IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-196

Filed: 17 October 2017

Sampson County, Nos. 13 CRS 50880-81

STATE OF NORTH CAROLINA, Plaintiff,

v.

BRADFORD LEE BRADSHAW, Defendant.

Appeal by defendant from judgments entered 8 June 2016 by Judge Russell J. Lanier in Sampson County Superior Court. Heard in the Court of Appeals 23 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Josephine N. Tetteh, for the State.

Mark Montgomery, Attorney at Law, for defendant-appellant.

ZACHARY, Judge.

Bradford Lee Bradshaw (defendant) appeals from judgments entered upon his convictions for two counts each of indecent liberties, crime against nature, and sex offense by an adult against a child. On appeal, defendant argues that the trial court erred by requiring defendant to choose between appearing *pro se* or being represented by an attorney with whom he had a conflict of interest and a dispute over trial

strategy. After careful review of defendant's arguments, in light of the record on appeal and the applicable law, we conclude that defendant is not entitled to relief.

Background

Defendant's sole argument on appeal is that the trial court erred by forcing him to choose between representing himself at trial or being represented by an attorney with whom he had an alleged conflict of interest. As a result, it is unnecessary to set out a detailed recitation of the evidence. Defendant has two daughters, Eva and Karin.[1] In 2012, Eva and Karin were adjudicated neglected and placed in foster care. Ms. Dana Sutton, a social worker with the Sampson County Department of Social Services, was assigned to the case. Defendant made efforts to complete his case plan, and the children were placed in defendant's custody between March and July of 2012.

On 18 April 2013, defendant contacted Ms. Sutton and confessed to having sexually abused Eva by forcing her to have oral sex with him during the time that the children were in his custody, when Eva was six years old. On the same day, defendant contacted the Sampson County Sheriff's Office and indicated that he wanted to speak with someone. After being informed of his rights, defendant spoke with Lieutenant Lawrence Dixon and admitted to having Eva perform oral sex on him on more than one occasion. Warrants for defendant's arrest on sexual offense

[1] For ease of reading and to protect the minors' privacy, we refer to defendant's daughters by the pseudonyms Eva and Karin.

charges were issued on 19 August 2013. On 21 January 2014, defendant was indicted on three counts each of indecent liberties, crime against nature, and sexual offense by an adult against a child. Prior to trial, the State elected to pursue only two charges for each offense.

Defendant was determined to be indigent, and attorney Hayes S. Ludlum was appointed to represent him on these charges. On 19 August 2014, Mr. Ludlum filed a motion seeking leave to withdraw from representation of defendant. Mr. Ludlum's motion was granted the day it was filed, apparently without a hearing, and Mr. Mario White was appointed to serve as defendant's counsel. On 16 February 2015, a pretrial hearing was conducted before the Honorable W. Allen Cobb, Jr. During this hearing, Mr. White informed Judge Cobb that defendant "wishes to represent himself." Thereafter, defendant made various assertions regarding his court-appointed counsel. In response, the trial court stated that defendant had already asked to have Mr. Ludlum replaced and that the right to court-appointed counsel did not include a right to counsel of defendant's choice. The trial court gave defendant the choice to be represented by Mr. White or to proceed *pro se*, with Mr. White serving as standby counsel. Defendant elected to represent himself, and signed a written waiver of the right to counsel. Judge Cobb conducted the inquiry required under N.C. Gen. Stat. § 15A-1242 (2015). In response to questions from Judge Cobb, defendant stated that he did not want to represent himself but that he felt he had "no choice."

The charges against defendant were tried beginning on 6 June 2016. Prior to trial, the trial court inquired as to the status of defendant's representation. Defendant informed the trial court that he had waived the right to counsel because he had a "serious conflict of interest" with Mr. White. Defendant stated that in 2000 Mr. White had represented his wife and that, during the period when Mr. White was his wife's attorney, defendant and Mr. White had an argument in which "there was a lot of words and things said." Defendant also asserted that he was dismayed by Mr. White's apparent lack of understanding of "appearability" and "good faith law." Without further discussion, the trial court turned its attention to other matters.

