

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-852

Filed 2 September 2026

Pender County, Nos. 23CR235898-700, 23CR234589-700

STATE OF NORTH CAROLINA

v.

WILLIAM ANDREW BENSON

Appeal by Defendant from judgment entered 20 November 2024 by Judge Ricardo Jensen in Pender County Superior Court. Heard in the Court of Appeals 11 August 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Kayla D. Britt, for the State-Appellee.

Johneric C. Emehel for Defendant-Appellant.

COLLINS, Judge.

Defendant William Andrew Benson appeals from judgments entered upon a jury's verdicts of guilty of two counts of first-degree statutory sexual offense and two counts of indecent liberties with a child. Defendant argues that he received ineffective assistance of counsel. We find no error.

I. Background

Defendant was indicted for various sexual offenses on 20 May 2023, and the case proceeded to trial on two counts of first-degree statutory sexual offense and two

counts of indecent liberties with a child.

The evidence presented at trial tended to show: Defendant is the great-uncle to Vanessa, who was approximately 12 years old in the fall of 2022 when she began therapy.¹ During a therapy session in January or early February of 2023, Vanessa told her therapist she had dreamed Defendant had touched her inappropriately; she wrote on a piece of paper that Defendant “touched her on her vagina, and stuck his fingers inside of her and took them out and licked his fingers.” During her next therapy session, Vanessa said that she had been afraid of telling her therapist the truth, the allegations she made about Defendant were not a dream, and Defendant had touched her inappropriately in real life. Vanessa’s therapist contacted her parents, the Pender County Sheriff’s Office, and Pender County Department of Social Services (“DSS”).

On 12 February 2023, a detective with the Pender County Sheriff’s Office conducted a “controlled phone call” between Defendant and Vanessa, during which Defendant did not know that the detective was listening, and Vanessa tried to get Defendant to speak about the allegations. The call did not provide any relevant information. The following day, Vanessa was forensically interviewed and medically examined at the Carousel Center, a child advocacy center. Vanessa said that, when she visited Defendant’s house, she would sleep in bed with Defendant and he would

¹ We use a pseudonym to protect the identity of the minor child.

“pull [her] underwear down and put his finger in [her] vagina and move it and then he would lick his finger and put it back in [her] vagina.” She further said Defendant touched her vagina on multiple occasions. Vanessa said it would last for around thirty minutes and would stop when Defendant’s wife came into the bedroom or when Defendant fell asleep. She then said Defendant touched her vagina at her house on two separate occasions. Vanessa’s medical exam did not show any evidence of abuse.

The detective interviewed Defendant at his job on 14 February 2023. Defendant admitted to touching Vanessa “from the outside” of her panties but denied putting his fingers inside of her. When the detective asked Defendant if he “touched her [p*ssy] lips,” Defendant said, “I guess.” Defendant admitted to touching Vanessa “two to three times” and said it happened both at his home and Vanessa’s home. A videotape of that interview was played for the jury.

The jury found Defendant guilty of both counts of first-degree statutory sexual offense and both counts of indecent liberties with a child. The trial court sentenced Defendant to an active term of 240 to 348 months’ imprisonment. Defendant appealed.

II. Discussion

A. Notice of appeal

The State moved to dismiss the appeal for lack of jurisdiction, arguing that Defendant failed to properly notice appeal.

A “party entitled by law to appeal from a judgment” may “take appeal by . . .

giving oral notice of appeal at trial[.]” N.C. R. App. P. 4(a)(1). Oral notice of appeal given “in open court immediately upon entry of the final judgment” complies with Rule 4. *State v. Graham*, 287 N.C. App. 477, 481 (2023) (citations omitted).

After the trial court sentenced Defendant and orally entered judgment, defense counsel stated, “[Defendant] did indicate that he would like to file a notice of appeal with the [c]ourt.” The trial court responded, “Okay. Madam Clerk, please note the defendant’s wish to appeal the judgment of this [c]ourt.”

The State argues that Defendant only “attempted” an oral notice of appeal in open court and did not file a written notice of appeal. Defendant responds that the record established his intent to appeal and steps taken to exercise his right to appeal. Defendant nonetheless filed a petition for writ of certiorari in the event this Court determined his oral notice to be deficient. *See* N.C. R. App. P. 21.

Because the transcript shows that Defendant’s oral notice of appeal was sufficient to invoke this Court’s jurisdiction, we deny the State’s motion to dismiss and dismiss Defendant’s petition for writ of certiorari as moot.

B. Ineffective assistance of counsel

Defendant asserts that he received ineffective assistance of counsel based on three related aspects of his trial counsel’s performance: counsel’s decision to elicit testimony regarding Defendant’s pending Brunswick County charges; counsel’s request for a jury instruction permitting consideration of those charges under Rule 404(b); and counsel’s closing argument emphasizing that any alleged conduct

happened in the Brunswick County case rather than the Pender County case being tried. Defendant argues that these errors individually and cumulatively resulted in Defendant being denied effective assistance of counsel.

“A defendant challenging his conviction on the basis of ineffective assistance of counsel must establish that his counsel’s conduct ‘fell below an objective standard of reasonableness.’” *State v. McNeill*, 371 N.C. 198, 218 (2018) (quoting *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). To establish that counsel’s performance was objectively unreasonable, the defendant must make two showings. *Id.*

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. (quoting *Strickland*, 466 U.S. at 687). “Cumulative errors lead to reversal when taken as a whole they deprived the defendant of his due process right to a fair trial free from prejudicial error.” *State v. Wilkerson*, 363 N.C. 382, 426 (2009) (cleaned up).

