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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-764

Filed 05 September 2023

Haywood County, No. 21CRS51192

STATE OF NORTH CAROLINA

v.

JESSICA PARKER

Appeal by Defendant from Judgment entered 29 November 2021 by Judge Forrest D. Bridges in Cleveland County Court. Heard in the Court of Appeals 26 April 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Charles G. Whitehead, for the State.

R. Daniel Gibson for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Jessica Ann Parker (Defendant) appeals from Judgment entered 29 November 2021 upon her conviction for Trafficking in Opium, Opiate, Opioid, or Heroin by Possessing Fourteen Grams or More but Less than Twenty-Eight Grams. The Record before us tends to reflect the following:

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On 27 April 2021, Defendant was arrested after a search revealed two small bags of fentanyl on her person. The North Carolina State Crime Lab confirmed that the bags contained approximately 16.44 grams of fentanyl. On 5 May 2021, the trial court appointed David C. Brown (Attorney Brown) to represent Defendant, and he continuously represented her until trial.

When Defendant's case was called to trial on Monday, 29 November 2021, Defendant appeared in court, and the State renewed a previous plea offer. The trial court continued the trial for two days until 1 December 2021 to allow Defendant and Attorney Brown to "fully discuss everything so the matter would be ready for trial." When Defendant answered ready for trial on 1 December 2021, she informed the trial court, for the first time, that she would like to release her court-appointed attorney and either represent herself or have the opportunity to hire her own attorney.

Defendant affirmed that she had had "lots of" chances to speak with Attorney Brown and prepare for trial but claimed she had just heard about the State's plea deal on Monday and that she and Attorney Brown had never discussed it. The State confirmed that it conveyed the plea deal on 16 August 2021 and repeated it that Monday. The State further acknowledged it had misstated the terms of its proposed plea deal that morning by offering the dismissal of more charges than intended in exchange for a single guilty plea to Level II trafficking. However, the State nevertheless indicated it was willing to bind itself to its "mistaken word." Attorney Brown confirmed that he had discussed the State's plea offer with Defendant on 30

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August 2021. Defendant disputed this, claiming, “The last time I was offered the plea, I wasn’t really offered it. . . . He didn’t give me a straight-up, straightforward answer until Monday.” The State then confirmed that Defendant had rejected the plea offer on the record in open court at her arraignment on 2 September 2021. Defendant nevertheless continued to dispute that this had occurred. Once again, the State offered to bind itself to its misstated plea deal. Defendant again confirmed that she had discussed her options with Attorney Brown but claimed that they hadn’t “really discussed the details of [the] case.” She again requested an opportunity to hire her own attorney before a trial. The trial court said, “That ship may have sailed already,” and explained Defendant’s rights: “You do have an absolute right to hire a lawyer of your choice, but what you don’t have is the right to use that ability to bring about endless delays of your case. . . . We’re here for a disposition of your case this week, which can occur either through a guilty plea or a trial.”

Defendant then claimed she had spoken to another lawyer named Bill Yarborough, whom “a friend” would pay for, but had not yet retained him, and claimed that Attorney Brown had “misrepresented” her. At this time, the courtroom clerk presented the minutes of the 2 September 2021 arraignment, affirming the State’s contention that Defendant had indeed rejected the plea agreement in open court, and that Defendant had been informed that her case was set for trial during the week of 29 November 2021. A cursory web search by the State then revealed that Bill Yarborough was not admitted to the North Carolina bar. The trial court

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responded that Defendant's claim that she had discussed her case with Yarborough "[seemed] to be another reason why this would simply be a delay for no real purpose except to delay," but nevertheless allowed a recess for Defendant and Attorney Brown to speak further.

After a 77-minute recess, Defendant again informed the Court that she would like to either represent herself or hire another attorney. The trial court then read through the charges and the State's plea deal, asking Defendant several times to confirm her understanding. The trial court also stated that he doubted she was capable of defending herself and explained her rights again: "Your right to hire counsel is not an unlimited right. That right cannot be invoked at the last minute simply in order to obtain a continuance of your case." Defendant then claimed that she had discussed her case with two other lawyers, one of whom, Joshua Neilsen, could be present in court later that day. The State confirmed that Neilsen's office was "within just a stone's throw." The trial court then called for another recess "to afford [Defendant] a little bit of latitude to give [her] an opportunity to have a lawyer here at 2:00 [p.m.]."