At trial, the State's evidence included the testimony of the law enforcement officer to whom defendant had admitted his guilt of the charged offenses, as well as testimony from Eva that defendant had made her perform oral sex on him on more than one occasion. On 8 June 2016, the jury returned verdicts finding defendant guilty of two counts of indecent liberties, two counts of crime against nature, and two counts of sexual offense of a child by an adult. The trial court sentenced defendant to concurrent terms of 300 to 369 months' imprisonment. Defendant gave notice of appeal in open court.

Standard of Review

The issue of whether a trial court has conducted the inquiry that is required before a criminal defendant may be permitted to represent himself and has

determined that a defendant's waiver of counsel is knowing and voluntary is reviewed *de novo*. *State v. Watlington*, 216 N.C. App. 388, 393-94, 716 S.E.2d 671, 675 (2011).

Waiver of the Right to Counsel: Legal Principles

It is well-established that " '[t]he right to counsel provided by the Sixth Amendment to the United States Constitution also provides the right to self-representation.' . . . '[I]t is error for a trial court to allow a criminal defendant to release his counsel and proceed *pro se* unless . . . the defendant knowingly, intelligently, and voluntarily waives his right to in-court representation.' " *State v. Faulkner*, __ N.C. App. __, __, 792 S.E.2d 836, 838 (2016) (quoting *State v. White*, 349 N.C. 535, 563, 508 S.E.2d 253, 270-71 (1998)). "[A]n inquiry conducted pursuant to G.S. 15A-1242 fully satisfies the constitutional requirement that waiver of counsel must be knowing and voluntary." *State v. Gerald*, 304 N.C. 511, 519, 284 S.E.2d 312, 317 (1981). 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.

Discussion

On appeal, defendant does not dispute that the trial court conducted the inquiry required by N.C. Gen. Stat. § 15A-1242. Nor does defendant argue that he was not advised of his right to counsel, or that he failed to understand the consequences of self-representation, the nature of the charges, or the range of possible sentences. Rather, defendant argues that his waiver of counsel was not knowing or voluntary, on the grounds that the trial court forced defendant to choose between self-representation and representation by an attorney with whom he had an alleged conflict of interest. Defendant further asserts that (1) he "presented the court with two strategic differences" between defendant and his counsel—whether defendant should plead guilty and whether he should waive the right to trial by jury— and that (2) defendant raised the issue of a conflict of interest between him and Mr. White. Defendant's position is that the trial court failed to properly investigate these issues before requiring defendant to choose between self-representation and representation by Mr. White. We have carefully reviewed the record and conclude that defendant did not allege facts tending to show that he and Mr. White had a dispute over trial strategy or that Mr. White's representation of defendant would be affected by a conflict of interest.

The trial court "must appoint substitute counsel 'whenever representation by counsel originally appointed would amount to denial of defendant's right to effective assistance of counsel[.]' " *State v. Holloman*, 231 N.C. App. 426, 429, 751 S.E.2d 638,

641 (2013) (quoting *State v. Thacker*, 301 N.C. 348, 352, 271 S.E.2d 252, 255 (1980)). "It is thus 'the obligation of the court to inquire into defendant's reasons for wanting to discharge his attorney[] and to determine whether those reasons [are] legally sufficient to require the discharge of counsel.' " *Id.* (quoting *State v. Hutchins*, 303 N.C. 321, 335, 279 S.E.2d 788, 797 (1981)). For example:

> [A]n actual conflict of interest is demonstrated where a District Attorney or a member of his or her staff has previously represented the defendant with regard to the charges to be prosecuted and, as a result of that former attorney-client relationship, the prosecution has obtained confidential information which may be used to the defendant's detriment at trial.

