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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-193

Filed: 6 December 2016

Mecklenburg County, Nos. 14 CRS 224978, 38519

STATE OF NORTH CAROLINA

v.

KENTERRIES LAMONT JOHNSON, Defendant.

Appeal by defendant from judgment entered 10 September 2015 by Judge Robert C. Ervin in Superior Court, Mecklenburg County. Heard in the Court of Appeals 3 November 2016.

*Attorney General Roy A. Cooper III, by Special Deputy Attorney General Victoria L. Voight, for the State.*

*Guy J. Loranger for defendant-appellant.*

STROUD, Judge.

Defendant appeals from a judgment entered upon a jury verdict finding him guilty of possession of cocaine and upon his admission to habitual felon status. The court imposed an active term of incarceration for a period of a minimum of 42 months and a maximum of 63 months.

The State presented evidence tending to show that on 26 June 2014, officers of the Charlotte-Mecklenburg Police Department who had just executed a search

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warrant on Corbett Street, which adjoins Midland Avenue in Charlotte, observed defendant walking down the right side of Midland Avenue. An officer operating an unmarked police van transporting the officers from the scene of the Corbett Street search observed defendant display behavior that, through his police training, indicated a possibility of possession of contraband. The officer backed up his van to speak with defendant, upon which defendant took off running. That officer and other officers, from within the police van, observed defendant throw objects from his pocket as he ran. The officers believed these thrown objects were narcotics. As two officers retrieved the items thrown to the ground, two other officers pursued the defendant on foot and apprehended him. Defendant testified that he ran because he feared that the person in the van was trying to rob him. The officers subsequently identified the retrieved objects as a plastic bag containing a compressed white powdery substance and two plastic bags with off-white solids. Analysis by the crime laboratory revealed the white powdery substance to be 3.66 grams of cocaine.

The court instructed the jury as to the offense of possession of cocaine with intent to sell or deliver and its lesser offense of possession of cocaine. The jury found the defendant guilty of the lesser offense. Defendant then pled guilty to habitual felon status and the court entered judgment. The plea arrangement stipulated that the State would forego proceeding on any aggravating factors. Defendant gave notice of appeal in open court.

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Defendant's counsel filed a brief on defendant's behalf in which he states that after reviewing the record and relevant cases and statutes, he is "unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal." In accordance with *Anders v. California*, 386 U.S. 738, 744, 18 L. Ed. 2d 493 (1967) and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), he requests this Court to conduct a full examination of the record to determine whether he has overlooked any justiciable, non-frivolous issue that would merit an argument that prejudicial error occurred. Counsel attached to the brief a letter he wrote to defendant on 16 May 2016 in which counsel informed defendant of his inability to find any issue that would provide a meaningful argument for relief and his request to this Court for review of the record for possible overlooked error. He advised defendant of his right to file his own written arguments directly with this Court. To assist defendant with filing his own arguments, counsel provided defendant with copies of the record on appeal, transcripts, and counsel's brief. He directed defendant to notify this Court immediately of his intention to file his own arguments, if deciding to take that course, and to file the arguments as quickly as possible. He provided defendant with the mailing address of this Court.

To help this Court in identifying possible issues to support an appeal, counsel directed our attention to nine possible issues that he ultimately concluded were non-

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meritorious. After examining these issues, we concur with counsel's opinion that they are without merit.

We find that the indictments plead all necessary elements required by N.C. Gen. Stat. § 15A-924.

We find that Exhibit 1 (Crime Laboratory Report) was properly admitted into evidence pursuant to N.C. Gen. Stat. § 90-95(g). Within the timeframe required by statute, defendant was provided a copy of the lab report and notice of the State's intent to use the report. The lab report was relevant and probative to ascertaining defendant's guilt or innocence and is otherwise admissible under the rules of evidence.

We find that the trial court properly administered the jury instructions to the jury and that the contents were proper given the charges against the defendant. No materially prejudicial error exists in the instructions to constitute grounds for an appeal. N.C. Gen. Stat. § 15A-1231.

We find that defendant's motion to dismiss lacked merit and was properly denied by the trial court. The State produced substantial evidence of (1) each element of the charged offense and (2) that the defendant was the perpetrator of the charged offense. *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). The evidence presented by the testifying witnesses and admitted exhibits provide a sufficient basis

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for a jury to make a reasonable inference of defendant's guilt. *State v. Lee*, 348 N.C. 474, 488–89, 501 S.E.2d 334, 343 (1998).

As to whether the trial court complied with the requirements of N.C. Gen. Stat. 15A-1022(a)-(c), we find that there is no reversible error. The trial court personally addressed defendant in order to inform him of the implications of a guilty plea as required by N.C. Gen. Stat. § 15A-1022(a)(1)-(7), enabling him to make an informed decision. The record provides no indication that defendant's plea was either involuntary or the product of improper pressure. N.C. Gen. Stat. § 15A-1022(b). Furthermore, defendant's admission to habitual felon status is supported by his prior criminal record as applied to the guilty verdict found in the instant case. N.C. Gen. Stat. § 15A-1022(c).

As to whether there exists any grounds for appeal pursuant to N.C. Gen. Stat. 15A-1444(a2), we find that the defendant's prior record level was properly calculated and applied in reaching a sentence. The trial court sentenced defendant in conformance with the sentencing guidelines authorized by N.C. Gen. Stat. § 15A-1340.17.

As to whether defendant was deprived of his constitutional right to effective counsel, we find that defendant's counsel met the appropriate standard of reasonableness and that defendant has suffered no material prejudice through his counsel's representation. *State v. Hutchins*, 303 N.C. 321, 335, 279 S.E.2d 788, 797

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(1981) (“[A] criminal defendant’s counsel does not amount to a denial of the constitutional right to counsel unless . . . the attorney’s representation was so ineffective that it renders the trial a farce and a mockery of justice.”).

Defendant has not filed his own written arguments, and after carefully reviewing the record on appeal, we are unable to find any basis for a meaningful argument for relief on appeal. We accordingly find no error.

NO ERROR.

Judges McCULLOUGH and ZACHARY concur.

Report per Rule 30(e).