

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-807

Filed 19 March 2024

Bertie County, Nos. 18 CRS 050604, 050612

STATE OF NORTH CAROLINA

v.

TELLY LANETTE SWAIN, Defendant.

Appeal by Defendant from judgment entered 18 January 2023 by Judge Cy A. Grant, Sr., in Bertie County Superior Court. Heard in the Court of Appeals 5 March 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Kellie E. Army, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for Defendant.

GRIFFIN, Judge.

Defendant Telly Lanette Swain appeals from a judgment entered after a jury found him guilty of possession of a firearm by a felon; discharging a firearm into an occupied building; and assault with a deadly weapon inflicting serious injury. Defense counsel filed an *Anders* brief on behalf of Defendant, asking this Court to

STATE V. SWAIN

Opinion of the Court

conduct an independent review of the proceedings to determine whether any meritorious issues exist.

On 9 December 2018, Daniel Bennett was performing at the Blue Light Lounge Club in Windsor, North Carolina. His wife, Patricia Bennett, was working the door, collecting the entrance fee. Carlos Young was working as security. Defendant was at the club and got into a physical altercation with another man. Young grabbed Defendant in a bear hug and escorted him out of the club. At that time, Defendant began struggling to get away from Young. Defendant then pulled a gun. Defendant fired the gun, shooting Patricia Bennett in the chest. Defendant was arrested and charged with discharging a weapon into an occupied property; two counts of assault with a deadly weapon with intent to kill inflicting serious injury; possession of a firearm by a felon; and habitual felon.

On 17 January 2023, the matter came on for jury trial. Upon a motion by Defendant, the court dismissed one count of assault with a deadly weapon with intent to kill inflicting serious injury and, as to the other count, submitted only the lesser-included offense of assault with a deadly weapon inflicting serious injury. On 18 January 2023, the jury returned a verdict finding Defendant guilty on all charges. Defendant admitted to attaining habitual felon status and was sentenced to 127-165 months' imprisonment, a consecutive term of 127-165 months' imprisonment, and a concurrent term of 127-165 months' imprisonment.

Defendant gave notice of appeal in open court.

STATE V. SWAIN

Opinion of the Court

Defendant's counsel filed a brief, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), asking this Court to conduct a full and independent review of the record to determine whether any meritorious issue or reversible error exists. Defendant's counsel presented three potential issues: (1) Whether there was sufficient evidence to establish assault with a deadly weapon inflicting serious injury; (2) Whether Defendant's prior record level was calculated properly; and (3) Whether the sentences imposed were authorized by statute.

Pursuant to *Anders* and *Kinch*, we must conduct a full examination of the proceedings to determine whether Defendant's appeal is wholly frivolous. *Anders*, 386 U.S. at 744; *see also Kinch*, 314 N.C. at 102–03, 331 S.E.2d at 667 (“[W]e [] review 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.” (citation omitted)).

After conducting a full and independent examination of the record, we hold the record contains no meritorious issue which would entitle Defendant to relief. As such, we conclude the appeal is wholly frivolous and dismiss the appeal.

DISMISSED.

Judges HAMPSON and STADING concur.

Report per Rule 30(e).