An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-448

NORTH CAROLINA COURT OF APPEALS

Filed: 17 November 2009

STATE OF NORTH CAROLINA

v. Wilkes County
No. 08 CRS 1680-81

JULIUS SANTEZ WILLIAMS

Appeal by defendant from judgment entered 15 December 2008 by Judge Edgar B. Gregory in Wilkes County Superior Court. Heard in the Court of Appeals 26 October 2009.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Thomas J. Pittman, for the State.

Sofie W. Hosford, for defendant-appellant.

JACKSON, Judge.

Julius Santez Williams ("defendant") appeals the 15 December 2008 order imposing satellite-based monitoring ("SBM") based on his right to be free from double jeopardy; the alleged vagueness of North Carolina General Statutes, section 14-208.40B; and the testimonial nature of the risk assessment presented as evidence against him. For the reasons stated herein, we affirm.

On 31 January 2008, defendant pled guilty to three counts of taking indecent liberties with a child. Defendant's sentence was suspended for thirty-six months with supervised probation. Prior

to 25 August 2008, defendant violated the terms of his probation. On 13 November 2008, the court modified the terms of defendant's probation. Defendant again violated the conditions of his probation, and his probation was revoked on 15 December 2008. On the same date, the trial court ordered defendant to enroll in SBM for a period of ten years. At the SBM hearing, the main evidence offered against defendant was a Static 99 Risk Assessment ("Static 99"), which labeled defendant as high risk. Defendant's probation officer, who had filled out the Static 99, testified at the hearing, but his supervisor — who was trained to administer Static 99 forms and had reviewed defendant's Static 99 — did not testify. Defendant appeals the trial court's imposition of SBM.

Defendant argues, first, that the trial court violated his right to be free from double jeopardy by imposing SBM eleven months after he was sentenced for the same offense. Second, defendant contends that the SBM statute, North Carolina General Statutes, section 14-208.40B, is void for vagueness, a violation of his due process rights. Defendant did not preserve either of these issues for appellate review.

"In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion[.]" N.C. R. App. P. Rule 10(b)(1) (2009). "'It is well settled that an error, even one of constitutional magnitude, that defendant does not bring to the trial court's attention is waived and will not be considered on appeal.'" *State v. Bell*, 359 N.C. 1, 28, 603 S.E.2d 93, 112 (2004) (holding that defendant failed to

raise the issue of double jeopardy at trial and therefore, waived the issue on appeal) (quoting *State v. Wiley*, 355 N.C. 592, 615, 565 S.E.2d 22, 39 (2002), *cert. denied*, 537 U.S. 1117, 154 L. Ed. 2d 795 (2003)); *see also State v. Worley*, __ N.C. App. __, __, 679 S.E.2d 857, 864 (2009) (holding that defendant failed to raise the issue of void for vagueness at trial and therefore, waived the issue on appeal).

Neither the record nor the transcript in this case shows any request, objection, or motion predicated on either a double jeopardy or a void for vagueness argument. Because defendant did not preserve these arguments for review, we do not address them here.

Defendant's final argument is that the trial court erred, or committed plain error, by admitting the Static 99, which was testimonial in nature, thereby violating his right to confront adverse witnesses. Defendant also failed to preserve this issue.

When a party does not raise the issue of the Confrontation Clause at the trial level, it is nonetheless reviewable pursuant to a plain error analysis. *State v. Lemons*, 352 N.C. 87, 96, 530 S.E.2d 542, 547-48 (2000) (holding that defendant failed to raise the issue of violation of the Confrontation Clause at trial and therefore, review of the issue must be for plain error). "*In criminal cases*, a question which was not preserved by objection noted at trial . . . nevertheless may be made the basis of an assignment of error where the judicial action questioned is . . .

contended to amount to plain error." N.C. R. App. P. Rule 10(c)(4) (2007) (emphasis added).

"In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. However, "the protections of the Confrontation Clause do not apply in civil cases of this nature." *In re T.M.*, 180 N.C. App. 539, 548, 638 S.E.2d 236, 241 (2006) (referring to an adjudication of neglect, but equally applicable here) (citing *In re B.D.*, 174 N.C. App. 234, 243, 620 S.E.2d 913, 919 (2005), *disc. rev. denied*, 360 N.C. 289, 628 S.E.2d 245 (2006); *In re D.R.*, 172 N.C. App. 300, 303-04, 616 S.E.2d 300, 303-04 (2005)). The General Assembly intended to create, and did create, the SBM statutes as a civil, regulatory program. *State v. Bare*, __ N.C. App. __, __, 677 S.E.2d 518, 531 (2009) ("We hold that the restrictions imposed by the SBM provisions do not negate the legislature's expressed civil intent."). Because the Confrontation Clause is a protection afforded only criminal defendants, it is not applicable to civil regulations such as SBM. Accordingly, we do not address the merits of this issue.

We hold that defendant failed to preserve his arguments relating to double jeopardy, void for vagueness, and the Confrontation Clause.

Affirmed.

Chief Judge MARTIN and Judge ERVIN concur.

Report per Rule 30(e).