

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-386

No. COA20-732

Filed 20 July 2021

Rowan County, Nos. 16 CRS 52465, 67, 69

STATE OF NORTH CAROLINA

v.

DARREN LYNN JOHNSON, Defendant.

Appeal by defendant by writ of certiorari from judgments entered 14 February 2018 and resentencing on 5 June 2019 by Judge Lori Hamilton in Superior Court, Rowan County. Heard in the Court of Appeals 25 May 2021.

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

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for defendant-appellant.*

STROUD, Chief Judge.

¶ 1 Defendant filed an *Anders* brief requesting we review his case which resulted in the resentencing of multiple drug-related convictions. In 2018, defendant filed a prior appeal to this Court wherein he challenged his sentences, *State v. Johnson*, 265 N.C. App. 85, 827 S.E.2d 139 (2019) (“*Johnson I*”). Ultimately, this Court vacated defendant’s judgment and “remanded for resentencing.” *Johnson I*, 265 N.C. App. at

91, 827 S.E.2d at 143 (Original in all caps.). On 5 June 2019, defendant was resentenced, and he appeals.

¶ 2

The State notes defendant failed to give timely oral or written notice of appeal under North Carolina Rule of Appellate Procedure 4. *See generally* N.C. R. App. P. 4. Defendant acknowledges his failure to properly appeal and filed a petition for a writ of certiorari (“PWC”) requesting review. *See generally* N.C. R. App. P. 21(a)(1) (“The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists, or for review pursuant to N.C.G.S. § 15A-1422(c)(3) of an order of the trial court ruling on a motion for appropriate relief.”). We allow defendant’s PWC.

In 1967, the United States Supreme Court held that an attorney for an indigent criminal defendant, who after a conscientious examination of the record believes an appeal of his client’s conviction would be “wholly frivolous,” may so advise the appellate court in a brief to that court “referring to anything in the record that might arguably support the appeal.” *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493, 498 (1967); *see State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). The appellate court, after a full examination of the proceedings, is to then decide whether the appeal is wholly frivolous or has some merit. *Anders*, 386 U.S. at 744, 87 S.Ct. at 1400, 18 L.Ed.2d at 498; *Kinch*, 314 N.C. at 102, 331 S.E.2d at 667. The *Anders* brief, as it has come to be known, is grounded in the due process and equal protection clauses

STATE V. JOHNSON

2021-NCCOA-386

*Opinion of the Court*

of the United States Constitution and assures an indigent defendant the “same rights and opportunities on appeal . . . as are enjoyed by those persons who are in a similar situation but are able to afford the retention of private counsel.” *Anders*, 386 U.S. at 744–45, 87 S.Ct. at 1400–01, 18 L.Ed.2d at 498–99.

*In re May*, 153 N.C. App. 299, 301, 569 S.E.2d 704, 706-07 (2002), *aff’d*, 357 N.C. 423, 584 S.E.2d 271 (2003).

¶ 3

Defendant’s attorney has been unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and 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). We have fully examined the record to determine whether any issues of arguable merit appear but have been unable to find any possible prejudicial error and conclude that this appeal is wholly frivolous.

NO ERROR.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).