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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-279

Filed 19 September 2023

Swain County, Nos. 99 CRS 2025–28, 00 CRS 194–97

STATE OF NORTH CAROLINA

v.

JOHN O’HANLAN

Appeal by defendant from order entered 30 December 2022 by Judge William H. Coward in Swain County Superior Court. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Nicholas G. Vlahos, for the State.

Dobson Law Firm, PLLC, by Miranda Dues, for defendant-appellant.

PER CURIAM.

Defendant John O’Hanlan appeals from the trial court’s order denying his motion for post-conviction DNA testing of certain evidence that was collected during the investigation of the November 1999 kidnapping and assault of Defendant’s coworker and neighbor. We affirm.

On 7 February 2000, the Swain County grand jury issued indictments charging

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Defendant with one count of first-degree kidnapping; two counts of first-degree rape; three counts of first-degree sexual offense; one count of assault with a deadly weapon inflicting serious injury; and one count of felonious larceny. Following a trial, on 11 April 2000, the jury returned verdicts finding Defendant guilty of all charges. The trial court entered judgments upon Defendant's convictions, and Defendant appealed.

By opinion filed 12 June 2002, this Court upheld Defendant's convictions. *State v. O'Hanlan*, 153 N.C. App. 546, 570 S.E.2d 751 (2002), *cert. denied*, 358 N.C. 158, 593 S.E.2d 397 (2004). In 2003, Defendant petitioned our Supreme Court to issue its writ of certiorari, seeking further review of his case; the Court denied Defendant's petition on 5 February 2004.

On 25 February 2022, Defendant filed with the trial court a "Motion for Release of Evidence for DNA Testing," requesting that certain evidence from his case—most notably, a sweatshirt, a pubic-hair sample, and the victim's rape kit—be released to him for post-conviction DNA testing, pursuant to N.C. Gen. Stat. § 15A-269. On 18 April 2022, Defendant filed a second motion, a "Motion to Compel Discovery," after the State purportedly "failed to communicate with [Defendant] as to the existence of the [requested] evidence." The State denied Defendant's allegations, asserting that it was never served with Defendant's first motion, and objected to his request for post-conviction DNA testing.

Following a hearing, the trial court entered an order denying Defendant's motion for release of evidence for post-conviction DNA testing. From this order,

Defendant appeals.

On appeal from an order denying a motion for post-conviction DNA testing, the trial court's "findings of fact are binding on this Court if they are supported by competent evidence and may not be disturbed absent an abuse of discretion." *State v. Lane*, 370 N.C. 508, 517, 809 S.E.2d 568, 574 (2018). We review the trial court's conclusions of law de novo. *Id.* "A trial court's determination of whether [the] defendant's request for post[-]conviction DNA testing is 'material' to his defense . . . is a conclusion of law, and thus we review de novo the trial court's conclusion that [the] defendant failed to show the materiality of his request." *Id.* at 517–18, 809 S.E.2d at 574.

Defendant argues on appeal that the trial court erred in denying his motion for post-conviction DNA testing because the requested "testing was material to his defense, related to his prosecution, and would have had a reasonable probability of exonerating [Defendant] of the crimes for which he was convicted[.]" However, Defendant fails to challenge any of the trial court's 16 detailed findings of fact, which are thus binding on this Court. The court's findings include that:

12. The victim . . . testified she knew [Defendant] as a co-worker and had lived in a cabin community with him prior to the events of November 5, 1999, that led to these charges.

13. The charges all arose over an approximately 18-hour period during which [Defendant] and the victim were in close physical proximity to one another, and the victim testified [Defendant] was the one who assaulted her,

kidnapped her, and committed numerous sexual crimes upon her. Defendant has not identified anyone else, either at trial or during the hearing of this motion, that was involved with these crimes, and there was no other evidence elicited during trial to suggest there were other individuals involved with this series of events other than [Defendant].

. . . .

16. Defendant has presented no evidence to support his conclusory and vague statements without evidentiary foundation that this motion now filed is material to his defense.

The trial court's unchallenged findings, in turn, support the trial court's conclusions of law. *See id.*

We agree with the trial court that "Defendant has failed to prove by a preponderance of the evidence that there are facts to establish that DNA testing of any of the evidence collected during the investigation of this case was material to his defense[.]" and that "[t]here is not a reasonable probability the verdict would have been more favorable to Defendant if the DNA testing requested had been performed on the evidence."

Accordingly, we affirm the trial court's order denying Defendant's motion for post-conviction DNA testing.

AFFIRMED.

Panel consisting of:

Judges ZACHARY, HAMPSON, and FLOOD.

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Report per Rule 30(e).