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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-538

Filed: 21 November 2017

Randolph County, Nos. 15 CRS 050123-25

THE STATE OF NORTH CAROLINA

v.

GREGORY LAMONT MONROE

Appeal by defendant from judgments entered 8 November 2016 by Judge W. Erwin Spainhour in Randolph County Superior Court. Heard in the Court of Appeals 31 October 2017.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Lisa K. Bradley, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for defendant.*

PER CURIAM.

Gregory Lamont Monroe (“defendant”) filed petitions for *writ of certiorari* for review of the trial court’s acceptance of his guilty plea and denial of his motion to withdraw his guilty plea. The State filed a motion to dismiss the appeal. Based on

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the reasons stated herein, we deny defendant's petitions for *writ of certiorari* and grant the State's motion to dismiss.

I. Background

On 14 September 2015, defendant was indicted for trafficking in opium or heroin (possessing more than 28 grams) in violation of N.C. Gen. Stat. § 90-95(h); trafficking in opium or heroin (transporting more than 28 grams) in violation of N.C. Gen. Stat. § 90-95(h); possessing with intent to sell and deliver heroin (more than 28 grams) in violation of N.C. Gen. Stat. § 90-95(a)(1); possessing heroin in violation of N.C. Gen. Stat. § 90-95(a)(3); trafficking in opium or heroin (possessing 4 grams or more but less than 14 grams) in violation of N.C. Gen. Stat. § 90-95(h); and trafficking in opium or heroin (transporting 4 grams or more but less than 14 grams) in violation of N.C. Gen. Stat. § 90-95(h).

On 8 November 2016, defendant's case was heard in the Randolph County Superior Court before the Honorable W. Erwin Spainhour. Defendant, proceeding *pro se* with standby counsel, entered a guilty plea to all charges.

On 8 November 2016, defendant was sentenced to consecutive terms of 25 to 282 months and 70 to 93 months.

On 14 November 2016, defendant filed a form entitled "Request For Services" with the Randolph County Clerk's Office. In the form, defendant stated as follows: "I would like to Appeal my case due to the fact that I signed my name with 'under

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duress' up under it making the contract voidable and invalid [sic] therefore this time I received is no good." Defendant requested a new court date.

On 17 November 2016, defendant filed a document entitled, " 'AFFIDAVIT' NOTICE OF APPEAL[,]" stating the he "would like to appeal the plea bargan do [sic] to the fact it was made under duress." Defendant also argued, among other things, that he was denied due process and equal protection, Judge Spainhour had committed fraud, his sentence should be vacated, and his case should be dismissed.

The record contains documents from defendant entitled "Motion to Withdraw Plea" and "DEFENDANT AFFIDAVIT OF FACT" in which he contends that his guilty plea was made under duress. On 22 November 2016, the trial court entered an order stating that defendant had sent this motion and affidavit to the Office of the Senior Resident Superior Court Judge of Judicial District 19-B. The order provided that although the documents were filed 22 November 2016<sup>1</sup>, the court was uncertain what date the documents were received and that the accompanying envelope was postmarked 15 November 2016. The order denied defendant's motion to withdraw his guilty plea.

The record also contains a document file-stamped on 28 November 2017 and entitled "NOTICE OF APPEAL" wherein defendant argues that he was not given equal protection or due process, Judge Spainhour violated his oath of office, defendant

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<sup>1</sup> The record on appeal has a file stamp date of 23 November 2016 on the "Motion to Withdraw Plea."

was threatened “with force of restraint[,]” and he was under duress when signing his guilty plea.

## II. Discussion

Defendant presents two issues on appeal. First, defendant argues that the trial court erred in accepting his guilty plea when it was not supported by a sufficient factual basis. Second, defendant contends that the trial court erred by denying his motion to withdraw his guilty plea.

### A. Factual Basis for Guilty Plea

Defendant argues that the trial court erred by accepting his guilty plea where there was an insufficient factual basis for the plea, in violation of N.C. Gen. Stat. § 15A-1022(c)<sup>2</sup>. Specifically, defendant contends that there was insufficient evidence to establish the identity of the controlled substances and to support the statutory weights for four of the charges. Defendant also argues that defendant’s stipulations were insufficient to establish a factual basis.

