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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-31

Filed 3 December 2024

Guilford County, No. 95CRS34636

STATE OF NORTH CAROLINA

v.

RANDY SCOTT BALLON, Defendant.

Appeal by defendant from judgment entered 13 December 1996 by Judge Howard R. Greeson, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 12 June 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Sherri Horner Lawrence, for the State-appellee.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for defendant-appellant.*

GORE, Judge.

By order entered 16 March 2023, this Court granted certiorari to hear defendant's appeal from the trial court's judicial review of his sentence pursuant to N.C.G.S. § 15A-1380.5. *See* N.C.G.S. § 15A-1444(g) (2023).

“The recommendation of a judge made in accordance with [§ 15A-1380.5] may

be reviewed on appeal only for an abuse of discretion.” § 15A-1380.5(f) (1996) (repealed 1998). A trial court abuses its discretion when its “ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285 (1988) (citation omitted). An abuse of discretion also occurs where “a trial judge acts under a misapprehension of the law.” *State v. Nunez*, 204 N.C. App. 164, 170 (2010).

Defendant raises four issues on appeal: (1) whether the trial court erred by declining to make a recommendation regarding his sentence; (2) whether the trial court erred by denying his request for appointment of counsel; (3) whether the trial court erred by failing to consider the trial transcript while conducting its review; and (4) whether the Parole Commission violated defendant’s right to due process by not telling him why it did not recommend alteration of his sentence.

Upon review, we discern no abuse of discretion or prejudice otherwise shown. Accordingly, we affirm the trial court’s discretionary determination made in accordance with § 15A-1380.5.

On 13 December 1996, defendant was convicted of first-degree murder and sentenced to life in prison without parole. Defendant appealed his conviction, and in an unpublished opinion filed 1 September 1998, this Court discerned no error in the trial court’s judgment. *State v. Ballon*, 130 N.C App. 757 (1998) (unpublished).

On or about 4 April 2020, defendant became eligible for review of his sentence pursuant to § 15A-1380.5. The North Carolina General Assembly enacted § 15A-

1380.5 in 1994. The statute provides, “[a] defendant sentenced to life imprisonment without parole is entitled to review of that sentence by a resident superior court judge for the county in which the defendant was convicted after the defendant has served 25 years of imprisonment.” § 15A-1380.5(b). A qualified defendant is entitled to “review[ ] again every two years as provided by this section, unless the sentence is altered or commuted before that time.” *Id.* Because our General Assembly repealed § 15A-1380.5 in 1998, inmates sentenced to life without parole between the years of 1994–1998 are still eligible for judicial review of their sentences after serving 25 years of imprisonment.

On 30 December 2020, defendant filed a letter with the Superior Court, Guilford County, seeking review of his sentence pursuant to § 15A-1380.5. The statute provides:

(c) In reviewing the sentence the judge shall consider the trial record and may review the defendant’s record from the Department of Correction, the position of any members of the victim’s immediate family, the health condition of the defendant, the degree of risk to society posed by the defendant, and any other information that the judge, in his or her discretion, deems appropriate.

(d) After completing the review required by this section, the judge shall recommend to the Governor or to any executive agency or board designated by the Governor whether or not the sentence of the defendant should be altered or commuted. The decision of what to recommend is in the judge’s discretion.

(e) The Governor or an executive agency designated under this section shall consider the recommendation made by

the judge.

§ 15A-1380.5(c)–(e).

On 12 July 2021, former Guilford County Senior Resident Judge John O. Craig, III filed a letter stating he conducted an *in-camera* review of defendant’s sentence pursuant to § 15A-1380.5. Judge Craig indicates he reviewed all obtainable trial records,<sup>1</sup> defendant’s motion and letters of support from defendant’s family and friends, and letters of opposition from victim’s family and the current Guilford County Chief Assistant District Attorney. Judge Craig concluded, “It is in my discretion as to whether I give a recommendation[.]” and “I hereby decline to make any recommendation[.]”

On 17 February 2022, the Parole Commission held a video hearing with defendant. On 7 October 2022, the Parole Commission sent a letter to defendant notifying him that it did not recommend alteration of his sentence at that time.

On 14 February 2023, defendant filed a pro se “Motion for Dismissal of Decision/Judgment” in this Court. On 16 March 2023, we entered an order construing defendant’s pro se motion as a petition for writ of certiorari and allowed the petition.

On or about 12 July 2023, Guilford County Senior Resident Judge R. Stuart Albright began a second judicial review of defendant’s sentence pursuant to § 15A-

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<sup>1</sup> Judge Craig indicated he did not review the trial transcript because it “has been lost and the court reporter is deceased.”

1380.5.<sup>2</sup> Judge Albright reviewed the available trial record, including the previous information submitted for Judge Craig’s review, defendant’s record from the Department of Correction, the degree of risk to society posed by defendant, and other such information contained in the record. After review, Judge Albright filed a written recommendation on 18 August 2023 recommending that defendant’s “sentence of life imprisonment without parole should not be altered or commuted in any manner.” On 21 September 2023, the Office of the Governor sent a letter to defendant stating, “the [Parole] Commission concurs with the judge’s recommendation” and that his “sentence will not be altered or commuted at this time.”