State v. Camacho, 329 N.C. 589, 601, 406 S.E.2d 868, 875 (1991) (citation omitted). Similarly, "representation of the defendant as well as a prosecution witness (albeit in another matter) creates several avenues of possible conflict for an attorney." *State v. James*, 111 N.C. App. 785, 790, 433 S.E.2d 755, 758 (1993). However:

> [w]hen a defendant requests the appointment of substitute counsel based on an alleged conflict of interest, "the trial court must satisfy itself only that present counsel is able to render competent assistance and that the nature or degree of the conflict is not such as to render that assistance ineffective." "Once it becomes apparent that the assistance of counsel has not been rendered ineffective, the trial judge is not required to delve any further into the alleged conflict." Denial of a defendant's request for substitute counsel is therefore proper, where it appears that counsel is reasonably competent and there is no conflict between defendant and appointed counsel that renders counsel ineffective to represent defendant.

Holloman, 231 N.C. App. at 430, 751 S.E.2d at 641 (quoting *Thacker*, 301 N.C. at 353, 271 S.E.2d at 256, and *State v. Poole*, 305 N.C. 308, 311-12, 289 S.E.2d 335, 338 (1982)). Moreover, the right of a criminal defendant to the assistance of counsel "does not include the right to insist that competent counsel . . . be removed and replaced with other counsel merely because the defendant has become dissatisfied with his services." *State v. Robinson*, 290 N.C. 56, 66, 224 S.E.2d 174, 179 (1976) (citation omitted). Therefore, "to be granted substitute counsel, 'the defendant must show good cause, such as a conflict of interest[.]' " *State v. Gary*, 348 N.C. 510, 516, 501 S.E.2d 57, 62 (1998) (quoting *State v. Sweezy*, 291 N.C. 366, 372, 230 S.E.2d 524, 29 (1976)).

On appeal, defendant argues that the trial court committed reversible error by requiring defendant to choose between appearing *pro se* or being represented at trial by Mr. White. Accordingly, we first review the relevant portion of the transcript of pretrial proceedings. During the pretrial hearing conducted on 16 February 2015, Mr. White informed the court that defendant wished to represent himself. The court asked defendant whether he wished to proceed *pro se*:

> THE COURT: And did you hear what Mr. White said to the Court about your desire to, what, represent yourself?
>
> DEFENDANT: Considering in light of new evidence, Your Honor, that I have heard myself, I have the right to counsel. I also have a right to refuse counsel, if counsel is not proven competent enough to handle my case, whereas I have demonstrated irrefutable evidence concerning my counsel's not being competent, and also have a right under the peer-ability law to speak --

> THE COURT: The what?
>
> DEFENDANT: The peer-ability law.
>
> THE COURT: The peer-ability law?
>
> DEFENDANT: The peer-ability law is for *pro se* litigants. I am not in language with the prosecution's language. I should be allowed to speak without being objected to because I don't understand their language. May I speak?
>
> THE COURT: Yes, sir.
>
> DEFENDANT: However, I request counsel to—I asked my counsel to explain to me the good faith law, which is clearly on the bar exam, and any counselor should know that. He told me he does not know nothing about that. . . . I need to present my evidence, and I have irrefutable evidence proving my innocence. . . .
>
> THE COURT: What is it that you're asking this Court to do?
>
> DEFENDANT: To show my evidence and to prove that these charges need to be throwed (sic) out.

At that point, the court explained to defendant that he could be represented by Mr. White or could represent himself:

> THE COURT: Well you've got Mr. White appointed to represent you, appointed by the State of North Carolina to represent you, because you have . . . asked the State of North Carolina to provide a lawyer to you free of charge.
>
> DEFENDANT: Yes, sir.
>
> THE COURT: Do you understand that?

> DEFENDANT: Yes, sir.
>
> THE COURT: And now I understand that you have done this once before. Who was the lawyer before; Mr. Ludlum? Is that correct?
>
> MS. GILLIS: That's correct.
>
> THE COURT: And he was relieved of representing you?
>
> DEFENDANT: Yes, sir.