We first address the motions that are before our panel. On 10 July 2017, defendant filed a petition for *writ of certiorari* for review of this issue. Defendant also stated that he was filing the petition in the event that our Court finds his *pro se* notice

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<sup>2</sup> N.C. Gen. Stat. § 15A-1022(c) (2015) provides: “The judge may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea. This determination may be based upon information including but not limited to: (1) A statement of the facts by the prosecutor. (2) A written statement of the defendant. (3) An examination of the presentence report. (4) Sworn testimony, which may include reliable hearsay. (5) A statement of facts by the defense counsel.”

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of appeal to be defective for failing to indicate that he was appealing to our Court in violation of Rule 4(b) of the North Carolina Rules of Appellate Procedure. On 14 August 2017, the State filed a motion to dismiss defendant's appeal. As to defendant's first issue, the State argues that defendant's right to appeal is precluded by N.C. Gen. Stat. § 15A-1444 and defendant's guilty plea.

"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, 568 S.E.2d 867, 869, *disc. review denied*, 356 N.C. 442, 573 S.E.2d 163 (2002). A defendant "does not have an appeal as a matter of right to challenge the court's acceptance of his guilty plea." *State v. Bolinger*, 320 N.C. 596, 601, 359 S.E.2d 459, 462 (1987). However, "our Supreme Court has held that when a trial court improperly accepts a guilty plea, the defendant may obtain appellate review of this issue only upon grant of a writ of certiorari." *State v. Demaio*, 216 N.C. App. 558, 562, 716 S.E.2d 863, 866 (2011) (internal quotation marks and citation omitted). "A petition for the writ must show merit or that error was probably committed below. *Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown." *State v. Rouson*, 226 N.C. App. 562, 563-64, 741 S.E.2d 470, 471 (citing *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959)), *disc. review denied*, 367 N.C. 220, 747 S.E.2d 538 (2013).

We find *State v. Kimble*, 141 N.C. App. 144, 539 S.E.2d 342 (2000), *disc. review denied*, \_\_ N.C. \_\_, 548 S.E.2d 150 (2001), to be dispositive here. In *Kimble*, the

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defendant argued on appeal that the trial court erroneously entered judgment against him for eight counts of solicitation to commit first-degree murder because there was an insufficient factual basis for his guilty plea, in violation of N.C. Gen. Stat. § 15A-1022(c). In the alternative, the defendant argued that the State's factual narrative only supported one solicitation. *Id.* at 147, 539 S.E.2d at 344. Our Court noted that the defendant did not object during the plea hearing to the State's summary of the factual basis for these charges, the defendant did not argue before the trial court that only one count of solicitation was supported by a sufficient factual basis, and the defendant's motion to withdraw his guilty plea after entry of judgment did not include an insufficient factual basis argument. *Id.* Citing to the North Carolina Rules of Appellate Procedure, our Court held that because the issue on appeal was not raised before the trial court, it was not properly before this Court. *Id.* at 147, 539 S.E.2d at 345.

We find the circumstances in the present case analogous to those found in *Kimble*. After defendant's charges were read to him, defendant, proceeding *pro se*, repeated the phrase that he "accept[ed] the value of the charges[]" and "accept[ed] the value of the whole proceeding[]" multiple times. Defendant then stated that he waived a jury trial and that he would "take whatever is given to me." The trial court interpreted defendant's communications as a waiver of a jury trial and an election of

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a bench trial. After the State called on four witnesses, the following exchange occurred:

[Defendant]: . . . I mean, what was the purpose of me pleading guilty if I still got to go through this? I thought I wouldn't have to go through this.

THE COURT: Well, you're having – you don't have to go through it in front of a jury, see? You've – you've taken away a jury trial. Just – just don't – just relax and listen to the evidence, okay?

. . . .

[Defendant]: Can't I just plead guilty –

. . . .

[Defendant]: I can't just accept the guilt and get it over with and you give me time and I'm gone back to prison?

THE COURT: No.

[Defendant]: You can't do it like that? I mean, I –

THE COURT: All right, let's do it this way ----

[Defendant]: God.

THE COURT: Just do you stipulate – I just think that I – I ought to hear this evidence. You don't want me to hear this evidence?

[Defendant]: No, you don't have to hear it; just go ahead and find – sentence me.

The trial court then read through each of defendant's charges and asked defendant if he stipulated, agreed, and admitted to the elements of the offenses. Defendant

replied in the affirmative to each charge. Like the *Kimble* defendant, at no time during the plea hearing did defendant argue that the factual basis for the entry of judgment against him on all the charges were insufficient. Rather, defendant continuously interrupted the trial court's attempt to provide a factual basis and insisted that the court move on to sentencing. In addition, defendant's motion to withdraw his plea was not based on the argument of an insufficient factual basis to support his plea. Assuming *arguendo* that we granted defendant's petition, the issue would not be properly before us due to his failure to raise this argument to the trial court. Accordingly, defendant's 10 July 2017 petition for *writ of certiorari* is denied.

