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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-791

Filed 05 July 2023

Wake County, No. 19 CRS 209718

STATE OF NORTH CAROLINA

v.

STEVE ANDREW GARCIA

Appeal by Defendant from judgment entered 9 February 2022 by Judge Rebecca W. Holt in Wake County Superior Court. Heard in the Court of Appeals 24 May 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert C. Ennis, for the State.

Blass Law, PLLC, by Danielle Blass, for the Defendant.

WOOD, Judge.

Steve Andrew Garcia (“Defendant”) appeals from judgment entered upon his conviction for voluntary manslaughter. On appeal, Defendant contends the trial court erred by: 1) failing to address the absolute impasse and in allowing defense counsel to make the final decision regarding whether Defendant should present an

allocution statement; and 2) abused its discretion by failing to consider mitigating factors. Defendant further contends he received ineffective assistance of counsel at the sentencing hearing. For the following reasons, we hold the trial court did not err and overrule Defendant's claim of ineffective assistance.

I. Factual and Procedural Background

On 25 May 2019, Defendant fatally stabbed twenty-one-year-old Jonathan Culbreth ("Culbreth"). At the time of the stabbing, Defendant was about seventeen years and eight months old. Defendant and Culbreth had known each other for approximately three years, and previously had a romantic relationship. While Culbreth was openly gay, Defendant did not openly share his sexual orientation. About one week before the altercation, Defendant told a mutual friend, Sydney Ojiambo ("Ojiambo"), he was mad at Culbreth for "putting . . . [his] information out there," by telling other individuals that he was gay.

On the day of the stabbing, Culbreth attended a gathering with friends, Nya Richardson ("Richardson"), Jaquavis Johnson ("Johnson"), and Nya Alston ("Alston"), at the home of Jazmyne Powell ("Powell"). In the late afternoon, Ojiambo picked up Defendant so they could smoke some marijuana together and drove to Powell's home to purchase drugs. Ojiambo proceeded to the front door of the home to make the purchase while Defendant remained in the vehicle. When Culbreth learned from Ojiambo that Defendant was waiting in the vehicle, according to Ojiambo, Culbreth stated jokingly, "let's go beat [Defendant's] ass." Culbreth proceeded outside followed

by Alston and Johnson.

Culbreth walked up to the car where Defendant was sitting, and the two began speaking. According to witnesses, Culbreth told Defendant that there was a field right there if he wanted to fight, at which point Defendant responded that there was “no beef. We cool.” According to Alston and Johnson, they turned around and started walking back to the house, expecting Culbreth to follow, but within seconds they heard the sounds of fighting and the sound of Culbreth’s cup dropping to the ground.

Eventually, after fighting each other to the ground, Defendant, with knife in hand, stabbed Culbreth who had put his body on Defendant’s face causing Defendant to be unable to breathe. After Defendant dropped the knife, Alston grabbed the knife to make sure no one else would get stabbed and hid it under the stairs of the apartment. Defendant looked for the knife but left in a vehicle when he could not find it. Culbreth was taken to the hospital where he underwent heart surgery. Although the surgery repaired the stabbing injury, he ultimately died from blood loss the same evening.

Defendant turned himself into law enforcement the next morning. On 1 July 2019, Defendant was indicted on first degree murder. The matter came on for trial by jury during the 31 January 2022 criminal session of Superior Court in Wake County. During the jury trial, Defendant testified in his own defense and stated that he turned himself into police because his family told him it was the right thing to do. On cross-examination, the following line of questioning occurred:

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[Prosecutor]. You ran because you knew you did something wrong, right?

[Defendant]. Yes, ma'am.

[Prosecutor]. To be fair, you did not wake up on May 25th of 2019 intending to kill [Culbreth]; am I right about that?

[Defendant]. Yes, ma'am.

[Prosecutor]. But, ultimately, after everything was said and done, you knew that you were in the wrong, right?

[Defendant]. No, ma'am.

[Prosecutor]. Well, you just said that.

[Defendant]. I regret, you know what I'm saying? I regret, like, what happened. And, ultimately, my uncle told me, he said to watch the news, because if he passes away, you've got to turn yourself in, you know. Me, I wasn't hoping that he passed away, you know.

[Prosecutor]. So, if he hadn't passed away, would you not have turned yourself in?

[Defendant]. I believe if he hadn't passed away, his family would have pressed charges, and I would have been going to court.

On 9 February 2022, the jury found Defendant guilty of voluntary manslaughter.

