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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-316

Filed: 15 December 2015

Guilford County, No. 12CRS078766-67

STATE OF NORTH CAROLINA

v.

SOLOMON LEE-WARREN GRAVES, Defendant.

Appeal by Defendant from judgment entered 10 November 2014 by Judge Lindsay R. Davis, Jr., in Guilford County Superior Court. Heard in the Court of Appeals 24 September 2015.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Richard G. Sowerby, for the State.

Marie H. Mobley for the Defendant.

DILLON, Judge.

Solomon Lee-Warren Graves (“Defendant”) appeals from the judgment of the trial court on resentencing. We affirm.

I. Background

Defendant was convicted by a jury of (1) assault inflicting serious injury and (2) assault on a female. He received a consolidated prison sentence within the presumptive range of twenty-eight (28) to forty-three (43) months. On a prior appeal,

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this Court vacated the assault on a female conviction and remanded the matter to the trial court for resentencing. *See State v. Graves*, ___ N.C. App. ___, 761 S.E.2d 754, 2014 WL 2123215, *7 (2014) (unpublished decision).

On remand, Defendant was resentenced to the same term of imprisonment (twenty-eight (28) to forty-three (43) months), within the presumptive range for the remaining conviction. Defendant timely appealed.

II. Analysis

On appeal, Defendant argues that the trial court erred by denying his request to appoint new counsel for the resentencing hearing following the first appeal. We disagree.

During the resentencing hearing, the trial court inquired whether Defendant's attorney wished to be heard, and he indicated that he did not. Likewise, the State indicated that it did not wish to be heard. Before the trial court pronounced sentence, however, Defendant interjected, stating that he wanted to "fire" his attorney and be appointed new counsel because his attorney failed to call Defendant's wife to testify; failed to subpoena various witnesses to testify on his behalf; and failed to present certain arguments in support of the mitigation of Defendant's sentence.

The trial court denied Defendant's oral motion to substitute counsel, but expressly indicated that this denial was *without prejudice* to Defendant's right to file a motion for appropriate relief (an "MAR").

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Our Supreme Court has held that a “trial court is constitutionally required to appoint substitute counsel whenever representation by counsel originally appointed would amount to denial of defendant’s right to effective assistance of counsel[.]” *State v. Thacker*, 301 N.C. 348, 352, 271 S.E.2d 252, 255 (1980). Also, “when it appears to the trial court that the original counsel is reasonably competent to present defendant’s case and the nature of the conflict between defendant and counsel is not such as would render counsel incompetent or ineffective to represent *that* defendant, denial of defendant’s request to appoint substitute counsel is entirely proper.” *Id.* (emphasis added). Finally, “a disagreement over trial tactics generally does not render the assistance of the original counsel ineffective.” *Id.*

Here, Defendant argues that the trial court should have granted his motion because he was provided ineffective assistance of counsel during his resentencing. The record before us is inadequate to conduct a review of this issue. For instance, there is no indication as to the testimony that would have been given on Defendant’s behalf at the resentencing hearing. Therefore, we affirm the trial court’s order. Our holding is without prejudice to any right Defendant may have to file an MAR in the trial court, as was indicated by the trial court when it denied Defendant’s motion.

AFFIRMED.

Judges HUNTER, JR., and DIETZ concur.

Report per Rule 30(e).