

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-983

Filed: 2 July 2019

New Hanover County, Nos. 11 CRS 57565, 16 CRS 56954

STATE OF NORTH CAROLINA

v.

JOHNATHAN DALE STEVENS

Appeal by defendant from judgments entered 5 June 2018 by Judge Phyllis M. Gorham in New Hanover County Superior Court. Heard in the Court of Appeals 10 June 2019.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Karen A. Blum, for the State.*

*Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for defendant-appellant.*

ZACHARY, Judge.

On 24 October 2011, Defendant Johnathan Dale Stevens was indicted on charges of felony possession of marijuana, possession with intent to sell or deliver marijuana, and possession with intent to manufacture, sell, or deliver a Schedule I controlled substance. On 13 March 2012, Defendant pleaded guilty, pursuant to a plea agreement, to possession with intent to sell or deliver marijuana. The terms of

STATE V. STEVENS

*Opinion of the Court*

the plea arrangement stated that Defendant agreed to testify truthfully against a co-defendant if called upon to do so, and the trial court would enter a prayer for judgment on the charge of possession with intent to sell or deliver marijuana. The trial court entered the prayer for judgment in accordance with the plea agreement. Additionally, the charges of felony possession of marijuana and possession with intent to manufacture, sell, or deliver a Schedule I controlled substance were dismissed.

On 27 February 2017, Defendant was indicted on charges of trafficking in opium or heroin, possession with intent to manufacture, sell or deliver a Schedule I controlled substance, and possession of drug paraphernalia. On 4 June 2018, Defendant pleaded guilty pursuant to a plea agreement to trafficking in opium or heroin. Pursuant to the terms of the plea arrangement, several other pending charges, including the other charges for which he was indicted on 27 February 2017, were dismissed. On 5 June 2018, the trial court entered judgment and sentenced Defendant to a term of 225 to 282 months in the custody of the North Carolina Division of Adult Correction. On the same day, the State prayed judgment on Defendant's 2011 conviction for possession with intent to sell or deliver marijuana. The trial court sentenced Defendant to a concurrent term of 4 to 5 months' imprisonment. Defendant gave notice of appeal in open court.

Counsel appointed to represent Defendant has been unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and

STATE V. STEVENS

*Opinion of the Court*

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 guilty plea, Defendant's right of appeal was limited to the sentencing issues set forth in N.C. Gen. Stat. § 15A-1444(a1)-(a2) (2015). Here, however, for Defendant's conviction for trafficking in opium or heroin, Defendant was sentenced for drug trafficking pursuant to N.C. Gen. Stat. § 90-95, rather than under Structured Sentencing. Thus, Defendant has no cognizable ground for direct appeal as to this conviction under N.C. Gen. Stat. § 15A-1444(a1)-(a2), (e). See *State v. Saunders*, 131 N.C. App. 551, 553, 507 S.E.2d 911, 912 (1998) ("The punishment range set out in structured sentencing . . . does not control the minimum sentence when an applicable statute, such as N.C. Gen. Stat. § 90-95 in this case, requires or authorizes another minimum sentence."). As to Defendant's remaining conviction for possession with intent to sell or deliver marijuana, Defendant stipulated to his prior convictions and prior record level.

STATE V. STEVENS

*Opinion of the Court*

Furthermore, Defendant was sentenced within the presumptive range for a Class I, Level II felony offender.

Accordingly, we find no prejudicial error, conclude that the appeal is wholly frivolous, and affirm the judgments entered by the trial court.

AFFIRMED.

Judges STROUD and BERGER concur.

Report per Rule 30(e).