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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-982

Filed 21 May 2024

Perquimans County, No. 18-CRS-50196

STATE OF NORTH CAROLINA

v.

QUENTIN JACKSON, Defendant.

Appeal by Defendant from judgment entered 24 February 2022 by Judge Jerry R. Tillett in Perquimans County Superior Court. Heard in the Court of Appeals 19 September 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Catherine R. Laney, for the State.

Hynson Law, PLLC, by Warren D. Hynson, for the defendant-appellant.

STADING, Judge.

Defendant Quentin Jackson appeals from a second-degree trespass judgment after the superior court denied his motion to set aside a previously entered *Alford* plea. After careful consideration, we affirm the trial court's judgment.

I. Background

On 13 June 2018, Catherine Flowers filed a criminal complaint against Defendant, her nephew, alleging he entered and remained on her property without

permission. The magistrate issued a warrant for Defendant's arrest, charging him with misdemeanor breaking and entering and first-degree trespass. On 12 September 2018, a trial was held in Perquimans County District Court, and Defendant was found guilty of first-degree trespass. Defendant appealed to superior court that same day.

On 4 October 2021, Defendant entered an *Alford* plea to the lesser offense of second-degree trespass. Defendant affirmed his plea agreement and transcript of the plea. He made a number of oral affirmations, including: (1) he understood the judge; (2) he understood he had the right to remain silent and his statements could be used against him; (3) he is able to read and write at a college level; (4) while he had taken medication that day, he had been taking this medication for eleven months and believed his mind was clear and he understood his actions to plead not guilty, be tried by a jury, and to confront and cross-examine witnesses, and that, by entering this plea, he gave up those and other constitutional rights; (8) he understood that entering this plea limited his right to appeal; and (9) he understood this plea may impact preservation of certain evidence relating to his case. Further, Defendant confirmed his understanding that he was pleading guilty under *Alford* to second-degree trespass. The trial court found: there was a factual basis for entry of the plea; Defendant was satisfied with his lawyer's legal services; Defendant was competent to stand trial, the plea was Defendant's informed choice; and Defendant entered the plea freely, voluntarily, and understandingly. To address sentencing at the same

time as a “pending probation matter,” judgment was continued to 24 February 2022.

At this later setting, Defendant’s trial counsel moved to withdraw before sentencing. Trial counsel stated that he and Defendant were at an impasse because Defendant wished to set aside his plea, but counsel was unaware of a legal basis to do so. Defendant asserted that he sent trial counsel a text message in November requesting to withdraw his plea, but counsel never filed anything to that effect. In support of withdrawal, Defendant stated, “there was a lot of evidence that came after [the victim] got up here and said what she said. So the legal basis on top of the medication I take can definitely be argued.” The trial court stated that trial counsel’s actions adhered to his ethical obligations to advance his client’s request and to inform the court that he was unaware of a legal basis for doing so. The trial court later denied trial counsel’s request to withdraw and proceeded with sentencing.

Then, trial counsel again informed the trial court that Defendant did not wish to proceed with the plea. Trial counsel stated Defendant was concerned an *Alford* plea may affect the outcome of a pending civil case. The trial court reiterated that the plea was already adjudicated and emphasized Defendant’s affirmations from the 4 October 2021 hearing. The trial court found Defendant’s proffered reasons were not “either regular cause or exceptional or special cause” to warrant withdrawal of his plea. The trial court entered the second-degree trespass judgment and ordered a twenty-day jail sentence, with credit for time served. Defendant gave notice of appeal the same day.

II. Jurisdiction

This Court has jurisdiction to consider Defendant's appeal under N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2023).

III. Analysis

Defendant raises two issues on appeal: (1) whether the trial court erred in denying his motion to withdraw his *Alford* plea, and (2) whether he was denied effective assistance of counsel.

A. Motion to Withdraw

First, Defendant argues that the trial court erred in denying his motion to withdraw his *Alford* plea because it applied the incorrect standard, and the record shows Defendant had fair and just reasons to support his motion. When reviewing a trial court's denial of a motion to withdraw a guilty plea before sentencing, our Court performs an independent review of the record to determine whether it would have been "fair and just" to allow the motion. *State v. Marshburn*, 109 N.C. App. 105, 108, 425 S.E.2d 715, 717 (1993) (citation omitted). "Although there is no absolute right to withdraw a guilty plea, withdrawal motions made prior to sentencing, and especially at a very early stage of the proceedings, should be granted with liberality." *State v. Crawford*, 278 N.C. App. 104, 107, 861 S.E.2d 18, 22 (2021) (citing *State v. Meyer*, 330 N.C. 738, 742–43, 412 S.E.2d 339, 342 (1992)). A defendant seeking withdrawal "has the burden of showing that his motion to withdraw is supported by some fair and just

reason.” *Id.* (internal quotation marks and citations omitted). “Whether the reason is ‘fair and just’ requires a consideration of a variety of factors.” *Marshburn*, 109 N.C. App. at 108, 425 S.E.2d at 717 (citing *State v. Handy*, 326 N.C. 532, 536, 391 S.E.2d 159, 161 (1990)). These factors, known as the *Handy* factors, include:

