely as it was not filed within fourteen days after entry of the judgment. N.C. R. App. P. 4(a). Because

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Defendant's handwritten notice failed to conform to the requirements of Rule 4, his appeal is subject to dismissal.

However, on 26 February 2018, Defendant filed a petition for writ of *certiorari* in recognition of the fact that his notice of appeal was in violation of Rule 4. Defendant claims that after his conviction he wrote to his trial attorney, requesting that the attorney appeal his conviction, but received no reply. Thus, he contends that the delay in filing the notice of appeal was due to his trial attorney's failure to respond and that issuance of the writ is necessary to prevent manifest injustice.

Pursuant to Rule 21(a)(1) of the Appellate Rules, this Court possesses the authority to grant a petition for writ of *certiorari* and review an order or judgment entered by the trial court "when the right to prosecute an appeal has been lost by failure to take timely action" N.C. R. App. P. 21(a)(1).

The State does not contend that it has been misled by Defendant's failure to serve the notice of appeal. It is within this Court's discretion to issue a writ of *certiorari* under these circumstances where the appellee has not been misled by the appellant's mistake. *See State v. Springle*, 244 N.C. App. 760, 763, 781 S.E.2d 518, 521 (2016) ("[A] defect in a notice of appeal should not result in loss of the appeal as long as the intent to appeal can be fairly inferred from the notice and the appellee is not misled by the mistake." (citation, quotation marks, and ellipsis omitted)).

Thus, in our discretion, we grant Defendant's petition for writ of *certiorari* and proceed to address the merits of his arguments. *See State v. Rowe*, 231 N.C. App. 462, 466, 752 S.E.2d 223, 226 (2013) (granting defendant's petition for writ of *certiorari* where he failed to designate the court to which appeal was being taken and did not serve notice of appeal on the State).¹

II. *Anders v. California*

Defendant's appointed counsel has filed a brief on his behalf in which he states that after examining the record along with relevant case law and statutes, he "is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal." He asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has also shown 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 file written arguments with this Court and providing him with the documents necessary for him to do so.

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. By virtue of his plea of no

¹ The State has moved to dismiss Defendant's appeal on the basis that because Defendant pled guilty he has only a limited right to appeal. We note, however, that even in cases involving a guilty plea, a defendant convicted of a felony has a statutory right to appellate review of certain aspects of the judgment. *See* N.C. Gen. Stat. § 15A-1444(a1)-(a2) (2017); *see also State v. Hamby*, 129 N.C. App. 366, 369-70, 499 S.E.2d 195, 196-97 (1998) (conducting *Anders* review although the defendant pled guilty and "brought forward no issues on appeal"). Accordingly, we deny the State's motion.

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contest, Defendant's right of appeal was limited to the issues set forth in N.C. Gen. Stat. § 15A-1444(a1)-(a2). Here, Defendant stipulated to his prior convictions and prior record level. Furthermore, Defendant was correctly sentenced from the presumptive range for a Class H, Level VI felony offense. Accordingly, we find no prejudicial error and affirm the trial court's judgment.

Conclusion

For the reasons stated above, we affirm Defendant's conviction.

AFFIRMED.

Judges CALABRIA and BERGER concur.

Report per Rule 30(e).