After a lunch recess of over two hours, Defendant had failed to retain a new attorney and Attorney Brown made a motion to withdraw from the case due to a "major conflict" with his client. The trial court denied this motion out of concern that Defendant would be unable to represent herself. The trial court again confirmed Defendant understood the State's plea offer and asked Defendant if she wished to

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reject it and proceed with the trial. The State suggested that jury selection begin, allowing Defendant time to think about the plea offer overnight. The trial court commenced jury selection.

After prospective jurors had exited the courtroom, Attorney Brown expressed concerns about Defendant's competency and fitness to stand trial, and the trial court observed that Defendant had been "acting out and misbehaving" and ordered a drug test. The State made a motion to revoke Defendant's bond due to Defendant's history of failing to appear in court and her behavior in court. After failing to produce a specimen, Defendant admitted that she had used fentanyl, methamphetamine, and marijuana in the preceding three days. Based on this admission, Defendant's behavior, her pattern of failing to appear, and her interest in being present and sober during her trial, the trial court granted the State's motion to revoke the bond and called a recess until the following morning.

The following morning, 2 December 2021, before the jury was impaneled, the State once again tendered a plea offer allowing Defendant to plead guilty to one count of trafficking, in keeping with its misstated plea the previous morning. Attorney Brown stated that Defendant had agreed to accept the deal pursuant to an Alford plea. After confirming that she was sober and understood her plea, Defendant denied that she was satisfied with her representation. Because acceptance of an Alford plea requires confirmation of Defendant's satisfaction with her representation, Defendant rendered her plea impermissible. Defendant once again asked to hire her own

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attorney. The trial court restated Defendant's rights: "You are entitled to hire a lawyer of your choice, but you cannot use that right to postpone these proceedings. You were informed three months ago that your case would be scheduled for trial this week. . . . You have not convinced me of any good cause as to why your case should be postponed." The trial court then explained the rights of appeal Defendant would waive by submitting an Alford plea. Defendant expressed her understanding of the waiver and said twice: "I don't want to give up those rights." At this time, the State withdrew its plea offer, and the trial court re-commenced jury selection.

On 3 December 2021, the jury found Defendant guilty of Trafficking in Opium, Opiate, Opioid, or Heroin by Possessing Fourteen Grams or More but Less than Twenty-Eight Grams. The trial court sentenced Defendant to a mandatory term of 90-120 months of imprisonment and a \$100,000 fine. On 9 December 2021, Defendant timely filed a Notice of Appeal.

Issue

The issue on appeal is whether the trial court, in declining to continue the trial, properly balanced Defendant's right to counsel of her choosing with the need to prevent disruption of the orderly administration of justice.

Analysis

Defendant contends that the trial court denied her Motion to Continue without finding that a continuance would "cause significant prejudice" or "disruption in the orderly process of justice" as required by *State v. Goodwin*, 267 N.C. App. 437, 833

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S.E.2d 379 (2019), and *State v. McFadden*, 292 N.C. 609, 234 S.E.2d 742 (1977), depriving her of a fair trial. We disagree.

Where a motion to continue raises a constitutional issue—for example as here implicating Defendant’s right to counsel—the trial court’s ruling involves a question of law reviewable de novo by an examination of the particular circumstances presented by the record on appeal. *State v. Searles*, 304 N.C. 149, 153, 282 S.E.2d 430, 433 (1981). If the defendant can show that the denial was erroneous and the case was prejudiced as a result, it is grounds for a new trial. *Id.*

Defendant contends that the trial court erred by making a conclusory finding that she requested a continuance to find a new lawyer to delay trial. Defendant relies on the requirement that a defendant be permitted to retain their counsel of choice unless allowing a continuance to do so “would cause significant prejudice or a disruption in the orderly process of justice.” *Goodwin*, 267 N.C. App. 437 at 440, 833 S.E.2d 379 at 382. Defendant contends that the trial court made no such finding.