[T]he defendant’s assertion of legal innocence; the weakness of the State’s case; a short length of time between the entry of the guilty plea and the motion to withdraw; that the defendant did not have competent counsel at all times; that the defendant did not understand the consequences of the guilty plea; and that the plea was entered in haste, under coercion or at a time when the defendant was confused. If the defendant meets this burden, the court must then consider any substantial prejudice to the State caused by the withdrawal of the plea.

Id. at 108, 425 S.E.2d at 717–18 (internal citation omitted) (citing *Handy*, 326 N.C. at 539, 391 S.E.2d at 163). These factors are not intended to be exhaustive or definitive. *State v. Taylor*, 374 N.C. 710, 723, 843 S.E.2d 46, 55 (2020). “[R]ather, they are designed to be an instructive collection of considerations to aid the court in its overall determination of whether sufficient circumstances exist to constitute any fair and just reason for a defendant’s withdrawal of a guilty plea.” *Id.*

Defendant argues that the trial court erred in denying his motion to withdraw because (1) he made the motion at the first opportunity, (2) he had the “intention” of asserting his innocence, (3) his trial counsel was not competent, and (4) the State did not argue prejudice. To begin with, Defendant argues the trial court used a higher, incorrect standard when it denied the motion to withdraw. “[T]he appellate court must itself determine, considering the reasons given by the defendant and any

prejudice to the State, if it would be fair and just to allow the motion to withdraw.” *Mashburn*, 109 N.C. App. at 108, 425 S.E.2d at 718. Thus, we address Defendant’s arguments and each individual *Handy* factor below to determine whether the trial court should have allowed the motion to withdraw.

As to the first factor—assertion of legal innocence—Defendant asserts the statements made at the plea hearing suggest he “intended to contest his guilt” and “assert his innocence.” Yet his contention is misplaced, as these statements and Defendant’s appellate brief establish no concrete assertion of his legal innocence. In *State v. Chery*, the defendant unsuccessfully argued that he maintained his legal innocence by entering into a “plea of no contest,” however, a plea of no contest fails to “conclusively establish the factor of assertion of legal innocence for purposes of the *Handy* analysis.” 203 N.C. App. 310, 315, 691 S.E.2d 40, 45 (2010). For our Court to conclude this factor favors a defendant, *Handy* requires their unequivocal assertion of innocence. *State v. Watkins*, 195 N.C. App. 215, 225, 672 S.E.2d 43, 50 (2009). In *State v. Graham*, our Court determined the “defendant made no concrete assertion of innocence, stating only that he ‘always felt that he was not guilty[.]’” 122 N.C. App. 635, 637, 471 S.E.2d 100, 102 (1996).

Here, the record reflects that Defendant only wished to withdraw his plea due to concerns that it may be used against him in a pending civil case. At the plea hearing, trial counsel informed the trial court that Defendant’s “concern is if he is found responsible or guilty under this court, it can be used against him in civil court.”

Moreover, Defendant's assertion that he intended to contest his guilt and assert his innocence does not show an unequivocal, concrete assertion of his legal innocence, under *Handy*. *Id.* Thus, even with consideration of Defendant's *Alford* plea, this factor weighs against permitting the withdrawal of Defendant's plea.

We also consider how long between the entry of the guilty plea and the motion to withdraw. "[C]ourts have historically placed a heavy reliance on the length of time between a defendant's entry of a guilty plea and a motion to withdraw the plea." *Crawford*, 278 N.C. App. at 114, 861 S.E.2d at 26 (internal quotation marks and citation omitted). Here, even if we accept Defendant's statement that he tried to withdraw the plea in November 2021 as accurate, that was still, at a minimum, twenty-seven days after he entered his plea. Considering the facts here, the length of time does not demonstrate a "swift change of heart" or a wavered decision to plead guilty at "a very early stage of the proceedings." *Compare Handy*, 326 N.C. at 540–41, 391 S.E.2d at 163–64 (granting the defendant's motion to withdraw his plea less than twenty-four hours after it was entered) with *State v. Robinson*, 177 N.C. App. 225, 230, 628 S.E.2d 252, 255 (2006) (denying the defendant's motion to withdraw his guilty plea three-and-a-half months after it was entered).