B. Denial of Motion to Withdraw Guilty Plea

In his second argument, defendant contends that the trial court erred by denying his motion to withdraw his guilty plea following sentencing.

In the State's 14 August 2017 motion to dismiss the appeal, the State asserts that our Court does not have jurisdiction to review the trial court's denial of defendant's motion to withdraw his guilty plea due to lack of notice of appeal. In response, on 28 August 2017, defendant filed a second petition for *writ of certiorari* to review the trial court's 22 November 2016 order denying defendant's motion to withdraw his guilty plea.

“When a defendant seeks to withdraw a guilty plea after sentencing, his motion should be granted only where necessary to avoid manifest injustice.” *State v. Suites*,



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109 N.C. App. 373, 375, 427 S.E.2d 318, 320, *disc. review denied*, 333 N.C. 794, 431 S.E.2d 29 (1993).

Some of the factors which favor withdrawal include whether the defendant has asserted legal innocence, the strength of the State's proffer of evidence, the length of time between entry of the guilty plea and the desire to change it, and whether the accused has had competent counsel at all relevant times. Misunderstanding of the consequences of a guilty plea, hasty entry, confusion, and coercion are also factors for consideration.

*State v. Handy*, 326 N.C. 532, 539, 391 S.E.2d 159, 163 (1990) (internal citations omitted).

Because defendant's motion to withdraw his plea was made post-sentence, it is properly treated as a motion for appropriate relief. *Id.* at 536, 391 S.E.2d at 161. "A defendant who seeks relief by motion for appropriate relief must show the existence of the asserted ground for relief. Relief must be denied unless prejudice appears . . . ." N.C. Gen. Stat. § 15A-1420(c)(6) (2015).

Defendant argues that the trial court should have granted his motion to withdraw his plea because it was made under duress and was based on a misunderstanding of the law. We are not persuaded.

Defendant asserts that he was threatened to be "tide [sic] and gagged" by the trial court judge and thus, his plea was made under duress. The record demonstrates that defendant was uncooperative and unresponsive throughout the entire 8 November 2016 hearing. The trial court stated that if defendant continued to be

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disruptive, it would have no choice but to force defendant to have a seat, “to have you bound and gagged[.]” Nevertheless, when the trial court attempted to proceed to trial and jury selection, defendant was initially unresponsive and then stated that he was pleading guilty and “accept[ing] the value” of the charges and of the whole proceeding. When asked if he waived his right to a jury trial, defendant stated, “I waive a jury and accept the value of the whole proceeding[.]” As explained above, the trial court interpreted this to mean that defendant desired a bench trial. When it was time for defendant’s opening statement, he stated that he desired to “just plead guilty or whatever and get it over with.” Defendant asserted that he wished to make an *Alford* guilty plea. After four of the State’s witnesses were called to testify, defendant interrupted the proceedings again and specifically requested that he wanted to plead guilty and move onto sentencing. Therefore, we find no evidence that defendant made his guilty plea under duress as the trial court attempted to proceed to trial and it was defendant who insisted on pleading guilty.

As to defendant’s argument that he misunderstood the law, the record includes a completed and signed Transcript of Plea form and the transcript reveals that the trial court made a careful inquiry of defendant regarding the plea. Our Court has held these two things to be sufficient to demonstrate that the plea was entered into freely, understandingly, and knowingly. *See State v. Russell*, 153 N.C. App. 508, 511,

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570 S.E.2d 245, 248 (2002); *State v. Wilkins*, 131 N.C. App. 220, 224, 506 S.E.2d 274, 277 (1998).

Considering the foregoing reasons, defendant is unable to establish manifest injustice and unable to show that the trial court erred by denying his motion to withdraw his guilty plea. Thus, the 28 August 2017 petition for *writ of certiorari* cannot show merit and is denied. The State's motion to dismiss appeal is granted.

III. Conclusion

Defendant's 10 July 2017 and 28 August 2017 petitions for *writ of certiorari* are denied. The State's 14 August 2017 motion to dismiss appeal is granted.

APPEAL DISMISSED.

Panel Consisting Of: Bryant, Murphy, Arrowood.

Report per Rule 30(e).