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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-726

No. COA21-40

Filed 21 December 2021

Guilford County, Nos. 06 CRS 102498, 08 CRS 24333

STATE OF NORTH CAROLINA

v.

JUAN CARLOS RAMIREZ

Appeal by Defendant from Order entered 18 March 2013 by Patrice L. Hinnant in Guilford County Superior Court. Heard in the Court of Appeals 6 October 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Marissa Jensen, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1

Juan Carlos Ramirez (Defendant) appeals from an Order denying his pro se “Petition for Actual Innocence of First Degree Murder and Statutory Rape of Child - N.C.G.S. 14A-1415”. Relevant to this appeal, the Record before us tends to reflect the following:

¶ 2

On 9 October 2008, a jury returned a verdict finding Defendant guilty of First-Degree Murder by Premeditation and Deliberation. After the jury verdict but before sentencing, Defendant also pled guilty to Statutory Rape of the victim. The trial court sentenced Defendant to life imprisonment without parole for the First-Degree Murder conviction with a concurrent 240-297 month sentence for the Statutory Rape Judgment. Defendant gave oral Notice of Appeal to the First-Degree Murder conviction in open court.

¶ 3

This Court heard Defendant's first appeal on 20 August 2009. Defendant raised two issues on appeal, both related to whether the trial court erred by admitting certain statements of the victim at trial. In an unpublished opinion, this Court found no prejudicial error. *State v. Ramirez*, 2009 N.C. App. LEXIS 2204 (8 December 2009) (unpublished). On 10 March 2011, the North Carolina Supreme Court denied discretionary review. *State v. Ramirez*, 365 N.C. 90, 706 S.E.2d 255 (2011).

¶ 4

On 8 January 2013, Defendant filed a pro se document entitled, "Petition for Actual Innocence of First Degree Murder and Statutory Rape of a Child" in the North Carolina Supreme Court.¹ The Supreme Court dismissed that petition on 24 January 2013. Shortly thereafter, Defendant filed another pro se document titled, "Petition for Actual Innocence of First Degree Murder and Statutory Rape of a Child N.C.G.S.

¹ A copy of Defendant's Supreme Court filing is not part of the Record before us.

14A-1415” (Petition) in Guilford County Superior Court. The Petition asserted that while in an “uncontrollable rage” Defendant stabbed the victim “(16) times and left the knife in her chest, gave victim a kiss and departed.” He requested his conviction and sentence be set aside and that he be resentenced for voluntary manslaughter. On 18 March 2013, the trial court entered an Order denying the Petition without a hearing. The Order states in relevant part:

Petitioner appealed to the North Carolina Court of Appeals which, in an opinion dated December 8, 2009, found that the trial court was free of error. The same motion that is before this Court was filed at the North Carolina Supreme Court, which, in an Order dated January 24, 2013, dismissed the Motion.

The Court has observed from the opinion that the Petitioner failed to raise an issue subject to the motion at the time of the appeal, namely one of level of offense. . . . As it applies to the facts admitted by the petitioner both at trial and in this Motion, petitioner has failed to meet the standards required to merit either setting aside the sentence or an evidentiary hearing to determine whether to set aside the sentence. Petitioner’s Motion is not supported by affidavit; Petitioner alleges no specific facts in support of his contentions but facts that tend to support the judgment; and, Petitioner has done nothing more than to make general allegations and assertions unfounded in law or fact for purposes of meeting the standard required by law.

Moreover, Petitioner entered a guilty plea to the second offense . . . [and] has not now shown that his is the rare case in which a judgment following a guilty plea will be disturbed. The Motion is without merit as a matter of law.

The Court determines that review of the file and contemplation of the authority leaves the Petition without relief. The Allegations of the motion lack reason for the court to allow the relief sought

by petitioner. Hence, in this instance, the Petitioner is procedurally barred from relief.