Judge Cobb's statement that that defendant had "done this once before," referring to defendant's request for the appointment of substitute counsel, was technically inaccurate, as Mr. Ludlum's withdrawal was the result of a motion he filed, rather than arising from defendant's request that Mr. Ludlum be replaced. However, it appears from the contents of Mr. Ludlum's motion that Mr. White was the second attorney with whom defendant was unwilling or unable to cooperate, as evidenced by the following allegations in Mr. Ludlum's motion:

. . .

> 3 The undersigned feels as though his opinion and the Defendant's opinion on how to proceed with this case are irreconcilably at odds.
>
> 4. The undersigned feels that the relationship between he and the Defendant has deteriorated to the point that the Defendant no longer has confidence in the undersigned's ability to zealously and effectively advocate on his behalf. Evidence of this lack of confidence can be found in recent motions the Defendant filed *pro se* with the Sampson County Clerk of Superior Court.

The dialogue between the court and defendant continued as follows:

> THE COURT: And it appears to me, from what I know, similar to the same allegations that you're making against Mr. White.
>
> DEFENDANT: But these are true allegations.
>
> THE COURT: Excuse me?
>
> DEFENDANT: They're true allegations. I'm not making nothing up.
>
> THE COURT: I understand that. And—I understand that. But when you are appointed a lawyer by the State of North Carolina, free of charge, you don't get the right to select your own.
>
> DEFENDANT: I'm not.
>
> THE COURT: You get the lawyer that's appointed to represent you. This being the second occurrence about you wanting to relieve a Court-appointed lawyer from representation of you, I'm not inclined to allow you to fire Mr. White and get another Court-appointed lawyer. So Mr. White is going to be your Court-appointed lawyer, if you want a Court-appointed lawyer. If you don't want a Court-appointed lawyer, that's fine. You can make that decision, and you can represent yourself in front of a jury with this exposure that — one of the charges carries life imprisonment. If you want to do that, you certainly are able to do that. I'll go through some questions with you about that, if that's what you want to do. But if you want to go forward and represent yourself, I'm prepared to make Mr. White your standby counsel. He'll be behind you in a chair. He'll be there during your jury trial, and if you want to turn around and ask him any questions about legal principles or concepts, or strategy or anything like that, you'll be able to do that. So that's where we are.

> You are going to have a lawyer and it's going to be provided by the State of North Carolina, free of charge. Mr. White's going to be your counsel, and he's going to be sitting at the table with you during your jury trial or if you want to be at the table by yourself, conducting your own defense, that's fine, but he'll then be sitting behind you in a chair as standby counsel to be there for you if you have any questions that come up during the course of the trial. Now do you understand what I just said to you?
>
> DEFENDANT: I understand, but how is it that I should be represented by counsel when it's clear that he represented my wife before and we had an argument, words were said to him, words were said back and forth? How am I going to get a fair trial by lawyer? Apparently I said something to him that is of a nature that would constitute discrimination against me, that I would be prejudiced against his retaliation. There is motive there to retaliate. And, apparently, he's trying to use my own girl against me to plead guilty on something I've clearly said I'm not guilty on. Now how is that proper counsel?
>
> THE COURT: I'll let you respond, Mr. White, for the record, if you want to. You don't have to.
>
> MR. WHITE: Judge, I have no idea what he's talking about. I represented his wife before. I don't recall having any conversation with him. And I may have, but I don't recall it. That's all I can comment on that.

Thereafter, the court directed defendant to choose whether he wished to be represented by Mr. White or represent himself.

> THE COURT: Listen to what I'm asking you. These are the choices; you are going to relieve Mr. White of his duty to represent you to the best of his ability and you're going to be at the table representing yourself.

> DEFENDANT: No. I need representation. I do not need him.
>
> THE COURT: Well, you are not going to get another Court-appointed lawyer. Do you understand that?
>
> DEFENDANT: Then I'll be a *pro se* litigant.

