

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-1250

Filed: 3 December 2019

Wake County, No. 16 CRS 211605

STATE OF NORTH CAROLINA

v.

HOWARD LAMAR GILLARD

Appeal by Defendant from judgment entered 26 June 2018 by Judge Michael J. O’Foghludha in Wake County Superior Court. Heard in the Court of Appeals 18 November 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

Mary McCullers Reece for Defendant-Appellant.

DILLON, Judge.

Defendant Howard Lamar Gillard appeals from a judgment entered upon his guilty plea to failure to notify the Sheriff of a change of address after being convicted of a reportable sex offense.

Counsel appointed to represent Defendant on appeal “is unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal”

STATE V. GILLARD

Opinion of the Court

and asks that this Court 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. Defendant has not filed any written arguments.

The State has filed a motion to dismiss defendant's appeal, arguing his guilty plea limits his right to appeal, and he has not raised an appealable issue in his brief. Nonetheless, Defendant has a statutory right to appellate review of certain issues, *see* N.C. Gen. Stat. § 15A-1444(a2), (e) (2017), and since defendant's counsel filed an *Anders* brief asking this Court to review the record for any possible appealable issue, we deny the State's motion to dismiss. *See State v. Hamby*, 129 N.C. App. 366, 369, 499 S.E.2d 195, 196 (1998) (conducting *Anders* review even though the defendant pled guilty and "brought forward no issues on appeal").

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom.¹ Upon a review of the record, we have been unable to find any possible prejudicial error, but have found that trial court failed to make findings of fact or conclusions of law that Defendant's prior out-

¹ Our review of potential error was limited to those issues for which an appeal of right is authorized by N.C. Gen. Stat. § 15A-1444 (2017). *See State v. Jamerson*, 161 N.C. App. 527, 528-29, 588 S.E.2d 545, 546-47 (2003).

STATE V. GILLARD

Opinion of the Court

of-state convictions were sufficiently similar to crimes in North Carolina. *See* N.C. Gen. Stat. § 15A-1340.14(e) (2017); *see also State v. Hanton*, 175 N.C. App. 250, 255, 623 S.E.2d 600, 604 (2006) (“We conclude that the question of whether a conviction under an out-of-state statute is substantially similar to an offense under North Carolina statutes is a question of law to be resolved by the trial court.”). Thus, we affirm the judgment against Defendant, but remand to the trial court for a new sentencing hearing. *See State v. Palmateer*, 179 N.C. App. 579, 581-82, 634 S.E.2d 592, 594 (2006).

AFFIRMED IN PART AND REMANDED IN PART.

Judges DIETZ and MURPHY concur.

Report per Rule 30(e).