IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-113

No. COA20-814

Filed 15 February 2022

Guilford County, Nos. 19 CRS 67598-601, 19 CRS 67750-51, 19 CRS 67844, 19 CRS 24225

STATE OF NORTH CAROLINA,

v.

QUANTEZ LASHAY THOMAS.

Appeal by Defendant from Judgments entered 14 February 2020 by Judge Michael D. Duncan in Guilford County Superior Court. Heard in the Court of Appeals 27 October 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General, Benjamin T. Spangler, for the State.

Ward, Smith, & Norris, P.A., by Kirby H. Smith, III, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Quantez LaShay Thomas (Defendant) appeals from his convictions for three counts of Breaking or Entering a Motor Vehicle, three counts of Financial Card Theft, two counts of Obtaining Property by False Pretenses, Possession of a Stolen Motor

Vehicle, Felony Larceny, Misdemeanor Fleeing to Elude Arrest with a Motor Vehicle, and two counts of Misdemeanor Larceny. Relevant to this appeal, the Record before us tends to reflect the following:

¶ 2 On 22 July 2019 Defendant was indicted by the Guilford County Grand Jury on the following offenses: three counts of Obtaining Property by False Pretenses, three counts of Financial Transaction Card Theft, Financial Transaction Card Fraud, two counts of Breaking or Entering a Motor Vehicle, Felony Larceny, Possession of a Stolen Motor Vehicle, Felonious Fleeing to Elude Arrest with a Motor Vehicle, and three counts of Misdemeanor Larceny. On 19 August 2019, Defendant made his first appearance in Superior Court on the charges against him. The trial court informed Defendant he was charged with fifty-eight felonies, to wit: forty-four Class I felonies, each of which was punishable by up to twenty-four months in prison and fourteen Class H felonies, each of which was punishable by up to thirty-nine months in prison. Defendant acknowledged that he understood the charges and was then advised of his right to ask for a court-appointed attorney. Defendant informed the trial court he wanted to represent himself but said he did not waive his right to counsel and refused to sign the Waiver of Counsel form.

¶ 3 The trial court then heard Defendant's pending motions for a speedy trial, lack of probable cause, objection to a continuance, motion to dismiss, speedy trial, lack of due process, lack of probable cause hearing, and demand for a probable cause hearing.

Each motion was denied. After the hearing, Defendant continued to file handwritten motions which requested the trial court dismiss the charges or grant him a speedy trial. The repetitive and "nonsensical" nature of the motions led the State to request the trial court to appoint a forensic evaluator to determine whether Defendant was competent to proceed to trial. The trial court granted the motion over Defendant's objection and offered Defendant another opportunity to have an attorney appointed. Defendant continued to insist he wanted to represent himself, but again refused to sign the Waiver of Counsel form.

¶ 4 On 9 September 2019 Defendant was indicted as a Habitual Felon. On 1 November 2019 Defendant made his first appearance on the Habitual Felon Indictment. Initially, the trial court told Defendant he faced up to eighty-eight months in prison if convicted of the charges against him for breaking or entering a motor vehicle, misdemeanor larceny, injury to personal property and being a habitual felon. Subsequently, the trial court realized Defendant faced more charges and engaged in the following dialogue with Defendant:

> Court: if [Defendant] is going to represent himself, I want him to understand the consequence of representing himself and how much time he's looking at because that's the only way he's going to be able to represent himself. We put a habitual felon on him today. So I'm going to have to go back and figure out how much time he's looking at.
>
> State: Yes, sir. So we're going to bring him back this afternoon, and I'm going to take care of that. [Defendant], I'm

going to send you back while I figure up the amount of exposure you have on these charges. I thought it was just one. I had forgotten you had several from the last time you were in Court.

Def. : . . . I know how much time I'm facing because every time I come to Court they tell me how much time I'm going to face for those charges.

Court: Well, it's all different now because you've got a habitual felon.

Def.: Nah. They told me with the habitual felon. Once — if you get the habitual felon, this is how much you're facing. So I'm aware of that, about how much time I'm facing. So you don't have to do that. I'm aware about how much time I'm facing. We just need to set a definite trial date and who can judge on this motion to dismiss.

Court: Well, your case — I realize it's not moving fast enough for you, but in the scheme of things, it's only been, what nine months since you've been arrested?

. . .

Court: . . . But I do want you to understand what you're charged with and what the consequences of representing yourself because if you don't—

Def.: I understand.

Court: —you can't be tried without a lawyer.