At sentencing, several of Culbreth's family members and close friends gave victim-impact statements. The state prosecutor advocated for the trial court to sentence Defendant at the top of the presumptive range and argued aggravating circumstances such as: 1) the nature of the offense, including that Defendant was "armed with a deadly combat knife in this fight," while Culbreth "was completely

unarmed”; 2) Defendant “had every opportunity to call for help for [Culbreth]” but did not do so; and 3) the evidence and jury’s verdict indicated that Defendant had “intentionally caused [Culbreth’s] death.” The prosecutor requested Defendant be sentenced “at the top of the presumptive range, which is 64 to 89 months” based upon the evidence presented.

In response, Defendant’s counsel requested that the trial court sentence Defendant at the bottom of the presumptive range, and argued several mitigating circumstances: 1) Defendant was seventeen years old when he committed the offense; 2) he had no prior criminal record; 3) Defendant wanted to give a statement to the sentencing court; 4) he had a positive employment history; 5) people in the community had submitted character letters about him, exhibiting he possessed a support system; 6) “the jury spoke” that the confrontation between Defendant and the victim was “an excessive-force situation” and not an aggressor situation; 7) Defendant had learning disabilities growing up; and 8) there is scientific evidence showing a boy’s seventeen-year-old brain is not “fully developed.” After presenting these factors, Defendant’s trial counsel requested that the trial court “take all that into consideration when fashioning your judgment” and asked that Defendant be sentenced at the bottom of the presumptive range, a minimum 51 months. Additionally, Defendant’s trial counsel put on the record that Defendant wanted to provide an allocution statement to the court: “Mr. Garcia wants to say something to the Court. I’ve advised him not to, and that’s because there’s, you know, probably going to be an appeal. But, you

know, I would put that out there.” Upon hearing this statement from counsel, the trial court engaged in the following exchange:

THE COURT: All right. Thank you. Mr. Garcia, is there anything you would like to say to the Court? You don’t have to, but if there’s anything you’d like to say, I’d be glad to hear you.

THE DEFENDANT: No, ma’am.

On this same day, Defendant was sentenced, within the presumptive range, to a minimum of 64, maximum of 89 months, with credit for 991 days served prior to trial. Defendant gave oral notice of appeal in open court.

II. Analysis

Defendant argues three issues on appeal pertaining to the propriety of his presumptive range sentence: 1) the trial court erred by allowing trial counsel’s decision to control when an absolute impasse was reached on whether Defendant should provide an allocution statement at sentencing, and the matter had been brought to the trial court’s attention; 2) the trial court erred by failing to consider mitigating factors when it sentenced Defendant; and 3) Defendant received ineffective assistance of counsel from his trial counsel at his sentencing hearing based upon Defendant’s previous two arguments. Defendant filed a petition for writ of certiorari requesting that we invoke Rule 21 of our North Carolina Rules of Appellate Procedure to reach the merits of his second argument. For the reasons stated below, we grant Defendant’s petition for writ of certiorari to review the merits of his second

argument.

A. Allocution Statement at Sentencing.

First, Defendant argues that the trial court's failure to recognize and address the *Ali* impasse, once raised by defense counsel, constitutes error and entitles Defendant to a new sentencing hearing. We disagree.

"The standard of review for alleged violations of constitutional rights is *de novo*." *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009) (citation omitted). A defendant has a constitutional right to control his defense. *State v. McDowell*, 329 N.C. 363, 380, 407 S.E.2d 200, 210 (1991). Tactical decisions in trial, "such as which witnesses to call, 'whether and how to conduct cross-examinations, what jurors to accept or strike, and what trial motions to make are ultimately the province of the lawyer.'" *State v. Ali*, 329 N.C. 394, 404, 407 S.E.2d 183, 189 (1991) (quoting *State v. Luker*, 65 N.C. App. 644, 649, 310 S.E.2d 63, 66 (1983), *rev'd on other grounds*, 311 N.C. 301, 316 S.E.2d 309 (1984)). However, when trial counsel and a "fully informed criminal defendant client reach an absolute impasse as to such tactical decisions, the client's wishes must control" in accordance with the principal-agent nature of the attorney-client relationship. *Id.* The trial attorney is "bound to comply with her client's lawful instructions, 'and her actions are restricted to the scope of the authority conferred.'" *State v. Williams*, 191 N.C. App. 96, 98-99, 662 S.E.2d 397, 399 (2008) (quoting *Ali*, 329 N.C. at 403, 407 S.E.2d at 189). When an absolute impasse is reached, defense counsel "should make a record of the

circumstances, the lawyer's advice and the reasons, and the conclusion reached." *Ali*, 329 N.C. at 403-04, 407 S.E.2d at 189. A defendant bears the burden of showing an "absolute impasse" existed. *See State v. Ward*, 281 N.C. App. 484, 487-88, 868 S.E.2d 169, 173 ("[C]onclusory allegations of impasse are not enough."), *disc. rev. denied*, 382 N.C. 326, 876 S.E.2d 276 (2022). However, no actual impasse exists where there is no conflict between a defendant and counsel. *State v. Wilkinson*, 344 N.C. 198, 211-12, 474 S.E.2d 375, 382 (1996).

