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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1087

Filed 16 April 2025

Davidson County, Nos. 18 CRS 56929, 18 CRS 56931, 19 CRS 906

STATE OF NORTH CAROLINA

v.

RAMON PERRY DRAYTON, Defendant.

Appeal by Defendant from judgment entered 13 April 2023 by Judge Lori I. Hamilton in Davidson County Superior Court. Heard in the Court of Appeals 25 September 2024.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Phillip T. Reynolds, for the State.*

*Kimberly P. Hoppin, for Defendant-Appellant.*

CARPENTER, Judge.

Ramon Perry Drayton (“Defendant”) appeals from judgment after pleading guilty to possession of heroin and attaining the status of habitual felon. On appeal, Defendant argues the trial court erred by finding that his plea was entered voluntarily, knowingly, and intelligently. Defendant also asserts he received ineffective assistance of counsel (“IAC”). Recognizing he is not entitled to appeal as

a matter of right and that his notices of appeal are defective, Defendant filed a petition for writ of certiorari (“PWC”). After careful review, we conclude Defendant’s argument that the trial court erred by finding his plea was entered voluntarily, knowingly, and intelligently is without merit. As for Defendant’s IAC claim, we are unable to discern IAC from the face of the record. Accordingly, we deny Defendant’s PWC and dismiss his appeal without prejudice to Defendant’s statutory right to file a motion for appropriate relief in the trial court.

### **I. Factual and Procedural Background**

On 5 December 2018, Officer Andy Avery of the Thomasville Police Department initiated a traffic stop and search of Defendant’s car. In Defendant’s car, Officer Avery found two items that were later determined to be .11 grams of heroin and 8.81 grams of cocaine hydrochloride. By magistrate’s order, Defendant was charged with one count each of: possession with intent to sell heroin; possession with intent to sell or deliver cocaine; possession of drug paraphernalia; and attaining the status of habitual felon.

On 13 October 2022, Defendant filed a motion to suppress evidence obtained from the traffic stop and subsequent search. On 9 November 2022, Defendant filed a motion to dismiss based on destruction of material evidence. The trial court conducted a hearing and denied both of Defendant’s motions.

On 13 April 2023, the State and Defendant entered a plea agreement whereby Defendant agreed to plead guilty to possession of heroin and attaining the status of

habitual felon in exchange for dismissal of the remaining charges. The same day, the trial court conducted a plea hearing. The trial court accepted Defendant's plea and committed him to thirty-five to fifty-four months' imprisonment. Neither Defendant nor defense counsel gave notice of appeal in open court. On 15 and 16 April 2023, Defendant filed written notices of appeal.

Defendant's notices of appeal contained the headers: "Davidson County Jail" and "Inmate Request Form." The 15 April 2023 notice stated: "I am appealing the judgment/decision that was made Thursday April 14 / 2023 in my case. This is my notice of appeal. I also sent a copy to the District Attorney." The 16 April 2023 notice stated: "This is a notice that I appeal the decision made in Superior Court in front of Superior Court Judge (\_\_\_\_\_). I would like to request a court date in said matter that I was in court for 11/13/23[.]" Defendant sent both notices to the attention of the Davidson County Clerk of Court, who file-stamped both notices. After Defendant submitted the written notices, he appeared before the trial court on 17 April 2023 and gave oral notice of appeal in open court.

## **II. Jurisdiction**

As a threshold matter, we first address Defendant's PWC. Defendant concedes he does not have a right to appeal the trial court's acceptance of his guilty plea as voluntary, knowing, and intelligent. Defendant also concedes his written notices of appeal are defective in that they did not fully identify the judgments from which he appeals or designate the court to which appeal is taken. Accordingly, Defendant

requests that we allow his PWC to permit full appellate review.<sup>1</sup> See N.C. R. App. P. 21(a)(1).

“A defendant who pleads guilty may only appeal their plea under limited circumstances.” See *State v. Scott*, 294 N.C. App. 282, 284, 902 S.E.2d 336, 339 (2024) (citing *State v. Ledbetter*, 371 N.C. 192, 195, 814 S.E.2d 39, 42 (2018)). Indeed, a defendant who has pleaded guilty only has the right to appeal: certain issues pertaining to his sentence, see N.C. Gen. Stat. § 15A-1444(a1), (a2)(1)–(3); the denial of his motion to suppress, provided he has met the notice requirements, see N.C. Gen. Stat. §§ 15A-979(b) and 15A-1444(e); *State v. McBride*, 120 N.C. App. 623, 625, 463 S.E.2d 403, 404 (1995) (“[D]efendant bears the burden of notifying the [S]tate and the trial court during plea negotiations of the intention to appeal the denial of a motion to suppress, or the right to do so is waived after a plea of guilty.”); and the denial of his motion to withdraw a plea of guilty or no contest, see N.C. Gen. Stat. § 15A-1444(e). Thus, a defendant does not have a right to appeal the issue of whether his plea was entered voluntarily, knowingly, and intelligently. See *State v. Bolinger*, 320 N.C. 596, 601, 359 S.E.2d 459, 462 (1987); N.C. Gen. Stat. § 15A-1444.