Def.: Yeah. I understand, sir. I understand.

Court: Well, you tell me you understand. Well, how much time are you looking at?

Def.: It's a big number. It's a big number.

. . .

Court: . . . [Defendant], now that you've pointed it out to me, I do remember that when you were here back in August with me, we did go over what the punishments were for your habitual felon status. Do you remember that?

Def.: Yes, sir.

. . .

Court: I've asked you to sign waivers before and waivers this time, and you've refused to sign, which is your right. I can't make you sign the waiver, but you indicated you understood the wavier. Is that right?

Def.: Yes, sir.

Court: And I've written on the waiver Defendant was advised of the maximum punishments for his status as a habitual felon, and that was back on August the 19th. That wasn't today. Do you understand that?

Def.: Yes, sir.

The trial court then excused Defendant without advising him of the maximum possible punishment for these offenses with the habitual felon status.

¶ 5 On 31 January 2020, Defendant's case came before the trial court for an arraignment hearing. Before the trial court heard the Defendant's pleadings in the matter, the State stipulated to the admission of a letter from Frances E. Gill, LPCS, a certified forensic screener. The letter stated in relevant part:

> [Defendant] is currently capable to proceed to trial. He has a good understanding of courtroom procedures, he appreciated the

> adversarial nature of the proceedings, and he appeared to appreciate his legal situation. His capacity to adequately represent himself without legal counsel may be doubtful, but there was no clear evidence from this assessment of a psychiatric or intellectual disorder (other than some unruly behavior in jail) which would make him incapable.

Based on this letter, the trial court found Defendant competent to proceed to trial. Defendant did not object to the court's Finding, request to be heard, nor offer evidence on the matter of his competency. After making this Finding, the trial court arraigned Defendant and he entered pleas of not guilty on all the charges against him. At the conclusion of the hearing, the trial court did not inquire to see if Defendant wanted court-appointed counsel. Instead, the trial court found Defendant had twice refused to sign a Waiver of Counsel form, had been advised on what it means to self-represent on 1 November 2019, and had understood what it meant.

¶ 6 On 11 February 2020 the cases came on for trial and the jury found Defendant guilty of the following offenses: three counts of Breaking or Entering a motor Vehicle, three counts of Financial Card Theft; two counts of Obtaining Property by False Pretenses, Possession of a Stolen Motor Vehicle, Felony Larceny, Misdemeanor Fleeing to Elude Arrest with a Motor Vehicle; two counts of Misdemeanor Larceny; and Habitual Felon.

¶ 7 On 17 February 2020, the trial court sentenced Defendant to an active sentence of a minimum of 93 and a maximum of 137 months in the North Carolina Division of

Adult Correction. The written judgment included an order for Defendant to serve an active sentence for three convictions of felonious breaking and entering a motor vehicle, when Defendant was only convicted of two such charges. In addition, Defendant was convicted of three counts of misdemeanor larceny, but the trial court only sentenced him on two counts. Immediately after the trial judge announced the sentence, Defendant gave Notice of Appeal in open court.

Issues

¶ 8 The dispositive issues on appeal are whether: (I) the trial court erred by conducting Defendant's competency hearing at the same time as Defendant's arraignment hearing; and (II) the trial court erred by failing to advise Defendant of all the permissible punishments for the charges against him, pursuant to N.C. Gen. Stat. § 15A-1242.[1]

Analysis

I. Defendant's Competency Hearing

¶ 9 Defendant contends the hearing conducted on 31 January 2020 did not qualify as a competency hearing as contemplated by N.C. Gen. Stat. § 15A-1002 because he was not represented by counsel nor given an opportunity to speak. N.C. Gen. Stat. §

[1] Defendant also contends the trial court erred by sentencing Defendant for an offense for which he had not been convicted. For its part, the State concedes there was at least a clerical error in the Judgment entered. Because of our disposition here, we do not reach this issue.

15A-1002 states in relevant part:

> The question of the capacity of the defendant to proceed may be raised at any time on motion by the prosecutor, the defendant, the defense counsel, or the court. The motion shall detail the specific conduct that leads the moving party to question the defendant's capacity to proceed. When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed . . . .

N.C. Gen. Stat. § 15A-1002(a), (b)(1) (2021). Defendant has the burden of persuasion with respect to establishing his incapacity. *State v. Jacobs*, 51 N.C. App. 324, 328, 276 S.E.2d 482, 485 (1981). "Where the procedural requirement of a hearing has been met, defendant must show that the trial court abused its discretion in denying the motion before reversal is required." *State v. McGuire*, 297 N.C. 69, 254 S.E. 2d 165, *cert. denied sub nom.*, 444 U.S. 943 (1979).