¶ 5 On 5 June 2020, Defendant filed a pro se Petition for Writ of Certiorari in this Court seeking review of the 18 March 2013 Order denying his Petition. This Court allowed Defendant’s Petition for Writ of Certiorari in an Order filed 15 June 2020 to permit appellate review of the trial court’s 18 March 2013 Order.

Issues

¶ 6 The dispositive issues on appeal are whether: (I) the trial court abused its discretion by treating Defendant’s Petition as a motion for appropriate relief; (II) the trial court erred by concluding the Petition was procedurally barred; and (III) the trial court erred by concluding Defendant failed to meet the standards required to merit an evidentiary hearing.

Analysis

I. Treatment of the Petition

¶ 7 At the outset, we address the State’s contention that the trial court erred by treating Defendant’s Petition dated 8 January 2013 as a motion for appropriate relief. The State contends the trial court should not have considered Defendant’s Petition as a motion for appropriate relief because Defendant erroneously cites to N.C. Gen. Stat. § 14A-1415 in the Petition’s caption, labels it as “Petition for Actual Innocence” instead of “Motion for Appropriate Relief,” and does not specifically enumerate the

grounds for the motion for appropriate relief with reference to N.C. Gen. Stat. § 15A-1415(b).

¶ 8

Generally, courts are obliged to liberally construe filings by pro se litigants. *Haines v. Kerner*, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 654 (1972). “That duty extends to recharacterizing a filing to which a pro se litigant has attached the wrong label, allowing courts to ‘avoid an unnecessary dismissal, to avoid inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a pro se motion’s claim and its underlying legal basis.’ ” *United States v. Brown*, 797 Fed. App’x 85, 89 (4th Cir. 2019) (quoting *Castro v. United States*, 540 U.S. 375, 381-82, 157 L. Ed. 2d 778, 786 (2003) (internal citations omitted)). “[D]etermining whether a pro se filing, liberally construed, should be recharacterized is a matter of [] discretion.” *Id.* at 90. Here, then, we review the trial court’s treatment of Defendant’s Petition as a motion for appropriate relief for abuse of discretion.

¶ 9

In this case, it is evident in citing to Chapter 14 of our General Statutes, which governs Criminal Law, Defendant intended to reference Chapter 15A governing Criminal Procedure. The trial court clearly recognized this and treated the Petition as a motion for appropriate relief pursuant to N.C. Gen. Stat. §15A-1415. N.C. Gen. Stat. § 15A-1415 provides:

(a) At any time after verdict, a noncapital defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section. . .

(b) The following are the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment.

N.C. Gen. Stat. § 15A-1415 (2019). Here, Defendant began his handwritten Petition with a request for the court to “set aside judgments and sentences entered by the trial court . . . and resentence him on [1] count of voluntary manslaughter.” The Defendant then set forth the facts he deemed sufficient to support his claim for relief. Indeed, the substance of Defendant’s claim is not his ‘actual innocence’ as the caption suggests, but rather a claim for relief available under a motion for appropriate relief—resentencing for a lesser offense. *See* N.C. Gen. Stat. § 15A-1417(b) (“When relief is granted in the trial court and the offense is divided into degrees or necessarily includes lesser offenses, and the court is of the opinion that the evidence does not sustain the verdict but is sufficient to sustain a finding of guilty of a lesser degree or of a lesser offense necessarily included in the one charged, the court may, with consent of the State, accept a plea of guilty to the lesser degree or lesser offense.”). Therefore, since the trial court properly addressed the Petition based on the substance of the claim and its underlying legal basis, the trial court did not abuse its discretion in treating Defendant’s Petition as a motion for appropriate relief.

II. Procedural Bar

¶ 10 Next, we turn to Defendant’s contention that the trial court erred by concluding Defendant’s Petition was procedurally barred by his prior appeal. “When considering rulings on motions for appropriate relief, we review the trial court’s order to determine whether the findings of fact are supported by evidence, whether the findings of fact support the conclusions of law, and whether the conclusions of law support the order entered by the trial court.” *State v. Frogge*, 359 N.C. 228, 240, 607 S.E.2d 627, 634 (2005).

