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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-469

Filed 16 April 2025

Durham County, No. 07CRS50838

STATE OF NORTH CAROLINA

v.

ADRIAN LEE BULLOCK, Defendant.

Appeal by Defendant from judgment entered by Judge Brian C. Wilks in Durham County Superior Court. Heard in the Court of Appeals 29 January 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Robert C. Ennis, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Brandon Mayes, for the Defendant–Appellant.

MURRY, Judge.

Adrian L. Bullock (Defendant) appeals the trial court’s denial of his motion for postconviction DNA testing (Motion). Defendant argues that the trial court erred by denying his Motion and by doing so before appointing counsel. We affirm the trial court.

I. Background

On 24 June 2009, a jury found Defendant guilty of one count of statutory rape

STATE V. BULLOCK

Opinion of the Court

of a person 15 years or younger in violation of N.C.G.S. § 14-27.7A and one count of indecent liberties with a child in violation of N.C.G.S. § 14-202.1. N.C.G.S. § 14-27.7A(A) (2023) (statutory rape) (recodified as N.C.G.S. § 14-27.25(a)); *id.* § 14-202.1 (indecent liberties). The trial court sentenced Defendant to 316–389 months for the statutory-rape conviction and to 25–30 months for the indecent-liberties conviction as a concurrent sentence.¹

On 17 August 2023, Defendant moved for postconviction DNA testing under §§ 15A-268 and 15A-269. N.C.G.S. §§ 15A-268, -269. Defendant’s Motion stated that he was incarcerated at Warren Correctional Institution and asserted “his actual innocence in this unthinkable crime.” More specifically, Defendant alleged that:

Through [d]iligent [p]ost[c]onviction [r]esearch[,] [D]efendant has obtained “*prima facie evidence*” . . . that the [S]tate had in its possession materially exculpatory . . . DNA evidence . . . *establish[ing] that . . . [he] was not the per[pe]trator in the aforementioned crimes upon which the conviction relies[.]* . . . See[] attachment[] . . . [6 March 2010] [of] the *Herald Sun-State* [article] to re-examine crime lab efforts.

(Capitalization emphasis replaced with italicization.) Defendant also cited a *Raleigh News & Observer* article dated 30 December 2006 to further assert “proof of guilt of someone other than” himself “if tested against the massive DNA database.” He also attached two transcript pages of his trial attorney’s closing argument and a handwritten memorandum stating that he would be “proven innocent”; however, he

¹ Defendant appealed the convictions, and this Court found no error as part of a prior appeal not at issue here. *State v. Bullock*, No. COA10-320, 2010 N.C. App. LEXIS 2058 (2 Nov. 2010) (unpublished).

left blank the hand-drawn signature, date, and notarization lines. Altogether, Defendant requested that the trial court grant his Motion, appoint appellate counsel, and order an evidentiary hearing.

On 16 January 2024, the trial court rejected all three requests, finding that Defendant “failed to establish a valid basis for believing that [p]ost[c]onviction DNA testing would result in a reasonable possibility that the verdict would have been more favorable to the defendant.” The order instructed the Clerk of Superior Court to mail a copy to Defendant at the Durham County Jail instead of to the Warren Correctional Institution. On 27 February 2024, Defendant filed notice of appeal 42 days after the order’s entry.

II. Jurisdiction

Defendant petitions this Court for a writ of certiorari. “In North Carolina, a defendant’s right to appeal in a criminal proceeding is purely a creation of state statute.” *State v. Pimental*, 153 N.C. App. 69, 72 (2002). A defendant may appeal the denial of a motion for postconviction DNA testing as a matter of right, N.C.G.S. § 15A-270.1 (2023), but must also “fil[e] notice of appeal with the clerk of superior court and serv[e] copies thereof upon all adverse parties within fourteen days after entry of the judgment or order,” N.C. R. App. P. 4(a)(1)–(2). Notwithstanding a party’s failure to “take timely action,” this Court may issue a writ of certiorari in appropriate circumstances to permit review of a trial court’s judgment where “the right to prosecute an appeal has been lost by the failure to take timely action.” *Id.* 21(a)(1).

Here, Defendant's appeal was "undoubtedly late" because the trial court denied Defendant's Motion on 16 January 2024 and he did not file notice of appeal until 27 February 2024. Defendant's Motion stated that he was incarcerated at Warren Correctional Institution, but the order instructed the clerk to mail a copy to the Durham County Jail. The delay may be partially attributed to Defendant's untimely receipt of the order resulting from its being mailed to the wrong location. *See State v. Hammonds*, 218 N.C. App. 158, 163 (2012). Therefore, we grant Defendant's petition.

