

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1004

Filed 5 December 2023

Caldwell County, Nos. 07CRS3906-08

STATE OF NORTH CAROLINA

v.

RONALD WAYNE SPANN

Appeal by defendant from order entered 9 February 2022 by Judge Athena Fox Brooks in Caldwell County Superior Court. Heard in the Court of Appeals 1 November 2023.

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

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Sterling Rozeas, for the defendant-appellant.*

TYSON, Judge.

This Court provisionally allowed Ronald Wayne Spann's ("Defendant") Petition for Writ of Certiorari ("PWC") on 6 June 2022 to "review the 9 February 2022 order of [the superior court] denying [D]efendant's motion for appropriate relief." We dismiss.

## **I. Background**

The underlying facts are set out in greater detail in this Court's prior opinion. *See State v. Spann*. 201 N.C. App. 727, 689 S.E.2d 600 (2010) (unpublished). Defendant was convicted by a jury of two counts of first-degree statutory rape and four counts of taking indecent liberties with a child on 15 August 2008.

Defendant was sentenced as a prior record level II offender with 4 prior record level points. Defendant's two convictions for first-degree statutory rape were consolidated for judgment, with an active sentence imposed of 288 to 355 months. Defendant was also sentenced to an active sentence of 19 to 23 months for one count of taking indecent liberties with a minor, to run consecutive to his sentence for the two first-degree statutory rapes. Defendant was further sentenced to three concurrent terms of 19 to 23 months, which was suspended for 60 months of supervised probation for the three remaining indecent liberties with a minor conviction.

Defendant's prior appellate counsel argued the trial court had erred by allowing two of the State's expert witnesses to vouch for or bolster the victim's credibility, allowing the State to introduce evidence of his uncharged bad acts, failing to instruct the jury on attempted statutory rape, and failing to disclose sealed information to him. This Court's unanimous unpublished opinion on 5 January 2010 concluded and held no error had occurred at trial and is the law of the case. *See id.* Defendant did not petition for discretionary review by the Supreme Court of North

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Carolina.

Defendant filed a *pro se* Motion for Appropriate Relief (“MAR”) on 17 February 2010 in Cleveland County Superior Court. The superior court ordered an evidentiary hearing on 26 March 2010, held an evidentiary hearing on 26 July 2010, and denied Defendant’s MAR on 21 January 2011.

Defendant filed an amended MAR and motion for re-consideration of the denial of the prior MAR two and one-half years later on 4 June 2013. The superior court denied Defendant’s amended MAR and motion for re-consideration on 18 June 2013. Defendant filed a PWC to this Court on 6 August 2013, which was denied by this Court’s order on 26 August 2013.

Defendant filed a MAR with the Supreme Court of North Carolina on 27 November 2013, which was dismissed by order on 10 February 2014. Defendant filed another *pro se* MAR in Cleveland County Superior Court on 24 July 2014, which was denied by order filed 25 September 2014.

Defendant filed yet another MAR on 21 June 2016. The superior court ordered Defendant to “supplement his M[AR] by providing additional affidavits or records to further support his claims relating to his alleged lack of capacity to stand trial.” Defendant supplemented his MAR on 12 October 2016.

The superior court entered an order denying Defendant’s MAR in part, but it ordered an evidentiary hearing on three ineffective assistance of counsel claims on 24 October 2016. The issue was whether Defendant’s trial counsel was ineffective

because he allegedly failed to have Defendant's capacity to stand trial evaluated, ignored evidence pertinent to Defendant's mental disability, and had failed to request a jury instruction on attempted rape.

Defendant filed a PWC in this Court to review the denial of his MAR on 30 November 2016. This Court denied Defendant's PWC by order entered 16 December 2016. Defendant filed a PWC on 7 February 2017 in the Supreme Court of North Carolina, which was denied by order entered 3 May 2017.

The superior court held an evidentiary hearing on 7 January 2022 and denied Defendant's three remaining IAC claims on 9 February 2022. Defendant filed a PWC on 3 March 2022, contending that the 9 February 2022 order "is erroneous and that [Defendant] is entitled to the relief sought for the reasons stated in the [MAR]." The PWC was "allowed without prejudice to reconsideration by the panel to which the case is assigned" on 6 June 2022.

