

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

NO. COA09-1440

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

STATE OF NORTH CAROLINA

v.

Onslow County  
Nos. 04CRS61940

JOSHUA SHOEMAKER

Appeal by Defendant from order entered 5 January 2009 by Judge Charles H. Henry in Onslow County Superior Court. Heard in the Court of Appeals 22 June 2010.

*Attorney General Roy Cooper, by Assistant Attorney General Thomas H. Moore, for the State.*

*Mark Montgomery, for Defendant.*

BEASLEY, Judge.

Defendant appeals from the trial court's order imposing lifetime satellite-based monitoring (SBM) for sex offenders. Defendant argues that the trial court's 2009 SBM order, based on his 2005 conviction for indecent liberties with a child, violates the *ex post facto* clauses of the state and federal constitutions. Because Defendant has not included a final SBM order in the record on appeal, we dismiss the appeal.

On 1 July 2005, Defendant agreed to plead guilty to indecent liberties with a child and to register as a sex offender. In exchange for Defendant's plea, the State agreed not to oppose a

probationary sentence. On 20 October 2005, however, the trial court imposed an active term of sixteen to twenty months imprisonment. The trial court also found that Defendant was a sexually violent predator. Defendant was released from prison in December 2006, and on 1 January 2007, he signed an agreement indicating that he understood he was subject to lifetime SBM.

On 4 December 2008, the trial court held a hearing in which it found that Defendant would be subject to lifetime SBM, but continued the matter for "final disposition." The trial court held another hearing on 5 January 2009, but there is no transcript of that hearing, or a copy of any order entered at that hearing, in the record on appeal. Instead, the record includes a "Statement Regarding An Unrecorded Judgment" prepared by Defendant's appellate counsel:

On January 5, 2009 in the Superior Court for Onslow County, after considering the defendant's constitutional objections, the Honorable Charles H. Henry entered a final order requiring the defendant to subject himself to Satellite-based monitoring for the duration of his life.

On 20 January 2009, Defendant entered written notice of appeal from "the final judgment of lifetime GPS satellite monitoring entered on January 5 2009 in the Superior Court of Onslow County." In a hearing held 7 May 2009, Defendant reiterated his desire to appeal the trial court's 5 January 2009 oral order, and the trial court entered appellate entries.

In his sole argument on appeal, Defendant contends that imposition of lifetime SBM violates the *ex post facto* clauses of the state and federal constitutions. We dismiss the appeal.

The record on appeal in a criminal case shall contain, "copies of the verdict and of the judgment, order, or other determination from which appeal is taken[.]" N.C.R. App. P. 9(3)(g) (emphasis added). "'Announcement of judgment in open court merely constitutes "rendering" of judgment, not entry of judgment.'" *State v. Crumbley*, 135 N.C. App. 59, 66, 519 S.E.2d 94, 99 (1999) (quoting *Abels v. Renfro Corp.*, 126 N.C. App. 800, 803, 486 S.E.2d 735, 737 (1997)).

This Court has held that, "although appeal of a rendered order or judgment may be timely filed, jurisdiction will not vest with this Court if judgment in substantial compliance with the judgment rendered is not subsequently entered." *Abels*, 126 N.C. App. at 804, 486 S.E.2d at 738; *see also Searles v. Searles*, 100 N.C. App. 723, 725, 398 S.E.2d 55, 56 (1990) (holding "entry of judgment is jurisdictional [and] this Court is without authority to entertain an appeal where there has been no entry of judgment"). "Likewise, this Court will dismiss an appeal if the judgment or order does not appear in the record on appeal." *Abels*, 126 N.C. App. at 804, 486 S.E.2d at 738; *see also Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008) ("A jurisdictional default . . . precludes the appellate court from acting in any manner other than to dismiss the appeal").

In this case, Defendant acknowledges that the record on appeal does not include an SBM order. Defendant nonetheless attempts to substitute a "Statement Regarding An Unrecorded Judgment" in place of a final order. In that statement, Defendant contends that the trial court "entered a final order" in open court on 5 January 2009. The rendering of an order in open court, however, is not the equivalent of the entry of a final order, and the inclusion in the record on appeal of a final order is a jurisdictional prerequisite for this Court's review. Accordingly, we dismiss Defendant's appeal.

Dismissed.

Judges STEPHENS and ERVIN concur.

Reported per Rule 30(e).