IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-126

Filed: 19 September 2017

Rowan County, Nos. 11 CRS 053038, 053246, 13 CRS 002949, 002950

STATE OF NORTH CAROLINA,

v.

QUENTIN ODELL MATHIS, Defendant.

Appeal by Defendant from Judgment entered 25 April 2016 by Judge Joe Crosswhite in Rowan County Superior Court. Heard in the Court of Appeals 22 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph E. Elder, for the State.

Glover & Petersen, P.A., by James R. Glover and Ann B. Petersen, for Defendant-Appellant.

INMAN, Judge.

A trial court does not violate a defendant's right to conduct a *pro se* defense when the defendant does not, by his statements and actions considered together, clearly and unequivocally assert his desire for self-representation.

Quentin Odell Mathis ("Defendant") appeals from a judgment entered 25 April 2016 following a jury verdict finding him guilty of attempted first degree murder, possession of a firearm by a felon, assault with a deadly weapon with intent to kill inflicting serious injury ("AWDWIKISI"), and assault with a deadly weapon inflicting serious injury ("AWDWISI"). Defendant argues that he was denied his constitutional right to a *pro se* defense after the trial court failed to conduct an inquiry into his request to proceed without counsel at a pretrial hearing.

After careful review, we hold Defendant has failed to show reversible error.

Facts and Procedural History

The evidence of record tends to show the following:

On 7 May 2011, Courtney Davis and Edward Stewart were shot and injured in an altercation at a drag strip in Mooresville, North Carolina. On 18 May 2011, Defendant was arrested on charges of attempted first degree murder and possession of a firearm by a felon. On 20 May 2011, a judge in Rowan County District Court entered an order finding Defendant was not financially able to afford counsel and appointing a local attorney to represent him. Defendant was indicted in July 2011 on charges of attempted first degree murder and possession of a firearm by a felon. Two years later, in August 2013, while Defendant was incarcerated awaiting trial on the 2011 charges, he was indicted on two counts of AWDWIKISI in connection with the same shooting.

In September 2013, Defendant filed a *pro se* motion for a speedy trial, which was not heard because the trial court concluded that Defendant was represented by counsel and was therefore required to file any motions with the court through his attorney.

On 21 January 2014, Defendant's appointed counsel filed a motion to withdraw. The motion was allowed and Defendant was appointed new counsel on the same day. On 15 July 2014, Defendant's second counsel withdrew and Defendant was appointed yet another trial attorney.

In October 2015, Defendant filed a second *pro se* motion for a speedy trial. In November 2015, Defendant appeared in court with his third court-appointed attorney for a hearing to review a plea offer that the prosecutor had extended to Defendant in March 2015. Defendant's *pro se* speedy trial motion was not addressed during the hearing. Defendant, according to his attorney, was concerned about whether he would receive credit against any sentence for his time in pretrial incarceration. The trial court continued the matter to the next administrative setting to allow Defendant additional time to consider the plea offer or to prepare for trial.

Defendant appeared before the trial court on 6 January 2016. By that date, Defendant had pleaded guilty to two felony charges of assaulting a law enforcement officer in the jail, resulting in a higher prior record level for the calculation of his sentence, and increasing Defendant's potential sentence if he accepted the State's

outstanding plea offer. Defendant's potential sentence was uncertain because the plea offer would leave it to the trial court to determine whether Defendant's sentences would run concurrently or consecutively. For those reasons, Defendant's counsel explained, Defendant would not agree to the State's plea offer. The trial court noted Defendant's decision for the record and admonished Defendant that once the offer was rejected, it would be "gone forever" and the case would proceed to trial.

After rejecting the State's plea offer, Defendant asked the trial court to consider his pending *pro se* motion for a speedy trial. The trial court dismissed the motion because Defendant was serving a prison sentence for unrelated criminal convictions and because Defendant was represented by counsel. The trial court reiterated that because Defendant was represented by counsel, the court would not consider his *pro se* motions. Defendant then stated to the trial court: "Well, I chose to represent myself." The trial court responded, "I think that's a very foolish thing to do. You can think about that." When Defendant repeated his request to represent himself, the trial court acknowledged his request and denied it, explaining that "you're charged with incredible, serious things." Thus Defendant continued to be represented by counsel and the trial court did not conduct any further inquiry regarding Defendant's request to represent himself.

Defendant's trial was scheduled for April 2016. The day before Defendant's trial, during a hearing that Defendant attended, counsel for Defendant and the State

presented evidentiary issues to the trial court and confirmed that both Defendant and the State were prepared to proceed the following morning.

The morning of trial, Defendant told the court that he and his counsel "have not got along the whole time of me having him . . . and I would like to make a motion directly for the ineffectiveness of counsel." Defendant stated that he had asked his counsel to withdraw months earlier. The trial court asked Defendant, "what are you asking the Court to do at this time?" Defendant responded, "Provide me with better counsel." Defendant said he had previously addressed the issue with the trial court during the January 2016 hearing, and that "she said she would provide me with other counsel . . . ."

