

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-895

No. COA22-250

Filed 20 December 2022

Guilford County, Nos. 20CRS65092-95

STATE OF NORTH CAROLINA

v.

TARIQ KAMAL WOODS, Defendant.

Appeal by defendant from judgment entered 22 September 2021 by Judge Martin B. McGee in Guilford County Superior Court. Heard in the Court of Appeals 4 October 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Charles G. Whitehead, for the State-appellee.

Vitrano Law Offices, PLLC, by Sean P. Vitrano, for defendant-appellant.

GORE, Judge.

¶ 1

Defendant petitions for writ of certiorari for this Court to review the judgment against him in which he pled guilty under an *Alford* plea for multiple offenses charged on 1 January 2020. *See North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed. 2d 162 (1970). The State agreed to dismiss defendant's multiple charges and consolidate the remaining offenses into one trafficking offense with an active term per an *Alford* plea

agreement. Accordingly, the trial court consolidated the offenses and sentenced defendant to active imprisonment for 90–120 months. Defendant orally appealed upon conviction.

¶ 2 Defense counsel filed a brief pursuant to *Anders v. California* and *State v. Kinch*, stating upon review of the record he could not identify any issues with merit for this Court’s consideration. *Anders*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967); *Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985). Accordingly, counsel requests this Court review the record for any potential prejudicial error. Counsel complied with the requirements set out in *Anders* and *Kinch* by advising defendant of his right to file any arguments with this Court and by providing the resources to do so. *See Kinch*, 314 N.C. at 102, 331 S.E.2d at 666–67. Defendant failed to file a supplemental argument.

¶ 3 Defendant has a limited right to appeal due to his *Alford* plea under Section 15A-1444(e) and his failure to preserve the right to appeal the order denying his motion to suppress evidence under Section 15A-979. *See* N.C. Gen. Stat. § 15A-1444(e) (2019); N.C. Gen. Stat. § 15A-979 (2019). The State filed a Motion to Dismiss defendant’s appeal because defendant failed to challenge the trial court’s denial of defendant’s motion to suppress prior to the plea negotiation. Under Section 15A-979, a defendant has a right to appeal a trial court’s ruling on a motion to suppress, but defendant only preserves the right by notifying the State and the court of his intent

to appeal prior to concluding any plea negotiations. *State v. Tew*, 326 N.C. 732, 735, 392 S.E.2d 603, 605 (1990); *see* N.C. Gen. Stat. § 15A-979. Defendant waives this right when he fails to give notice. *Tew*, 326 N.C. at 735, 392 S.E.2d at 605.

¶ 4

“A petition for the [writ of certiorari] must show merit or that error was probably committed below. . . . Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959). Upon review, we deny the State’s Motion to Dismiss defendant’s appeal and grant defendant’s petition for writ of certiorari in part as to certain issues raised in which defendant has a statutory right to appellate review. *See* N.C. Gen. Stat. § 15A-1444(a1)–(a2); *State v. Hamby*, 129 N.C. App. 366, 368, 499 S.E.2d 195, 196 (1998) (stating the limited circumstances for appealing of right when defendant enters a guilty plea). This Court will not review the appeal of defendant’s motion to suppress, as previously stated, since he waived this right. *See Tew*, 326 N.C. at 735, 392 S.E.2d at 605.

¶ 5

Defendant raised the following issues on appeal for this Court to consider through an *Anders* review: (1) whether the indictment was sufficient to confer subject matter jurisdiction to charge the offense and result in defendant’s conviction; (2) whether defendant’s *Alford* guilty plea was knowing, intelligent, and voluntary; (3) whether the trial court properly calculated defendant’s record level; and (4) whether the imposed sentence is authorized by statute. Once the petition is granted, an

Anders review requires “a full examination of all the proceedings[,] including a review [of] the legal points appearing in the record, transcript, and briefs, not for the purpose of determining their merits (if any) but to determine whether they are wholly frivolous.” *State v. Robinson*, 279 N.C. App. 643, 646, 2021-NCCOA-533, ¶ 11 (internal quotation marks and citations omitted).

¶ 6 This Court reviewed the whole record for any prejudicial error, including the issues suggested by defense counsel. Defendant’s indictments align with statutory requirements and are free of prejudicial error. Defendant and the State stipulated to defendant’s prior convictions, points, and record level. The trial court fulfilled its obligation to advise defendant on his rights and the effects of an *Alford* guilty plea; it appears defendant entered into the same knowingly, intelligently, and voluntarily. The trial court properly sentenced defendant pursuant to Section 15A-1340.15(b) by consolidating the offenses and sentencing defendant within the guidelines for a single judgment of a trafficking offense and pursuant to defendant’s *Alford* guilty plea. *See* N.C. Gen. Stat. § 15A-1340.15 (2019); N.C. Gen. Stat. § 90-95(h)(4)(b) (2019). After complete review, we determine there is no prejudicial error and affirm the judgment.

AFFIRMED.

Chief Judge STROUD and Judge MURPHY concur.

Report per Rule 30(e).