IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1226

Filed: 2 October 2018

Wake County, Nos. 14 CRS 202985, 2274

STATE OF NORTH CAROLINA

v.

WILLIAM SAKON PARKER

Appeal by defendant from judgment entered 16 September 2016 by Judge Michael R. Morgan in Wake County Superior Court. Heard in the Court of Appeals 9 August 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Marie Hartwell Evitt, for the State.

Michael E. Casterline for defendant.

DIETZ, Judge.

Defendant William Sakon Parker appeals his conviction for willfully failing to register a new address as required by North Carolina's sex offender registry statute. Parker, who represented himself at trial, challenges the trial court's instructions to the jury in response to questions during the jury's deliberations. Parker did not object to these instructions in the trial court.

As explained below, Parker's first argument is waived because it involves a discretionary decision not subject to plain error review on appeal. Parker's second argument fails because Parker has not shown error, and certainly not error sufficient to satisfy the plain error standard.

Facts and Procedural History

On 26 March 2007, Defendant William Parker registered as a sex offender following a conviction for indecent liberties with a child. Our State's sex offender registry law required Parker to notify the local sheriff's office when Parker changed his address. N.C. Gen. Stat. § 14-208.9(a).

In November 2013, Parker reported his address as the South Wilmington Street Center, a shelter for homeless men in Raleigh. In February 2014, the Center notified the Wake County Sheriff's Office that Parker had not resided there since December 2013. Law enforcement repeatedly visited the Center to look for Parker, but no one at the Center knew where he was. Law enforcement also tried calling Parker, but the only updated number they had on file for him was the Center's main line. On 19 February 2014, law enforcement located and arrested Parker for violating N.C. Gen. Stat. § 14-208.9(a) for failing to register a new address within three days of leaving the Center.

Parker's case went to trial, and he represented himself with the public defender as stand-by counsel. The State presented testimony showing that Parker

did not reside at the Center for nearly a month and failed to notify the sheriff's office of his change in living arrangements. Parker testified that he lost his assigned bed while waiting for an apartment to become available, forcing him to sleep outside on the Center's property, on the street, or in his friends' cars.

At the charge conference, the trial court instructed the jury on willful failure to register as a sex offender, including the elements of willfully changing "address" and failing to provide notice pursuant to N.C. Gen. Stat. § 14-208.9. During deliberations, the jury requested an additional instruction defining the word "address" as used in the statute. The court replied that "the jury charge I gave you in terms of my verbal instructions to you will have what it is that you need to know in terms of any direction as to the term address within the context of what your responsibilities are as jurors." Parker did not object to the trial court's response.

Further into deliberations, the jury sent a note to the court stating that they had reached an eleven-to-one impasse. The trial court informed counsel of the impasse and then instructed the jury to continue deliberations, using a slight variation of the language from the pattern jury instruction governing failure to reach a unanimous verdict and continued deliberations.

The jury continued its deliberations and later found Parker guilty. Parker then pleaded guilty to obtaining habitual felon status, and the trial court sentenced him to 50 to 72 months in prison. Parker timely appealed.

Analysis

I. Jury's request for further instruction on the word "address"

Parker first argues that the trial court erred in denying the jury's request for clarification of the meaning of the word "address" and instead instructing the jury to rely on the court's original instructions.

When the jury, during deliberations, asks the trial court for further explanation of the law or the court's instructions, the court may respond by giving additional instructions. N.C. Gen. Stat. § 15A-1234. The court also may reinstruct the jury on issues already covered by the original jury charge. *Id.* "[T]he trial court is in the best position to determine whether further additional instruction will aid or confuse the jury in its deliberations, or if further instruction will prevent or cause in itself an undue emphasis being placed on a particular portion of the court's instructions." *State v. Guarascio*, 205 N.C. App. 548, 563–64, 696 S.E.2d 704, 715 (2010) (citations omitted). "Thus, a trial court's decision to grant or deny the jury's request for additional instruction is reviewed by this Court only for an abuse of discretion." *Id.*

Parker did not object to the court's decision not to give the jury additional instructions concerning the meaning of the word "address." Thus, we can review this instructional issue, if at all, only for plain error. N.C. R. App. P. 10. But matters left to the trial court's discretion are not subject to plain error review. *State v. Steen*, 352

N.C. 227, 256, 536 S.E.2d 1, 18 (2000). Instead, unpreserved arguments concerning discretionary decisions are deemed "waived" and cannot be reviewed on appeal. *Id.* Accordingly, we reject Parker's argument because it is procedurally barred.

II. Jury instruction concerning further deliberations and deadlock

Parker next challenges the trial court's instruction to the jury after the jury informed the court that it was unable to reach a unanimous verdict because one juror disagreed with the remaining eleven jurors. Parker argues that the trial court's instruction, which purported to follow the applicable pattern jury instruction, omitted key language and put undue pressure on the holdout juror.

Because Parker did not object at trial, we must review this matter for plain error. *State v. Williams*, 315 N.C. 310, 327, 338 S.E.2d 75, 86 (1986). "For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). "To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty." *Id.* In other words, the defendant must "show that, absent the error, the jury probably would have returned a different verdict." *Id.* at 519, 723 S.E.2d at 335. In addition, our Supreme Court has emphasized that we should invoke the plain error doctrine "cautiously and only in the exceptional case"

where the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Id.* at 518, 723 S.E.2d at 334.

The General Assembly has, by statute, described the instructions that a trial court should provide to a deadlocked jury when instructing them to continue deliberations. N.C. Gen. Stat. § 15A-1235(b). The statute provides that the trial court should inform the jury that:

> (1) Jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment;
>
> (2) Each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors;
>
> (3) In the course of deliberations, a juror should not hesitate to reexamine his own views and change his opinion if convinced it is erroneous; and
>
> (4) No juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

Id. Our Supreme Court has held that if a trial court instructs the jury to continue to deliberate in this manner, the court must inform the jury of all four factors listed in this statute. *State v. Aiken*, 342 N.C. 567, 579, 467 S.E.2d 99, 106 (1996).

Here, after the jury informed the trial judge that they had reached an eleven-to-one impasse, the trial judge gave the jury the following instruction, which is a slight variation of the applicable pattern jury instruction:

> The Court wants to emphasize the fact that it is your duty to do whatever you can to reach a verdict. You should reason the matter over together as reasonable men and women and to reconcile your differences, if you can, without the surrender of conscientious convictions. But no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of his or her fellow jurors or for the mere purpose of returning a verdict.

We agree with Parker that this instruction omitted the language in subsection (b)(3) of the statute concerning jurors' duty not to hesitate to reexamine their own views and change their opinion if convinced it is erroneous. But in *Aiken*, the Supreme Court emphasized that, even if the trial court's instruction improperly omitted one of the statutory factors, the error is harmless so long as the court's instruction as a whole did not coerce the jury to reach a unanimous verdict against their convictions. *Aiken*, 342 N.C. at 580, 467 S.E.2d at 107. The court's instruction in this case was analogous to the one in *Aiken* and was not coercive.

In any event, we are reviewing not for ordinary error, but for plain error. Parker has not shown that this alleged error probably affected the outcome of the jury's deliberations or that this alleged error transformed the trial into the type of "extraordinary" case that calls into question the fairness or integrity of the criminal justice system. *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. Accordingly, we find no error in the trial court's instruction and certainly no plain error.

Conclusion

We find no error in the trial court's judgment.

NO ERROR.

Judges TYSON and BERGER concur.

Report per Rule 30(e).