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NO. COA06-885

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

STATE OF NORTH CAROLINA

v.

JASON ANTHONY EVANS

Davidson County
Nos. 02CRS061032
03CRS009655, 001136

Appeal by defendant from judgment entered 15 February 2006 by Judge Christopher Collier in Davidson County Superior Court. Heard in the Court of Appeals 2 April 2007.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Spurgeon Fields, III, for the State.

Randolph and Fischer, by J. Clarke Fischer, for defendant-appellant.

HUNTER, Judge.

A jury found defendant guilty of possession of cocaine and possession of a firearm by a felon, whereupon he admitted his status as an habitual felon. The trial court consolidated the offenses for judgment and sentenced defendant to an active prison term of 93 to 121 months. After a careful review, we find no error.

On appeal, defendant challenges the trial court's denial of his counsel's motion to withdraw on the day of trial. He asserts that the court's failure to enter findings of fact and conclusions

of law on the motion is alone sufficient to warrant a reversal of his convictions. Defendant further contends that the court abused its discretion in denying the motion to withdraw in light of the breakdown in the attorney-client relationship described to the court by counsel.

The stenographic transcript of defendant's trial reflects that defendant arrived late to court on his scheduled trial date, 14 February 2006. He explained to the court that he was attempting to locate a witness. When defendant's case was called for trial, his counsel moved to withdraw. The court addressed counsel's motion as follows:

[DEFENSE COUNSEL]: At this point I made a motion to withdraw from [defendant's] case. Because of that there's been some friction between my client and I. He indicated he was not here earlier because he was going to locate a witness. When I spoke with [defendant] yesterday afternoon I told him then I would make a motion to withdraw from his case. He went out this morning looking for a particular witness, that's why he was late this morning. He was here every other time with the excepting [sic] in October [and] again when his witness did not show and he went looking for that witness. He has been here every other time. At this time I think [defendant] would join this and allow me to withdraw as attorney of record. There's a conflict we cannot get past. I think he wants to retain other counsel, your Honor.

THE COURT: Why did he wait until the date of trial to make this motion? Or you, for that matter?

[DEFENSE COUNSEL]: Your Honor, I apologize to the Court. I could never get in touch with [defendant]. I called on numerous occasions to reach him, I could never get in touch with him.

. . .

THE COURT [to defendant]: What would you like to say about it?

THE DEFENDANT: As far as not getting in contact with me, I talked to [counsel] occasionally many times. He says he's just -- he feels he's just not fit for this case or something like that. He told me something like that yesterday. I think when you do have a lawyer you feel you want to have trust in that person and that person can trust you and right now I don't think we have that established. . . .

THE COURT: . . . [Y]ou are retained; is that right?

[DEFENSE COUNSEL]: Yes, sir.

THE COURT: You have a right to hire any lawyer that you want to. At some point if you were unhappy with your lawyer you have a right to go out and hire another lawyer. It is a little bit late, the case is over --

THE DEFENDANT: It's really not my fault, sir. I'm saying when it comes to being late or wanting to hire a lawyer as far as being late because I was really ready to go along with [counsel] until [counsel] told me he would rather withdraw from the case.

THE COURT: So you don't feel like you have a conflict with him?

THE DEFENDANT: At the same time I do. At the same time I do. I just feel like he's not going to give me his all in this case, sir. My life is on the line.

. . .

THE COURT: The Court will note that [defendant] was indicted September of 2003. He has had all of this time to make arrangements about counsel. It was called around for trial at an early court date, what was that, last October? N[o] motion to withdraw was made by the attorney or the defendant. It was called up around for trial

and the defendant didn't show up for trial albeit he showed up at a later time. At the attorney's request to withdraw it is the Court's opinion it is this defendant's attempt to get yet another continuance. Motion to withdraw is denied. . . .

At the conclusion of his trial on the substantive charges, defendant affirmed his satisfaction with counsel, under oath, in pleading guilty to habitual felon status.

A ruling on a motion to withdraw is left to the sound discretion of the trial court. *State v. Thomas*, 310 N.C. 369, 375, 312 S.E.2d 458, 461 (1984). The court may deny the motion once it is satisfied "that the 'present counsel is able to render competent assistance and that the nature or degree of the conflict is not such as to render that assistance ineffective.'" *State v. Poole*, 305 N.C. 308, 311, 289 S.E.2d 335, 338 (1982) (citation omitted). "In order to establish prejudicial error arising from the trial court's denial of a motion to withdraw, a defendant must show that he received ineffective assistance of counsel." *State v. Thomas*, 350 N.C. 315, 328, 514 S.E.2d 486, 495, *cert. denied*, 528 U.S. 1006, 145 L. Ed. 2d 388 (1999)). If the defendant does not show prejudice, this Court need not determine if the trial court abused its discretion in denying the motion to withdraw. See *Thomas*, 310 N.C. at 375, 312 S.E.2d at 461.

Here, defendant makes no showing that his counsel rendered constitutionally ineffective assistance at trial. See generally *Strickland v. Washington*, 466 U.S. 668, 686, 80 L. Ed. 2d 674, 692 (1984). Defendant neither argues nor shows "that counsel's performance fell below an objective standard of reasonableness[,]"

Thomas, 350 N.C. at 328, 514 S.E.2d at 495 (citation omitted), or that counsel's deficiencies "were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland*, 466 U.S. at 687-88, 80 L. Ed. 2d at 693. Accordingly, because defendant has failed to demonstrate any prejudice caused by the denial of counsel's motion to withdraw, we overrule his assignment of error. See *Thomas*, 310 N.C. at 375, 312 S.E.2d at 461; *State v. Chivers*, ___ N.C. App. ___, ___, 636 S.E.2d 590, 597 (2006).

We note that the record contains no evidence that defendant's counsel was burdened by any actual or potential conflict of interest arising from his representation of other clients. See generally *Cuyler v. Sullivan*, 446 U.S. 335, 348, 64 L. Ed. 2d 333, 346-47 (1980); *State v. James*, 111 N.C. App. 785, 789-90, 433 S.E.2d 755, 757-58 (1993). Rather, we interpret counsel's references to "some friction" and "a conflict we cannot get past" as depicting interpersonal difficulties between him and defendant. Cf. *State v. Hammonds*, 105 N.C. App. 594, 597, 414 S.E.2d 55, 57 (1992) (finding no grounds for appointment of new counsel where defendant complained that his counsel "'hasn't spent enough time with me on this case and really wasn't concerned about hearing my case'"). Absent any indication that counsel had a true conflict of interest, the trial court had no duty to hold a separate hearing on this issue. See *State v. Hardison*, 126 N.C. App. 52, 56, 483 S.E.2d 459, 461 (1997).

The record on appeal includes additional assignments of error not addressed by defendant in his brief to this Court. Pursuant to N.C.R. App. P. 28(b)(6), we deem them abandoned.

No error.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).