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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-286

No. COA20-872

Filed 15 June 2021

Mecklenburg County, No. 14 CRS 237227

STATE OF NORTH CAROLINA

v.

DEMORRIS VAN CATHCART, II

Appeal by defendant, by writ of certiorari, from order entered 12 May 2020 by Judge Carla N. Archie in Mecklenburg County Superior Court. Heard in the Court of Appeals 11 May 2021.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Sherri Horner Lawrence, for the State.*

*Knox, Brotherton, Knox & Godfrey, by Allen C. Brotherton, for defendant-appellant.*

ZACHARY, Judge.

¶ 1 Defendant Demorris Van Cathcart, II, appeals from an order denying his motion for appropriate relief. After careful review, we affirm.

***Background***

¶ 2 On 18 September 2014, Defendant was arrested for engaging in a sexual act with a child under the age of 13. On 6 October 2014, a Mecklenburg County grand

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jury returned an indictment charging Defendant with statutory sexual offense with a child by an adult, in violation of N.C. Gen. Stat. § 14-27.4A (2013).<sup>1</sup> The indictment alleged that Defendant “did unlawfully, willfully, and feloniously engage in a sexual act with C.W., a child under the age of thirteen (13) years.”

¶ 3 Defendant was tried during the 19 February 2018 criminal session of Mecklenburg County Superior Court, the Honorable Gregory R. Hayes presiding. On 23 February 2018, the jury found Defendant guilty of the charged offense. That same day, Defendant gave oral notice of appeal. *State v. Cathcart*, 266 N.C. App. 402, 829 S.E.2d 698, 2019 N.C. App. LEXIS 612, at \*5 (2019) (unpublished). By an unpublished opinion filed 16 July 2019, this Court found no error in the judgment entered upon Defendant’s conviction. *Id.* at \*12.

¶ 4 On 4 March 2020, Defendant filed a motion for appropriate relief, alleging that the indictment charging him with statutory sex offense with a child failed to impart the trial court with subject-matter jurisdiction. Specifically, Defendant argued that the State had failed to comply with the naming requirement of N.C. Gen. Stat. § 15-144.2(b) (2019) when it alleged that Defendant committed statutory sex offense against “C.W.,” in that the minor victim’s initials were not sufficiently specific to

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<sup>1</sup> N.C. Gen. Stat. § 14-27.4A has been recodified as N.C. Gen. Stat. § 14-27.28. *See* 2015 N.C. Sess. Laws 460, 462, ch. 181, § 10.(a) (effective 1 December 2015 and applicable to offenses committed on or after that date).

identify the victim in accordance with the statute.

¶ 5

By order entered 12 May 2020, the trial court denied Defendant's motion for appropriate relief. The trial court made the following pertinent conclusions of law:

2. There are no disputed facts and an evidentiary hearing is not required.

3. In State v. McKoy, 196 N.C. App. 650 (2009), the North Carolina Court of Appeals held that, in combination with other record evidence, a victim's initials could satisfy the naming requirement under N.C.G.S. § 15-144.2(b).

4. The North Carolina Supreme Court has since held that an indictment referring to "Victim #1" does not satisfy the naming requirement, and facial validity is determined by evaluating only the allegations in the criminal pleading. State v. White, 372 N.C. 248 (2019).

5. Although the Supreme Court has restricted analysis of facial validity to the four corners of the charging document, the Court did not expressly overrule McKoy. Therefore, the ultimate holding in McKoy still stands.

6. The indictment in this case satisfies the naming requirement under N.C.G.S. § 15-144.2(b) and Defendant's claim fails as a matter of law.

¶ 6

Defendant filed a petition for writ of certiorari with this Court on 1 July 2020, seeking review of the trial court's denial of his motion for appropriate relief. This Court allowed Defendant's petition and issued the writ on 23 July 2020.

### ***Analysis***

¶ 7

Defendant contends that the trial court erred by concluding that the indictment was sufficient, pursuant to N.C. Gen. Stat. § 15-144.2(b), to confer subject-

matter jurisdiction upon the trial court. We affirm the trial court's denial of Defendant's motion for appropriate relief.

*I. Standard of Review*

¶ 8 In reviewing a trial court's order on a motion for appropriate relief, we consider "whether the findings of fact are supported by evidence, whether the findings of fact support the conclusions of law, and whether the conclusions of law support the order entered by the trial court." *State v. Wilkerson*, 232 N.C. App. 482, 488–89, 753 S.E.2d 829, 834 (2014) (citation omitted). We review the trial court's conclusions of law de novo. *Id.* at 489, 753 S.E.2d at 834.

*II. Merits*

¶ 9 Here, Defendant does not challenge any of the trial court's findings of fact; he only challenges the legal conclusion that the indictment was sufficient. Defendant argues that the indictment charging him with statutory sex offense was insufficient to impart subject-matter jurisdiction upon the trial court because it failed to "nam[e] the victim" in accordance with N.C. Gen. Stat. § 15-144.2(b). Defendant asserts that the Supreme Court's decision in *State v. White*, 372 N.C. 248, 827 S.E.2d 80 (2019), implicitly reversed *State v. McKoy*, 196 N.C. App. 650, 675 S.E.2d 406, *appeal dismissed and disc. review denied*, 363 N.C. 586, 683 S.E.2d 215 (2009). In *McKoy*, this Court held that an indictment charging a defendant with rape was not insufficient where the indictment identified the alleged victim by her initials. 196

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N.C. App. at 658, 675 S.E.2d at 412. In *White*, our Supreme Court addressed but did not overturn *McKoy* in reaching its holding that an indictment alleging a sex offense against a minor identified as “Victim #1” failed to establish jurisdiction in the trial court. 372 N.C. at 252, 827 S.E.2d at 83.

¶ 10 Our Court recently addressed the issue of whether initials sufficiently identify a victim in *State v. Pabon*, \_\_\_ N.C. App. \_\_\_, 850 S.E.2d 512, *disc. review allowed on other grounds*, 376 N.C. 527, 851 S.E.2d 43 (2020). In *Pabon*, our Court considered *White*’s applicability and reasoned that “[t]here is nothing in *White* which overturned ‘the common sense understanding that initials represent a person.’” *Id.* at \_\_\_, 850 S.E.2d at 529 (quoting *McKoy*, 196 N.C. App. at 654, 675 S.E.2d at 410). We then concluded that “[c]onsistent with *McKoy*, it is unnecessary to include the victim’s full name. Therefore, the use of the victim’s initials is proper.” *Id.*; accord *State v. Sechrest*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 2021-NCCOA-204, ¶ 15.

¶ 11 Consequently, we must conclude that the trial court did not err in concluding that the indictment was sufficient where it alleged the commission of a statutory sex offense against “C.W.”

¶ 12 Defendant requests that we hold that *White* implicitly overruled *McKoy*, and that *Pabon* does not adequately address *White*’s effect on our precedents. However, we are bound by our Court’s decision in *Pabon* unless and until a higher court overturns it. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“Where

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a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.”). We therefore affirm the denial of Defendant’s motion for appropriate relief.

***Conclusion***

¶ 13 For the foregoing reasons, we conclude that the trial court did not err in denying Defendant’s motion for appropriate relief.

AFFIRMED.

Judges MURPHY and CARPENTER concur.

Report per Rule 30(e).