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NO. COA11-328  
NORTH CAROLINA COURT OF APPEALS

Filed: 1 November 2011

STATE OF NORTH CAROLINA

v.

Harnett County  
No. 09 CRS 50776  
09 CRS 3715

CHARLES ANTHONY WILLIAMS

Appeal by defendant from convictions entered 26 October 2010 by Judge Franklin F. Lanier in Harnett County Superior Court. Heard in the Court of Appeals 27 September 2011.

*Attorney General Roy Cooper, by Assistant Attorney General Dahr Joseph Tanoury for the State.*

*Guy J. Loranger, attorney for defendant.*

ELMORE, Judge.

On 26 October 2010, Charles Anthony Williams (defendant) was convicted of 1) the sale of cocaine and 2) as a habitual felon. On that same day, defendant was sentenced as a Class C, Record Level IV Habitual Felon to 133-169 months in prison. No error.

On 22 January 2009, defendant sold cocaine to two individuals. These two individuals were confidential informants working for the Angier Police Department. Defendant was arrested on 26 February 2009 for the sale and delivery of cocaine. At that time, Defendant retained Gerald Hayes as counsel.

On 17 August 2009, defendant was indicted for the sale of cocaine and for attaining the status of habitual felon. On 19 January 2010, Hayes withdrew as counsel and C. Winston Gilchrist was appointed to represent defendant. Shortly thereafter, on 25 January 2011, Gilchrist moved to withdraw as counsel. On 22 February 2010, the trial court granted Gilchrist's motion, and Gilchrist withdrew. On that same day, Cecil "Bo" Jones was appointed as defendant's counsel.

Defendant's case was called for trial on 19 July 2010, but defendant failed to appear. The trial court then issued an order for his arrest. On 28 July 2010, defendant was arrested by the Harnett County Sheriff's Department. On 9 September 2010, defendant wrote a letter to the clerk of superior court, requesting that Jones be removed as counsel. In that letter defendant wrote that "[m]e and Bo Jones is having and had a

conflicet (sic) of interest." On 25 October 2010, defendant's case was again called for trial.

During the two-day trial, defendant interrupted the proceedings several times. First, defendant made a loud noise during the State's direct examination of Detective Williams Coats of the Angier Police Department. Next, during the State's redirect of the same witness, defendant again interrupted the proceedings. As a result, the trial court excused the jury, and questioned defendant about his behavior. Defendant explained that he was having a "conflict of interest" with his attorney, Jones. Defendant explained that he wanted Jones to ask the witness a specific question during cross-examination, but Jones declined to ask the question. The trial resumed, but defendant continued to act in a disruptive manner. At one point, defendant 1) grabbed Jones, 2) put his face approximately two inches from Jones and stared at him, and 3) put papers in Jones's face.

On 26 October 2010, the trial court entered an order denying defendant's motion to represent himself. The trial court also removed defendant from the courtroom at this time, due to his prior disruptive behavior. Defendant was initially placed in a holding cell located just outside of the courtroom.

However, once inside the holding cell defendant yelled loudly and kicked the cell door. The trial court then had defendant returned to the Harnett County Jail. The trial then continued, and the jury found defendant guilty of all charges.

The trial court arrested judgment on defendant's delivery of cocaine conviction and sentenced defendant as a Class C felon with a prior record level of IV for the sale of cocaine offense. Defendant was ordered to serve an active prison term of a minimum of 133 months to a maximum of 169 months with a 91-day credit for pre-trial confinement. Defendant now appeals.

Defendant first argues that the trial court abused its discretion by failing to conduct a sufficient inquiry into whether a conflict of interest between defendant and his appointed counsel had rendered the attorney's assistance ineffective. We disagree.

We review a trial court's ruling on whether to remove counsel under an abuse of discretion standard. *State v. Jones*, 357 N.C. 409, 413, 584 S.E.2d 751, 754 (2003). An abuse of discretion occurs when a court's ruling is "manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). Our Supreme Court

has determined that when a defendant claims a conflict of interest, the trial court must determine 1) if present counsel is able to render competent assistance and 2) if the nature or degree of the conflict would render that assistance ineffective. *State v. Thacker*, 301 N.C. 348, 353, 271 S.E.2d 252, 256 (1980).

According to this test, the trial court here was first required to determine whether defendant's present counsel was able to render competent assistance. We conclude that the trial court had sufficient information to make that determination. Here, the trial court witnessed Jones cross-examine Detective Coats. That cross-examination was lengthy and covered several different subjects. Jones first probed Coats's knowledge of the confidential informants he used on the night in question. Jones was able to elicit from Coats that 1) he had not met the informants prior to that evening and 2) that the informants were paid more for completing purchases. It was after this cross-examination that defendant informed the trial court that he had an issue with Jones's representation of him. Therefore, it is clear that the trial court had sufficient facts upon which to determine whether Jones was able to render competent assistance, and it was not necessary for the trial court to conduct further inquiry into that issue.

Next, under the test established by our Supreme Court, the trial court here was also required to examine the nature or degree of the alleged conflict, and to determine if the conflict would render counsel's assistance ineffective. Here, the only conflict raised by defendant at trial was that Jones refused to ask Coats a specific question that defendant wanted to ask. Our Supreme Court has held that the type of defense to present and the number of witnesses to call is a matter of trial tactics, and "the responsibility for these decisions rests ultimately with defense counsel." *State v. McDowell*, 329 N.C. 363, 384, 407 S.E.2d 200, 211 (1991). Therefore, a disagreement between a defendant and his court-appointed counsel over trial tactics is "not sufficient to require the trial court to replace court-appointed counsel with another attorney." *State v. Gary*, 348 N.C. 510, 516, 501 S.E.2d 57, 62 (1998). Similarly, we conclude that deciding what questions to ask a witness is also a matter of trial tactics. Therefore, defendant's frustration with Jones' refusal to ask a specific question of Coats is not the type of disagreement that would render Jones' assistance ineffective.

Furthermore, this Court notes that when analyzing the record it appears as though Jones performed admirably in a

difficult environment. The record illustrates that defendant had become overtly hostile towards Jones: 1) grabbing him, 2) staring at him, and 3) putting papers in his face. Defendant also ignored multiple warnings to cease such behavior, forcing the trial court to remove him from the courtroom altogether. Accordingly, the only "conflicts" present during the proceedings appear to be those created by defendant. We conclude that the trial court committed no error with regards to defendant's first issue.

Defendant next argues that he received ineffective assistance of counsel in violation of the Sixth Amendment, because Jones denied him of his right to testify. Here, the face of the record lacks sufficient evidence for this Court to review this issue. Therefore, we dismiss this issue without prejudice to defendant.

No error.

Judges McGEE and HUNTER, JR., Robert N., concur.

Report per Rule 30(e).