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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-964

Filed 15 October 2024

Rowan County, No. 18CRS54371

STATE OF NORTH CAROLINA

v.

DEMAUREA GRANT

Appeal by defendant from judgment entered 15 December 2022 by Judge Richard S. Gottlieb in Rowan County Superior Court. Heard in the Court of Appeals 24 September 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Farrah R. Raja, for the State.

Jarvis John Edgerton, IV, for the defendant-appellant.

TYSON, Judge.

Demaurea Grant (“Defendant”) appeals from judgment entered upon a jury’s guilty verdict for assaulting a corrections officer. Our review discerns no error.

I. Background

Defendant was charged with assaulting Joe Anthony Brown, a State correctional officer (“Officer Brown”), while incarcerated at Piedmont Correctional

STATE V. GRANT

Opinion of the Court

Institution. Officer Brown was part of an extraction team, whose job was to return Defendant into his cell after a recreational break on 8 October 2018. Defendant resisted the officers' attempts to subdue him and attempted to stab Officer Brown with a handmade shank. Officer Brown used a plastic shield to prevent the shank from piercing his body, but his right hand and left inner forearm were injured from using the shield.

Counsel represented Defendant for the first part of his trial, which began on 31 August 2021. Defendant requested to proceed *pro se* at 9:51 a.m. on the second day of trial. Defendant's counsel discussed the implications of proceeding without assistance of counsel for approximately two minutes. The trial court further discussed with Defendant his election to proceed *pro se*, pursuant to the statutory requirements of N.C. Gen. Stat. § 15A-1242 (2023).

In the trial court's colloquy, the trial court explained Defendant, given his prior convictions, would be assessed as a prior record level IV offender with no aggravating factors for felony sentencing purposes. The trial court informed Defendant he faced a potential 25 to 39 months of active incarceration, if the jury found him to be guilty.

Defendant affirmed he understood the charges, understood the potential sentence he was facing, and understood the trial court would hold him to the same standard as an attorney for the remainder of the trial. The trial court determined Defendant's decision to proceed *pro se* was knowing, voluntary, and intelligently elected. The court accepted and entered Defendant's waiver of counsel and placed his

prior counsel on standby.

Defendant represented himself at trial for a brief period of time. The trial court announced a fifteen-minute recess at 11:16 a.m. Defendant never returned to trial following the recess. After conducting a search of the courthouse, the court determined Defendant had voluntarily absented himself from his trial.

The trial court re-appointed Defendant's standby counsel as his counsel for the remainder of the trial. The jury returned a guilty verdict on 1 September 2021. Defendant was sentenced to 25 to 39 months of imprisonment.

II. Jurisdiction

This Court possesses jurisdiction for appellate review pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2023).

III. Defendant's Waiver of Counsel

Defendant argues the trial court committed prejudicial error in accepting Defendant's waiver of counsel without informing him of the theoretical maximum punishment he was facing in violation of the statutory mandate of N.C. Gen. Stat. § 15A-1242. We disagree.

A. Standard of Review

"We review the question of whether the trial court complied with N.C. Gen. Stat. § 15A-1242 *de novo*." *State v. Frederick*, 222 N.C. App. 576, 581, 730 S.E.2d 275, 279 (2012). When reviewing an issue *de novo*, this court "considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v.*

Williams, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (internal punctuation omitted).

B. Analysis

1. A defendant may waive his right to counsel

A waiver of counsel requires a defendant to have “clearly and unequivocally expressed a desire to proceed without counsel, and that the defendant knowingly, intelligently, and voluntarily waived the right to counsel.” *State v. Lindsey*, 271 N.C. App. 118, 126, 843 S.E.2d 322, 328 (2020). Defendant argues the trial court committed prejudicial error when it failed to advise him of the theoretical maximum punishment, and instead only informed him of his actual maximum punishment range, accounting for his prior record level and any aggravating factors.