Turning to our discussion of the issues on appeal, defendant first argues the trial court abused its discretion and violated a statutory mandate by declining to make a recommendation pursuant to § 15A-1380.5(d). We discern no prejudice.

Here, Judge Craig wrote in his recommendation letter, “It is in my discretion as to whether I give a recommendation[.]” and “I hereby decline to make any recommendation[.]” The statute specifies, however, that “the judge “shall recommend . . . .” § 15A-1380.5(d). Section 15A-1380.5(d) is a statutory mandate because it “requires a specific act by a trial judge.” *State v. Chandler*, 376 N.C. 361, 366 (2020). While the statute “provides minimal guidance as to what types of circumstances would support alteration or commutation of the sentence” and results in a

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<sup>2</sup> Pursuant to § 15A-1380.5(b), “[t]he defendant’s sentence shall be reviewed again every two years . . . unless the sentence is altered or commuted before that time.”

recommendation that “is rooted in essentially unguided discretion[.]” *State v. Young*, 369 N.C. 118, 124–25 (2016), the trial court must make a recommendation as to “whether or not the sentence of the defendant should be altered or commuted[.]” § 15A-1380.5(d).

Although we determine that the trial court abused its discretion, it is essential to assess whether this error resulted in any prejudice to defendant. *See State v. Jones*, 339 N.C. 114, 134 (1994) (citation omitted) (“In order for the defendant to show reversible error, he must show that the trial court abused its discretion and that he was prejudiced thereby.”). An error is prejudicial “when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” § 15A-1443(a) (2023).

Defendant contends his outcome “would have been different if Judge Craig had made a recommendation because,” in his view, “there would have been something for the Commission and Governor to consider.” We disagree.

“The decision of what to recommend is in the judge’s discretion[.]” § 15A-1380.5(d), but “the only effect of the judge’s recommendation is that the Governor or an executive agency designated under this section must consider it[.]” *Young*, 369 N.C. at 124–25. The Parole Commission is not bound by the trial court’s recommendation. Here, the Parole Commission conducted a video-conference hearing on 17 February 2022, considered Judge Craig’s detailed report, and gathered

its own information on defendant's case prior to making its own discretionary determination. While the trial court abused its discretion by declining to make any recommendation, defendant has not shown prejudice as a result. *See* § 15A-1443(a).

Turning to the second issue presented, defendant argues the trial court erred by failing to appoint counsel to represent him in this case. We disagree.

Defendant acknowledges he has no statutory right to counsel under § 15A-1380.5. Rather, defendant asserts the trial court "misapprehended the law" because it "seemingly . . . believed that in the absence of statutory authority expressly authorizing appointment of counsel, counsel could not be appointed." Defendant's argument lacks merit.

"Section 15A-1380.5 states that a defendant is entitled to review of his or her sentence by a resident superior court judge, but it guarantees no hearing, no notice, and no procedural rights." *Young*, 369 N.C. at 124 (cleaned up). The record before us reveals nothing to suggest that the trial court misapprehended its own discretionary appointment power. We discern no abuse of discretion.

Regarding the third issue presented, defendant argues the trial court abused its discretion by failing to review the trial transcript. We discern no prejudice.

Subsection (c) of § 15A-1380.5 provides, in relevant part, "[i]n reviewing the sentence the judge shall consider the trial record . . . ." The statute does not define the term "trial record." Here, Judge Craig noted in his review letter that he was "not able to confirm" what happened regarding a possible plea offer prior to defendant's

trial in December 1996 “because the trial transcript has been lost and the court reporter is deceased.” Defendant contends the trial transcript was not lost (he filed a copy with this Court), and that “[a] transcript is a key component of any trial record and necessary for any later review.”

Presuming, *arguendo*, that the trial court’s review of the “trial record” under § 15A-1380.5(c) was deficient, defendant must show prejudice as a result. *See State v. Quick*, 179 N.C. App. 647, 651 (2006) (“[A] party must demonstrate that the missing recorded evidence resulted in prejudice.”). “General allegations of prejudice are insufficient to show reversible error.” *Id.* Yet, defendant fails to identify any facts in the transcript that are likely to influence Judge Craig’s recommendation, or ultimately, the recommendation of the Parole Commission. Defendant generally alleges prejudice in his principal brief without demonstrating a reasonable probability of a different result.

Finally, defendant raises the issue of whether the Parole Commission violated his right to due process by not telling him why it did not recommend alteration of his sentence. We dismiss this issue as not properly before us.

“The Governor or an executive agency designated . . . shall consider the recommendation made by the judge.” § 15A-1380.5(e). “The *recommendation of a judge made in accordance with this section may be reviewed on appeal* only for an abuse of discretion.” § 15A-1380.5(f) (emphasis added). We granted certiorari to review Judge Craig’s recommendation. It is entirely unclear, based on defendant’s



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brief and the statutes cited therein, whether this Court has jurisdiction to review the Parole Commission's recommendation to the Governor separately.

For the foregoing reasons, we discern no abuse of discretion or prejudice otherwise shown in the trial court's discretionary recommendation to the Parole Commission made pursuant to § 15A-1380.5.

AFFIRMED.

Chief Judge DILLON and Judge THOMPSON concur.

Report per Rule 30(e).