

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-411
NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2013

STATE OF NORTH CAROLINA

v. Mecklenburg County
Nos. 00 CRS 25816
ANTONIO JENNINGS 07 CRS 201598

Appeal by defendant from order entered 7 December 2012 by Judge F. Lane Williamson in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 September 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Joseph Finarelli, for the State.

Richard Croutharmel for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals from the trial court's order requiring him to register as a sex offender and enroll in a satellite-based monitoring ("SBM") program for the duration of his natural life. We dismiss the appeal as the record is insufficient to review defendant's sole argument on appeal.

On 2 April 2001, defendant pled guilty to one count of indecent liberties with a child. Defendant was indicted for a

subsequent charge of indecent liberties with a child on 29 January 2007, and pled guilty to the charge on 10 December 2007. On 7 December 2012, defendant appeared before Judge F. Lane Williamson for a hearing pursuant to N.C. Gen. Stat. § 14-208.40B to determine defendant's eligibility for enrollment in the SBM program. The trial court found that: (1) "defendant was convicted of a reportable conviction as defined by G.S. 14-208.6(4)[;]" and (2) "defendant is a recidivist" which is "one of the categories requiring satellite-based monitoring under G.S. 14-208.40[.]" The trial court ordered that defendant enroll in SBM for "the remainder of [his] natural life." Defendant timely filed written notice of appeal.

Defendant's sole argument on appeal is that the trial court reversibly erred by violating his procedural due process rights when it conducted an SBM hearing where he had not received notice of the basis for the Division of Adult Correction's preliminary determination that he should be required to enroll in SBM.

When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, the Division of Adult Correction shall make an initial determination on whether the offender falls

into one of the categories described in G.S. 14-208.40(a).

If the Division of Adult Correction determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Division of Adult Correction, shall schedule a hearing in superior court for the county in which the offender resides. The Division of Adult Correction shall notify the offender of the Division of Adult Correction's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt. Upon 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(a), (b) (2011). Defendant contends the Court should vacate the SBM order and remand the matter for a new hearing because "there is no record evidence that the Division of Adult Correction sent proper notice to [defendant] as required by N.C. Gen. Stat. § 14-208.40B."

"It is well settled that a silent record supports a presumption that the proceedings below are free from error, and it is the duty of the appellant to see that the record is properly made up and transmitted to the appellate court." *State*

v. Perry, 316 N.C. 87, 107, 340 S.E.2d 450, 462 (1986). Here, presumably defendant received some sort of notice as he was appointed counsel on 22 May 2012 and appeared with counsel for the SBM hearing on 7 December 2012. Furthermore, the trial court found: "The Department of Correction has made an initial determination that the offender falls into at least one of the categories requiring satellite-based monitoring under G.S. 14-208.40, and gave notice to the offender of the applicable [sic] category(ies)." However, the record does not contain a copy of this notice. Unless defendant received oral notice, which he does not allege, without a copy of the notice, we are unable to consider the merits of defendant's argument that he did not receive notice of the basis for the Division of Adult Correction's preliminary determination that he should be required to enroll in SBM.

Appeal dismissed.

Judges HUNTER (Robert C.) and BRYANT concur.

Report per Rule 30(e).