NO. COA10-264

NORTH CAROLINA COURT OF APPEALS

Filed: 21 September 2010

STATE OF NORTH CAROLINA

v. Onslow County
No. 07 CRS 52978

CAROLYN WILLIAMS MELVIN

Appeal by defendant from judgment entered 20 August 2009 by Judge Jack W. Jenkins in Onslow County Superior Court. Heard in the Court of Appeals 13 September 2010.

Attorney General Roy Cooper, by Assistant Attorney General Kimberly L. Wierzel, for the State.

John T. Hall for defendant-appellant.

MARTIN, Chief Judge.

Defendant Carolyn Williams Melvin appeals from the judgment entered upon a conviction by a jury of two counts of common law forgery. We find no error.

Defendant's grandparents, James and Sarah Williams, owned a large parcel of land in Onslow County as tenants by the entirety. After both grandparents died intestate, equal shares in the property passed to a number of their heirs. In 1989, defendant's mother, Donna Williams, purported to give defendant a general warranty deed to one-acre tract within the property. The general warranty deed was recorded, and defendant believed that she owned

the tract. In 2002, after defendant was married, she and her husband refinanced the mortgage on her home, which was placed on the tract, to reduce the monthly payments. At the time of the refinancing, defendant was advised by an attorney for the lender that the tract was subject to claims by the other heirs to her grandparents' estate, and that she must obtain the signatures of the remaining heirs on a quitclaim deed to settle the title to the tract. On 28 June 2002, defendant recorded a quitclaim deed transferring the interests of twelve of the heirs to defendant. Several of these heirs subsequently claimed that their signatures on the quitclaim deed were forged and, in August 2007, defendant was indicted on multiple counts of common law forgery.

When the case was called for trial on 18 August 2009, defendant moved to continue, contending that her handwriting expert had not been allowed sufficient time to analyze handwriting samples of the prosecuting witnesses because the trial court had not compelled the witnesses to submit samples and because defendant had been provided little notice that the case would be called for trial. In response, the State asserted that it had complied with its discovery obligations and noted that defendant had filed a motion related to the handwriting samples as far back 14 February 2008. The State also asserted that defendant had been on notice that the case could be called for trial but had neglected to take further action to obtain the handwriting samples. The trial court denied the motion to continue, but allowed defendant an opportunity to notify her handwriting expert of the need to appear and offered

to "entertain any motions to try to accommodate him in as reasonable a fashion as possible" if the expert was unable to appear.

At trial, each prosecuting witness signed his or her name ten times so that defendant's expert could analyze the signatures. Defendant's handwriting expert, Charles Perrotta, examined the signatures obtained at trial and compared them to the signatures on the quitclaim deed. With respect to two of the prosecuting witnesses, Mr. Perrotta testified that Tommy Anderson did not provide sufficient similar samples to enable Mr. Perrotta to compare his signature to the one on the deed, and that Pauline C. Anderson had overwritten her last name on the deed. Mr. Perrotta testified that he believed it more likely than not that Ms. Anderson wrote her own first name on the deed. Mr. Perrotta testified that, although he would have preferred more samples on which to base his opinion, that he was "very comfortable" with his opinion, and that he "wouldn't be up here if [he] wasn't comfortable." As to the prosecuting witness, Catherine Williams, Mr. Perrotta opined that she "more likely than not" had signed the deed. Defendant testified on her own behalf, denying that she had forged the name of any party to the deed. She offered the testimony of other heirs to show that they had signed the deeds themselves.

The trial court denied defendant's motion at the close of the evidence to dismiss the forgery charges as to Tommy Anderson, Pauline Anderson, and Catherine W. Williams. The jury found

defendant guilty of forging the signature of Tommy Anderson and Pauline Anderson and not guilty of forging the signatures of Catherine Williams. The trial court consolidated the convictions and sentenced defendant to a minimum term of 5 months and a maximum term of 6 months imprisonment. The sentence was suspended and defendant was placed on supervised probation. Defendant appeals.