Here, there was neither a disagreement regarding tactical decisions, nor anything in the record to evidence the existence of any conflict between Defendant and his defense counsel. At sentencing, Defendant's counsel brought to the trial court's attention and placed upon the record Defendant's desire "to say something to the Court." Defense counsel further informed the court that he had "advised him not to," explaining to the trial court that he had given that advice based upon the likelihood of appeal. The trial court addressed Defendant directly: "Mr. Garcia, is there anything you would like to say to the Court? You don't have to, but if there's anything you'd like to say, I'd be glad to hear you." Defendant answered, "No, ma'am." Defendant was granted the express opportunity to voice disagreement with counsel's recommendation against making an allocution statement and to make a statement if he wished. Ultimately, he declined to make any statement to the court. Because Defendant declined to make an allocution statement, the choice to ultimately defer to his trial attorney's decision was his. Therefore, "no impasse existed." *State*

v. Curry, 256 N.C. App. 86, 98, 805 S.E.2d 552, 559 (2017). Thus, this argument is overruled.

B. Consideration of Mitigating Factors.

Next, Defendant argues that the trial court erred when it failed to consider mitigating factors in sentencing Defendant in the presumptive range. Because a defendant sentenced in the presumptive range is not “entitled to appeal as a matter of right the issue of whether his or her sentence is supported by evidence introduced at the trial and sentencing hearing,” Defendant petitions this Court for review of this issue by writ of certiorari. N.C. Gen. Stat. § 15A-1444(a1) (2022).

A writ of certiorari is an “extraordinary remedial writ to correct errors of law.” *State v. Simmington*, 235 N.C. 612, 613, 70 S.E.2d 842, 843-44 (1952). “Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959).

Defendant argues that the trial court did not consider six mitigating factors and that mitigation issues are of particular importance in cases involving juvenile defendants. In our discretion, we grant Defendant’s petition and review his argument on its merits.

Additionally, Defendant requests that this Court grant his motion to add a letter written by Defendant’s parents to the certified record on appeal pursuant to North Carolina Rules of Appellate Procedure Rule 9(b)(5)(b). In his motion, Defendant states that this letter was submitted by his trial counsel “to the lower court

during the sentencing hearing” but that the letter did not appear “in the Clerk of Court’s file.” Defendant points this Court to the trial transcript and reasons that the “record captures the submission of this document” because the trial judge affirmed that he had “reviewed the letter . . . from [Defendant]’s parents.” We agree and grant Defendant’s Rule 9(b)(5)(b) motion to amend the record on appeal. *Umstead Coal. v. Raleigh-Durham Airport Auth.*, 275 N.C. App. 384, 391, 853 S.E.2d 742, 747 (2020).

Defendant argues that the trial court erred in failing to consider statutory mitigating factors including: 1) the defendant’s age, or immaturity, at the time of the commission of the offense significantly reduced the defendant’s culpability for the offense; 2) “[t]he victim was more than 16 years of age and was a voluntary participant in the defendant’s conduct or consented to it”; 3) “[t]he defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating”; 4) “[t]he defendant is a minor and has reliable supervision available”; 5) “the defendant has a support system in the community”; and 6) “[t]he defendant has a positive employment history or is gainfully employed.” N.C. Gen. Stat. § 15A-1340.16(e)(4), (6), (8), (13), (18), and (19) (2022). We disagree.

Under the Structured Sentencing Act, a trial court “shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court.” *Id.* § 15A-1340.16(a). It “shall make findings of the aggravating and mitigating factors present in the offense only if, in its

discretion, it departs from the presumptive range.” *Id.* § 15A-1340.16(c).

Under North Carolina law, “[t]he judgment of a court is presumed valid and just.” *State v. Taylor*, 332 N.C. 372, 391, 420 S.E.2d 414, 425 (1992) (citation omitted). “When the validity of a judgment is challenged, the burden is on the defendant to show error amounting to a denial of some substantial right.” *State v. Heggs*, 280 N.C. App. 95, 98, 866 S.E.2d 320, 324 (2021) (citation omitted). “A sentence within the statutory limit will be presumed regular and valid, unless the record discloses that the court considered irrelevant and improper matters in determining the severity of the sentence.” *State v. Meadows*, 371 N.C. 742, 748, 821 S.E.2d 402, 407 (2018) (cleaned up). Absent such a showing, “the within-limits sentence . . . is presumed proper” and will remain undisturbed, and a defendant’s challenge that the trial court abused its discretion in sentencing him is “meritless.” *Id.*