2. N.C. Gen. Stat. § 15A-1242

Our General Statutes provide a list of requirements, which must be met before a defendant may waive his right to counsel:

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

N.C. Gen. Stat. § 15A-1242.

For Defendant's waiver of counsel to be valid, "[t]he record must reflect that the trial court is satisfied regarding each of the three inquiries listed in the statute." *State v. Stanback*, 137 N.C. App. 583, 586, 529 S.E.2d 229, 230 (2000). The extent to which this Court has granted a *pro se* criminal defendant relief when a trial court fails to communicate the "range of permissible punishments" has been related to: (1) the specificity of the punishment; (2) the *nature* of potential punishments; or, (3) the degree of error in the proposed sentencing range.

3. Frederick, Taylor, & Mahatha

A defendant who was told he may face a vague "mandatory active prison sentence" and could be incarcerated for "a long, long time" was not adequately instructed of "the range of permissible punishments." *State v. Frederick*, 222 N.C. App. 576, 583, 730 S.E.2d 275, 280-81 (2012).

A defendant who was instructed of the number of months of potential incarceration, but not of an additional punishment, i.e., a potential fine, was also inadequately instructed of "the range of permissible punishments." *State v. Taylor*, 187 N.C. App. 291, 294, 652 S.E.2d 741, 743 (2007).

In *State v. Mahatha*, we held that the trial court erred when it asked Defendant "if he understood that he could face '231 months'" when he in fact was facing a maximum of 666 months of imprisonment and 170 days in jail. 267 N.C. App. 355, 363, 832 S.E.2d 914, 921 (2019).

4. *State v. Gentry*

This court has also held “a mistake in the number of months which a trial judge employs during a colloquy with a defendant contemplating the assertion of his right to proceed *pro se*” does not constitute “a *per se* violation of N.C. Gen. Stat. § 15A-1242.” *State v. Gentry*, 227 N.C. App. 583, 599-600, 743 S.E.2d 235, 246 (2013). To find prejudicial error on such a basis, there must be “a reasonable likelihood that the defendant might have made a different decision with respect to the issue of self-representation had he or she been more accurately informed about the ‘range of permissible punishments.’” *Id.* at 600, 743 S.E.2d 246. In *Gentry*, this Court held a fourteen-year difference in the potential sentencing ranges, though lengthy, would not have altered Defendant’s decision to proceed *pro se* since both were ultimately life sentences. *Id.* at 600-01, 743 S.E.2d 246.

5. *Defendant’s Arguments*

The asserted error here purportedly occurred when the trial court informed Defendant his potential sentencing range was 25 to 39 months, rather than the absolute maximum possible sentence range of 41 to 59 months, presuming Defendant was in the highest criminal history category for the class of offense and the highest possible sentence in the aggravated range.

Although the trial court failed to inform Defendant of the maximum *theoretical* sentence, if convicted, Defendant has failed to show this information would have materially influenced his decision to proceed *pro se*. Our conclusion considers the

lengths of the potential sentences relative to one another and the reality Defendant was *in fact* sentenced to the monthly sentencing range of which he was informed.

Defendant was accurately informed of the actual sentence he faced, given his criminal record and potential aggravating factors. A theoretical 16 to 20 month difference in potential maximum sentencing is insufficient to conclude Defendant did not knowingly and voluntarily waive his right to counsel. The trial court's inquiry satisfied the requirements of N.C. Gen. Stat. § 15A-1242. Defendant's argument is overruled.

IV. Conclusion

Defendant has failed to show the trial court committed prejudicial error in allowing Defendant to proceed *pro se* after informing him of the actual maximum range of punishment he faced, rather than the theoretical maximum range of punishment faced.

No evidence tends to show Defendant's decision to proceed *pro se* would have been materially influenced by the *theoretical* possibility of facing an additional 16 to 20 months of incarceration. We discern no error in the court's decision to accept Defendant's waiver of counsel. *It is so ordered.*

NO ERROR.

Judges COLLINS and GRIFFIN concur.

Report per Rule 30(e).