Defendant's statements are confusing and their meaning is not entirely clear. It appears, however, that defendant asserted: (1) that Mr. White was not competent to represent him because he had been unable to explain "the good faith law" to defendant; (2) that defendant had certain rights under "the peer-ability law"; (3) that he was frustrated by Mr. White's effort to obtain a plea offer from the State; and (4) that at some time in the past, when Mr. White represented defendant's wife, he and Mr. White had an argument or exchange of words, which defendant contended had given Mr. White a motive to "retaliate" against him.

Defendant made similar assertions at the start of trial, when questioned by the trial court:

> THE COURT: Okay. Now, you understand that you have a constitutional right to represent yourself?
>
> DEFENDANT: Yes, sir.
>
> . . .
>
> THE COURT: Okay. So you have I assume earlier waived your right to counsel?
>
> DEFENDANT: Well, there was a conflict of interest, but I had no choice but to waive my right because they said it

was either take him or nobody. But we had a conflict of interest that I don't think I'd be getting fairly -- so I just went ahead and said I'll just represent myself.

THE COURT: Okay. Well, we're just talking about your representing yourself at this point. I just want to make certain you understand the complexities involved, and that you may be at a disadvantage against someone who has legal training. You understand that?

DEFENDANT: Yes, sir.

THE COURT: And you're willing to accept those deficiencies and proceed?

DEFENDANT: I got no choice.

THE COURT: Well, you do have a choice. You can have an attorney.

DEFENDANT: But it's a serious conflict of interest between me and him, Your Honor.

THE COURT: And what is that conflict?

DEFENDANT: He was a lawyer to my wife back in 2000, somewhere around there, and him and her got into an argument/dispute, and I kind of got into with him, and there was a lot of words and things said, aggression and things I can't take back. But the way he's been treating me and my trial, stuff like that, it's a question like the law of appearability. (sic) I have a right to appear before a court instead of the jury, or good faith law. He says he don't know what that is. That's simple stuff that's on the --

THE COURT: How many attorneys have you had appointed for you?

> DEFENDANT: One of them withdrew himself. I didn't withdraw him, Your Honor, and this one right here, and that's it.
>
> MS. GILLIS: Your Honor, this matter was heard by a prior judge -- actually two prior judges, and we addressed this conflict he's bringing up with Mr. White. During that proceeding, Mr. White said he did not remember that conflict that arose between him and Mr. Bradshaw back in 2010. His other attorney withdrew and Mr. Bradshaw didn't have anything to do with that withdrawal, Your Honor.
>
> THE COURT: All right.

We first consider defendant's argument that he "presented the court with two strategic differences he and Mr. White had: 1) how to plead, and 2) whether to waive a jury trial." Defendant contends that there is evidence in the record tending to show that "Mr. White wanted [defendant] to plead guilty against his wishes" and that "[defendant] wanted to waive a jury trial and have a bench trial, but Mr. White either disagreed or did not know that it was possible to do that." Defendant fails to identify any testimony or cite to any transcript pages to support this allegation. We have reviewed the transcript of the pretrial hearing before Judge Cobb and the preliminary inquiry before the trial court. We have found no statements in the transcript that support defendant's position, but assume that defendant bases this argument upon the following transcript excerpts:

> DEFENDANT: I also have a right to refuse counsel, if counsel is not proven competent enough to handle my case, whereas I have demonstrated irrefutable evidence

> concerning my counsel's not being competent, and also have a right under the peer-ability law to speak -
>
> . . .
>
> DEFENDANT: I asked my counsel to explain to me the good faith law, which is clearly on the bar exam, and any counselor should know that. He told me he does not know nothing about that.
>
> . . .
>
> DEFENDANT: And, apparently, he's trying to use my own girl against me to plead guilty on something I've clearly said I'm not guilty on. Now how is that proper counsel?
>
> . . .
>
> DEFENDANT: But the way he's been treating me and my trial, stuff like that, it's a question like the law of appearability. (sic) I have a right to appear before a court instead of the jury, or good faith law. He says he don't know what that is. That's simple stuff that's on the --

During the hearing on 16 February 2015, the prosecutor and defense counsel put on the record the terms of a plea bargain that had been offered to defendant. Defendant rejected the plea offer, and clearly expressed his desire to go to trial. There is no record evidence suggesting that Mr. White was insisting that defendant plead guilty, or that defendant was confused about his right to plead not guilty and have a trial on the charges against him. Similarly, defendant's statement that he had "a right to appear before a court instead of the jury" does not imply that his appointed counsel did not understand this right or had failed to communicate it to defendant.

