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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-484

No. COA22-108

Filed 5 July 2022

Pitt County, No. 19 CRS 52785

STATE OF NORTH CAROLINA

v.

THURENZO ELIZONDO SPEIGHT, Defendant.

Appeal by Defendant from judgment entered on 25 March 2021 by Judge Jeffery B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 8 June 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Andrew L. Hayes, for the State.

Benjamin J. Kull for Defendant.

JACKSON, Judge.

¶ 1

Thurenzo Elizondo Speight (“Defendant”) has filed an *Anders* brief asking this Court to conduct an independent review to determine whether the record discloses prejudicial error in his conviction of malicious conduct by a prisoner. After careful review of the record, we find no error.

I. Factual and Procedural Background

¶ 2

On 10 February 2020, Defendant was charged by indictment with one count of malicious conduct by a prisoner. Trial was held on 25 March 2021 in the Criminal Session of Pitt County Superior Court before the Honorable Jeffrey B. Foster presiding. The jury returned a verdict of guilty on the sole charged offense. The trial court proceeded to sentencing and determined that Defendant had a prior record level of III and sentenced him to an active term of 19 to 32 months.

¶ 3

The testimony presented at Defendant's trial demonstrated that on 20 April 2019, Greenville Police Officer Gary Williams responded to a domestic violence call at a home on Nash Street in Greenville. Officer Williams encountered Defendant and his girlfriend at that location. Upon investigation, Officer Williams determined there was probable cause to arrest Defendant for "alleged crimes." Officer Williams handcuffed Defendant and walked with him to another patrol vehicle, which was closer to the residence than his own car. Officer Williams testified as "he went to guide the Defendant into the vehicle, his body was in close proximity to mine. . . . And at that time, the Defendant spat directly in my face, which did, unfortunately, land in my mouth as well."

¶ 4

Defendant exercised his constitutional right not to testify. During the charge conference, defense counsel asked the court to instruct the jury on the misdemeanor charge of assault on an officer and claimed that it was a lesser-included offense of the charged crime. The court, however, ruled that assault on an officer was not a lesser-

included offense of malicious conduct by a prisoner and denied the request.

¶ 5

Based on the evidence from the State, the jury deliberated for less than an hour and returned a verdict of guilty on the charge of malicious conduct by a prisoner. The trial court imposed an active sentence within the presumptive range on 25 March 2021. Defendant filed written notice of appeal on 1 April 2021.

II. Appellate Jurisdiction

¶ 6

An appeal of right from a final judgment entered in the superior court upon conviction properly lies directly with this Court. N.C. Gen. Stat. §§ 7A-27(b), 15A-1444(a) (2021). Thus, Defendant was entitled to appeal the superior court's judgment to this Court, which was done in a proper and timely fashion.

III. *Anders* Brief

¶ 7

Defendant's appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), indicating that after a close examination of the record and relevant law, he is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal. Defendant asks this Court to conduct its own review of the record for possible error.

¶ 8

Counsel has filed documentation with the Court showing that he has complied with the requirements of both *Anders* and *State v. Kinch*, 314 N.C. 99, 102, 331 S.E.2d 665, 666 (1985) (holding that defense counsel's brief had "fully complied with *Anders*" by "stat[ing] in his brief that he found no merit in the assignments of error and

request[ing] this Court to review the record for any prejudicial error”). Namely, counsel here advised Defendant in writing on 1 March 2022 of his right to file written arguments with the Court and has provided him with a copy of the documents pertinent to his appeal, including the transcript, record on appeal, and counsel’s brief.

¶ 9 Unlike the appellant in *Kinch*, Defendant here has not filed a pro se brief with this Court, and a reasonable time for him to do so has expired. *Id.* at 102, 331 S.E.2d at 666-67. Further, as in *Kinch*, counsel for Defendant has referred us to one issue that might arguably support an appeal: the court’s failure to instruct on a lesser-included offense of assault on an officer. We agree with counsel that this argument is without merit in that this Court has previously held that assault on an officer is not a lesser-included offense of malicious conduct by a prisoner. *State v. Crouse*, 169 N.C. App 382, 387-88, 610 S.E.2d 454, 458 (2005).

¶ 10 Finally, the Defendant’s prior record level of III was properly calculated from the prior convictions listed on his Felony Sentencing Worksheet and his sentence was imposed in the presumptive range for a Class F felony with a prior record level of III.

IV. Conclusion

¶ 11 In accordance with our duty under *Anders* and *Kinch*, we have fully examined the record to determine whether any meritorious issues appear to exist and have found none. Defendant received a fair trial, free from prejudicial error. There is no error in the trial court’s verdict or in the judgment entered thereon.

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Opinion of the Court

NO ERROR.

Judges DILLON and TYSON concur.

Report per Rule 30(e).