

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-290

No. COA20-734

Filed 15 June 2021

Lee County, No. 19 CRS 134

STATE OF NORTH CAROLINA

v.

AMANDA CHRISTINE TILLMAN

Appeal by defendant from order entered 10 December 2019 by Judge C. Winston Gilchrist in Lee County Superior Court. Heard in the Court of Appeals 25 May 2021.

*Attorney General Joshua H. Stein, by Associate Attorney General Jaren Kelly, for the State.*

*Meghan Adelle Jones for defendant-appellant.*

TYSON, Judge.

¶ 1

Amanda Christine Tillman (“Defendant”) appeals from the trial court’s order modifying her probation and imposing an active sentence as a condition of special probation. We dismiss.

**I. Background**

¶ 2 Defendant pled guilty pursuant to a plea arrangement to felony financial card theft, a class I felony, and misdemeanor financial card fraud on 3 July 2018. Defendant was sentenced as a Level II offender to a minimum of 6 months with a corresponding maximum of 17 months. Defendant was placed on 12 months of supervised probation and was ordered to pay \$4,661.91 restitution and \$275.00 in attorney’s fees.

¶ 3 Defendant first violated the conditions of her probation and her sentence was modified on 26 March 2019. At that time, the trial court extended Defendant’s term of probation for 12 months. Two months later, Defendant was served with a second probation violation report, alleging she had: (1) failed to report for an office visit; (2) was \$670 in arrears at the time of the violation report; and, (3) been charged with a new criminal offense.

¶ 4 Defendant’s probation violation hearing was held on 9 December 2019. The State proceeded only on the first two allegations. Defendant, through her appointed counsel, admitted both violations and their willfulness. The court found Defendant in willful violation and continued her probation. The court ordered Defendant “to serve a modified intermediate sentence of 120 days in DAC.” Nine days later, Defendant filed her written notice of appeal.

## **II. Jurisdiction**

¶ 5 Appeal from a judgment imposing special probation lies of right to this Court pursuant to N.C. Gen. Stat. § 15A-1347 (2019) and N.C. Gen. Stat. § 7A-27 (2019).

### III. *Anders* Brief

¶ 6 Defendant’s appellate counsel asserts she “is 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’s “no-merit letter” is “accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel’s brief [was] furnished the indigent and time [was] allowed [for] him to raise any points that he chooses[.]” *Anders v. California*, 386 U.S. 738, 744, 18 L. Ed. 2d 493, 498 (1967); see also *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). Counsel has shown to the satisfaction of this Court she has complied with the requirements of *Anders* by advising Defendant of her right to file written arguments with this Court and providing to her the documents necessary to do so. *Id.* Defendant has not filed any documents on her own behalf with this Court and a reasonable time for her to do so has expired.

¶ 7 Here, the State, relying on an unpublished and nonbinding opinion of this Court, asserts an *Anders* review is not constitutionally required for post-conviction matters. See *State v. Brown*, 261 N.C. App. 538, 817 S.E.2d 922, 2018 WL 4441309, at \*1 (2018) (unpublished) (noting “the United States Supreme Court has held that

an *Anders* review is not constitutionally required in post-conviction proceedings.”). However, in *Brown*, this Court in its discretion reviewed the record and determined no non-frivolous issue existed. *Id.* at \*2.

¶ 8

The Supreme Court of the United States makes it clear, a defendant is not entitled to an appellate court’s *Anders* review of their appeal, where the defendant is not entitled to counsel. *Pennsylvania v. Finley*, 481 U.S. 551, 554–55, 95 L. Ed. 2d 539, 545 (1987).

The holding in *Anders* was based on the underlying constitutional right to appointed counsel established in *Douglas v. California*, 372 U.S. 353, 9 L. Ed. 2d 811, 83 S. Ct. 814 (1963). Relying on “that equality demanded by the Fourteenth Amendment,” *id.*, at 358, 9 L. Ed. 2d, at 811, 83 S. Ct., at 814, the *Douglas* Court held that denial of counsel to indigents on first appeal as of right amounted to unconstitutional discrimination against the poor. In *Anders*, the Court held that in order to protect the “constitutional requirement of substantial equality and fair process” set out in *Douglas*, appointed appellate counsel must follow the procedures described above when a case appears to be frivolous. 386 U.S., at 744, 18 L. Ed. 2d, at 493, 87 S. Ct., at 1396. Of course, *Anders* did not set down an independent constitutional command that all lawyers, in all proceedings, must follow these particular procedures. Rather, *Anders* established a prophylactic framework that is relevant when, and *only when*, a litigant has a previously established constitutional right to counsel.

*Id.* at 554–55, 95 L. Ed. 2d at 545 (emphasis supplied).

¶ 9

In North Carolina, defendants have a statutory right, not a constitutional right, to counsel for post-conviction proceedings. N.C. Gen. Stat. § 15A-1347(a) (2019)

provides a statutory right of appeal for a defendant “[w]hen a superior court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation[.]”

¶ 10 Here, we decline to conduct an *Anders* review of Defendant’s appeal where she has no constitutional right to counsel. Defendant’s appeal is dismissed.

#### **IV. Conclusion**

¶ 11 Defendant is not entitled to an *Anders* review of her record on appeal. No other issues were presented in Defendant’s brief. “Issues not presented and discussed in a party’s brief are deemed abandoned.” N.C. R. App. P. 28(a). Her appeal is dismissed.

*It is so ordered.*

DISMISSED.

Judges MURPHY and JACKSON concur.

Report per Rule 30(e).