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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1305

Filed: 5 July 2017

Brunswick County, No. 12 CRS 55968

STATE OF NORTH CAROLINA

v.

RICHARD HUGH GRISSETT

Appeal by defendant from order entered 30 August 2016 by Judge Ola M. Lewis in Brunswick County Superior Court. Heard in the Court of Appeals 19 June 2017.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Richard L. Harrison, for the State.*

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

DIETZ, Judge.

Defendant Richard Hugh Grissett appeals from the trial court's order denying his *pro se* motion for postconviction DNA testing. After reviewing Grissett's motion, the court declined to appoint counsel for Grissett and declined to conduct an evidentiary hearing on the motion. The trial court found that Grissett "has failed to

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meet his burden of showing any evidence resulting from the DNA testing being sought would be material.” Grissett timely appealed.

Counsel appointed to represent Grissett on appeal has been unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has shown to the satisfaction of this Court that he has complied with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising Grissett of his right to file written arguments with this Court and providing him with the documents necessary for him to do so.

On 21 February 2017, Grissett filed an “Addendum to Defendant-Appellant’s Brief” in which he raises his own written arguments. Grissett contends that the evidence cited in his motion “represent[s] evidentiary components that either clearly contain or could possibly contain biological evidence relevant to his prosecution” and that “failure to allow for DNA testing in the matter at bar could effectively prevent Defendant from having an opportunity to exercise his fundamental right to present a complete defense, as such could possibly establish his innocence.”<sup>1</sup>

Grissett’s motion was made pursuant to N.C. Gen. Stat. § 15A-269, which permits DNA testing only if the defendant shows that the biological evidence is

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<sup>1</sup> Defendant additionally appears to briefly argue that his confession was involuntary. This argument is not properly before this Court.

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“material to the defendant’s defense.” N.C. Gen. Stat. § 15A-269(a)(1). A defendant’s burden to show materiality under this statutory provision requires more than mere conclusory statements. *State v. Gardner*, 227 N.C. App. 364, 369, 742 S.E.2d 352, 356 (2012). Here, Grissett relies entirely on the conclusory assertion that DNA testing of the evidence he identifies might show that other individuals were present at the time of the robbery and murder. This conclusory assertion is insufficient to satisfy N.C. Gen. Stat. § 15A-269. Accordingly, the court did not err by denying Grissett’s motion.

AFFIRMED.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).