## **II. Jurisdiction**

Defendant's PWC was provisionally allowed by this Court on 6 June 2022 "to review the 9 February 2022 order of [the superior court] denying [D]efendant's [MAR]." This Court possesses jurisdiction pursuant to N.C. Gen. Stat. § 15A-1444(f) (2021) and N.C. R. App. P. 21(a).

## **III. Issues**

Defendant now argues the superior court erred by: (1) failing to order a new trial instead of a retrospective competency determination; (2) determining it was

possible to conduct a meaningful retrospective capacity hearing eight years after trial; (3) concluding he was competent to stand trial fourteen years after the trial; and, (4) violating N.C. Gen. Stat. § 15A-1001 (2021), by failing to grant relief from punishment, despite finding him to be currently incompetent.

#### **IV. Retrospective Capacity Evaluation & Retrospective Capacity Hearing**

The superior court denied Defendant's request for a new trial in its 24 October 2016 order and ordered a retrospective capacity hearing. Defendant appealed the denial of relief in that order to this Court, which denied Defendant's PWC by order entered 16 December 2016, and to the Supreme Court of North Carolina, which denied Defendant's PWC by order entered 3 May 2017. We are bound by those prior orders.

This Court conditionally granted Defendant's PWC to review the 9 February 2022 order. Defendant's arguments on grounds, which are not contained within the 9 February 2022 order, are not properly before this Court. Defendant's purported arguments previously ruled upon and not asserted in the PWC are dismissed.

#### **V. Competency**

Every adult person is presumed to be competent. *See State v. Hicks*, 269 N.C. 762, 763, 153 S.E.2d 488, 488 (1967) (per curiam) (citation omitted). Defendant argues the superior court erred in concluding he was competent to stand trial fourteen years after trial. Defendant's argument in his MAR before the superior court asserted his trial counsel had provided ineffective assistance by failing to challenge

his competency to stand trial. The 9 February 2022 order addressed Defendant's trial counsel's alleged failure to request a capacity evaluation and whether his trial counsel allegedly ignored evidence "pertinent to Defendant's mental disability."

Defendant's arguments in his brief do not address the purported ineffective assistance of counsel, but only challenge Defendant's competency. Defendant has waived appellate review of this issue. Defendant's argument is dismissed.

#### **VI. Violation of N.C. Gen. Stat. § 15A-1001**

Defendant argues the trial court violated N.C. Gen. Stat. § 15A-1001 and erred by failing to grant him relief from punishment despite finding him currently incompetent. N.C. Gen. Stat. § 15A-1001. The 9 February 2022 order found and specifically concluded "[t]his Court is not determining whether the defendant is competent currently and whether it is just for him to remain in the Department of Corrections. This Court is determining the [Defendant's] capacity at the time of the trial on the merits." This issue was not raised in his MAR filed 21 June 2016 or the 12 October 2016 supplement, was not before the superior court and its 9 February 2022 order, and is not properly before this Court. Defendant's argument is dismissed.

#### **VII. Conclusion**

Defendant's arguments concerning a retrospective capacity determination and the superior court's ability to conduct a meaningful retrospective capacity hearing were previously denied by the superior court on 24 October 2016. This Court and the Supreme Court of North Carolina both denied Defendant's PWC. We are bound by

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those orders.

These issues were not included in the 9 February 2022 order, which this Court provisionally granted certiorari to review. These arguments are not properly before this Court and are also dismissed.

Defendant did not argue his trial counsel's failure to address his competency during his trial on the merits constituted ineffective assistance of counsel as was addressed in the 9 February 2022 order denying his MAR. Defendant has waived appellate review of this issue.

Defendant never raised a potential violation of N.C. Gen. Stat. § 15A-1001 in his 21 June 2016 MAR or in the 12 October 2016 supplement. This issue was never addressed by the superior court's 9 February 2022 order and is not properly before this Court. Defendant's appeal is dismissed. *It is so ordered.*

DISMISSED.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).