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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-741

Filed 19 February 2025

Scotland County, Nos. 00CRS22; 00CRS23

STATE OF NORTH CAROLINA

v.

DONALD WAYNE LOCKLEAR

Appeal by Defendant from order entered 21 April 2023 by Judge Stephan R. Futrell in Scotland County Superior Court. Heard in the Court of Appeals 4 February 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General Hillary F. Patterson, for the State-Appellee.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for Defendant-Appellant.*

PER CURIAM.

Defendant Donald Wayne Locklear appeals from the trial court's order denying his motion for post-conviction DNA testing. Defendant also petitions this court for a writ of certiorari to address his appeal in the event his notice of appeal was deficient. We conclude Defendant's notice of appeal was sufficient to vest jurisdiction in this

STATE V. LOCKLEAR

*Opinion of the Court*

Court; we dismiss Defendant's petition as moot and deny the State's motion to dismiss.

In 2003, Defendant was found guilty of first-degree burglary and first-degree rape and judgment was entered upon the jury's guilty verdicts. On 16 March 2023, Defendant filed a *pro se* motion for post-conviction DNA testing pursuant to N.C. Gen. Stat. § 15A-269. In his motion, Defendant requested DNA testing of bed linen, clothing material, and evidence that had already been DNA-tested prior to his trial. The trial court found that Defendant had failed to show that any of the items he wanted tested were material under N.C. Gen. Stat. § 15A-269. The trial court concluded that Defendant's motion failed to allege specific facts showing a reasonable probability that, had the items been tested, a different outcome would have ensued.

Counsel appointed to represent Defendant on appeal is "unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal" and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel has shown to the satisfaction of this Court that he has complied with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *State v. Kinch*, 314 N.C. 99 (1985), by advising Defendant of his right to file written arguments with this Court and providing him with the documents necessary for him to do so.

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therein. Under N.C. Gen. Stat. § 15A-269(a), a motion for DNA testing may be granted if the biological evidence is (1)

STATE V. LOCKLEAR

*Opinion of the Court*

material to defendant's defense, (2) related to the investigation or prosecution resulting in judgment, and (3) was not previously DNA tested or, if the evidence was previously DNA tested, the requested testing would yield results "significantly more accurate and probative" of perpetrator or accomplice identity or yield results that have a "reasonable probability of contradicting prior test results." N.C. Gen. Stat. § 15A-269(a) (2023); *see State v. Foster*, 222 N.C. App. 199, 204 (2012).

Though Defendant contends that the requested DNA testing would provide facts "material" to his wrongful conviction claims and prove his innocence, we conclude that Defendant failed to allege specific facts showing a reasonable probability that, had the items been tested, a different outcome would have ensued. Accordingly, the trial court properly denied Defendant's motion for post-conviction DNA testing.

AFFIRMED.

Panel consisting of Judges COLLINS, GRIFFIN, and MURRY.

Report per Rule 30(e).