The Sixth Amendment right to counsel includes “a fair opportunity to secure counsel of his own choice.” *Powell v. Alabama*, 287 U.S. 45, 53, 53 S. Ct. 55, 58 (1932). However, a defendant who is “inexcusably dilatory in securing legal representation” cannot use a request to change counsel, delaying trial, if it would cause a “disruption of the orderly process of justice.” *McFadden*, 292 N.C. at 613-14, 234 S.E.2d at 745-46.

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This Court considered similar cases in *State v. Chavis*, 141 N.C. App. 553, 540 S.E.2d 404 (2000), and *State v. Wilson*, 268 N.C. App 467, 834 S.E.2d 452 (2019). In each, the defendant informed the court as trial was set to begin that he wished to hire private counsel, but that no such attorney had been retained, while the State and an appointed defense attorney were prepared to go to trial, and the trial court accordingly denied the motion. In *Chavis*, this Court explained that the right to counsel of a Defendant's choosing must be balanced against "the need for speedy disposition of the criminal charges and the orderly administration of the judicial process." *Chavis*, 141 N.C. App. at 562, 540 S.E.2d at 411. Indeed, our appellate courts have repeatedly affirmed trial court decisions to deny a motion to continue—to obtain new counsel—made on the day the trial is set to begin. *See, e.g., State v. Little*, 56 N.C. App. 765, 766-69, 290 S.E.2d 393, 394-396 (1982); *State v. Poole*, 305 N.C. 308, 318-319, 289 S.E.2d 335, 341-343 (1982).

Defendant fails to establish either that the continuance would not have disrupted the orderly process of justice or that the court erred in denying the request. The specific facts and circumstances in this case are analogous to the circumstances found in this line of cases and provide ample support for our conclusion that the trial court properly denied Defendant's Motion because a continuance would constitute an unjustifiable procedural disruption not in keeping with the court's orderly administration.

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Here, Defendant premised her Motion to Continue on her claims she was not given notice of the State's plea offer and that she did not understand that her trial would commence that week. The trial court noted these claims were contradicted by Defendant's own words at her arraignment in open court. In addition, the trial court noted that her complaint was arising for the first time, although the trial court had earlier that week permitted a two-day continuance after the State renewed its plea offer, to allow for conference between Defendant and her assigned counsel. Nevertheless, the court permitted two recesses on the first day of trial to allow Defendant a chance to follow through on the arrangements she claimed were ongoing and to retain new counsel. Ultimately, on the second day of trial, before the completion of jury selection, the trial court explained that it had denied the request because Defendant had not shown "any good cause as to why [Defendant's] case should be postponed."

Throughout the proceedings, the Record shows numerous examples of the trial court explaining Defendant's rights alongside the timeline of events, calling attention to the readiness of both parties for trial and Defendant's statements in open court expressing understanding of the schedule and plea deals. This is precisely the balancing that this Court called for in *Chavis*. *Chavis*, 141 N.C. App. at 562, 540 S.E.2d at 411. After having permitted two days of continuance and three additional hours of recess, allowing Defendant ample opportunity to retain new counsel, Defendant's failure to do so gave the court sufficient justification to find that

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Defendant had been “inexcusably dilatory” and that her efforts to obtain new counsel were an attempt to cause “a disruption to the orderly process of justice.” *McFadden*, 292 N.C. at 613-14, 234 S.E.2d at 745-46; *Goodwin*, 267 N.C. App. 437 at 440, 833 S.E.2d 379 at 382.

Thus, Defendant was afforded a fair opportunity to secure counsel of her choice, and the trial court did not abridge her rights under the Sixth Amendment. Therefore, the trial court did not err in denying Defendant’s Motion to Continue. Consequently, the trial court’s Judgment entered 29 November 2021 is affirmed.

Conclusion

Accordingly, for the foregoing reasons, we conclude that there was no error at trial, and the trial court’s Judgment is affirmed.

NO ERROR.

Judges CARPENTER and STADING concur.

Report per Rule 30(e).