

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-206
NORTH CAROLINA COURT OF APPEALS

Filed: 21 August 2012

STATE OF NORTH CAROLINA

v.

Macon County
Nos. 11 CRS 50104, 50105

KATHLEEN R. COSTA

Appeal by defendant from judgments entered 27 July 2011 by Judge Sharon T. Barrett in Macon County Superior Court. Heard in the Court of Appeals 6 August 2012.

Roy Cooper, Attorney General, by Ellen A. Newby, Associate Attorney General, for the State.

Staples S. Hughes, Appellate Defender, by John F. Carella and Mary Jane K. Cook, Assistant Appellate Defenders, for defendant-appellant.

MARTIN, Chief Judge.

Defendant Kathleen R. Costa appeals from judgments entered upon jury verdicts finding her guilty of two counts of resisting a public officer and two counts of assault on a government official. Defendant contends the trial court erred by: (1) denying her motion for substitute counsel, and (2) failing to order an inquiry into her competency during the trial. We find

no error.

On 31 January 2011, deputies of the Macon County Sheriff's Office arrived at defendant's home pursuant to an order for her arrest for failure to appear in court. Defendant refused to leave her home and claimed that the arrest order was part of a "conspiracy" before slamming the door. The deputies entered the home with the permission of defendant's son and found defendant in her bedroom. An altercation followed during which defendant struck one deputy in the throat and another deputy in the face and stomach. Defendant was charged with two counts of resisting a public officer and two counts of assault on a government official.

Defendant filed a pretrial motion to suppress all evidence, alleging that the law enforcement officers' entry into her bedroom was unlawful. On 25 July 2011, the trial court heard and denied defendant's pretrial motion to suppress. Defendant's case was called for trial the next day. Before the trial began, defendant's counsel, Mr. Goss, moved to withdraw from representing her. Mr. Goss informed the court that defendant had requested he withdraw because defendant claimed that her civil rights had been violated. Defendant told the court she wished to replace her counsel but did not want to represent herself and was unable to afford to hire other counsel. The court noted defendant had a substitution of counsel earlier in

the case, then asked defendant why she did not want Mr. Goss to represent her. Defendant responded, "Inefficient defense." When the court asked if she had any additional support for her motion, defendant replied, "No, your Honor." The court found insufficient grounds for substitution of counsel and denied defendant's motion.

On direct and cross-examination, defendant testified that her arrest was part of a conspiracy. During defendant's testimony, she was interrupted several times by her counsel and by objections from opposing counsel. Also the court instructed defendant to limit her responses to questions she was asked and not to testify to whatever she wanted to say.

The jury returned verdicts of guilty on all charges, and the court sentenced defendant to seventy-five days imprisonment. The trial judge recessed court and asked the parties to reconvene at 2:30 p.m. to address defendant's probation violation in a separate matter.

Upon reconvening for the probation hearing, defendant's counsel informed the court that defendant had indicated she would refuse food and water, which led counsel to question her competency. Defendant twice denied being incompetent, insisting she was only standing up for her civil rights. The court ordered a forensic examination to determine defendant's competency before proceeding further with the probation

violation hearing. Defendant appeals from the judgment entered upon the jury's verdicts.

I.

Defendant contends the trial court abused its discretion in denying her motion for substitute counsel without inquiring further into the nature of defendant's conflict with her counsel.