After hearing from counsel for both sides, the trial court denied Defendant's motion to replace his counsel and the trial proceeded. The jury returned a verdict finding Defendant guilty of one count each of attempted first degree murder, possession of a firearm by a felon, AWDWISI, and AWDWIKISI. The trial court consolidated Defendant's convictions for attempted first degree murder, possession of a firearm by a felon, and AWDWIKISI and sentenced Defendant to 282 to 348 months of imprisonment. The trial court sentenced Defendant to an additional 42 to 60 months for AWDWISI, to run consecutively. Defendant gave oral notice of appeal.

Analysis

Defendant argues that he was denied his right to conduct a *pro se* defense after the trial court failed to make a further inquiry when he requested to represent himself. Given Defendant's repeated motions for a speedy trial and requests for replacement counsel, including a request for new counsel on the morning of his trial, we hold that Defendant failed to clearly and unequivocally assert a desire to proceed to trial without the assistance of counsel.

All criminal defendants are guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 23 of the North Carolina Constitution the right to counsel. Implicit in this right is a defendant's right to refuse counsel and conduct his or her own defense. *Faretta v. California*, 422 U.S. 806, 45 L. Ed.2d 562 (1975); *State v. Thacker*, 301 N.C. 348, 271 S.E.2d 252 (1980). To waive his right to counsel and elect to proceed *pro se*, a defendant must "*clearly and unequivocally* assert[] his desire to proceed to trial without his appointed attorney." *State v. McGuire*, 297 N.C. 69, 81, 254 S.E.2d 165, 173 (1979) (emphasis added). Once asserted, the trial court must satisfy the constitutional standards by making a determination as to whether the defendant "knowingly, intelligently, and voluntarily waive[d] his right to counsel." *State v. Fulp*, 355 N.C. 171, 175, 558 S.E.2d 156, 159 (2002) (internal quotation marks and citations omitted).

The North Carolina Supreme Court has held that a trial court's inquiry pursuant to N.C. Gen. Stat. § 15A-1242 satisfies the required constitutional

determination. *Id.* at 175, 558 S.E.2d at 159. N.C. Gen. Stat. § 15A-1242 (2015) provides that:

> A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied 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.

When determining whether a defendant has made a clear and unequivocal assertion of his right to waive counsel, we must consider "all the defendant's statements and actions[.]" *McGuire*, 297 N.C. at 83, 254 S.E.2d at 174. In *McGuire*, the defendant, at his arraignment hearing, requested a court appointed attorney and filled out an indigent defendant form. *Id.* at 82, 254 S.E.2d at 173. At a continuation of his arraignment the defendant asked the trial court for another attorney and stated "I am asking the court to let me defend myself in these cases." *Id.* at 82, 254 S.E.2d at 173. The trial court denied the request and the defendant repeated that "I am asking for another attorney." *Id.* at 82, 254 S.E.2d at 173. On the day of the trial, the trial court raised the issue of the defendant's satisfaction with counsel and asked

directly if he was "ready to proceed to trial with [his appointed] counsel." *Id.* at 82, 254 S.E.2d at 173. The defendant replied, "Yes, sir." *Id.* at 82, S.E.2d 254 at 173. The Supreme Court held that the defendant's right to counsel did not include the right to insist that his appointed counsel "be removed and replaced with other counsel merely because the defendant has become dissatisfied with his services," and that the defendant's actions and statements did not amount to a clear and unequivocal assertion of his desire to conduct a *pro se* defense. *Id.* at 82, 254 S.E.2d at 174 (internal quotation marks and citations omitted).

Here, as in *McGuire*, Defendant's statements and actions did not clearly and unequivocally communicate his desire to waive his right to the assistance of counsel and to represent himself at trial. On the morning of his trial, Defendant asked the trial court that it "[p]rovide [him] with better counsel." At no point during this second colloquy did Defendant assert that he wanted to move forward with a *pro se* defense; rather, he argued only his motion for new counsel. The trial court denied Defendant's request.

Defendant argues that this case differs from *McGuire* because here, in the hearing two months before his trial, Defendant twice told the trial court that he wanted to represent himself and did not want to be represented by his appointed counsel. We recognize the better practice would have been for the trial court to conduct an inquiry pursuant to N.C. Gen. Stat. § 15A-1242 at the time Defendant

raised his initial request to represent himself. But in light of Defendant's repeated motions for a speedy trial, delays caused by his conflicts with and the court's replacement of his two prior attorneys, and Defendant's subsequent statement that he wanted yet another "better counsel," Defendant did not clearly and unequivocally assert a constitutional right to represent himself.

Conclusion

For the forgoing reasons, we hold that the trial court did not violate Defendant's right to self-representation by failing to conduct a waiver inquiry. Accordingly, we conclude there was no error.

NO ERROR.

Judges BRYANT and DAVIS concur.

Report per Rule 30(e).