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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-822

Filed: 17 March 2020

Mecklenburg County, Nos. 17 CRS 21200, 212002, 212003

STATE OF NORTH CAROLINA

v.

KENNETH J. FIELDS

Appeal by defendant from order entered 29 March 2019 by Judge Casey M. Viser and judgment entered 8 April 2019 by Judge Gregory R. Hayes in Mecklenburg County Superior Court. Heard in the Court of Appeals 19 February 2020.

*Mary McCullers Reece for defendant.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.*

ARROWOOD, Judge.

Defendant's Petition for Writ of Certiorari requests our review of the trial court's order finding forfeiture of his right to counsel and judgment sentencing defendant upon his guilty plea to several counts of trafficking heroin. For the following reasons, we deny defendant's petition and dismiss the appeal.

I. Discussion

Defendant argues that the terms of his plea arrangement were not knowing and voluntary because a material term of the plea reserved a right of appeal from the trial court's order finding forfeiture of counsel, from which there is no right of appeal upon entry of a guilty plea. *State v. Ledbetter*, 371 N.C. 192, 195-97, 814 S.E.2d 39, 41-43 (2018) (citing N.C. Gen. Stat. § 15A-1444(e) (2019) (limiting appeals of right after entry of guilty plea to several enumerated circumstances not relevant in this case)). Thus, defendant contends that his plea bargain is invalid because he did not receive the benefit of his bargain. Defendant's argument is unpersuasive. We find that the terms of defendant's guilty plea did not purport to reserve any ability to exercise an appeal of right from the court's forfeiture of counsel order, and that his challenge to this order is without merit.

First, the terms of defendant's guilty plea do not expressly purport to reserve him any appeal of right from the trial court's order finding forfeiture of counsel. Defendant correctly notes that this Court's only means of reviewing such an order after a guilty plea is by our discretionary exercise of certiorari. *Id.* (citing N.C. Gen. Stat. § 15A-1444(e)). The trial court communicated the essence of this principle to defendant. The court advised defendant that "you won't lose that right to challenge [the forfeiture order], but it would substantially impair . . . I will tell you as we go through a plea transcript that a plea of guilty could and will affect your ability to

appeal the [order]. However, you would still have the ability to appeal [the order].” The court then referred defendant to his standby counsel for any further questions on the matter, and defendant subsequently pleaded guilty.

The plea transcript states that “defendant reserves his *right to challenge* the [forfeiture] order[.]” (emphasis added). *Cf. State v. White*, 213 N.C. App. 181, 187-88, 711 S.E.2d 862, 866 (2011) (vacating guilty plea and remanding for further proceedings where “[d]efendant’s plea agreement explicitly attempted to ‘reserve and preserve his *right to appeal* the denial of his motion to dismiss[.]’ ” of which defendant had no right to an appeal) (alterations omitted) (emphasis added). It also contains defendant’s acknowledgement that he “underst[oo]d that following a plea of guilty . . . there are limitations on your right to appeal[.]” *See State v. Carter*, 167 N.C. App. 582, 585-86, 605 S.E.2d 676, 679 (2004) (“Here, the trial court conducted the inquiry set out in N.C. Gen. Stat. § 15A-1022 (2003), and defendant subsequently signed a transcript of plea under oath, stating that he was entering into the plea of his own free will, fully understanding what he was doing. This Court has previously held that if the defendant signed a Transcript of Plea and the record reveals the trial court made ‘a careful inquiry’ of the defendant, it is sufficient to show the defendant’s plea was knowingly and voluntarily made, with full awareness of the direct consequences.”) (internal quotation marks and citations omitted). We are therefore convinced that defendant was aware that his plea would limit any appeal of right he

would otherwise have from the forfeiture order, but that the terms of his plea would allow him to request this Court's certiorari review of the order.

In any event, defendant's challenge to the forfeiture order is without merit. The order's findings of fact provide ample support for its conclusion of law that defendant forfeited his right to counsel.

"Any willful actions on the part of the defendant that result in the absence of defense counsel constitutes a forfeiture of the right to counsel." *State v. Quick*, 179 N.C. App. 647, 649-50, 634 S.E.2d 915, 917 (2006) (citation omitted). "A defendant may lose his constitutional right to be represented by the counsel of his choice when the right to counsel is perverted for the purpose of obstructing and delaying a trial." *Id.* at 649, 634 S.E.2d at 917 (citation omitted).

Defendant does not challenge any of the order's findings of fact. They are therefore binding on appeal. *State v. Evans*, 251 N.C. App. 610, 613, 795 S.E.2d 444, 448 (2017). Rather, defendant asserts that the forfeiture order's findings do not support the trial court's legal conclusion that he forfeited his right to counsel. We disagree. The order's findings establish that defendant demanded, and the trial court allowed, withdrawal of two attorneys appointed by the state and another whom he hired himself. Defendant's desire for three successive counsellors' withdrawal was due to his allegations that "his attorneys failed/refused to file motions he requested, failed/refused to provide discovery and/or go over it with him, and had conspired/was

conspiring with the State to withhold exculpatory evidence and otherwise deprive Defendant of his constitutional rights.” Defendant filed numerous *pro se* motions with the court, despite being informed that he could not do so while represented by counsel.

When he requested withdrawal of his third, self-retained attorney, the trial court warned defendant that if it granted his motion it would not allow him to secure other legal representation for his trial. Defendant stated that he nevertheless desired his attorney to withdraw. The court found that defendant’s third attorney “conveyed to the Defendant and to the Court that he was willing to continue representing Defendant through the trial” and based on the trial court’s prior experience with the counsellor, that “[he] would zealously and ably represent and advocate for Defendant in the trial[.]” The trial court concluded that “through his conduct, Defendant forfeited his right to have another attorney appointed to represent him in this case” because:

[A]ssignment of yet another attorney to represent Defendant in this case would be an exercise in futility – Defendant would simply continue to file his own motions with the Court, continue to allege that any attorney assigned to represent him was conspiring with the State, and continue to try to delay and thwart the orderly process of the trial court.”

Thus, the trial court’s findings of fact clearly establish that defendant committed several “willful actions . . . that result[ed] in the absence of defense

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counsel” and “[his] right to counsel [was] perverted for the purpose of obstructing and delaying a trial.” *Quick*, 179 N.C. App. at 649-50, 634 S.E.2d at 917. Therefore, the trial court did not abuse its discretion in determining that defendant forfeited his right to counsel.

II. Conclusion

For the foregoing reasons, we deny defendant’s Petition for Writ of Certiorari and dismiss his appeal.

DISMISSED.

Judges DILLON and BERGER concur.

Report per Rule 30(e).