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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-199

Filed: 20 November 2018

Forsyth County, Nos. 15 CRS 61566-67, 15 CRS 61598-600, 17 CRS 52552, 17 CRS 52554

STATE OF NORTH CAROLINA

v.

REGINALD ANTWAN LITTLE, Defendant.

Appeal by Defendant from judgments entered 18 September 2017 by Judge Stanley L. Allen in Forsyth County Superior Court. Heard in the Court of Appeals 9 November 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kimberly Randolph, for the State.*

*Sharon L. Smith, for defendant-appellant.*

MURPHY, Judge.

Defendant Reginald Antwan Little entered a guilty plea on 18 September 2017, to attempted trafficking in opium or heroin, possession with intent to sell and deliver heroin, seven counts of possession with intent to sell or deliver a Schedule II controlled substance, two counts of possession with intent to sell or deliver a Schedule

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IV substance, and possession of cocaine. Defendant's plea arrangement with the State provided:

The State will agree to consolidate into one Class E attempted trafficking, three Class I – all consecutive to each other with sentencing in the top of the presumptive range and [D]efendant must accept an active sentence (71 months minimum). These sentences shall run consecutive to each other. It is in the court[]s discretion as to whether this sentence will run consecutively or concurrently to the sentence that the [d]efendant is currently serving.

In addition, the State dismissed two counts of trafficking in opium or heroin; two counts of possession with intent to manufacture, sell, or deliver a Schedule IV controlled substance; one count of maintaining a vehicle or dwelling place for the purpose of keeping or selling controlled substances; one count of possession of drug paraphernalia; one count of possession of a firearm by a felon; and one count of driving while license revoked.

The trial court accepted Defendant's plea and consolidated his convictions into four judgments pursuant to the terms of the plea arrangement. The court sentenced Defendant to an active term of 44 to 65 months and three consecutive active terms of 9 to 20 months. Defendant's first term was also set to begin at the expiration of all sentences that he was then obligated to serve. Defendant gave notice of appeal in open court.

Defendant's appellate counsel states she is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks that

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this Court conduct its own review of the record for possible prejudicial error. Counsel shows to the satisfaction of this Court that she 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 Defendant with the documents necessary to do so.

Defendant filed pro se arguments with this Court on 31 May 2018, arguing: (1) he did not possess a handgun when he was arrested; (2) the arresting officers illegally entered and searched his girlfriend's residence, where they found the handgun he was charged with possessing; (3) his trial counsel failed to challenge the "wrongdoing" of the arresting officers and the "D.A.," the evidence against him, and failed to present evidence of mitigating factors; (4) his trial counsel failed to inform him that he had withdrawn from the case; and (5) the trial court erred in not consolidating his sentences and ordering them to run consecutively. These arguments are without merit or not properly before this Court.

By pleading guilty, Defendant waived "all defenses other than that the indictment charges no offense . . . [including] the right to trial and the incidents thereof and the constitutional guarantees with respect to the conduct of criminal prosecutions." *State v. Caldwell*, 269 N.C. 521, 526, 153 S.E.2d 34, 37-38 (1967) (citation and quotation marks omitted). Defendant's arguments regarding an

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allegedly illegal search are thus waived. Moreover, Defendant was not convicted of possession of a firearm by a felon and his arguments regarding the handgun he allegedly possessed are not properly before this Court.

Given Defendant's guilty plea, and thus the lack of an evidentiary record, his complaints about the performance of his trial counsel are more properly presented in a motion for appropriate relief filed in the trial court. *See State v. Thompson*, 359 N.C. 77, 122-23, 604 S.E.2d 850, 881 (2004) (“[I]neffective assistance of counsel claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing.” (citations omitted)). Additionally, Defendant's claim that trial counsel failed to inform him that counsel withdrew is without merit. While trial counsel filed a motion to withdraw as counsel of record on 24 April 2017, the record does not indicate that this motion was ruled upon or was granted. Indeed, the record indicates that Defendant's trial counsel did not withdraw from representing him until after the trial court entered its judgments in September 2017 and after Defendant gave notice of appeal from the judgments. Defendant has thus made no showing that counsel withdrew prior to the judgment being entered or that he was prejudiced by his counsel's withdrawal after the judgment was entered.

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Lastly, the trial court sentenced Defendant in accordance with the terms of his plea arrangement with the State, and Defendant has not shown that he was legally prejudiced by the trial court ordering his sentences to run consecutive to any sentence he was already obligated to serve.

In accordance with *Anders* and *Kinch*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. Defendant's judgments were entered upon his guilty plea to the offenses charged and our review of potential error in this case is limited to those issues authorized by N.C. G. S. § 15A-1444 (2017). *See State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003). We are unable to find any possible prejudicial error and hold Defendant's appeal is wholly frivolous. Accordingly, we affirm the trial court's judgments. However, our holding in this appeal "is without prejudice to Defendant's right to file a motion for appropriate relief in the superior court based upon an allegation of ineffective assistance of counsel." *Kinch*, 314 N.C. at 106, 331 S.E.2d at 669 (citations omitted).

AFFIRMED.

Judges STROUD and DIETZ concur.

Report per Rule 30(e).