

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-906

Filed 16 April 2024

Lee County, No. 22CR316313-520

STATE OF NORTH CAROLINA

v.

WALLACE LYNDALE HAWTHORNE, Defendant.

Appeal by defendant from judgment entered 30 March 2023 by Judge C. Winston Gilchrist in Lee County Superior Court. Heard in the Court of Appeals 20 March 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Elizabeth Branch Jenkins, for the State-appellee.*

*Hynson Law, PLLC, by Warren D. Hynson, for defendant-appellant.*

GORE, Judge.

Defendant appeals the final judgment and sentence imposed after an *Alford* plea for the charge of knowingly and intentionally maintaining a dwelling place for keeping and selling cocaine. Defendant concedes that his notice of appeal is untimely and petitions for writ of certiorari. The State filed a motion to dismiss the appeal.

STATE V. HAWTHORNE

*Opinion of the Court*

For the following reasons, we grant the State’s motion and deny the petition for writ of certiorari.

**I.**

On 5 December 2022, Wallace Hawthorne was indicted for trafficking in cocaine by possession, possession with intent to sell and or deliver (“PWISD”) cocaine, knowingly and intentionally keeping and maintaining a dwelling place for keeping and selling controlled substances, and PWISD cocaine within 1000 feet of a childcare center. On 29 March 2023, defendant entered an *Alford* plea for the charge of knowingly and intentionally keeping and maintaining a dwelling place for keeping and selling cocaine. Pursuant to the plea arrangement, the State dismissed the remaining charges. On 29 March 2023, defendant was sentenced to a term of 6 to 17 months imprisonment, suspended upon 12 months of supervised probation. Defendant filed a written notice of appeal. On 4 December 2023, defendant filed a petition for writ of certiorari. On 14 December 2023, the State filed a motion to dismiss the appeal.

**II.**

The State argues, and defendant concedes, that defendant’s untimely notice of appeal violates Rule 4 of the North Carolina Rules of Appellate Procedure, and therefore bars direct appeal. *See State v. Hughes*, 210 N.C. App. 482, 484 (2011) (“A jurisdictional default . . . precludes the appellate court from acting in any manner other than to dismiss the appeal . . . .”) (citation omitted); *see also* N.C.R. App. P. 4(a).

STATE V. HAWTHORNE

*Opinion of the Court*

However, it is not necessary to address any Rule 4 violation because “[a] defendant entering an *Alford* plea has no statutory right to appeal the trial court’s judgment.” *State v. Williams*, 265 N.C. App. 657, 659 (2019). Criminal defendants who plead guilty to a criminal charge in superior court are only entitled to appeal as a matter of right on issues regarding sentencing, but may however, petition for review by writ of certiorari. N.C.G.S. § 15A-1444 (2023). Defendant in this case is petitioning this Court for review of the final judgment entered against him by writ of certiorari, pursuant to section 15A-1444(e) and Rule 21.

Appellate Rule 21(a)(1) allows for the issuance of writs of certiorari “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 . . . .” N.C.R. App. P. 21(a)(1). “Certiorari, . . . is an extraordinary remedial writ” reserved “to correct errors of law or to cure a manifest injustice.” *State v. Woolard*, 385 N.C. 560, 568 (2023) (cleaned up). This Court has the discretion to grant or deny the petition. *Id.* “[A] petitioner must show merit or that error was probably committed below” for this Court to grant certiorari. *Id.*

Defendant’s sole issue on appeal is whether the trial court erroneously accepted defendant’s *Alford* plea absent a sufficient factual basis proffered by the State to support the plea. “A judge may not accept a defendant’s guilty plea without first determining that there is a factual basis for the plea.” *State v. Weathers*, 339 N.C. 441, 453 (1994) (citing N.C.G.S. § 15A-1022(c) (1988)). However, this issue is

## STATE V. HAWTHORNE

### *Opinion of the Court*

unpreserved for appellate review because defendant failed to object to the factual basis for the guilty plea before the trial court. “It is the general rule that failure to object to an alleged error in the trial court waives the consideration of such error on appeal.” *State v. Degree*, 110 N.C. App. 638, 642 (1993). To preserve an issue for appellate review, under Rule 10, “a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(a)(1).

In the present case, when asked by the trial judge if defendant would like to be heard further about the factual basis from the State, counsel for defendant responded “No, Your Honor. I will stipulate to a factual basis for the purpose of the plea.” *See State v. Kimble*, 141 N.C. App. 144, 146–47 (2000) (holding in part that an issue was unpreserved because the defendant neither objected during the plea hearing nor argued at the trial level the insufficiency of the “State’s summary of the factual basis for the entry of judgment”). Because this issue was not raised before the trial court, it is unpreserved. Accordingly, defendant has failed to show good and sufficient cause to issue a writ of certiorari.

### **III.**

For the foregoing reasons, we lack jurisdiction to consider defendant’s argument on direct appeal. We further decline to issue a writ of certiorari. Therefore, we grant the State’s motion to dismiss.

STATE V. HAWTHORNE

*Opinion of the Court*

DISMISSED.

Chief Judge DILLON and Judge COLLINS concur.

Report per Rule 30(e).