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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1022

Filed 05 September 2023

Johnston County, Nos. 21CRS053519, 21CRS053521, 21CRS001333

STATE OF NORTH CAROLINA

v.

WILSON RASUK GONZALEZ

Appeal by Defendant from judgment entered 13 May 2022 by Judge Craig Croom in Johnston County Superior Court. Heard in the Court of Appeals 22 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Adrian W. Dellinger, for the State.

North Carolina Prisoner Legal Services, Inc., by Kristen L. Todd, for Defendant.

COLLINS, Judge.

Defendant Wilson Rasuk Gonzalez appeals from judgment entered upon guilty verdicts of various drug-related offenses and his guilty plea to attaining habitual felon status. Defendant argues that the trial court abused its discretion or, in the alternative, plainly erred by failing to appoint Defendant an interpreter. Defendant also argues in the alternative that he received ineffective assistance of counsel

because his counsel failed to request an interpreter. The trial court did not abuse its discretion by not appointing Defendant an interpreter, and defense counsel did not provide ineffective assistance of counsel by not requesting one. We therefore find no error.

I. Background

Officer Julie Carroll with the Smithfield Police Department was parked near Becky's Log Cabin, a "known drug area[.]" when she spotted a gray Mercedes pulling out of the parking lot. Carroll got behind the vehicle, ran its tags, and discovered that the tags were expired and the insurance was inactive. Carroll initiated a traffic stop, approached the passenger side of the vehicle, and observed Defendant in the driver's seat and a woman in the front passenger seat.

K-9 Officer James Sittig with the Smithfield Police Department arrived on the scene while Carroll was speaking with Defendant. Sittig conducted an open-air sniff around the vehicle, and the K-9 alerted near the trunk. Upon searching the vehicle, Sittig seized a burnt marijuana cigarette, a Brillo pad inside of a cigarette pack, a cut can with a white powder residue, a plastic bag with a white powder substance, a plastic bag with a crystal-like substance, a blue plastic bag with a crystal-like substance, and a plastic bag with a leafy green substance. Defendant admitted that these items belonged to him. The crystal-like substance was tested and confirmed to be methamphetamine, and the white powdery substance was tested and confirmed to be cocaine.

Defendant was indicted for felony possession of a schedule II controlled substance, felony possession of cocaine, possession of drug paraphernalia, and possession of marijuana up to one-half ounce. Defendant was later indicted for having attained habitual felon status. After a trial, the jury returned guilty verdicts of felony possession of a schedule II controlled substance, felony possession of cocaine, possession of drug paraphernalia, and possession of marijuana up to one-half ounce. Defendant then pled guilty to having attained habitual felon status. The trial court sentenced Defendant to 17 to 33 months of imprisonment, suspended for 24 months of supervised probation. As a condition of special probation, the trial court required Defendant to serve an active term of 45 days. Defendant appealed.

II. Discussion

Defendant argues that the trial court abused its discretion or, in the alternative, plainly erred by failing to appoint Defendant an interpreter. Defendant also argues in the alternative that he received ineffective assistance of counsel because his counsel failed to request an interpreter.

A. Abuse of Discretion/Plain Error

Defendant argues that the trial court abused its discretion by not appointing Defendant an interpreter “despite clear indications that he was having trouble understanding what was being said during the course of his trial.” (capitalization altered).

“The decision of whether an interpreter is warranted in a particular case is a

decision within the trial judge's discretion." *State v. McLellan*, 56 N.C. App. 101, 102, 286 S.E.2d 873, 875 (1982) (citations omitted). It will be reviewed only for an abuse of discretion. *Id.* "An abuse of discretion is shown only when the court's decision is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Paynich v. Vestal*, 269 N.C. App. 275, 278, 837 S.E.2d 433, 436 (2020) (quotation marks and citation omitted).

Here, Defendant did not request an interpreter. Defendant testified in his own defense for approximately thirty-eight minutes. During his testimony, he coherently and logically answered numerous questions on both direct and cross examination. Although Defendant's English was not grammatically correct during portions of his testimony, the substance of his answers was nonetheless clear and responsive to the questions. Further, although Defendant asked the prosecutor on cross examination to repeat certain questions and clarify certain words, the record indicates that he ultimately understood the questions and responded appropriately.

Although the trial court had the discretion to appoint an interpreter, given that Defendant did not request one and the record indicates that Defendant understood what was being said during his trial and appropriately responded to questions, Defendant has failed to show that the trial court abused its discretion by not appointing an interpreter. Because the trial court did not abuse its discretion by not appointing an interpreter, we need not address whether the trial court plainly erred

by not appointing an interpreter.¹

B. Ineffective Assistance of Counsel

Defendant argues in the alternative that he received ineffective assistance of counsel because his counsel failed to request an interpreter.

To bring a successful ineffective assistance of counsel claim,

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

State v. Braswell, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985) (emphasis omitted) (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). We may decide an ineffective assistance of counsel claim on direct review "when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing." *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001) (citations omitted).

Here, the cold record reveals that during Defendant's thirty-eight minutes of

¹ We note that this argument could not be reviewed for plain error as our Supreme Court has declined to extend the plain error analysis beyond issues involving jury instructions and evidentiary matters. *State v. Diaz*, 155 N.C. App. 307, 318, 575 S.E.2d 523, 530-31 (2002).

testimony, he coherently and logically answered numerous questions on both direct and cross examination. Although Defendant's English was not grammatically correct during portions of his testimony, the substance of his answers was nonetheless clear and responsive to the questions. Further, although Defendant asked the prosecutor on cross examination to repeat certain questions and clarify certain words, the record indicates that he ultimately understood the questions and responded appropriately.

Because the cold record indicates that Defendant understood what was being said during his trial and appropriately responded to questions, Defendant has failed to show that by not requesting an interpreter, counsel "made [an] error[]" so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Braswell*, 312 N.C. at 562, 324 S.E.2d at 248 (citation omitted).

III. Conclusion

The trial court did not abuse its discretion by not appointing Defendant an interpreter, and defense counsel did not provide ineffective assistance of counsel by not requesting one. Accordingly, we find no error.

NO ERROR.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).