This Court will decide a claim for ineffective assistance of counsel on direct review “when the cold record reveals that no further investigation is required[.]” *State v. Fair*, 354 N.C. 131, 166 (2001) (citations omitted).

Defendant argues he is entitled to a new trial because his counsel’s choice “to introduce evidence of [his] arrest in Brunswick County on very similar sexual assault

charges involving [Vanessa]” “serves no admissible purpose and [was] highly prejudicial to” Defendant. He argues it had the “effect of showing that [Defendant] has the propensity and disposition to commit” the offenses.

Defendant makes similar arguments regarding his counsel’s request that the trial court instruct the jury to use his pending charges for the Brunswick County sexual assaults as Rule 404(b) evidence and his counsel’s closing argument that the sexual assaults took place in Brunswick County and not Pender County. Defendant argues his counsel’s actions “allow[ed] jurors to use [Defendant’s] arrest in Brunswick County . . . to show that [he] had motive, knowledge, state of mind and opportunity to commit [the offenses] . . . in Pender County” and that he was prejudiced by this choice. He further contends his counsel’s choice in closing argument to “make venue the central issue in this case” “lacked positive advocacy” and “was flawed factually and legally.”

The record reflects that counsel pursued a deliberate strategy aimed at narrowing the jury’s focus to whether the State had proven the Pender County offenses beyond a reasonable doubt. Vanessa testified that Defendant touched her at both his home in Brunswick County and her home in Pender County, and Defendant’s recorded interview included his statements acknowledging touching that occurred in both locations. Confronted with evidence suggesting repeated conduct in Brunswick County, counsel sought to frame the jury’s task as determining whether the State had met its burden in Pender County, while acknowledging that any alleged conduct

in Brunswick County would be addressed separately. Counsel explained to the trial court that he wished to avoid jurors believing Defendant would “walk away from this” if acquitted in Pender County and therefore intended to clarify that charges existed elsewhere.

Although Defendant now characterizes this approach as harmful, our review is guided by the “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance[.]” *State v. Lane*, 271 N.C. App. 307, 319 (2020) (cleaned up). “Trial counsel are necessarily given wide latitude in these matters [of trial strategy]. Ineffective assistance of counsel claims are not intended to promote judicial second-guessing on questions of strategy” *State v. Milano*, 297 N.C. 485, 495-96 (1979) (cleaned up), *overruled on other grounds by*, *State v. Grier*, 307 N.C. 628 (1983).

Here, counsel’s actions were components of a unified strategy: eliciting testimony about the Brunswick County charges, requesting a limiting instruction to guide the jury’s consideration of that evidence, and arguing that the jury should distinguish between conduct alleged in the two counties. Viewed together, these actions reflect an attempt to mitigate the impact of evidence suggesting repeated conduct outside Pender County and to focus the jury on the State’s burden in the case before it.

The trial court also conducted the following colloquy with Defendant before closing arguments:

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THE COURT: Okay. I think that we probably need to have our Harbison inquiry. . . . All right. [Defendant], if you can please stand real quick. Now, your attorney is obviously in charge of trial strategy, and what he feels best with regard to the strategy to present to the jury. Do you understand that?

[DEFENDANT]: Yes, sir.

THE COURT: Okay. Now, he plans to mention certain things you mentioned in your testimony here today. Some of those things could be considered as admissions to at least some of the elements regarding -- in either of these charges. Do you understand that?

[DEFENDANT]: Yeah.

THE COURT: Okay. But as far as everything -- you are maintaining your innocence with regard to all of the charges -- that is first-degree statutory sex offense and indecent liberties. Do you understand that?

[DEFENDANT]: Yes.

THE COURT: And is that correct that you are maintaining your innocence with regards to all the charges?

[DEFENDANT]: Yes.

THE COURT: And you are -- you've had a discussion with your attorney with regard to him mentioning those things to the jury that could be admissions to some elements with regard to those charges?

[DEFENDANT]: I have.

THE COURT: Okay. And you're okay with that particular trial strategy of your attorney?

[DEFENDANT]: Yeah.

THE COURT: Okay. Thank you. Let the record reflect that I've discussed with the defendant the potential Harbison issues that may come up during the defenses closing statements.

While Defendant now argues that the colloquy was insufficiently detailed, the

record shows that Defendant knowingly agreed to counsel's approach. Counsel did not concede guilt to the Pender County offenses; rather, he argued that certain statements made during Defendant's interview were more logically connected to the allegations in Brunswick County. This did not constitute a concession of guilt under *State v. Harbison*, 315 N.C. 175 (1985), nor did it fall outside prevailing professional norms.

Furthermore, even if counsel's performance had been deficient, Defendant has failed to show prejudice. The State presented substantial evidence of Defendant's guilt, including Defendant's own recorded statements acknowledging that he touched Vanessa "two to three times" and that such touching occurred both in Pender County and in Brunswick County. Vanessa provided consistent accounts during therapy, a forensic interview, and at trial. Although Defendant disputed the allegations at trial, the jury was entitled to credit the State's evidence.

On this record, Defendant has not demonstrated a reasonable probability that the outcome would have been different absent counsel's challenged actions. *McNeill*, 371 N.C. at 219.

III. Conclusion

We conclude that Defendant has failed to meet his burden under *Strickland*; the strategy employed by his counsel, to which Defendant agreed, reflects an attempt to focus the jury on the State's burden in the case before it. Moreover, given the overwhelming evidence of Defendant's guilt, he cannot show any prejudice from his

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counsel's performance. Defendant did not receive ineffective assistance of counsel.

NO ERROR.

Judges STROUD and GRIFFIN concur.