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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-302

Filed 19 September 2023

Davidson County, Nos. 20CRS51464, 20CRS51466, 20CRS948

STATE OF NORTH CAROLINA

v.

BRANDON DEMORCOS STREATER, Defendant.

Appeal by defendant from judgments entered 18 August 2022 by Judge Lori I. Hamilton in Superior Court, Davidson County. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Jessica N. Price, for the State.

Wyatt Early Harris Wheeler L.L.P., by Stanley F. Hammer, for the defendant-appellant.

PER CURIAM.

Defendant¹ was charged with trafficking methamphetamine, possession with intent to sell or deliver methamphetamine (“PWISD”), and as a habitual felon. The

¹ Defendant’s name appears numerous times in the record as “Brandon *Demarcus* Streater,” but appears in the judgment as “Brandon *Demorcus* Streater.” Thus, we will refer to Defendant as “Brandon Demorcus Streater.”

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jury returned a guilty verdict on both drug charges, and Defendant subsequently entered a guilty plea on the habitual felon charge. The trial court entered judgment imposing a prison sentence on 18 August 2022. Defendant filed notice of appeal from the trafficking and PWISD judgments and a petition for certiorari as to the habitual felon conviction.

Defendant argues he received ineffective assistance of counsel (“IAC”) during his trial. Defendant’s counsel made a motion to dismiss at the close of the State’s evidence, and then Defendant testified in his own defense. Defendant’s counsel did not renew the motion to dismiss at the close of the evidence.

An IAC claim raised on appeal can be decided on the merits only if the cold record is sufficient to review the claim and no further investigation is required. *See State v. Thompson*, 359 N.C. 77, 122–23, 604 S.E.2d 850, 881 (2004) (“It is well established that ineffective assistance of counsel claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing.”) (citations and quotation marks omitted). Here, Defendant does not contend there is any need for additional investigation but asks this Court to consider his IAC claim. Defendant’s sole argument as to IAC is based on his counsel’s failure to renew the motion to dismiss at the close of the evidence based on sufficiency of the evidence, so the record is sufficient for us to review his argument. Defendant contends the State

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failed to present sufficient evidence of constructive possession of a trafficking amount of methamphetamine and that he intended to sell or distribute the methamphetamine.

It is well established that “[a] convicted defendant’s claim that counsel’s assistance was so defective as to require a reversal of a conviction . . . has two components. First, the defendant must show that counsel’s performance was deficient Second, the defendant must show that the deficient performance prejudiced the defense.” *Strickland v. Washington*, 466 U.S. 668, 687, 80 L.Ed.2d 674, 693 (1984). Defendant contends “counsel’s failure to renew a motion to dismiss at the close of all evidence amounts to constitutionally deficient performance[.]” and he “suffered prejudice as a result[.]” (Capitalization altered.) However, even if we assume for purposes of this opinion that Defendant’s counsel’s failure to move for dismissal at the close of the evidence was deficient performance, Defendant has not shown this “deficient performance prejudiced” his defense. *Id.*

The State presented testimony from Thomasville Police Officers Poole and Aguilar regarding their response to a call regarding a domestic disturbance at a Budget Inn. The door to the motel room opened as the officers approached, and a woman ran out of the room. The officers found Defendant sitting in the room holding a gray sweatshirt zip jacket. Defendant dropped the jacket, then the officers searched the room finding a digital scale, 50-60 sandwich Ziploc baggies, and a green smoking pipe. When Officer Aguilar approached Defendant, he saw Defendant drop

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something from his hand. Officer Aguilar picked it up and identified, based on his training and experience, a “small corner bag” of the type used to “hold narcotics.” Officer Aguilar then found another plastic baggie hanging out of Defendant’s pocket, and within the “gray sweatshirt hoody” in the room, he found a large bag containing several small baggies of narcotics, later identified as about 80 grams of methamphetamine.

Defendant testified in his own defense he and the woman who ran from the hotel room were dating and planning to move in together. Defendant also testified that the sweatshirt and drugs in the room did not belong to him. Defendant contends the evidence is “undisputed” that he did not actually possess the sweatshirt; no one saw him conceal drugs in the sweatshirt; there was no evidence the motel room was registered in his name; and the State presented no evidence he acted in concert with another occupant of the room. However, we must view the evidence in the light most favorable to the State and any contradictions or discrepancies in the evidence must be resolved in favor of the State. *See State v. Bullard*, 312 N.C. 129, 160, 322 S.E.2d 370, 387–88 (1984).

When a defendant moves for dismissal, the trial court must determine whether there is substantial evidence of each essential element of the offense charged (or of a lesser offense included therein), and of the defendant’s being the one who committed the crime. If that evidence is present, the motion to dismiss is properly denied. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

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In ruling on a motion to dismiss, the evidence must be considered by the court in the light most favorable to the State, and the State is entitled to every reasonable inference to be drawn from the evidence. Contradictions and discrepancies must be resolved in favor of the State, and the defendant's evidence, unless favorable to the State, is not to be taken into consideration. The test of the sufficiency of the evidence on a motion to dismiss is the same whether the evidence is direct, circumstantial, or both.

Id. (citations and quotation marks omitted).

There was substantial evidence of Defendant's constructive possession of the narcotics based on the State's evidence. Defendant's testimony that the sweatshirt did not belong to him and that he was unaware of any drugs concealed in the sweatshirt does not change our analysis. "The defendant's evidence, unless favorable to the State, is not to be taken into consideration" when considering whether the State has met its burden of sufficiency of the evidence regarding a motion to dismiss. *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 653 (1982).

Defendant cannot show that defense counsel's failure to move to dismiss at the close of all evidence prejudiced him since the State provided sufficient evidence to support a conviction for the charged offenses. *See, e.g., State v. Alston*, 193 N.C. App. 712, 716, 668 S.E.2d 383, 386 (2008) (providing factors used to determine incriminating circumstances in a constructive possession case where the defendant was not in exclusive control of the place contraband was found), *see State v. Brown*, 310 N.C. 563, 569-70, 313 S.E.2d 585, 589 (1984) (holding there was sufficient

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evidence of constructive possession despite someone other than the defendant leasing the apartment where the contraband was found since, *inter alia*, defendant was found in close proximity to the drug paraphernalia).

We have determined the trial court committed no error as to Defendant's convictions for trafficking methamphetamine and PWISD. Further, Defendant's petition for certiorari as to the habitual felon conviction was based only on his claim of IAC in the underlying felony convictions. Thus, in our discretion, we deny Defendant's petition for certiorari. *See* N.C. R. App. P. 21.

NO ERROR.

Before a panel consisting of:

Chief Judge STROUD and Judges ARROWOOD and COLLINS.

Report per Rule 30(e).