

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-902

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

STATE OF NORTH CAROLINA

v.

WILSON CEDRIC WILKINS

Bertie County
Nos. 98 CRS 3472
99 CRS 1119

On writ of certiorari to review judgments dated 3 August 1999 by Judge Frank R. Brown in Bertie County Superior Court. Heard in the Court of Appeals 26 March 2002.

Attorney General Roy Cooper, by Assistant Attorney General Jason T. Campbell, for the State.

Charles A. Moore for defendant-appellant.

GREENE, Judge.

Wilson Cedric Wilkins (Defendant), by writ of certiorari, appeals judgments dated 3 August 1999 entered consistent with jury verdicts finding him guilty of common law robbery and felonious breaking and entering.

On 19 April 1999, Defendant was indicted for robbery with a dangerous weapon and felonious breaking and entering. One week prior to trial, Defendant requested his attorney, Lewis W. Hoggard (Hoggard), make a motion to withdraw from the case. Hoggard filed a pretrial motion to withdraw on 3 August 1999, one day before the

trial was to begin, and served the motion on the State on 4 August 1999. In the withdrawal motion, Hoggard stated Defendant believed counsel was unable to negotiate the disposition of his case with the State and Defendant wanted to directly communicate with the State. According to Hoggard, he and Defendant were unable to work together and he noted a dispute he had with Defendant during a 2 August 1999 visit.

The trial court heard Defendant's motion the day his case was called for trial, at which time Defendant was allowed to address the trial court. The trial court stated that if Defendant had retained another lawyer and the lawyer was present, then it would allow the motion. Hoggard informed the trial court Defendant had not retained another attorney. The trial court stated there was no need to pursue the motion, but it would hear what Defendant had to say. Defendant stated Hoggard had not been working in Defendant's best interest and the two had been arguing. The trial court denied Defendant's motion.

At trial, Defendant testified he entered the victim's house uninvited and proceeded to repeatedly ask her for money. "[A]fter [Defendant] demanded a couple more times, [the victim] went and got [the money] and gave it to" Defendant.

The dispositive issue is whether the trial court abused its discretion in denying Defendant's motion for withdrawal of counsel.

Defendant argues the trial court abused its discretion in denying Hoggard's motion to withdraw and that his Sixth Amendment

right to effective assistance of counsel, as guaranteed under the United States Constitution, was violated. We disagree.

The determination of whether an attorney can withdraw is within the discretion of the trial court, whose decision is reversible only for abuse of discretion. *State v. Moore*, 103 N.C. App. 87, 100, 404 S.E.2d 695 702, *disc. review denied*, 330 N.C. 122, 409 S.E.2d 607 (1991). The trial court may permit counsel to withdraw where good cause is shown. N.C.G.S. § 15A-144 (1999). To substantiate a claim for ineffective assistance of counsel, a defendant must demonstrate two things: (1) his counsel's performance "fell below an objective standard of reasonableness," and (2) he was prejudiced by the error such that "a reasonable probability exists that the trial result would have been different absent the error." *State v. Lee*, 348 N.C. 474, 491, 501 S.E.2d 334, 345 (1998).

In this case, the trial court denied Defendant's motion after reviewing his written motion, learning Defendant had not retained another attorney, and hearing from both Hoggard and Defendant. Furthermore, Defendant has not argued in his brief to this Court that Hoggard's representation fell below an objective standard of reasonableness such that "a reasonable probability exists that the trial result would have been different." Our review of the transcript and record reveals that Hoggard zealously represented his client. Although Defendant was charged with robbery with a dangerous weapon and felonious breaking and entering, the jury found Defendant guilty of the lesser-included offense of common law

robbery and felonious breaking and entering. Indeed, Defendant admitted he had entered the victim's house uninvited and proceeded to demand money from her. Accordingly, the trial court did not abuse its discretion in denying Hoggard's motion to withdraw.

No error.¹

Judges HUDSON and TYSON concur.

Report per Rule 30(e).

¹In Defendant's brief to this Court, his defense counsel states that "[a]fter a careful and conscientious review of the record on appeal, and the remaining assignments of errors previously made, counsel is unable to determine any error which would be prejudicial or reversible error" and asks this Court to examine the record pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967). Defendant's approach "is inappropriate in this situation because *Anders* . . . generally applies only where counsel believes the whole appeal is without merit." *State v. Wynne*, 329 N.C. 507, 522, 406 S.E.2d 812, 820 (1991). Because defense counsel presented an argument regarding his first assignment of error, Defendant is not entitled to an *Anders* review by this Court.