NO. COA11-274
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA

v. Sampson County
Nos. 85 CRS 9027-33, 9458-60

TIMOTHY AUTRY

Appeal by defendant from order entered 12 October 2010 by Judge Ripley E. Rand in Sampson County Superior Court. Heard in the Court of Appeals 22 August 2011.

Attorney General Roy Cooper, by Assistant Attorney General LaToya B. Powell, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Kathleen M. Joyce, for defendant-appellant.

MARTIN, Chief Judge.

Defendant appeals from the denial of his second motion for post-conviction DNA testing. We find no error.

On 25 March 1986, defendant was convicted by a jury of three counts of first-degree sex offense, two counts of first-degree rape, one count of first-degree kidnapping, two counts of second-degree sex offense, one count of second-degree rape, and one count of impersonating a law enforcement officer. The trial

court sentenced defendant to five life sentences plus 106 years imprisonment. Defendant appealed, and the Supreme Court found no error in defendant's trial. *State v. Autry*, 321 N.C. 392, 404, 364 S.E.2d 341, 348 (1988).

On 20 August 2002, defendant filed his first motion for post-conviction DNA testing, pursuant to N.C.G.S. § 15A-269. The trial court allowed defendant's motion on 31 March 2004, and approximately eight different types of evidence from defendant's trial were sent to the State Bureau of Investigation for DNA testing. However, testing revealed that none of the items contained any DNA or other biological evidence that implicated defendant or any other perpetrator. Following a hearing, the trial court found that the DNA results were not favorable to defendant and denied defendant's motion for relief. Defendant's petition for writ of certiorari seeking review of the trial court's order was denied.

On 3 November 2008, defendant filed a second motion for post-conviction DNA testing, requesting testing of twelve additional items. The trial court conducted a hearing on the motion on 3 June 2010. The trial court then took the matter under advisement. In an order entered 12 October 2010, the court denied defendant's motion after making detailed findings

of fact and conclusions of law. The trial court ultimately concluded that defendant failed to show that "additional DNA testing would create a 'reasonable probability that the verdict would have been more favorable to the defendant.'" From this order, defendant appealed.

Counsel appointed to represent defendant asserts that she has been 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 also shown to the satisfaction of this Court that she has complied with the requirements of *Anders v. California*, 386 U.S. 738, 744-45, 18 L. Ed. 2d 493, 498 (1967), and *State v. Kinch*, 314 N.C. 99, 102-03, 331 S.E.2d 665, 666-67 (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.

Defendant has purported to file a *pro se* brief, which contains articles on DNA testing and several documents pertaining to his trial, previous appeal, and previous motion for DNA testing. Defendant's purported *pro se* brief contains no arguments for this Court's review. In accordance with *Anders*, we have fully examined the record to determine whether any

issues of arguable merit appear therefrom or whether the appeal is wholly frivolous. We conclude the appeal is wholly frivolous. Furthermore, we have examined the record for possible prejudicial error and found none.

No error.

Judges HUNTER, JR. and THIGPEN concur.

Report per Rule 30(e).