In the present case, Defendant was convicted of voluntary manslaughter, a Class D felony under N.C. Gen. Stat. § 14-18. Defendant was a prior record level 1 offender, having no priors. Under the sentencing guidelines, the presumptive range for sentencing a level 1 offender for a Class D felony is a minimum of 51 months to a maximum of 89 months. The trial court sentenced Defendant, in the presumptive range, to a minimum of 64 months to a maximum of 89 months. The minimum terms within the presumptive range spanned from 51 to 64 months pursuant to N.C. Gen. Stat. § 15A-1340.17(c). Defendant’s trial counsel presented eight mitigating factors, discussed above, of why Defendant should be sentenced at the bottom of the

presumptive range and requested that the trial court “take all that into consideration when fashioning your judgment.” Defendant contends that the trial court did not consider the mitigating factors because the trial court did not make any findings regarding them. However, because Defendant was sentenced in the presumptive range by the trial court, the court was not required to make findings as to Defendant’s proposed mitigating factors. *See State v. James*, 226 N.C. App. 120, 127, 738 S.E.2d 420, 426 (2013) (“Because defendant was sentenced in the presumptive range, the trial court did not err in failing to make findings as to the mitigating factors of age, immaturity or limited mental capacity.” (cleaned up)). Here, the trial court did not abuse its discretion by failing to make findings on mitigating factors because it did not depart from the presumptive sentence range. *See, e.g., State v. Kelly*, 221 N.C. App. 643, 648, 727 S.E.2d 912, 915 (2012); *State v. Dorton*, 182 N.C. App. 34, 43, 641 S.E.2d 357, 363 (2007); *State v. Hagans*, 177 N.C. App. 17, 31, 628 S.E.2d 776, 786 (2006). Therefore, Defendant’s argument is overruled.

C. Ineffective Assistance of Counsel.

Finally, Defendant contends that he received ineffective assistance of counsel at sentencing based upon his counsel’s “advice not to present an allocution statement, his *Ali* violation, and [counsel’s] failure to request or advocate for a mitigated sentence for a child defendant.” Defendant argues that he was prejudiced because “there is a reasonable possibility that [his] allocution statement and zealous advocacy for mitigation would have led to a reduced sentence.” We disagree.

Ineffective assistance of counsel claims are reviewed *de novo*. *State v. Wilson*, 236 N.C. App. 472, 475, 762 S.E.2d 894, 896 (2014) (citation omitted). Under *de novo* review, the court considers the matter anew and substitutes its own judgment for that of the lower court. *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008). Ineffective assistance of counsel claims are governed by the two-part test articulated in *Strickland v. Washington*, wherein a defendant must show both that 1) counsel's performance was "deficient," and 2) the "deficient performance prejudiced the defense." 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). See *State v. Braswell*, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985). There exists a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065, 80 L. Ed. 2d at 694. Trial counsel "is given wide latitude in matters of strategy, and the burden to show that counsel's performance fell short of the required standard is a heavy one for defendant to bear." *State v. McNeill*, 371 N.C. 198, 218-19, 813 S.E.2d 797, 812 (2018) (citation omitted). At the same time, this presumption is rebuttable. *State v. Allen*, 378 N.C. 286, 300, 861 S.E.2d 273, 284 (2021).

In this case, Defendant's trial counsel informed the trial court at sentencing that Defendant wanted to give a statement, that he had advised against it, and the reason for that advice, as required under *Ali*. As discussed above, the trial court offered Defendant an opportunity to speak and to be heard. Defendant declined to avail himself of the opportunity to allocute.

Further, the transcript at sentencing reveals that defense counsel advocated for the trial court to impose the lowest possible presumptive-range sentence. At sentencing, defense trial counsel presented a letter from Defendant's parents for consideration and argued each mitigating circumstance including that Defendant: was seventeen-years-old when he committed the offense; had no prior criminal record; had a positive employment history; had learning disabilities; and presented supportive community character reference letters. Further, the defense trial counsel argued the "jury spoke that it was an excessive-force" situation, not an aggressor situation, and that there is scientific evidence indicating a seventeen-year-old's brain is not "fully developed." Defense counsel asked the trial court "to take all that into consideration when fashioning your judgment." Because Defendant's argument fails at the first prong of the *Strickland* analysis by not providing sufficient evidence to demonstrate defense counsel's representation fell below an objective standard of reasonableness, we need not reach the second prong. Accordingly, this argument is overruled.

III. Conclusion

For the foregoing reasons, we conclude that Defendant received a fair trial, free from error, and that the trial court did not err in sentencing. Further, we overrule Defendant's claim for ineffective assistance of counsel.

NO ERROR.

Judges ARROWOOD and GORE concur.

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Report per Rule 30(e).