An abuse of discretion standard of review is applied to determine if a trial court erred in denying a motion to have counsel removed. *State v. Jones*, 357 N.C. 409, 413, 584 S.E.2d 751, 754 (2003), *remanded on other grounds*, 168 N.C. App. 408, 607 S.E.2d 705 (2005). Abuse of discretion occurs when the trial court's ruling is "manifestly unsupported by reason." *State v. T.D.R.*, 347 N.C. 489, 503, 495 S.E.2d 700, 708 (1998). An indigent defendant does not have the right to choose his or her court appointed counsel. *State v. McNeil*, 263 N.C. 260, 270, 139 S.E.2d 667, 674 (1965). A court need not perform an in-depth inquiry in every case in which it is presented with a motion for substitution of counsel. *See State v. Thacker*, 301 N.C. 348, 353, 271 S.E.2d 252, 256 (1980). Rather, a court must only determine if current counsel is able to render competent assistance and that the conflict between counsel and client is not of a nature that would render assistance ineffective. *Id.*

In this case, defendant has not shown that her counsel was unable to perform his duties to the objectively reasonable level his profession requires. The only reason defendant presented to the trial court in support of her motion was a claim of "[i]nefficient defense." When asked for additional support, defendant did not give the court any information regarding the alleged conflict with her counsel. The court had an opportunity to observe the relationship between defendant and her counsel during the pretrial suppression hearing and thus had sufficient knowledge to determine the competency of defendant's counsel and his ability to render adequate assistance.

As defendant did not provide any additional evidence supporting her motion for substitute counsel, defendant failed to prove that the trial court's denial of her motion was "manifestly unsupported by reason." *T.D.R.*, 347 N.C. at 503, 495 S.E.2d at 708. Therefore, the trial court did not abuse its discretion in denying defendant's motion for substitute counsel.

II.

Defendant also contends the trial court erred in failing to order an inquiry into defendant's competency during her trial. We disagree.

Determination of a defendant's competency is within the trial court's discretion, and if supported by evidence, is conclusive on appeal. See *State v. Willard*, 292 N.C. 567, 575,

234 S.E.2d 587, 592 (1977); *State v. Nobles*, 99 N.C. App. 473, 475, 393 S.E.2d 328, 329 (1990).

Under N.C.G.S. § 15A-1001(a), a person must not be:

tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

N.C. Gen. Stat. § 15A-1001(a) (2011).

The trial court has a duty to conduct a competency hearing *sua sponte* where there is substantial evidence before the court suggesting that the defendant may not be mentally competent to stand trial. *State v. Whitted*, ____ N.C. App. ____, ____, 705 S.E.2d 787, 791 (2011) (quoting *State v. Badgett*, 361 N.C. 234, 259, 644 S.E.2d 206, 221 (2007)). “[E]vidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant’ to a bona fide doubt inquiry.” *State v. McRae*, 139 N.C. App. 387, 390, 533 S.E.2d 557, 559 (2000) (quoting *Drope v. Missouri*, 420 U.S. 162, 180, 43 L. Ed. 2d 103, 118 (1975)), *cert. denied*, 356 N.C. 442, 573 S.E.2d 160 (2002), *appeal after remand*, 163 N.C. App. 359, 594 S.E.2d 71, *appeal dismissed and disc. review denied*, 358 N.C. 548, 599 S.E.2d 911 (2004). Great deference is given to defense counsel’s representation that his or her client is competent because counsel is usually in the best position to

determine the client's ability to understand the proceedings and assist in his or her own defense. *State v. McRae*, 163 N.C. App. at 359, 594 S.E.2d at 78, *appeal dismissed and disc. review denied*, 358 N.C. 548, 599 S.E.2d 911 (2004).

In this case, the trial court did not have reason to doubt defendant's competency at her trial. Defendant's behavior throughout the trial and her ability to testify on her own behalf illustrate her understanding of the proceedings and ability to assist in her own defense. Additionally, defense counsel represented to the court that defendant was competent by proceeding with the trial and sentencing, without raising concerns about defendant's competency until court reconvened for the probation hearing. In ordering a forensic examination of defendant, the court specifically noted that it did not have any serious doubt regarding defendant's competency during the trial, but that defendant's post-trial statements and demeanor caused concern. *See Whitted*, ___ N.C. App. at ____, 705 S.E.2d at 792 (stating that a defendant's competency is not constant and may change over time). Defendant's argument is overruled. Accordingly, we find no error below.

No error.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).