III. Analysis

The issues before this Court are whether the trial court erred in (1) denying Defendant's Motion and (2) doing so before appointing counsel for him. A trial court's findings of fact that undergird its denial of a postconviction motion bind this Court if supported by competent evidence. *See State v. Cummings*, 361 N.C. 438, 471 (2007). We do not disturb those findings absent an abuse of discretion, *see id.* at 447; however, we do review the trial court's conclusions of law *de novo*, *State v. Lane*, 370 N.C. 508, 517–18 (2018) (reviewing whether defendant showed necessary facts to merit DNA testing under § 15A-269(b)). Under *de novo* review, this Court looks at the matter anew and substitutes its judgment for that of the trial court. *State v. Williams*, 362 N.C. 628, 632–33 (2008).

A. Conditions Precedent Under § 15A-269(a)

A defendant may move "for . . . DNA testing" to the trial court that entered the previous judgment if the biological evidence in question:

STATE V. BULLOCK

Opinion of the Court

- (1) Is material to . . . [his] defense[;]
- (2) Is related to the . . . prosecution that resulted in the judgment[; and]
- (3) Meets either of the following conditions:
 - (a) It was not DNA tested previously[; or]
 - (b) It was tested previously, but the requested DNA test would provide results that are significantly more accurate and probative of the identity of the perpetrator . . . or have a reasonable probability of contradicting prior test results.

N.C.G.S. § 15A-269(a)(1)–(3) (2023). A defendant must “prov[e] by a preponderance of the evidence every fact essential to support” his postconviction motion, including those “necessary to establish materiality.” *State v. Byers*, 375 N.C. 386, 394 (2020). Consistent with *Brady v. Maryland*, 373 U.S. 83 (1963), our courts define “material” as allowing for “a reasonable probability that . . . the result of the proceeding would have been different” “had the evidence been disclosed to the defense.” *Lane*, 370 N.C. at 519. They further define “reasonable probability” as any potentiality “sufficient to undermine the confidence in [case’s] outcome.” *Byers*, 375 N.C. at 394. In ruling on a motion, we determine “materiality . . . in the context of the entire record.” *Lane*, 370 N.C. at 519. This determination “hinges [] on whether the evidence would have affected the jury’s deliberations.” *Id.*

A defendant does not satisfy this burden if the motion for DNA testing merely consists of “conclusory and vague statements without evidentiary foundation.” *Byers*, 375 N.C. at 395; see *State v. Turner*, 239 N.C. App. 450, 454 (2015) (holding that a defendant’s assertion that “[t]he ability to conduct the requested DNA is material to [his] defense” was conclusory and insufficient to establish materiality); *State v.*

STATE V. BULLOCK

Opinion of the Court

Collins, 234 N.C. App. 398, 411–12 (2014) (holding that defendant’s statements claiming “new and more accurate [DNA] testing . . . would provide results that are significantly more accurate and probative” were conclusory and insufficient to establish materiality); *State v. Tilghman*, 261 N.C. App. 716, 720 (2018) (holding that “the aggregation of [the] [d]efendant’s conclusory statements communicate[d]” a “conclusory effect”). A motion alleging only “a statement that testing would show that [the defendant] was not the perpetrator of the crime” cannot establish materiality on its own. *Randall*, 259 N.C. App. at 888. Rather, a defendant must “expla[in] . . . *why* the testing would be material to his defense.” *State v. Gardner*, 227 N.C. App. 364, 369 (2013) (emphasis added). This explanation must include “specific reasons” why the evidence is material. *State v. Cox*, 245 N.C. App. 307, 312 (2016).

Here, Defendant cannot satisfy § 15A-269(a)(1) because he does not identify any testable evidence, much less show its materiality to his defense. Defendant cannot remedy his Motion by attempting to identify evidence for the first time on appeal. See *State v. Anderson*, 175 N.C. App. 444, 449 (2006) (rejecting defendant’s appellate argument “based on scientific literature never provided to” trial court). Thus, we limit our review to allegations already brought before the trial court.

Defendant claims that the State possessed “materially exculpatory *Brady* DNA evidence that[,] pursuant to forensic DNA testing,” would “establish that [he] was not the perpetrator.” He further asserts that if “the North Carolina state laboratory” tested this evidence “against [its] massive DNA database,” the results would “firmly

establish [his] innocence.” Like in *Byers*, Defendant “conclusor[il]y and vague[ly] states” his innocence “without evidentiary foundation.” *Byers*, 375 N.C. at 395. Motions that argue for “testing [that] would show” a different “perpetrator of the crime,” *Randall*, 259 N.C. App. at 888, must include “explanation[s],” *Gardner*, 227 N.C. App. at 369, and “specific reasons,” *Cox*, 245 N.C. App. at 312, to supplement a claim of innocence.

