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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-470

Filed: 2 June 2020

Mecklenburg County, Nos. 14 CRS 205870-71

STATE OF NORTH CAROLINA

v.

ANTHONY MONTREL ASBURY

Appeal by defendant from order entered 21 February 2019 by Judge W. Robert Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 27 April 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Kristin J. Uicker, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katherine Jane Allen, for defendant.

PER CURIAM.

Defendant Anthony Montrel Asbury appeals from an order denying his motion for post-conviction DNA testing. Upon review of the record, we affirm.

Background

On 3 March 2014, the State obtained indictments charging Asbury with taking indecent liberties with a child, statutory sexual offense, and statutory rape. Asbury entered a guilty plea to statutory sexual offense and statutory rape pursuant to a plea arrangement whereby other sexual offense charges were dismissed. The State stipulated to the existence of one mitigating factor, and the trial court accepted Asbury's plea and entered judgment on 25 August 2014. Asbury was sentenced to 166 to 260 months of imprisonment and ordered to register as a sex offender.

On 6 February 2019, Asbury filed a *pro se* "Request for Post[-]Conviction DNA Testing" pursuant to N.C. Gen. Stat. § 15A-269. Asbury sought DNA testing of "any and all evidence" on the contentions that "a DNA test[] will prove his factual innocence . . . and . . . is relevant to show his innocence regarding the coerced plea[] that he was compel[led] to enter into by[]way of deficient representation of counsel." Asbury also requested the appointment of counsel. On 21 February 2019, the trial court denied Asbury's motion without a hearing, concluding Asbury failed to satisfy the three conditions in N.C. Gen. Stat. § 15A-269(a) because his conclusory statements were insufficient to meet his burden of showing materiality. Asbury filed notice of appeal from the trial court's order on 8 March 2019 and the appellate defender was appointed to represent him on appeal.

Analysis

As an initial matter, Asbury has filed a petition for a writ of certiorari as an alternative basis for review in recognition of the fact that his notice of appeal failed in several respects to comply with the requirements of N.C. R. App. P. 4. In our discretion, we allow the petition in order to review the trial court's order.

Counsel appointed to represent Asbury is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks this Court to conduct its own review of the record for possible prejudicial error. Counsel shows to the satisfaction of this Court that she 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 Asbury of his right to file written arguments with this Court and providing him with the documents necessary to do so. Asbury has not filed any *pro se* arguments with this Court, and a reasonable time for him to do so has passed.

In accordance with *Anders* and *Kinch*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. We have been unable to find any possible prejudicial error. The trial court's order denying Asbury's request for post-conviction DNA testing is affirmed.

Conclusion

We affirm the trial court's order.

AFFIRMED.

STATE V. ASBURY

Opinion of the Court

Panel consisting of Judges DILLON, DIETZ, and MURPHY.

Report per Rule 30(e).