

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1293

Filed: 2 August 2016

Mecklenburg County, No. 14 CRS 4423-4426

STATE OF NORTH CAROLINA

v.

DAMON J. GARRISON, Defendant.

Appeal by defendant from Judgment entered 8 May 2015 by Judge Linwood O. Foust in Mecklenburg County Superior Court. Heard in the Court of Appeals 8 June 2016.

Attorney General Roy Cooper, by Special Deputy Attorney General Hilda Burnett-Baker, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant.

ELMORE, Judge.

Damon Garrison (defendant) appeals from his convictions, arguing that the trial court did not engage in the proper inquiry under N.C. Gen. Stat. § 15A-1242 (2015) before permitting him to proceed *pro se*. After careful review, we agree and conclude that defendant is entitled to a new trial.

I. Background

On 3 February 2014, defendant was indicted for possession of drug

paraphernalia, felony possession of a schedule VI controlled substance,¹ maintaining a place to keep controlled substances, and manufacturing a controlled substance. Defendant was initially provided with court-appointed counsel. On 17 July 2014, however, defendant's counsel filed a motion to withdraw, stating that defendant "would like to present the strategy." After a hearing, the Honorable Lisa C. Bell allowed the motion.

The case came on for trial at the 6 May 2015 Criminal Session of the Superior Court of Mecklenburg County, the Honorable Linwood O. Foust presiding. Defendant was not represented by counsel. On 8 May 2015, the jury returned verdicts finding defendant guilty of all charges. The trial court suspended defendant's sentence of four to fourteen months' imprisonment and placed him on twelve months' supervised probation. Defendant timely appeals.

II. Analysis

Defendant argues that the trial court did not comply with the requirements of N.C. Gen. Stat. § 15A-1242 before permitting him to proceed *pro se*.

We review a trial court's decision to permit a defendant to represent himself *de novo*. *State v. Watlington*, 216 N.C. App. 388, 393–94, 716 S.E.2d 671, 675 (2011). "A criminal defendant's right to representation by counsel in serious criminal matters is guaranteed by the Sixth Amendment to the United States Constitution and Article

¹ Prior to trial, the trial court granted the State's motion to amend this charge to misdemeanor possession.

STATE V. GARRISON

Opinion of the Court

I, §§ 19, 23 of the North Carolina Constitution.” *State v. Hyatt*, 132 N.C. App. 697, 702, 513 S.E.2d 90, 94 (1999) (citing *Gideon v. Wainwright*, 372 U.S. 335 (1963)). A criminal defendant also “‘has a right to handle his own case without interference by, or the assistance of, counsel forced upon him against his wishes.’” *Id.* (quoting *State v. Mems*, 281 N.C. 658, 670–71, 190 S.E.2d 164, 172 (1972)). “The trial court, however, must insure that constitutional and statutory standards are satisfied before allowing a criminal defendant to waive in-court representation.” *Id.* (citing *State v. Thomas*, 331 N.C. 671, 673, 417 S.E.2d 473, 475 (1992)).

Relevant here, N.C. Gen. Stat. § 15A-1242 (2015) states,

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

This Court has previously held that “[t]he inquiry is a mandatory one, and failure to conduct it is prejudicial error.” *State v. Godwin*, 95 N.C. App. 565, 572, 383 S.E.2d 234, 238 (1989) (citing *State v. Bullock*, 316 N.C. 180, 185–86, 340 S.E.2d 106, 108–09 (1986)); *see also State v. Stanback*, 137 N.C. App. 583, 586, 529 S.E.2d 229, 231 (2000) (holding that “because it is prejudicial error to allow a criminal defendant

to proceed *pro se* without making the inquiry required by section 15A-1242, Defendant must be granted a new trial”).

Defendant argues that the trial court did not conduct any of the three required inquiries under N.C. Gen. Stat. § 15A-1242(1)–(3). The State concedes error under N.C. Gen. Stat. § 15A-1242(3), noting that defendant was not advised of the range of permissible punishments and admitting that a new trial is warranted. After a thorough review of the transcripts, we agree and conclude that the trial court failed to make an inquiry sufficient to satisfy itself that defendant comprehended the range of permissible punishments under N.C. Gen. Stat. § 15A-1242(3). Accordingly, as the inquiry is a mandatory one, the trial court’s failure to satisfy the statutory requirements before permitting defendant to proceed *pro se* constitutes prejudicial error. *See Godwin*, 95 N.C. App. at 572, 383 S.E.2d at 238. Because we conclude that defendant is entitled to a new trial, we do not reach his second argument on a challenged jury instruction.

III. Conclusion

The trial court failed to comply with N.C. Gen. Stat. § 15A-1242 before permitting defendant to proceed *pro se*. As a result, defendant is entitled to a new trial.

NEW TRIAL.

Judges DAVIS and DIETZ concur.