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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-49

Filed 17 September 2024

Buncombe County, Nos. 02 CRS 50329; 02 CRS 50399-400

STATE OF NORTH CAROLINA

v.

DEMETRIUS A. JONES, Defendant.

Appeal by defendant from order entered 2 March 2023 by Judge Marvin P. Pope, Jr., in Buncombe County Superior Court. Heard in the Court of Appeals 5 September 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Zachary K. Dunn, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woormer-Deters, for defendant-appellant.

PER CURIAM.

Defendant Demetrius A. Jones pleaded guilty to three counts of first-degree murder in 2004 and was sentenced to three consecutive life sentences with no possibility of parole. Seventeen years later, in 2021, Defendant filed a Motion for Post-Conviction DNA Testing pursuant to N.C.G.S. § 15A-269. Following a hearing

on the matter, the trial court concluded that Defendant failed to satisfy the requirements of N.C.G.S. § 15A-269(a) and denied Defendant's motion. Defendant appeals.

Defendant's counsel has been unable to identify an issue with sufficient merit to support a meaningful argument for relief on appeal, but points to the following issues which may support Defendant's appeal: (1) whether the trial court erred by limiting the scope of appointed counsel's representation and (2) whether the trial court erroneously denied Defendant's motion for DNA testing.

Defendant's counsel shows to the satisfaction of this Court that he has complied with the requirements of *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). Counsel has advised Defendant of his right to file supplemental arguments with this Court and provided him with the documents necessary to do so. Defendant has not filed with this Court any arguments on his own behalf.

We have conducted a full and independent examination of the record. The record shows as follows: Defendant pleaded guilty and was convicted of three murders. He admitted to the killings on several occasions, specifically, twice to his mother and once to law enforcement. He told law enforcement where he had disposed of his pants and the knife he used in the murders, and law enforcement later found those items in a wooded area where Defendant had indicated that he had disposed of those items.

Defendant asked for testing/retesting of a few items. For instance, Defendant requested that DNA obtained from the screen door of the house where the murders occurred be retested, where the first test indicated that the DNA did not match that of Defendant or the three victims. Also, Defendant requested that DNA obtained from his shoe be retested, where the initial test merely showed that the three victims could not be excluded as possible matches.

Our Supreme Court has held that “whether [a] defendant’s request for postconviction DNA testing is ‘material’ to his defense [] is a conclusion of law [which] we review *de novo*[.]” *State v. Lane*, 370 N.C. 508, 517–18 (2018). And we have held that the burden is on the defendant to show materiality and that meeting this burden “requires more than the conclusory statement that the requested DNA testing is material to [his] defense.” *State v. Gardner*, 227 N.C. App. 364, 369 (2013) (cleaned up).

Here, Defendant made the allegation in his motion for post-conviction DNA testing that testing certain items would be material to his defense. However, he does not provide any explanation as to *how* the testing may be material. We conclude that Defendant has failed to show how testing/retesting the items may be material to his defense. Thus, we hold the record contains no meritorious issue which would entitle Defendant to relief and is wholly frivolous. Accordingly, the trial court’s judgment is affirmed.

AFFIRMED.

STATE V. JONES

Opinion of the Court

Panel consisting of Chief Judge DILLON and Judges MURPHY and STADING.

Report per Rule 30(e).