¶ 11 Here, the trial court denied the Petition and concluded “the Petitioner is procedurally barred from relief” because “the Petitioner failed to raise an issue subject to the motion at the time of the appeal, namely one of level of offense.”² N.C. Gen. Stat. §15A-1419(a)(3) provides that a motion for appropriate relief shall be denied when “upon a previous appeal the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so.” N.C. Gen. Stat. §15A-1419(a)(3) (2019). In other words, as our Supreme Court stated in *State v. Price*:

² Additionally, Defendant contends the trial court erred by finding the “same motion” had been filed in the Supreme Court but notes that a copy of the Supreme Court filing is not available for review to determine whether the substance of the filing was, in fact, the “same motion” addressed by the Supreme Court. Defendant also contends the trial court erred by concluding Defendant failed to meet the standards required to merit setting aside the sentence. Specifically, Defendant contends the trial court erred by concluding Defendant was required to submit an affidavit and failed to allege specific facts in support of his contention. However, we do not address these issues, because, ultimately, neither the Finding nor the Conclusions are dispositive to our determination.

Motions for Appropriate Relief generally allow defendants to raise arguments that could not have been raised in an original appeal, such as claims based on newly discovered evidence and claims based on rights arising by reason of later constitutional decisions announcing new principles or changes in the law . . . Motions for Appropriate Relief may not be used to add to an appeal new arguments which could have been raised in the briefs originally filed.

State v. Price, 331 N.C. 620, 630, 418 S.E.2d 169, 174 (1992) (citation omitted), *sentence vacated on other grounds*, 506 U.S. 1043, 122 L. Ed. 2d 113 (1992).

¶ 12 In his first appeal, heard by this Court on 20 August 2009, Defendant raised two issues related to the admissibility of alleged hearsay statements, but did not raise the issue related to whether the evidence could sustain a verdict of Voluntary Manslaughter but not First Degree Murder. Further, Defendant's Petition does not articulate any newly discovered evidence or claims based on rights arising by reason of constitutional decisions announcing new principles or changes in the law made after his first appeal. Instead, Defendant's Petition merely reiterates facts and evidence that were contained in his testimony at trial. As such, there are no new issues or arguments contained in his Petition that could not have been raised on his first direct appeal. Thus, the trial court did not err by concluding the Petition was procedurally barred under N.C. Gen. Stat. § 15A-1419(a)(3) and properly denied the Petition.

III. Evidentiary Hearing

¶ 13 Last, Defendant contends the trial court erred by denying the Petition without holding an evidentiary hearing. N.C. Gen. Stat. § 15A-1420(c)(1) provides:

Any party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing information presented unless the court determines that the motion is without merit. The court must determine, on the basis of these materials and the requirements of this subsection, whether an evidentiary hearing is required to resolve questions of fact.

N.C. Gen. Stat. § 15A-1420(c)(1) (2019). A defendant is not entitled to an evidentiary hearing when a court properly determines that the motion is without merit. *State v. Rice*, 129 N.C. App. 715, 723-24, 501 S.E.2d 665, 670 (1998). Subsection (c)(3) further provides:

The court must determine the motion without an evidentiary hearing when the motion and supporting and opposing information present only questions of law. The defendant has no right to be present at such a hearing where only questions of law are to be argued.

N.C. Gen. Stat. § 15A-1420(c)(3) (2019).

¶ 14 Here, as discussed above, the trial court properly concluded Defendant's Petition was procedurally barred because the issue of the evidence sustaining the verdict could have been raised on a prior appeal. Therefore, Defendant was not entitled to an evidentiary hearing because the Petition did not present any questions of fact—only questions of law. Thus, the trial court did not err by concluding that petitioner failed to meet the standard required to merit an evidentiary hearing.

Conclusion

¶ 15 For the foregoing reasons, we conclude the trial court did not err in denying Defendant's Petition. Accordingly, we affirm the Order.

AFFIRMED.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).