Defendant's first argument on appeal is that the trial court erred by denying her motion for a continuance. She argues that she was thereby deprived of the effective assistance of counsel due to the handwriting expert's lack of opportunity for preparation. We disagree.

Generally, our appellate courts "review a trial court's resolution of a motion to continue for abuse of discretion." *State v. Morgan*, 359 N.C. 131, 143, 604 S.E.2d 886, 894 (2004), *cert. denied*, 546 U.S. 830, 163 L. Ed. 2d 79 (2005), *cert. denied*, 363 N.C. 586, 683 S.E.2d 380 (2009). But, when the motion is based on a constitutional right, "the trial court's action upon it involves a question of law which is fully reviewable by an examination of the particular circumstances presented by the record on appeal of each case." *State v. Branch*, 306 N.C. 101, 104, 291 S.E.2d 653, 656 (1982) (citing *State v. Searles*, 304 N.C. 149, 153, 282 S.E.2d 430, 433 (1981)).

When a motion to continue is based on a constitutional issue:

> [t]he denial of a motion to continue . . . is grounds for a new trial only upon a showing by the defendant that the denial was erroneous and also that his case was prejudiced as a result of the error. The constitutional guarantees of due process, assistance of

> counsel and confrontation of witnesses unquestionably include the right of a defendant to have a reasonable time to investigate and prepare his case. No precise time limits are fixed, however, and what constitutes a reasonable length of time for the preparation of a defense must be determined upon the facts of each case.

Id. at 104-05, 291 S.E.2d at 656. (citation omitted).

In this case, we conclude that defendant has not shown that the trial court erred by denying her motion to continue, or that the denial of that motion prejudiced her case. In denying the motion, the trial court offered to make accommodations if the handwriting expert was unable to appear. Defendant's handwriting analyst, Mr. Perrotta, did appear at trial and was permitted to analyze handwriting samples obtained from each of the prosecuting witnesses. Mr. Perrotta testified that he was "very comfortable" with the conclusions that he reached as a result of his analysis. The jury heard Mr. Perrotta's testimony and was properly permitted to consider its weight against the weight of the State's evidence that the prosecuting witnesses did not sign the quitclaim deed. Defendant has failed to demonstrate how a continuance would have affected Mr. Perrotta's opinion or impacted the performance of counsel or the outcome of this case, and we conclude the trial court's denial of the motion to continue was not error.

Defendant's other argument is captioned "The Trial Court Erred to the Unfair Prejudice of Carolyn Williams Melvin Abusing Sentencing Discretion by Entry of Judgment." In it, counsel advances contentions of various deficiencies in the trial process, including the denial of the motion to continue, joinder of the

offenses, and the hardship and humiliation suffered by defendant attendant to her trial and conviction, none of which have even colorable merit.

Our General Statutes provide:

> A defendant who has been found guilty . . . is entitled to appeal as a matter of right the issue of whether his or her sentence is supported by evidence introduced at the trial and sentencing hearing *only if the minimum sentence of imprisonment does not fall within the presumptive range* for the defendant's prior record or conviction level and class of offense. Otherwise, the defendant is not entitled to appeal this issue as a matter of right but may petition the appellate division for review of this issue by writ of certiorari.

N.C. Gen. Stat. § 15A-1444(a1) (2009) (emphasis added); *see State v. Brown*, 146 N.C. App. 590, 593, 553 S.E.2d 428, 430 (2001), *appeal dismissed and disc. review denied*, 356 N.C. 306, 570 S.E.2d 734 (2002).

Here, defendant was sentenced in the presumptive range for the class of offense and her prior record level, and received a suspended sentence. Defendant has failed to identify any actual deficiency in the trial court's calculation of her sentence or entry of judgment. We also note that defendant has not filed a petition for writ of certiorari to seek review of any issue related to the entry of judgment. Accordingly, pursuant to N.C.G.S. § 15A-1444(a1), we decline to review this issue, and we find no error in defendant's convictions or sentence.

No error.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).