

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-114
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Avery County
No. 08 CRS 50357

LAWRENCE D. PATTERSON

Appeal by defendant from order entered 18 July 2012 by Judge Gary M. Gavenus in Avery County Superior Court. Heard in the Court of Appeals 7 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General Yvonne B. Ricci, for the State.

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender Andrew DeSimone, for defendant-appellant.

BRYANT, Judge.

On 25 March 2009, Lawrence Dale Patterson ("defendant") pled guilty to indecent liberties with a child and was sentenced to a term of sixteen to twenty months imprisonment. On 18 July 2012, the trial court entered an order requiring that defendant be enrolled in a sex offender satellite-based monitoring ("SBM") program for thirty years. Defendant appeals.

We first consider defendant's argument that the trial court failed to inquire into his indigent status and right to appointed counsel.

Pursuant to N.C. Gen. Stat. § 14-208.40B(b), at a hearing to determine whether a defendant should be required to enroll in SBM, "[u]pon the court's determination that the offender is indigent and entitled to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to rules adopted by the Office of Indigent Defense Services." N.C. Gen. Stat. § 14-208.40B(b) (2011).

Here, defendant did not appear at the SBM hearing with counsel and the trial court made no inquiry into defendant's indigent status. Defendant had been represented by appointed counsel prior to entering his guilty plea upon the charge of indecent liberties with a child. Upon giving notice of appeal from the SBM order, the trial court again determined that defendant was indigent and appointed counsel to represent him on appeal. On 10 September 2012, the trial court apparently realized its error, and upon its own motion, entered an order setting aside the SBM order. However, defendant had already given notice of appeal and the trial court was divested of jurisdiction. See *State v. Davis*, 123 N.C. App. 240, 242, 472

S.E.2d 392, 393 (1996) ("The general rule is that the jurisdiction of the trial court is divested when notice of appeal is given, except that the trial court retains jurisdiction for matters ancillary to the appeal[.]"). Consequently, the trial court's order setting aside the SBM order was void. Accordingly, because the trial court erred by not making an inquiry into defendant's indigent status and right to appointed counsel, we reverse the SBM order and remand for a new hearing.

Reversed and remanded.

Judges HUNTER, Robert C., and McCULLOUGH concur.

Report per Rule 30(e).