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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-772

No. COA22-45

Filed 15 November 2022

Mitchell County, Nos. 21 CRS 50104, 168

STATE OF NORTH CAROLINA

v.

SHARON DENISE STALLINGS

Appeal by defendant from judgment entered 16 September 2021 by Judge R. Gregory Horne in Mitchell County Superior Court. Heard in the Court of Appeals 20 September 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert C. Ennis, for the State.

Sarah Holladay for defendant.

DIETZ, Judge.

¶ 1 Defendant Sharon Stallings appeals her convictions for multiple drug-related charges. On appeal, Stallings argues that her counsel was constitutionally ineffective by failing to file a motion to suppress.

¶ 2 As explained below, claims of ineffective assistance of counsel ordinarily “should be considered through motions for appropriate relief and not on direct

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appeal.” *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001). This case falls within the typical category of cases, in which it is not appropriate for this Court to address the issue on the cold record. We therefore dismiss this appeal without prejudice to Stallings’s right to pursue the claim through a motion for appropriate relief in the trial court.

Facts and Procedural History

¶ 3 In March 2021, a narcotics detective and other law enforcement officers were assisting probation officers in routine checks of several supervised probationers residing in Spruce Pine and surrounding areas. The officers arrived at the residence of Nicholas Snyder, a probationer. The purpose of the probation check was to search for drugs.

¶ 4 Snyder and Defendant Sharon Stallings lived in the residence, a single-wide trailer with four rooms. In the middle of the residence was a common area with the living room and kitchen; on the right end was one bedroom; and on the left end was another bedroom and a bathroom. The driveway led directly up to the right end of the trailer, where the first bedroom was located. To the left of the driveway there was a small porch and front door. A window in this area opened to the middle, common living room and kitchen area.

¶ 5 As the officers approached the residence, the detective parked 30 to 40 feet away on an adjacent road and walked across the front yard toward the porch and

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front door. While walking across the yard, the detective could see into the window and observed Stallings and Snyder, shoulder-to-shoulder, “crouched down in the middle of the living room near a potbellied stove.” Stallings and Snyder made several movements with their hands while crouched by the stove and “appeared to be hiding something” in that area.

¶ 6 After Stallings and Snyder opened the door for the officers and allowed the officers inside to search, the detective went directly to the area around the stove. He moved a trash can away from the stove and found a small baggie of methamphetamine on the floor. Officers also recovered a sock tied in several knots that contained a glass pipe, which tested positive for methamphetamine residue. The officers continued their search and found a small amount of marijuana and digital scales. The officers took both Stallings and Snyder into custody.

¶ 7 The State charged Stallings with possession of methamphetamine, possession of drug paraphernalia, and possession of marijuana as well as attaining habitual felon status. On 16 September 2021, Stallings was found guilty of possessing methamphetamine and drug paraphernalia. She pleaded guilty to attaining habitual felon status. The trial court sentenced Stallings to a consolidated sentence of 38 to 58 months in prison. Stallings timely appealed.

Analysis

¶ 8 Stallings argues that her counsel was constitutionally ineffective because

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counsel failed to move to suppress the detective's testimony about what he saw through the front window of the residence as he walked across the yard toward the front porch.

¶ 9 “A defendant's right to counsel includes the right to the effective assistance of counsel.” *State v. Braswell*, 312 N.C. 553, 561, 324 S.E.2d 241, 247 (1985). “When a defendant attacks his conviction on the basis that counsel was ineffective, he must show that his counsel's conduct fell below an objective standard of reasonableness.” *Id.* This analysis involves a two-part test that examines whether “counsel's performance was deficient” and whether “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.*

¶ 10 Ordinarily, “claims of ineffective assistance of counsel should be considered through motions for appropriate relief and not on direct appeal.” *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001). This Court will address an ineffective assistance claim on direct appeal only “when the cold record reveals that no further investigation is required.” *State v. Thompson*, 359 N.C. 77, 122–23, 604 S.E.2d 850, 881 (2004). Thus, when the claim raises factual issues, either concerning the underlying issue or concerning counsel's strategy, “an evidentiary hearing available through a motion for appropriate relief is the procedure to conclusively determine these issues.” *State v. Friend*, 257 N.C. App. 516, 521, 809 S.E.2d 902, 906 (2018).

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¶ 11 Here, there are factual issues that preclude this Court from addressing the claim on direct appeal. First, there are questions about whether, in light of the questions counsel posed to the officers, counsel made a strategic decision not to move to suppress based on an accurate understanding of the relevant law and facts. This prevents this Court from addressing the deficient performance prong on the cold record before us. Moreover, there are factual questions about the property in question and whether it was reasonable for the detective to cross the front yard to reach the porch and door where the officers knocked and later entered the trailer. Likewise, there are questions about whether, had the detective instead walked to the front door through some other path, he would not have been able to see clearly through the window and observe Stallings and Snyder near the stove. Again, this prevents this Court from addressing the prejudice prong on the cold record before us.

¶ 12 In short, Stalling's ineffective assistance claim raises questions of fact that are not suitable for review on direct appeal. *Id.* When this Court "reviews ineffective assistance of counsel claims on direct appeal and determines that they have been brought prematurely, we dismiss those claims without prejudice, allowing defendant to bring them pursuant to a subsequent motion for appropriate relief in the trial court." *Thompson*, 359 N.C. at 123, 604 S.E.2d at 881. Accordingly, we dismiss this appeal without prejudice.

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Conclusion

¶ 13 We dismiss Stallings's appeal without prejudice to her right to pursue the claim asserted in this appeal through a motion for appropriate relief in the trial court.

DISMISSED.

Judges WOOD and JACKSON concur.

Report per Rule 30(e).