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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-966

Filed 4 June 2024

Mecklenburg County, Nos. 15 CRS 207225-27

STATE OF NORTH CAROLINA

v.

EMMANUEL JESUS RANGEL

Appeal by defendant from order entered 5 April 2023 by Judge Louis A. Trosh in Superior Court, Mecklenburg County. Heard in the Court of Appeals 17 April 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Kristin Jo Uicker, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, and Emmanuel Jesus Rangel, pro se, for defendant-appellant.*

ARROWOOD, Judge.

Emmanuel Jesus Rangel (“defendant”) appeals from order entered 5 April 2023 denying his motion for post-conviction DNA testing. Defendant’s appellate counsel filed an *Anders* brief on defendant’s behalf. Defendant also filed a *pro se* brief. After full review of the record, we affirm the trial court.

I. Background

On 9 March 2015, a grand jury in Mecklenburg County indicted defendant on three counts of first-degree murder. The evidence presented at trial tended to show the following relevant facts. On 23 February 2015, defendant picked up a friend Edward Sanchez (“Sanchez”) and went to the house of another friend David Lopez (“Lopez”) to smoke marijuana. Sanchez suggested they rob Jonathan Alvarado (“Alvarado”) for large quantities of money and heroin, and the three planned for defendant and Sanchez to rob Alvarado while Lopez was to drive the car.

At around 1:00 a.m. on 24 February 2015, defendant drove the three men to Alvarado’s house in Sanchez’s father’s black Dodge truck. Defendant and Sanchez entered the house after knocking on the door, and Lopez heard multiple gunshots. Defendant came to the front door and told Lopez to come inside, and when Lopez reached the front door, defendant handed him various electronics to put in the truck. Lopez entered the house and saw three dead bodies throughout the residence. Lopez continued to carry items back to the truck while the other two men searched the house. As the three men drove back to Lopez’s house, Sanchez struck defendant and threatened to shoot him because he “didn’t finish the job.” Defendant and Sanchez went back to Sanchez’s father’s house, and Sanchez woke his girlfriend Emily Isaacs (“Emily”) and told her they were going to drive to Texas. They were arrested later that evening in Texas.

Defendant was arrested in Charlotte the next morning, and a search of the Dodge truck and his room at his mother's house yielded various electronics and other items connected to the robbery.

On 25 May 2018, a jury found defendant guilty of three counts of first-degree murder, and the trial court sentenced defendant to three consecutive life sentences without parole. Defendant appealed his conviction, and this Court held the trial court committed no error and dismissed defendant's ineffective assistance of counsel claim without prejudice. *State v. Rangel*, No. COA19-131, 2019 WL 6532765, at \*9 (N.C. App. Dec. 3, 2019).

On 3 January 2023, defendant filed a pro se motion for post-conviction DNA testing. In his motion, defendant argued that he met the statutory requirements for post-conviction DNA testing provided in N.C.G.S. § 15A-269(c). Defendant specifically requested the following items of evidence: (1) a cast of a shoe print from the crime scene, defendant's shoe, and the floor tile containing the shoe print; (2) results of forensic testing on defendant for gunshot residue on defendant's hands/fingerprints; (3) guns, shell casings, and bullet projectiles seized by police; (4) "insignificant" chemical reaction to blood stains in the Dodge truck; (5) clothes, shoes, and personal items from defendant, Sanchez, and Emily; (6) video surveillance; and (7) exhibits included.

On 5 April 2023, the trial court entered an order denying defendant's motion without a hearing. The trial court concluded that some of the evidence defendant

requested to be tested, including the shoe, shoe print, and tile, as well as residue not submitted into evidence, did “not involve DNA evidence.” Further, the trial court concluded that the gun had already been tested for DNA evidence, and any testing of the shell casings would not provide “material results regarding who fired the gun, only who touched the bullets at some point in the past.” The trial court reasoned that even if there were third-party DNA on the casings, that fact, without more, would not “tend to show that Defendant was not involved in the crimes.” The trial court also concluded that DNA testing of the blood stains in the Dodge truck “would not provide material evidence as the result of the ‘blue star’ application was minimal.” Finally, the trial court concluded that N.C.G.S. § 15A-269 “provides for the testing of biological evidence, not testing to demonstrate lack of biological evidence.”

Defendant filed notice of appeal from the order denying his motion on 25 April 2023. Defendant filed a petition for writ of certiorari (“PWC”) on 9 November 2023.

## II. Discussion

### A. Writ of Certiorari

Initially, we must determine whether to grant defendant’s PWC. “The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]” N.C. R. App. P. 21(a)(1) (2023). “Whether to allow a petition and issue the writ of certiorari is not a

matter of right and rests within the discretion of this Court.” *State v. Biddix*, 244 N.C. App. 482, 486 (2015).

Here, defendant filed a *pro se* notice of appeal dated 14 April 2023, which was within the 14-day window for a timely appeal from the 5 April 2023 order. However, the notice of appeal was not file stamped by the Mecklenburg County Clerk of Superior Court until 25 April 2023, after the 14-day deadline. In our discretion, we allow defendant’s petition for writ of certiorari and address the merits of his appeal.

B. *Anders* Review

Defendant’s appellate counsel was “unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal” and thus requests this Court review the record on appeal for any issues of merit, pursuant to *Anders v. California*, 386 U.S. 738 (1967), *State v. Kinch*, 314 N.C. 99 (1985), and *State v. Velasquez-Cardenas*, 259 N.C. App. 211 (2018). In order to comply with *Anders*, appellate counsel was required to file a brief referring any arguable assignments of error and to provide defendant with copies of the brief, record, transcript, and the State’s brief. *Kinch*, 314 N.C. at 102. Defendant’s counsel has done so and accordingly has fully complied with *Anders* and *Kinch*. Defendant filed a *pro se* brief with this Court.

