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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-11

No. COA19-992

Filed: 2 February 2021

Mecklenburg County, No. 09 CRS 240639

STATE OF NORTH CAROLINA

v.

WARREN JAE AVERY

Appeal by defendant from order entered 14 January 2019 by Judge Carla N. Archie in Mecklenburg County Superior Court. Heard in the Court of Appeals 17 November 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General L. Michael Dodd, for the State.

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

DIETZ, Judge.

¶ 1 Defendant Warren Jae Avery appeals from an order denying his motion for post-conviction DNA testing. Avery's counsel filed an *Anders* brief. After an independent review of the record as required in *Anders* cases, we affirm the trial court's order.

Facts and Procedural History

¶ 2 In 2013, a jury found Avery guilty of first degree murder and related charges. The trial court sentenced Avery to life in prison without parole. This Court affirmed Avery's criminal judgments on direct appeal.

¶ 3 In 2018, Avery filed a *pro se* petition for post-conviction DNA testing pursuant to N.C. Gen. Stat. § 15A-269. The trial court denied Avery's petition on the ground that Avery failed to satisfy the statutory criteria. Specifically, the court ruled that Avery's petition failed to identify the evidence he wanted tested, failed to identify whether that evidence already had been tested, and failed to show a reasonable probability that the results of the testing would have impacted the outcome of his criminal trial. The court also noted that Avery confessed to the murder during an interrogation and admitted to the murder in a recorded telephone call with his sister while in jail awaiting trial. Avery appealed the denial of his request for DNA testing and the trial court appointed counsel to represent him on appeal.

Analysis

¶ 4 Avery's counsel filed an *Anders* brief explaining that counsel was unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal. *See State v. Velasquez-Cardenas*, 259 N.C. App. 211, 225, 815 S.E.2d 9, 18 (2018). Avery's counsel 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

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Avery of his right to file written arguments with this Court and providing him with the documents necessary to do so.

¶ 5

Avery did not file any written arguments with this Court and a reasonable time for him to do so has passed. In accordance with *Anders* and *Kinch*, we fully examined the record for any issues of arguable merit and found none. The trial court's order denying Avery's petition for post-conviction DNA testing is affirmed.

AFFIRMED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).