¶ 10 There is "no particular procedure" for a competency hearing and it "is still largely within the discretion of the trial judge." *State v. Gates*, 65 N.C. App. 277, 282, 309 S.E.2d 498, 501 (1983). Thus, the hearing requirement "appears to be satisfied as long as it appears from the record, that the defendant, upon making the motion, is provided an opportunity to present any and all evidence he or she is prepared to present." *Id.* at 283, 309 S.E.2d at 502. For example, in *State v. Gates*, this Court held a recorded conference in chambers satisfied the hearing requirement where the defendant failed to make a request to be heard further on the matter and there was no indication in the record that defendant had more evidence to present. *Id. See also State v. Williams*, 38

N.C. App. 183, 247 S.E.2d 620 (1978) (holding the hearing requirements of the statute were met when the "hearing" was in the context of a motion for a continuance to allow for a psychiatric examination prior to trial and "defense counsel did not request a full hearing on the matter nor did he tender evidence to support his motion").

¶ 11 Here, Defendant had the opportunity to present evidence at the hearing on 31 January 2020 and did not request to be heard further on the matter. Further, there is nothing in the Record that indicates Defendant had any evidence to present to prove his incompetency. Indeed, to the contrary, the Record reflects Defendant objected to the evaluation at each stage, claiming that he had "education up to the sophomore of college level" and could "read and write." Thus, the only evidence presented on the matter was the evaluation, which the court reviewed and verbally incorporated into its Findings. The evaluation letter supports the court's Finding Defendant was competent to proceed to trial. Thus, the hearing on 31 January 2020 satisfied the requirements of N.C. Gen. Stat. § 15A-1002 and the trial court did not abuse its discretion in finding Defendant competent to proceed based on the evaluator's letter. Therefore, the trial court did not err in holding Defendant's competency hearing at the same time as Defendant's arraignment hearing.

II. Failure to Advise of all Permissible Punishments

A. Ineffective Waiver of Counsel

¶ 12 Defendant contends the trial court committed prejudicial error by allowing

Defendant to represent himself without advising him of the permissible punishments for all of the charges against him, as is required by N.C. Gen. Stat. § 15A-1242. "A criminal defendant's right to representation by counsel in serious criminal matters is guaranteed by the Sixth Amendment." *State v. Watlington*, 216 N.C. App. 388, 393, 716 S.E.2d 671, 675 (2011) (citing *Gideon v. Wainwright*, 372 U.S. 335, 9 L. Ed. 2d 799 (1963)). However, a criminal defendant also "has a right to handle his own case without interference by, or the assistance of, counsel forced upon him against his wishes." *State v. Mems*, 281 N.C. 658, 670-71, 190 S.E.2d 164, 172 (1972). "Before allowing a defendant to waive in-court representation by counsel, however, the trial court must [e]nsure that constitutional and statutory standards are satisfied." *State v. Thomas*, 331 N.C. 671, 673, 417 S.E.2d 473, 475 (1992).

¶ 13 Our Supreme Court has held "N.C. Gen. Stat. § 15A-1242 satisfies any constitutional requirements by adequately setting forth the parameters of such inquiry." *State v. Fulp*, 355 N.C. 171, 175, 558 S.E.2d 156, 159 (2002) (citations and quotation omitted). N.C. Gen. Stat. § 15A-1242 states in relevant part:

> A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:
>
> (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;

> (2) Understands and appreciates the consequences of this decision; and
>
> (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

N.C. Gen. Stat. § 15A-1242 (2021). The third inquiry listed in the statute requires the trial court to specifically "advise a defendant of the possible maximum punishment." *State v. Lindsey*, 271 N.C. App. 118, 127, 843 S.E.2d 322, 329 (2020) (citations and quotation omitted). For example, in *State v. Frederick*, this Court held the trial court's statement that the defendant could "go to prison for a long, long time" was not specific enough to render the subsequent waiver valid. 222 N.C. App. 576, 585, 730 S.E.2d 275, 281 (2012).

