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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-371

Filed: 1 September 2020

Guilford County, No. 17 CRS 78394

STATE OF NORTH CAROLINA

v.

GREGORY CHARLES BASKINS, JR.

Appeal by defendant from judgment entered 15 November 2018 by Judge R. Stuart Albright in Guilford County Superior Court. Heard in the Court of Appeals 13 May 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Erin E. Gibbs, for the State.*

*Cooley Law Office, by Craig M. Cooley, for defendant.*

DIETZ, Judge.

Defendant Gregory Charles Baskins, Jr. appeals his conviction for assault with a deadly weapon inflicting serious injury. He contends that his counsel was ineffective for failing to request a jury instruction on defense of others.

As explained below, there are many conceivable strategic reasons for Baskins's counsel not to pursue that defense, particularly because Baskins also was asserting

that he was not the shooter. Accordingly, this claim is not suited for review on direct appeal, and we dismiss it without prejudice.

### **Facts and Procedural History**

In 2017, a fight broke out in a park in High Point. There were at least thirty to forty people in the park during the fight. Many of those people were actively involved in the melee, which included groups of teenagers attacking each other with bats, sticks, and various improvised weapons.

As the fighting continued, someone fired a gun, and then multiple gunshots rang out from different directions. Many people in the park began to flee. During this chaos, witnesses saw Defendant Gregory Charles Baskins, Jr. with a gun, shooting wildly in the direction of others. Rodney Jenkins was running from the scene at the same time and was hit by a bullet in the hip area.

Responding officers concluded that Baskins shot Jenkins. The officers arrested Baskins and charged him with assault with a deadly weapon with intent to kill inflicting serious injury. A jury later convicted Baskins of the lesser-included offense of assault with a deadly weapon inflicting serious injury. The trial court sentenced Baskins to 38 to 58 months in prison. Baskins appealed.

### **Analysis**

Baskins asserts only one argument on appeal: that his trial counsel provided ineffective assistance by not requesting a “defense of others” instruction from the trial

STATE V. BASKINS

*Opinion of the Court*

court. We dismiss this claim without prejudice because it is not suited for review on direct appeal.

“A defendant’s right to counsel includes the right to the effective assistance of counsel.” *State v. Braswell*, 312 N.C. 553, 561, 324 S.E.2d 241, 247 (1985). “When a defendant attacks his conviction on the basis that counsel was ineffective, he must show that his counsel’s conduct fell below an objective standard of reasonableness.” *Id.* This analysis involves a two-part test that examines whether “counsel’s performance was deficient” and whether “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*

Ordinarily, “claims of ineffective assistance of counsel should be considered through motions for appropriate relief and not on direct appeal.” *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001). This Court will address an ineffective assistance claim on direct appeal only “when the cold record reveals that no further investigation is required.” *State v. Thompson*, 359 N.C. 77, 122–23, 604 S.E.2d 850, 881 (2004). Thus, when the claim raises “potential questions of trial strategy and counsel’s impressions, an evidentiary hearing available through a motion for appropriate relief is the procedure to conclusively determine these issues.” *State v. Friend*, 257 N.C. App. 516, 521, 809 S.E.2d 902, 906 (2018). This is so because “whether defense counsel made a particular strategic decision remains a question of

STATE V. BASKINS

*Opinion of the Court*

fact, and is not something which can be hypothesized by an appellate court on direct appeal.” *Id.*

Here, Baskins argues that he was denied effective assistance of counsel because his trial counsel failed to request an instruction on “defense of others.” *See* N.C. Gen. Stat. § 14-51.3(b). But, as the State observes in its briefing, a strategy based on defense of others would have effectively “conceded that Defendant was in fact the shooter, precluding the possibility that Defendant had been misidentified.” This, in turn, would have conflicted with another strategy Baskins pursued at trial: to argue that there was insufficient evidence tying Baskins to the shooting of Jenkins.

For example, during closing arguments, Baskins’s trial counsel emphasized the lack of physical evidence corroborating the witness testimony implicating Baskins. Counsel argued to the jury that “We don’t have a gun. We don’t have fingerprints. We don’t have fingerprints on casings. We don’t have trajectory angles. . . . Nothing that would point to Gregory Baskins as the individual who fired any weapons on that particular day in question.”

Moreover, Baskins’s counsel may have believed that a “defense of others” strategy was so weak that it would have distracted from other arguments on which Baskins had a greater chance of persuading the jury. After all, witnesses testified that Baskins was “shooting wildly” into a small park filled with thirty or forty people, many of whom were Baskins’s own relatives. Baskins’s counsel might have made a

STATE V. BASKINS

*Opinion of the Court*

strategic decision to focus on the lack of evidence that Baskins was the shooter and the lack of evidence that Baskins intended to kill, which counsel believed were stronger arguments to the jury and which would have been weakened by including this additional defense theory.

In short, Baskins's ineffective assistance claim raises questions of fact that are not suitable for review on direct appeal. *Friend*, 257 N.C. App. at 521, 809 S.E.2d at 906. "[W]hen this Court reviews ineffective assistance of counsel claims on direct appeal and determines that they have been brought prematurely, we dismiss those claims without prejudice, allowing defendant to bring them pursuant to a subsequent motion for appropriate relief in the trial court." *Thompson*, 359 N.C. at 123, 604 S.E.2d at 881. Accordingly, we dismiss Baskins's appeal without prejudice.

**Conclusion**

We dismiss Baskins's appeal without prejudice to pursue the claims asserted in this appeal through a motion for appropriate relief in the trial court.

DISMISSED.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).