Additionally, this Court lacks jurisdiction where the appellant has not

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<sup>1</sup> We note that Defendant, in his PWC, also requests this Court issue the writ to permit appellate review of the denial of his pretrial motions. Defendant does not have a right to appeal his motion to suppress as he did not give notice of his intention to appeal the trial court’s ruling on the motion in his plea transcript. See *State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979). Likewise, Defendant does not have a right to appeal from the trial court’s denial of his motion to dismiss. See *State v. Shepley*, 237 N.C. App. 174, 177, 764 S.E.2d 658, 660 (2014).

complied with jurisdictional appellate rules. *See* N.C. R. App. P. 4; *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320 (2005) (“[W]hen a defendant has not properly given notice of appeal this Court is without jurisdiction to hear the appeal.”).

A PWC is a “prerogative” writ which we may issue to aid our jurisdiction. *See* N.C. Gen. Stat. § 7A-32(c) (2023). Issuing a PWC, however, is an extraordinary measure. *Cryan v. Nat’l Council of YMCAs*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023). Accordingly, a petitioner must satisfy a two-part test before we will issue the writ. *Id.* at 572, 887 S.E.2d at 851. “First, a writ of certiorari should only issue if the petitioner can show ‘merit or that error was probably committed below.’” *Cryan v. Nat’l Council of YMCAs*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023) (quoting *State v. Ricks*, 378 N.C. 737, 741, 862 S.E.2d 835, 839 (2021)). “Second, a writ of certiorari should issue only if there are ‘extraordinary circumstances’ to justify it.” *Id.* at 572–73, 887 S.E.2d at 851 (quoting *Moore v. Moody*, 304 N.C. 719, 720, 285 S.E.2d 811, 812 (1982)). “Ultimately, the decision to issue a writ of certiorari rests in the sound discretion of the presiding court.” *Id.* at 573, 887 S.E.2d at 851 (citing *Ricks*, 378 N.C. at 740, 862 S.E.2d 835).

#### **A. Voluntary, Knowing, and Intelligent Plea**

Defendant argues the trial court erred by finding that his plea was entered voluntarily, knowingly, and intelligently. Specifically, Defendant asserts that his plea was not the product of an informed choice because he mistakenly believed that his right to appeal the trial court’s rulings on his motion to suppress and motion to

dismiss survived his guilty plea. We disagree.

Whether a criminal defendant's guilty plea is the product of an informed choice "is a question of law subject to *de novo* review." *State v. Tinney*, 229 N.C. App. 616, 621, 748 S.E.2d 730, 734 (2013). "Under a *de novo* review, [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, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

The trial court "may not accept a plea of guilty or no contest from a defendant without first determining that the plea is a product of informed choice." N.C. Gen. Stat. § 15A-1022(b) (2023). Specifically, the trial court is required to conduct a plea colloquy with the defendant. *See* N.C. Gen. Stat. § 15A-1022(a) (2023). In doing so, the trial court must inform the defendant that he has the right to remain silent and to plead not guilty as well as inform him that by pleading guilty he waives his right to a jury trial, which includes waiving his right to confront witnesses. *See* N.C. Gen. Stat. § 15A-1022(a)(1), (3), and (4). Additionally, the trial court must inform the defendant of the maximum possible sentence and the possibility that he may be deported or excluded from the United States if he is not a citizen. *See* N.C. Gen. Stat. § 15A-1022(a)(6) and (7). Lastly, the trial court must determine whether the defendant understands the nature of the charges against him and is satisfied with his representation. *See* N.C. Gen. Stat. § 15A-1022(a)(2) and (5).

“A plea is voluntary and knowing if it is made by someone fully aware of the direct consequences of the plea.” *State v. Wilkins*, 131 N.C. App. 220, 224, 506 S.E.2d 274, 277 (1998); *see also Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1436, 1469, 25 L.Ed.2d 747, 756 (1970) (explaining that a defendant’s plea “not only must be voluntary but must be [a] knowing, intelligent act[] done with sufficient awareness of the relevant circumstances and likely consequences”). Evidence that the defendant signed a plea transcript and the trial court conducted a careful inquiry of the defendant regarding the plea is generally considered “sufficient to demonstrate that the plea was entered into freely, understandingly, and voluntarily.” *Wilkins*, 131 N.C. at 224, 506 S.E.2d at 277.