Finally, we consider whether Defendant entered his plea in haste, confusion, under coercion, or without understanding its consequences. When considering this factor, our Court in *State v. Konakh*, determined that "the transcript from the plea hearing reveal[ed] that the trial court made a careful inquiry of [d]efendant regarding

his decision to plead, the accuracy of which [d]efendant confirmed by executing a Transcript of Plea form.” 266 N.C. App. 551, 557 831 S.E.2d 865, 869–70 (2019). There, our Court held “[t]hese two things demonstrate that the plea was entered into knowingly, voluntarily, and with an understanding of the direct consequences of the plea.” *Id.* (citation omitted). Here, Defendant made several affirmations to the trial court at the plea hearing and affirmed his transcript of plea. His actions reveal that his decision to enter the plea resulted from an informed choice.

An application of the *Handy* factors leads us to conclude that Defendant failed to meet his burden of showing a fair and just reason to withdraw his plea. Defendant further argues the State committed error by failing to argue that it would be prejudiced by the allowance of Defendant’s motion to withdraw. However, “[a]lthough *Handy* notes that the State *may refute* a defendant’s motion to withdraw by evidence of concrete prejudice, the State need not even address this issue until the defendant has asserted a fair and just reason why he should be permitted to withdraw his guilty pleas.” *State v. Meyer*, 330 N.C. 738, 744, 412 S.E.2d 339, 343 (1992) (alteration in original) (internal citations omitted). Because Defendant failed to meet this burden, the State had no duty to argue prejudice. Accordingly, the trial court did not err by denying Defendant’s motion to withdraw his *Alford* plea.

B. Ineffective Assistance of Counsel

Next, Defendant argues he was denied effective assistance of counsel when trial counsel told the trial court that Defendant lacked a meritorious basis to

withdraw his plea. Ineffective assistance of counsel claims are reviewed *de novo*. *State v. McDougald*, 279 N.C. App. 25, 31, 862 S.E.2d 877, 882 (2021). “In general, claims of ineffective assistance of counsel should be considered through motions for appropriate relief and not on direct appeal.” *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001), *cert. denied*, 356 N.C. 623, 575 S.E.2d 758 (2002). “[I]neffective assistance of counsel claims brought on direct review [are] decided on the merits when the cold record reveals that no further investigation is required[.]” *State v. Thompson*, 359 N.C. 77, 122–23, 604 S.E.2d 850, 881 (2004) (internal quotation marks and citation omitted). “To make a successful ineffective assistance of counsel claim, a defendant must show that (1) counsel’s ‘performance was deficient,’ and (2) ‘the deficient performance prejudiced the defense.’” *State v. Waring*, 364 N.C. 443, 502, 701 S.E.2d 615, 652 (2010) (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)) (citations omitted).

To establish “prejudice” for ineffective assistance purposes, defendants must show “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *State v. Campbell*, 359 N.C. 644, 690, 617 S.E.2d 1, 29 (2005) (quoting *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698) (internal quotation marks omitted). Even if “counsel made an error, even an unreasonable error, [that] does not warrant reversal of a conviction unless there is a reasonable probability that, but for counsel’s errors, there would have been a different result in the proceedings.” *State v. Braswell*, 312 N.C.

553, 563, 324 S.E.2d 241, 248 (1985) (citing *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Campbell*, 359 N.C. at 690, 617 S.E.2d at 29–30 (quoting *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698). “[B]oth deficient performance and prejudice are required for a successful ineffective assistance of counsel claim.” *State v. Todd*, 369 N.C. 707, 711, 799 S.E.2d 834, 838 (2017).

Applying the ineffective assistance prongs to this case, Defendant satisfies neither. The record reveals that Defendant and his trial counsel “worked out” continuing sentencing for this matter as a legal strategy so he could address his “pending probation matter” at the same time. The record also shows that Defendant either sent a text or email message to his trial counsel changing his mind at some point after the *Alford* plea to the lesser charge was entered. Unable to determine a legal basis to request that the plea be set aside, his trial counsel was at an impasse with Defendant and requested to withdraw from his representation. Defendant elaborated on his concerns that “there was a lot of evidence that came after [the victim] got up here and said what she said” and mentioned his medication. Contrary to Defendant’s assertion, the victim’s statement was not evidence, and consumption of his regularly prescribed medicine alongside his affirmation that his mind was clear and he understood his actions does not show that his trial counsel acted deficiently—nor did it prejudice Defendant.

IV. Conclusion

For the foregoing reasons, Defendant cannot show that a fair and just reason existed to withdraw his second-degree trespass *Alford* plea. Nor can he show that his counsel was deficient or that he was prejudiced by any deficiency. Accordingly, we affirm the trial court's judgment.

AFFIRMED.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).