NO. COA14-190

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

STATE OF NORTH CAROLINA

v. Columbus County
No. 96 CRS 4307

GILES BRANTLEY FLOYD,
Defendant.

Appeal by Defendant from an order entered 4 September 2013 by Judge Douglas B. Sasser in Columbus County Superior Court. Heard in the Court of Appeals 13 August 2014.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Daniel S. Hirschman, for the State.

Mark Hayes, for the Defendant.

DILLON, Judge.

Giles Brantley Floyd ("Defendant") appeals from an order denying his postconviction motion for DNA testing pursuant to N.C. Gen. Stat. § 15A-269 (2012). We affirm.

I. Background

Defendant was convicted of murdering his wife after her body was discovered by their daughter in their utility shop behind their home. His conviction was upheld by this Court. *State v. Floyd*, 143 N.C. App. 128, 545 S.E.2d 238 (2001), *disc.*

review denied, 353 N.C. 730, 551 S.E.2d 111 (2001), *cert. denied sub nom*, *Floyd v. North Carolina*, 534 U.S. 1092, 122 S. Ct. 838, 151 L. Ed.2d 717 (2002), *reh'g denied*, 535 U.S. 952, 122 S. Ct. 1353, 152 L. Ed.2d 255 (2002).

On 22 October 2012 – fourteen years after his conviction – Defendant filed a motion in the trial court seeking postconviction DNA testing of items that were collected from the utility shop by investigators. Following a non-evidentiary hearing on the matter, the trial court entered an order denying the motion.

Defendant now appeals from that order. For the reasons set forth below, we affirm the order.

II. Analysis

A defendant may request postconviction DNA testing of evidence pursuant to N.C. Gen. Stat. § 15A-269, which allows for a court to order such testing if certain conditions are met. One of these conditions is that the evidence sought "[i]s material to defendant's defense." N.C. Gen. Stat. § 15A-269(a)(1) (2012). A defendant seeking the DNA testing "carries the burden to make the showing of materiality[.]" *State v. Gardner*, __ N.C. App. __, __, 742 S.E.2d 352, 356 (2013), *disc. review denied*, 749 S.E.2d 860 (2013). We have held that

evidence is "material" for purposes of the statute if "there is a *reasonable probability* that its disclosure to the defense would result in a different outcome in the jury's deliberation." *State v. Hewson*, 220 N.C. App. 117, 122, 725 S.E.2d 53, 56 (2012) (internal marks omitted) (emphasis added).

In the present case, Defendant sought DNA testing of five cigarettes and a beer can that were found in the utility shop where the victim's body was discovered. Defendant has contended that he did not kill his wife and that he believed that Karen Fowler, with whom he had had an adulterous affair for a number of years, or Ms. Fowler's two sons, committed the murder. In his postconviction motion, he argued that the testing may show the presence of DNA from Ms. Fowler or her sons at the crime scene, which would support his theory.

We believe, however, that the trial court did not err in concluding that there was not a "reasonable probability" that the results from any DNA testing would result in a more favorable outcome in a trial, based on the evidence in the record pointing to Defendant's guilt and the fact that DNA testing would not reveal who brought the items into the utility shop or when they were left there. *See State v. McLean*, __ N.C. App. __, __, 753 S.E.2d 235, 240 (2014) (stating that whether

DNA evidence is material "can only be determined after . . . the judge has had an opportunity to compare [the] DNA evidence against the cumulative evidence presented at trial."). Here, as we pointed out in our prior opinion in this case, the evidence pointing to Defendant's guilt is overwhelming: The victim's blood was found splattered on the Defendant's boots and jeans on the day of the murder. Defendant had an affair for many years with Ms. Fowler, living with her at various times during his marriage to the victim. The victim had filed a divorce complaint against him approximately six weeks before her murder, but apparently reconciled with him a week later, whereupon they agreed that if she ever suspected him of renewing the affair, Defendant would vacate the home and would pay her $500.00 per month in alimony. Witnesses testified hearing Defendant state within a month of the murder that he would be doing something in a couple of weeks that "you'll read about . . . in the paper"; that he missed having sex with Ms. Fowler and still loved her; and that he would "rather go to jail before he paid [his wife] any money." Telephone records reveal twelve calls between Defendant's and Ms. Fowler's home within nine days leading up to the murder, as well as five calls made to Ms. Fowler's home

after the murder. *See Floyd*, 143 N.C. App. at 129-31, 545 S.E.2d at 239-40.

While the results from DNA testing *might* be considered "relevant," had they been offered at trial, they are not "material" in this postconviction setting. *See McLean*, __ N.C. App. at __, 753 S.E.2d at 239-40 (holding that a showing of materiality is a higher burden than a showing of relevancy under N.C. Gen. Stat. § 15A-267).

Defendant argues that the trial court erred in making findings in the order that he "failed to offer any evidence as to why the DNA testing is material to [his] defense" and that he "failed to offer any evidence as to why the said items of evidence are related to the homicide," because the trial court was holding a non-evidentiary hearing. We agree that these findings were erroneous; however, we hold that the error is harmless because these findings are not needed to support the trial court's conclusion. We have stated that the statute at issue "contains no requirement that the trial court make specific findings of facts, and we decline to impose such a requirement." *Gardner*, __ N.C. App. at __, 742 S.E.2d at 356. A trial court's order is sufficient so long as it states that the court reviewed the defendant's motion, cites the statutory

requirements for granting the motion, and concludes that the defendant failed to show that all the required conditions were met. *Id.* at __, 742 S.E.2d at 356-57. Accordingly, this argument is overruled.

Defendant also argues that the contents of his motion were sufficient to require the trial court to conduct an evidentiary hearing. While a trial court may conduct an evidentiary hearing, it is not required to do so in every case. Indeed, we have affirmed denials of motions for postconviction DNA testing where the trial court did not even conduct any hearing. *See, e.g.*, *Gardner*, *supra*. In the context of a motion for appropriate relief, we have held that in determining whether an evidentiary hearing is necessary, "the ultimate question that must be addressed [by the trial court] . . . is whether the information contained in the record *and* presented in the [] motion . . . would suffice, if believed, to support an award of relief." *State v. Jackson*, 220 N.C. App. 1, 6, 727 S.E.2d 322, 328 (2012) (emphasis added). We hold that for motions brought under N.C. Gen. Stat. § 15A-269, a trial court is not required to conduct an evidentiary hearing where it can determine from the trial record and the information in the motion that the defendant has failed to meet his burden of showing any evidence

resulting from the DNA testing being sought would be material. A trial court is not required to conduct an evidentiary hearing on the motion where the moving defendant fails to describe the nature of the evidence he would present at such a hearing which would indicate that a reasonable probability exists that the DNA testing sought would produce evidence that would be material to his defense.

Here, Defendant indicates in his motion some evidence he would offer at a hearing. While such evidence *might* indicate how the results of DNA testing would produce "relevant" evidence, Defendant failed to show how DNA testing would produce "material" evidence; that is, he failed to show how such testing would produce evidence sufficient to create a reasonable probability of a different result, given the evidence already in the trial record. Rather, even if the DNA testing showed the presence of DNA from Ms. Fowler or her sons, the motion did not indicate how such results would create a *reasonable probability* that the verdict would have been any different. Accordingly, the trial court was not required to conduct an evidentiary hearing; and, therefore, this argument is overruled.

AFFIRMED.

Judges HUNTER, Robert C. and DAVIS concur.