Here, Defendant signed a Transcript of Plea. In the Transcript of Plea, Defendant responded “Yes” to the question: Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal? Additionally, before conducting the mandatory plea colloquy, the trial court asked Defendant if he: previously discussed the plea transcript with his lawyer; understood the questions his lawyer was asking him when they were discussing the plea transcript; took time to ensure he was satisfied with the answers recorded in the plea transcript; and signed the plea transcript. Defendant responded in the affirmative to each question posed by the trial court. The trial court then conducted a plea colloquy in accordance with section 15A-1022(b) by informing Defendant of his rights, the maximum possible sentence, and the possibility of deportation. Further, the trial court determined that

Defendant understood the charges against him and was satisfied with his representation. Finally, and most pertinently, Defendant responded, “Yes” when the trial court asked him: Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal?

Not only did Defendant sign a Transcript of Plea, in which he indicated he understood his right to appeal would be limited, but he also confirmed to the trial court that he previously discussed the Transcript of Plea with his lawyer and was satisfied with those discussions. Furthermore, the trial court conducted a careful plea colloquy and ultimately accepted Defendant’s plea. Defendant did nothing to suggest he was not making a voluntary, knowing, and intelligent plea. For these reasons, we conclude the trial court did not err in determining that Defendant’s plea was voluntary, knowing, and intelligent. *See Wilkins*, 131 N.C. App. at 224, 506 S.E.2d at 277.

#### **B. IAC Claim**

Defendant also asserts he received IAC. Specifically, Defendant argues his defense counsel was ineffective for failing to explain the ways in which his right to appeal would be limited following his guilty plea “beyond just that they would be limited in some respect as set out in the plea transcript.” According to Defendant, defense counsel did “not adequately inform[] [him] that he had the right to appeal, how to preserve the appeal, [or] how to initiate an appeal.”

This Court reviews IAC claims de novo. *State v. Wilson*, 236 N.C. App. 472,



475, 762 S.E.2d 894, 896 (2014). “Under a *de novo* review, [this Court] considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *Williams*, 362 N.C. at 632, 669 S.E.2d at 294 (quoting *In re Greens of Pine Glen Ltd. P’ship*, 356 N.C. at 647, 576 S.E.2d at 319).

To establish IAC, a defendant must pass a two-part test. *See State v. Braswell*, 312 N.C. 553, 562–63, 324 S.E.2d 241, 248 (1985). First, the defendant must demonstrate that his “counsel’s performance was deficient.” *Id.* at 561–62, 324 S.E.2d at 248. This requires “showing that counsel’s representation fell below an objective standard of reasonableness.” *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006) (citations omitted). Second, the defendant must demonstrate that “the deficient performance prejudiced the defense . . . .” *Braswell*, 312 N.C. at 562, 324 S.E.2d at 248. With respect to plea agreements, a defendant “must show that there is a reasonable probability that, but for counsel’s error, he would not have entered a plea of guilty.” *State v. Russell*, 92 N.C. App. 639, 644, 376 S.E.2d 458, 461 (1989). “A reasonable probability is one ‘sufficient to undermine confidence in the outcome’ of the proceeding.” *State v. Best*, 376 N.C. 340, 348, 852 S.E.2d 191, 198 (2020) (quoting *State v. Byers*, 375 N.C. 386, 400, 847 S.E.2d 735, 741 (2020)).

In general, IAC claims “should be considered through motions for appropriate relief and not on direct appeal.” *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001). If brought on direct appeal, IAC claims “will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that

may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing.” *State v. Thompson*, 359 N.C. 77, 122–23, 604 S.E.2d 850, 881 (2004) (citation omitted). If this Court determines the claim has “been prematurely asserted on direct appeal, it shall dismiss [the claim] without prejudice to the defendant’s right to reassert [it] during a subsequent [motion for appropriate relief] proceeding.” *State v. Fair*, 354 N.C. 131, 167, 557 S.E.2d 500, 525 (2001) (citing *State v. Kinch*, 214 N.C. 99, 106, 331 S.E.2d 665, 669 (1985)).

Here, we cannot properly assess Defendant’s IAC claim because the cold record is not dispositive. *See Thompson*, 359 N.C. at 122–23, 604 S.E.2d at 881. Indeed, the record does not include the contents of the discussions that occurred between defense counsel and Defendant regarding the appealability of the trial court’s judgment or its rulings on Defendant’s pretrial motions. Thus, we cannot say whether defense counsel was ineffective for failing to properly advise Defendant on such matters. Accordingly, we dismiss Defendant’s IAC claim without prejudice to his statutory right to file a motion for appropriate relief in the trial court.

### **III. Conclusion**

In sum, Defendant’s argument that the trial court erred by accepting his guilty plea is without merit. We cannot discern from the record whether Defendant received IAC. Accordingly, we deny Defendant’s PWC and dismiss his appeal without prejudice to Defendant’s statutory right to file a motion for appropriate relief in the trial court.

STATE V. DRAYTON

*Opinion of the Court*

DISMISSED.

Judges ARROWOOD and STADING concur.

Report per Rule 30(e).