¶ 14 Here, the Record reflects that the trial court never accurately informed Defendant of the possible maximum punishment. Indeed, the transcripts filed with this Court show only two such discussions between Defendant and the trial court with regard to Defendant's range of permissible punishments. First, at a hearing on 19 August 2019, when the court advised Defendant, he was charged with fifty-eight felonies, to wit: forty-four Class I felonies, each of which was punishable by up to twenty-four months in prison, and fourteen Class H felonies, each of which was punishable by up to thirty-nine months in prison. Defendant had not yet been indicted as a habitual felon, and thus, the court did not inform him of how that charge would alter the maximum possible punishment. Second, at a hearing on 1 November 2019,

the court incorrectly advised Defendant he was only facing eighty-eight months before subsequently realizing Defendant was facing several more charges. After this realization, the trial court mistakenly informed Defendant he had been advised of the maximum range of permissible punishments with the habitual felon status at the prior hearing on 19 August 2019. However, the Record reveals Defendant had not, in fact, been informed of the maximum range of permissible punishments with the habitual felon status at the previous hearing. Instead, the trial court took Defendant's statement that he was facing a "big number" to be sufficient to satisfy the requirement that Defendant comprehend the range of permissible punishments. This statement, however, does not affirmatively show Defendant comprehended the nature of the charges and proceedings against him or the range of permissible punishments. *See Frederick*, 222 N.C. App. at 585, 730 S.E.2d at 281.

¶ 15 Indeed, the Record reflects Defendant had been informed of the incorrect maximum punishment on two occasions and had never been informed of the correct maximum punishment including the habitual felon status. Therefore, the trial court erred in failing to conduct a thorough inquiry as is required by N.C. Gen. Stat. § 15A-1242, and what inquiry was made, was insufficient to satisfy the trial court that Defendant comprehended the nature of the charges and proceedings and the range of permissible punishments. *See Frederick,* 222 N.C. App. at 585, 730 S.E.2d at 281. Thus, Defendant's waiver of counsel was rendered ineffective and his Sixth

Amendment right to counsel was violated.

B. Prejudicial Error

¶ 16 In its brief to this Court, the State, in conclusory fashion, asserted any error in not advising Defendant of the range of punishments was harmless. The State, however, cited no authority to support this proposition. Further, at oral argument, the State conceded:

> Whether the defendant was properly advised—whether the trial court was satisfied—and that's what the statute says—whether the trial court was satisfied that defendant comprehended what he was facing—if we are going to add to that that not only does he have to comprehend the maximum, or the range of permissible punishments, but he also has to have that told to him as a specific number of months. Then I don't see how that's not structural.

¶ 17 "Structural error" is an error that "necessarily render[s] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." *State v. Polke*, 361 N.C. 65, 74, 638 S.E.2d 189, 195 (2006) (citing *Neder v. United States*, 527 U.S. 1, 9, 144 L. Ed. 2d 35, 47 (1999)). A structural error is subject to "automatic reversal regardless of a showing of prejudice." *State v. Lawrence*, 365 N.C. 506, 513, 723 S.E.2d 326, 331 (2012) (citation and quotations omitted).

¶ 18 Indeed, this Court has held "it is prejudicial error to allow a criminal defendant to proceed pro se at any critical stage of criminal proceedings without making the inquiry required by N.C. Gen. Stat. § 15A-1242." *Lindsey*, 271 N.C. App. at 128, 843 S.E.2d at 329 (citation omitted). Further, our Supreme Court has held some

constitutional rights, like the right to counsel, are "so basic to a fair trial that the infraction can never be treated as harmless error." *State v. Colbert*, 311 N.C. 283, 286, 316 S.E.2d 79, 80 (1984). Moreover, even at a "non-critical" stage of the proceeding,

> the State must demonstrate, beyond a reasonable doubt, that the failure to obtain a knowing, voluntary, and intelligent waiver was harmless. N.C. Gen. Stat. § 15A-1443 (2019) ('A violation of the defendant's rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt. The burden is upon the State to demonstrate, beyond a reasonable doubt, that the error was harmless.').

Lindsey, 271 N.C. App. at 129, 843 S.E.2d at 330. "When the State fails to carry its burden in this context, a new trial is the appropriate remedy." *Id.*

¶ 19 Thus, here, even if the error in advising Defendant of the possible range of punishments he was facing prior to permitting Defendant to proceed pro se did not constitute structural error, the State has failed to advance any argument that the error was harmless beyond a reasonable doubt. Therefore, the State has failed to meet its burden in this context. Consequently, the appropriate remedy is a new trial.

Conclusion

¶ 20 Accordingly, for the foregoing reasons, we vacate the Judgments and remand this matter for a New Trial.

NEW TRIAL.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).