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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-514

Filed: 20 December 2016

Sampson County, No. 13CRS050173

STATE OF NORTH CAROLINA

v.

TRAMON C WILLIAMS, Defendant.

Appeal by Defendant from judgment entered 30 October 2015 by Judge Jack W. Jenkins in Sampson County Superior Court. Heard in the Court of Appeals 19 October 2016.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General L. Michael Dodd, for the State.

Appellate Defender Glenn G. Gerding, by Assistant Appellate Defender Paul M. Green, for the Defendant.

DILLON, Judge.

The sole issue raised by Tramon C. Williams (“Defendant”) on appeal is whether he was afforded effective assistance of counsel at trial.¹ Defendant argues

¹ We note at the outset that Defendant’s oral notice of appeal was defective as it was offered *before* the judgment was *entered*. *State v. Robinson*, 236 N.C. App. 446, 448, 763 S.E.2d 178, 179-80 (2014), *aff’d as modified*, 368 N.C. 402, 777 S.E.2d 755 (2015). However, Defendant has filed a petition for writ of certiorari which the State does not oppose and we hereby grant. *See id.* at 448, 763 S.E.2d at 180.

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that he was not afforded effective assistance of counsel as his attorney failed to exclude hearsay testimony regarding alleged statements by a witness to the homicide.

In brief, the hearsay statements provided a description that fit the Defendant, specifically Defendant's height and gait, along with numerous other details which were consistent with Defendant's murder confession.

Typically, an ineffective assistance of counsel claim ("IAC claim") may be disposed of on appeal only "when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing." *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001). If this is not the case, the claim is premature and we are obligated to dismiss it "without prejudice to the defendant's right to reassert [it] during a subsequent MAR proceeding." *Id.* at 167, 557 S.E.2d at 525.

After carefully reviewing the record, we conclude that Defendant's IAC claim is premature. In order to prevail on an IAC claim, a defendant must establish "that (1) defense counsel's performance was deficient, and (2) the deficient performance prejudiced the defense." *State v. Waring*, 364 N.C. 443, 502, 701 S.E.2d 615, 652 (2010) (internal quotation marks omitted). Defense counsel's "strategy and the reasons therefor are not readily apparent from the record, and more information must

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be developed to determine” the viability of Defendant’s claim. *State v. Al-Bayyinah*, 359 N.C. 741, 753, 616 S.E.2d 500, 509–10 (2005).

Accordingly, we dismiss Defendant’s claim without prejudice to any right Defendant may have to move for appropriate relief in the trial court pursuant to N.C. Gen. Stat. § 15A-1415 and N.C. Gen. Stat. § 15A-1420. Assuming Defendant has the right to file such motion, that motion must be accompanied by affidavits and any other materials or evidence necessary to support Defendant’s contention, *see* N.C. Gen. Stat. § 15A-1420(b)(1), whereupon the trial court will rule on the motion after making appropriate findings of fact.

DISMISSED.

Judges ELMORE and HUNTER, JR., concur.

Report per Rule 30(e).