

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-873

No. COA22-562

Filed 20 December 2022

Chatham County, Nos. 18 CRS 482–87

STATE OF NORTH CAROLINA

v.

TONY ALSTON

Appeal by defendant from order entered 24 March 2021 by Judge Alyson Adams Grine in Chatham County Superior Court. Heard in the Court of Appeals 16 November 2022.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Kristin J. Uicker, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Daniel Shatz, for defendant-appellant.*

ZACHARY, Judge.

¶ 1 Defendant Tony Alston appeals from an order denying his motion to locate and preserve evidence and for postconviction DNA testing. Counsel for Defendant filed an *Anders* brief. After careful review, we affirm.

¶ 2 On 24 April 2019, Defendant and the State entered into a negotiated plea agreement pursuant to the terms of which, in exchange for one active, consolidated

sentence, Defendant agreed to plead guilty to multiple counts of the following charges: sexual activity by a substitute parent or custodian; attempted statutory sex offense with a child 15 years of age or younger; attempted statutory rape of a child 15 years of age or younger; and indecent liberties with a child. The trial court accepted the plea agreement and entered judgment in accordance with its terms, sentencing Defendant to a term of 125 to 210 months in the custody of the North Carolina Division of Adult Correction.

¶ 3 On 25 February 2021, Defendant filed a *pro se* motion to locate and preserve evidence and for postconviction DNA testing, as well as a memorandum of innocence. The trial court summarily denied the motion in an order entered on 24 March 2021. Defendant timely filed notice of appeal from the order pursuant to N.C. Gen. Stat. § 15A-270.1 (2021).

¶ 4 Counsel appointed to represent Defendant on appeal has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, *reh'g denied*, 388 U.S. 924, 18 L. Ed. 2d 1377 (1967), indicating that he was “unable to identify any issue with sufficient merit to support a meaningful argument for relief[,]” *see State v. Velasquez-Cardenas*, 259 N.C. App. 211, 225, 815 S.E.2d 9, 18 (2018) (“Our precedent establishes that this Court has *both* jurisdiction *and* the authority to decide whether *Anders*-type review should be prohibited, allowed, or required in appeals from [N.C. Gen. Stat.] § 15A-270.1. Exercising this discretionary authority, we hold that *Anders* procedures

apply to appeals pursuant to [N.C. Gen. Stat.] § 15A-270.1.”). Counsel requests that this Court conduct its own review of the record for possible prejudicial error. Counsel has also demonstrated to the satisfaction of this Court that he has complied with the requirements of *Anders* and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising Defendant of his right to file arguments with this Court and providing him with the documents necessary to do so.

¶ 5 Defendant has not filed any written arguments with this Court, and a reasonable time for him to do so has passed.

¶ 6 “Under our review pursuant to *Anders* and *Kinch*, we must determine from a full examination of all the proceedings whether the appeal is wholly frivolous.” *State v. Frink*, 177 N.C. App. 144, 145, 627 S.E.2d 472, 473 (2006) (citation and internal quotation marks omitted). As required by *Anders* and *Kinch*, we have conducted a full examination of the record for any issue with arguable merit. We have been unable to find any error, and we conclude that this appeal presents no issue that might entitle Defendant to relief. Accordingly, we affirm the trial court’s order denying Defendant’s motion to locate and preserve evidence and for postconviction DNA testing.

AFFIRMED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).