Pursuant to *Anders*, this Court must conduct “a full examination of all the proceedings[.]” including a “review [of] the legal points appearing in the record, transcript, and briefs, not for the purpose of determining their merits (if any) but to

determine whether they are wholly frivolous.” *Id.* at 102–103 (citation omitted). Defendant’s appellate counsel submitted two legal issues for consideration: (1) whether the trial court’s denial of the motion for post-conviction DNA testing was supported, and (2) whether the trial court’s denial of the appointment of counsel was supported. After careful review of the record, we agree with defendant’s appellate counsel that these issues lack merit on appeal.

1. Denial of Motion for DNA Testing

Our statutes provide a defendant with the opportunity for post-conviction DNA testing if the biological evidence

is material to the defendant’s defense, related to the investigation or prosecution that resulted in the judgment, and either was not DNA tested previously, or was tested but the requested DNA test would provide results that are significantly more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

N.C.G.S. § 15A-269(a)(1)–(3) (2023) (cleaned up). The trial court shall grant the motion for DNA testing if it determines that (1) the above conditions are met, (2) if the testing requested had been conducted on the evidence, there “exists a reasonable probability that the verdict would have been more favorable to the defendant[,]” and (3) the defendant signed a sworn affidavit of innocence. § 15A-269(b)(1)–(3).

Defendant requested DNA testing for (1) a cast of a shoe print from the crime scene, defendant’s shoe, and the floor tile containing the shoe print; (2) results of forensic testing on defendant for gunshot residue on defendant’s hands/fingerprints;

(3) guns, shell casings, and bullet projectiles seized by police; (4) “insignificant” chemical reaction to blood stains in the Dodge truck; (5) clothes, shoes, and personal items from defendant, Sanchez, and Emily; (6) video surveillance; and (7) exhibits included. As a preliminary matter, we agree with the trial court that the shoe print, shoe, and tile, residue, projectiles, and video surveillance are not biological evidence that can be tested under N.C.G.S. § 15A-269. We turn to whether the remaining evidence is material to defendant’s defense.

Our Supreme Court defined “material” for purposes of N.C.G.S. § 15A-269(a)(1) as “a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *State v. Lane*, 370 N.C. 508, 519 (2018) (quoting *State v. Tirado*, 358 N.C. 551, 589 (2004), *cert. denied*, 544 U.S. 909 (2005)). “The determination of materiality must be made in the context of the entire record and hinges upon whether the evidence would have affected the jury’s deliberations.” *Id.* (cleaned up).

Defendant contended in his motion, as he does now, that this evidence is material because it does not link him to the crimes and would be “significantly more probative of the identity of the perpetrator[.]” More specifically, defendant argues DNA testing the evidence he requested would show whether he was at the crime scenes and whether he fired a gun. The gun was tested at the trial level and revealed fingerprints belonging to Sanchez on the trigger and trigger guard. Defendant’s fingerprints were not present on the gun when it was tested. For evidence already

tested, § 15A-269(a)(3)(b) requires defendant show the test “would provide results that are significantly more accurate and probative of the identity of the perpetrator[.]” This evidence was before the jury when it convicted defendant. Defendant has not provided the necessary showing that retesting the gun would be more accurate and probative of the identity of the perpetrator.

As for the shell casings, these were not tested for fingerprints at the trial level. However, testing the casings for DNA evidence is not material to defendant’s defense that he did not fire the gun or was not at the scene of the crime. Even if testing yielded DNA that was not defendant’s on the casings, this evidence merely would show who touched the shell casing at some point, not conclusively who fired the gun it came from. Additionally, the lack of defendant’s DNA on the casings would not conclusively eliminate him from the crime scene.

Further, if defendant “desires to demonstrate a lack of biological evidence, the post-conviction DNA testing statute does not apply.” *State v. Brown*, 170 N.C. App. 601, 609 (2005). Defendant requested that the blood stains in the Dodge truck as well as his, Sanchez’s, and Emily’s clothes be tested for biological evidence to show in part that his clothing would not contain the same biological evidence located in the truck. Because defendant requested the testing for this purpose, the testing under § 15A-269 does not apply. Furthermore, defendant’s requests to test Sanchez’s clothes, which contained blood stains, and the blood stain in the truck to see if the biological materials match are not material to his defense. While the evidence would point to



Sanchez as a perpetrator, it would not necessarily eliminate defendant from suspicion or exonerate him. Defendant has not shown that the DNA evidence he requested is material to his defense, and the trial court did not err in denying defendant's motion for post-conviction DNA testing.

2. Denial of Appointment of Counsel

We next review defendant's challenge to the trial court's denial of appointment of counsel. Our DNA testing statute also provides that "[i]f the petitioner has filed pro se, the court shall appoint counsel for the petitioner in accordance with rules adopted by the Office of Indigent Defense Services upon a showing that the DNA testing may be material to the petitioner's claim of wrongful conviction." N.C.G.S. § 15A-269(c) (2023). As discussed above, defendant did not make the requisite showing that DNA testing would be material to his defense. Accordingly, the trial court did not err in denying defendant appointed counsel.

III. Conclusion

For the foregoing reasons, we hold that defendant's appellate counsel has complied with *Anders* and *Kinch* by filing a brief identifying several legal points potentially at issue. After reviewing the record, we are unable to identify a nonfrivolous issue for appeal, and accordingly, we affirm the trial court.

AFFIRMED.

Judges MURPHY and THOMPSON concur.

Report per Rule 30(e).