NO. COA13-524
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

STATE OF NORTH CAROLINA

v. Iredell County
Nos. 11 CRS 51731-32

MARCUS LAWRENCE BRADLEY

Appeal by defendant from judgments entered 17 December 2012 by Judge Jerry Cash Martin in Iredell County Superior Court. Heard in the Court of Appeals 21 October 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Harriet Worley, for the State.

Mary McCullers Reece for defendant-appellant.

STEELMAN, Judge.

Where the trial courts, on multiple occasions, advised the defendant of the possible range of punishments for the charges against him, defendant's waiver of counsel and his decision to proceed to trial without counsel was knowing, intelligent and voluntary.

I. Factual and Procedural Background

On 13 February 2012, Marcus Lawrence Bradley (defendant) was indicted for five felonies: (1) altering serial numbers on a motor vehicle; (2) altering the title to a motor vehicle; (3) a notary public act violation; (4) obtaining property by false pretenses; and (5) possession of a stolen motor vehicle. On 19 January 2012, defendant waived his right to all counsel in district court, before Judge Hedrick. On 25 April 2012, defendant waived his right to all counsel in district court, before Judge Church. On 26 April 2012, defendant waived his right to all counsel in superior court, before Judge Bragg. On 10 December 2012, defendant again waived his right to all counsel in superior court, before Judge Martin.

This case proceeded to trial before Judge Martin, with defendant representing himself, without counsel. On 17 December 2012, the jury found defendant guilty of all five charges. The jury also found an aggravating factor submitted by the State. Defendant was sentenced to two consecutive active terms of imprisonment of 10-12 months from the aggravated range of sentences. As to the remaining three charges, the court imposed three sentences of 8-10 months, at the expiration of the first two sentences. These three sentences were suspended and defendant was to be placed upon supervised probation for 36

months at the expiration of the first two sentences. The latter three sentences were to run concurrently.

Defendant appeals.

II. Validity of Defendant's Waiver of Counsel

Defendant contends that the trial court erred in allowing him to waive his right to counsel without properly advising him of "the range of permissible punishments[.]" We disagree.

As a corollary to the constitutional right to counsel, a criminal defendant "'has a right to handle his own case without interference by, or the assistance of, counsel forced upon him against his wishes.'" *State v. Hyatt*, 132 N.C. App. 697, 702, 513 S.E.2d 90, 94 (1999) (quoting *State v. Mems*, 281 N.C. 658, 670-71, 190 S.E.2d 164, 172 (1972)). Before allowing a defendant to proceed *pro se*, however, the court "must determine whether the defendant knowingly, intelligently, and voluntarily waives the right to in-court representation by counsel. A trial court's inquiry will satisfy this constitutional requirement if conducted pursuant to N.C.G.S. § 15A-1242." *State v. Moore*, 362 N.C. 319, 322, 661 S.E.2d 722, 724 (2008) (citations omitted).

Section 15A-1242 provides that, prior to accepting a waiver of counsel, the court must make a "thorough inquiry" and find that the defendant:

> (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
>
> (2) Understands and appreciates the consequences of this decision; and
>
> (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

N.C. Gen. Stat. § 15A-1242 (2011). It is well-established that a properly performed inquiry, "conducted at a preliminary stage of a proceeding, meets the requirements of N.C.G.S. § 15A-1242 even if it is conducted by a judge other than the judge who presides at the subsequent trial." *State v. Wall*, 184 N.C. App. 280, 283, 645 S.E.2d 829, 831 (2007) (quoting *State v. Kinlock*, 152 N.C. App. 84, 89, 566 S.E.2d 738, 741 (2002)). "'[I]t is not necessary for the trial judge to repeat the statutory inquiry.'" *Id.* at 282-83, 645 S.E.2d at 831. "Once given, a waiver of counsel is good and sufficient until the proceedings are terminated or until the defendant makes known to the court that he desires to withdraw the waiver[.]" *State v. Hyatt*, 132 N.C. App. at 700, 513 S.E.2d at 93.

The record shows that defendant signed written waivers of counsel in district court on 19 January and 25 April 2012. At his first appearance in superior court on 26 April 2012, Judge

Bragg notified defendant that he was charged with (1) two Class H felonies, obtaining property by false pretenses and possession of a stolen vehicle, each of which carried a 30-month maximum sentence, and (2) three "Class I felonies with maximum sentences of 15 months" each: "violation of the Notary Public Act" as well as "altering a serial number and altering a title[.]" Judge Bragg then clarified, "So that's 45, plus 60. Maximum possible sentence of 105 months," and asked, "Do you understand what you've been charged with, Mr. Bradley?" Defendant replied, "Yes." At the conclusion of Judge Bragg's inquiry pursuant to N.C. Gen. Stat. § 15A-1242, defendant declared his desire to "[r]epresent [him]self." He was sworn in open court and signed a written waiver of "all assistance of counsel[,]" his third to date.

We conclude that the proceeding on 26 April 2012 satisfied the requirements of N.C. Gen. Stat. § 15A-1242, and that Judge Bragg properly advised defendant of the maximum possible sentences for the charged offenses in accordance with subsection (3) of the statute. *See State v. Whitfield*, 170 N.C. App. 618, 621, 613 S.E.2d 289, 291 (2005); *see also* N.C. Gen. Stat. § 15A-1340.17(c), (d) (2009).[1]

[1]Because defendant committed his offenses in 2010, he was not

In challenging the validity of his waiver under N.C. Gen. Stat. § 15A-1242(3), defendant points out that the trial judge revisited his decision to proceed without counsel prior to trial on 10 December 2012. After noting defendant's previous waivers, including the waiver executed on 26 April 2012, Judge Martin ascertained that defendant understood the consequences of proceeding *pro se* and was aware of his options to hire an attorney or obtain court-appointed counsel. Defendant reiterated his wish to "represent [him]self." In the course of his inquiry, however, Judge Martin misidentified the classification of possession of a stolen vehicle as a Class I felony punishable by up to 15 months of imprisonment. He later corrected the offense classification, as follows:

> THE COURT: . . . [T]hat's going to be five charges; obtaining property by false pretense, Class H; felonious possession of stolen motor vehicle, Class H; and then three that are Class I's. Do you think you understand what you're charged with?
>
> THE DEFENDANT: Yes.

Having previously advised defendant of the 30-month maximum sentence for the Class H felony of obtaining property by false pretenses, the judge did not reiterate the 30-month maximum for

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subject to the increased maximum sentences enacted in the Justice Reinvestment Act of 2011, N.C. Session Laws 2011-142, sec. 2(e).

Class H possession of a stolen vehicle. Therefore, defendant argues, "the 10 December 2012 waiver hearing left [him] with a false understanding of the amount of time he might receive" for this charge.

We find no merit in this claim. Defendant was fully informed of "the range of permissible punishments" when he waived assistance of counsel on 26 April 2012. N.C. Gen. Stat. § 15A-1242(3). Although defendant argues that he was not served with notice of the prosecutor's intent to use aggravating factors until 27 April 2012, *see* N.C. Gen. Stat. *§* 15A-1340.16(a6) (2011), we hold that Judge Bragg accounted for the possibility of aggravation when he advised defendant of the maximum possible sentences. Because defendant never indicated a desire to withdraw the waiver, the trial judge was not required to engage in a second colloquy under N.C. Gen. Stat. § 15A-1242. *See Wall*, 184 N.C. App. at 284-85, 645 S.E.2d at 832-33. Nor did Judge Martin's minor *lapsus linguae* on 10 December 2012 mislead defendant or otherwise undermine the knowing and voluntary nature of his waiver.

AFFIRMED.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).