IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-386

Filed: 6 December 2016

Davie County, Nos. 13 CRS 51539–40, 42–44

STATE OF NORTH CAROLINA

v.

TERRY RANDALL LAXTON, SR.

Appeal by defendant from judgments entered 17 September 2014 by Judge Mark E. Klass in Davie County Superior Court. Heard in the Court of Appeals 22 September 2016.

Attorney General Roy Cooper, by Special Deputy Attorney General Larissa S. Williamson, for the State.

Richard Croutharmel for defendant.

DIETZ, Judge.

Defendant Terry Randall Laxton, Sr. appeals his conviction and sentence for various sex offenses involving a child under 13 years of age. Laxton argues that his sentence is unconstitutional because it fell within the aggravated range under the Structured Sentencing Act without any written notice, evidence, or jury findings of aggravating factors necessary to sentence a defendant in the aggravated range. We reject this argument because the Structured Sentencing Act provides that the

General Assembly may establish a different mandatory minimum sentence for an offense. That is precisely what our legislature did in section 14–27.4A(b) of the General Statutes, in effect at the time of Laxton's sentencing and now recodified in section 14–27.28(b), which states that when an offender is convicted of statutory sex offense with a child under 13 years of age "in no case shall the person receive an active punishment of less than 300 months." The trial court sentenced Laxton within the presumptive range in light of this statutory mandatory minimum.

Laxton also argues that his counsel was constitutionally ineffective because, at sentencing, he stated, "The jury has spoken, your Honor. I have nothing more to add" instead of arguing that Laxton should receive a more lenient sentence. As explained below, the only arguments Laxton identifies on appeal that his counsel might have made at sentencing were based on factors plainly evident to the court from the sentencing record, such as Laxton's age and ill health. Moreover, Laxton spoke to the court directly, apologizing for the offense, and asking for forgiveness and mercy. In light of these facts, Laxton has not met his burden to show that, but for the alleged deficient performance of his counsel, the result of his sentencing would have been different. Accordingly, we find no error in the trial court's judgments.

Facts and Procedural History

On 17 September 2014, a jury found Defendant Terry Randall Laxton, Sr. guilty of three counts of first degree sex offense against a child by an adult and four

counts of indecent liberties with a child. At sentencing, the trial court asked Laxton's counsel if he had anything to say in response to the State's sentencing recommendations. Laxton's counsel responded, "The jury has spoken, your Honor. I have nothing more to add." The Court also asked Laxton if there was anything he would like to say. Laxton apologized and asked for forgiveness and mercy.

The trial court consolidated the three counts of first degree sex offense and sentenced Laxton to 300 to 420 months in prison. This sentencing range was based on the statutory mandatory minimum sentence for a statutory sex offense conviction involving a child under 13 years of age. The trial court also sentenced Laxton to 16 to 29 months in prison for each of the four indecent liberties counts.

Laxton did not give notice of appeal. On 17 November 2015, Laxton filed a petition for writ of certiorari with this Court, alleging that his trial counsel had not told him of his right to appeal. On 7 December 2015, this Court allowed Laxton's petition.

Analysis

I. Constitutionality of Sentence for First Degree Sex Offense

Laxton first argues that his sentence for first degree sex offense is unconstitutional because the 300 month minimum sentence imposed in accordance with N.C. Gen. Stat. § 14–27.4A(b) was in the aggravated range under the Structured Sentencing Act without any written notice, evidence, or jury findings of aggravating

factors necessary to sentence a defendant in the aggravated range. As explained below, this argument is meritless.

Ordinarily, the Structured Sentencing Act requires the trial court to select a sentence within a presumptive range that is calculated based on the class of offense and the offender's prior record level. *See* N.C. Gen. Stat. §§ 15A–1340.13(e), 15A–1340.16(c). But the Structured Sentencing Act also provides that the "minimum term of imprisonment shall be within the range specified for the class of offense and prior record level, *unless applicable statutes require or authorize another minimum sentence of imprisonment*." *Id.* § 15A–1340.13(b) (emphasis added).

Here, there is another "applicable statute" that requires "another minimum sentence of imprisonment." Section 14–27.4A(b) of the General Statutes, in effect at the time of Laxton's sentencing and now recodified in section 14–27.28(b), states that, when an offender is convicted of statutory sex offense with a child, "in no case shall the person receive an active punishment of less than 300 months." Thus, the trial court, in calculating Laxton's sentence, was required to apply the statutory minimum sentence specified in section 14–27.4A(b), not the default minimum from the Structured Sentencing Act.

Because the trial court properly calculated Laxton's sentence based on this mandatory statutory minimum, and sentenced Laxton within the presumptive range based on that statutory minimum, Laxton's constitutional arguments are meritless.

All of those arguments are premised on the notion that Laxton received a sentence in the aggravated range under the Structured Sentencing Act. He did not.

Laxton also argues that application of the statutory mandatory minimum sentence in section 14–27.4A(b) violates the Equal Protection Clause because it "discriminate[s] against [him] as compared to all other persons subject to the Structured Sentencing Act, [and] it discriminates against him as compared to other violators of N.C. Gen. Stat. § 14–27.4A(b)" who have higher prior record levels and thus would be subject to higher mandatory minimum sentences under the Structured Sentencing Act. Even if we were to assume this statutory framework creates different classes of people who are treated differently, Laxton does not allege that the class of persons to which he belongs is entitled to any form of heightened scrutiny. Thus, his claim is subject to rational basis review. *See State v. Harris*, __ N.C. App. __, __ 775 S.E.2d 31, 35 (2015). The General Assembly's decision to set a 300-month mandatory minimum sentence for offenders who commit a sexual offense with a child under 13 years of age—an offense that is considered heinous in our society—is plainly rational. Accordingly, we reject this constitutional claim.

II. Ineffective Assistance of Counsel at Sentencing

Laxton next argues that he received ineffective assistance of counsel during sentencing because his counsel "did nothing more than tell the trial court, 'The jury has spoken, your Honor. I have nothing more to add.'" Although the trial court

sentenced Laxton based on the statutory minimum sentence on the statutory sex offense counts, the court imposed consecutive sentences at the top of the presumptive range for the four indecent liberties counts. Laxton contends that, "[h]ad [his] trial attorney rendered some assistance during the sentencing phase of the case, it is likely [he] would have received less prison time."

To establish ineffective assistance of counsel, "[f]irst, the defendant must show that counsel's performance was deficient." *State v. Braswell*, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985). "Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* To prove prejudice, "a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006). "[I]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, [the court] need not determine whether counsel's performance was deficient." *State v. Phillips*, 365 N.C. 103, 122, 711 S.E.2d 122, 138 (2011).

Here, Laxton has not shown that, but for the alleged deficient performance of his counsel, he would have received a more lenient sentence. Laxton argues that his counsel "could have argued for reduced punishment based on Laxton's elderly age, ill health, and light criminal history." But all of these factors were apparent to the court from the sentencing record. Moreover, the court provided Laxton with an opportunity

to speak on his own behalf. Laxton apologized and asked for forgiveness and mercy. After hearing this appeal, the trial court still chose consecutive sentences at the top of the presumptive range for the convictions of indecent liberties with a child. Given the seriousness of these offenses, Laxton has not met his burden to show that, but for his counsel's failure to make the arguments asserted in his appellate brief, Laxton would have received a more lenient sentence. Accordingly, we reject Laxton's ineffective assistance of counsel claim.

Conclusion

We find no error in Defendant's convictions and sentences.

NO ERROR.

Judges HUNTER, JR. and McCULLOUGH concur.

Report per Rule 30(e).