Defendant’s Motion fails to specify a “reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Lane*, 370 N.C. at 519 (quotation omitted); see *Tilghman*, 261 N.C. App. at 720. In its order denying Defendant’s Motion, the trial court found that Defendant “failed to establish a valid basis for believing that [p]ost[c]onviction DNA testing would result in a reasonable probability that the verdict would have been more favorable” to him. We agree that by failing to establish materiality, Defendant fails to satisfy the conditions precedent of N.C.G.S. § 15A-269(a). Thus, this Court holds that the trial court did not err in denying the Motion.

B. Denial of Defendant’s Motion Under § 15A-269(b)

Assuming *arguendo* that Defendant’s Motion had satisfied N.C.G.S. § 15A-269(a), it fails on additional grounds under N.C.G.S. § 15A-269(b). Under subsection (b), the trial court “shall grant” the motion for postconviction DNA testing “and run any profiles obtained from the testing” upon a determination that (1) all requirements in subsection(a) have been met, (2) “there exists a reasonable

STATE V. BULLOCK

Opinion of the Court

probability that the verdict would have been more favorable to defendant” had the requested DNA testing been conducted, and (3) “defendant has signed a sworn affidavit of innocence.” N.C.G.S. § 15A-269(b). Thus, the requirements of both subsections (a) and (b) subject “a defendant’s statutory right to postconviction DNA testing” to “several conditions precedent.” *Lane*, 370 N.C. at 524. A trial court may deny a motion for DNA testing if a defendant fails to meet one of these conditions precedent. *Id.* (finding a failure to establish materiality standard); see *Turner*, 239 N.C. App. at 454 (“Absent the required showing, the trial court is not statutorily obligated to order postconviction DNA testing.”); *State v. Foster*, 222 N.C. App. 199, 205 (2012) (“As defendant failed to establish the condition precedent to the trial court’s granting his motion, the trial court properly denied the motion.”).

One of those conditions is a signed “and sworn affidavit of innocence.” N.C.G.S. § 15A-269(b)(3). Here, Defendant’s Motion states that he “has always contended his actual innocence” and asserts that “proof exist[s] that this contention is true and accurate.” Defendant attaches a handwritten note titled “Affidavit,” which states that he is “actually innocent of any wrongdoing in this matter” and that he “did not participate in this crime.” However, the spaces for Defendant’s signature and a notarized certification were left blank. Thus, Defendant’s free-standing assertions do not satisfy the requirements for a “sworn affidavit of innocence” under N.C.G.S. § 15A-269(b)(3).

Assuming Defendant had established materiality as required by subsection (a),

Defendant's failure to satisfy conditions precedent in subsection (b) supports the trial court's finding that he "failed to establish a valid basis" for postconviction DNA testing. *See, e.g., Lane*, 370 N.C. at 524; *Turner*, 239 N.C. App. at 454; *Foster*, 222 N.C. App. at 205. Therefore, we hold that the trial court did not err in denying Defendant's Motion.

C. Denial Without Appointing Counsel Under N.C.G.S. § 15A-269(c)

Defendant argues that the trial court erred in denying his Motion before appointing counsel to represent him. He asserts that the trial court "applied the harsher standard" requiring him to show that DNA testing is "material to his defense," and that it failed to "address whether the evidence may have been material to his claim of wrongful conviction." Although § 15A-269 instructs the trial court to "appoint counsel" for an indigent *pro se* defendant who moves for postconviction DNA testing, the defendant still must show "that the DNA testing may be material" to his wrongful-conviction claim. N.C.G.S. § 15A-269(c) (2023). To show Defendant is entitled to appointed counsel, he need only show that the alleged evidence "*may* be material." *Id.* § 15A-269(c). However, Defendant fails to meet this lower standard. As our Supreme Court instructs in *Byers*:

[T]he term "material" maintains the same definition in subsections (a) and (c) that this Court has attributed to it in our cited case decisions. The major consequentiality inherent in the term "material" itself is neither heightened in N.C.G.S. § 15A-269(a) nor relaxed in N.C.G.S. § 15A-269(c) by virtue of an alteration in the term's legal meaning; rather, it is the modifying word "is" preceding the term "material" in subsection (a) and the modifying word "may" prior to the term "material"

in subsection (c) which create the difference in the levels of proof to be met by a defendant.

Byers, 375 N.C. at 397. Thus, whether we apply the higher standard of subsection(a) or the lower standard of subsection(c), our definition of “materiality” remains consistent: “a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding *may* have been different.” *Id.* at 399 (emphasis added).

Here, as discussed above, Defendant’s Motion is conclusory, vague, and unsupported by evidence would otherwise “undermine . . . confidence in the outcome” of his conviction. *Id.* at 394. Defendant’s Motion does not establish materiality even at the lower standard. Thus, this Court holds that the trial court did not err in denying Defendant’s Motion or by doing so without appointing counsel.

IV. Conclusion

For the reasons above, this Courts holds that the trial court did not err in denying Defendant’s Motion for postconviction DNA testing.

NO ERROR.

Judges ARROWOOD and GORE concur.

Report per Rule 30(e).