Instead, it is clear from the context that Mr. White had indicated that he was unfamiliar with the "peer ability law" or with defendant's proposed "good faith law." We conclude that defendant has failed to show that he and Mr. White had a conflict over the appropriate trial strategy.

We next consider defendant's argument that he properly raised the issue that his court-appointed counsel had a conflict of interest with defendant and that the trial court erred by "requiring [defendant] to either accept an attorney with whom he had a conflict of interest or represent himself." Defendant contends that he forecast evidence of a conflict of interest between himself and Mr. White, such that the trial court was required to investigate further and conduct a hearing on the alleged conflict. Accordingly, we note the transcript passages that are relevant to this argument. On 16 February 2015, defendant stated the following:

> DEFENDANT: I understand, but how is it that I should be represented by counsel when it's clear that he represented my wife before and we had an argument, words were said to him, words were said back and forth? How am I going to get a fair trial by lawyer? Apparently I said something to him that is of a nature that would constitute discrimination against me, that I would be prejudiced against his retaliation. There is motive there to retaliate. . . .
>
> THE COURT: I'll let you respond, Mr. White, for the record, if you want to. You don't have to.
>
> MR. WHITE: Judge, I have no idea what he's talking about. I represented his wife before. I don't recall having any conversation with him. And I may have, but I don't recall it. That's all I can comment on that.

At the outset of trial, defendant made the following statements:

> DEFENDANT: But it's a serious conflict of interest between me and him, Your Honor.
>
> THE COURT: And what is that conflict?
>
> DEFENDANT: He was a lawyer to my wife back in 2000, somewhere around there, and him and her got into an argument/dispute, and I kind of got into with him, and there was a lot of words and things said, aggression and things I can't take back. . . .

Defendant's statements to Judge Cobb and to the trial court did not raise any previously recognized basis for finding that a defendant's attorney had a conflict of interest that should preclude him from representing the defendant. Instead, in order to find that Mr. White had a conflict of interest with defendant, we would be required to accept the following sequence of contentions:

> 1. In 2000, Mr. White represented defendant's wife.
>
> 2. During the time that Mr. White represented defendant's wife, Mr. White and defendant had a verbal dispute.
>
> 3. Notwithstanding his denial of any recollection of a conversation or argument with defendant, Mr. White might have wanted to "retaliate" against defendant for something defendant said during this argument.
>
> 4. Mr. White had a "conflict of interest" with defendant in that there was a conflict between his duty to provide zealous representation and his desire to exact retribution from defendant for an unspecified comment made during an argument five or ten years earlier.

It would be an understatement to describe this scenario as "wildly improbable." Moreover, defendant cites no authority for the proposition that a legal conflict of interest arises from the fact that an attorney may have argued with a defendant years earlier. Mr. White informed the trial court that he had no recollection of ever speaking with defendant during his representation of defendant's wife. Defendant has not asserted that Mr. White was being other than truthful with the court, and we find nothing in the record that would support a finding that Mr. White was denying a recollection of the prior argument in order to position himself to "retaliate" against defendant.

Conclusion

For the reasons discussed above, we conclude that defendant did not inform the trial court of circumstances that might indicate that his court-appointed attorney had a conflict of interest, and that the trial court did not err by requiring defendant to choose between representation by his appointed counsel or proceeding *pro se*.

NO ERROR.

Judges CALABRIA and MURPHY concur.

Report per Rule 30(e).