

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-604  
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

STATE OF NORTH CAROLINA

v.

Martin County  
No. 13 CRS 126

CHRISTOPHER RAY LUCKADOO,  
Defendant.

Appeal by defendant from order entered 10 January 2014 by Judge Wayland J. Sermons, Jr. in Martin County Superior Court. Heard in the Court of Appeals 20 October 2014.

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

*W. Michael Spivey for defendant-appellant.*

GEER, Judge.

Defendant Christopher Ray Luckadoo appeals from the trial court's order requiring him to enroll in satellite-based monitoring ("SBM") for the remainder of his natural life. Defendant argues that this order was not authorized under N.C. Gen. Stat. § 14-208.40B (2013) to the extent that it ordered lifetime SBM. We agree and, therefore, vacate the order.

Facts

On 25 September 2013, defendant was convicted by a jury of taking indecent liberties with a child. The trial court sentenced defendant to an active term of 27 to 42 months imprisonment.

On 19 November 2013, the trial court conducted a hearing to determine defendant's eligibility for SBM. At the hearing, the State presented a "STATIC-99" risk assessment form which placed defendant in the "high risk" category. Defendant contested the accuracy of the assessment, and the trial court appointed counsel for defendant and continued the hearing. The trial court conducted another hearing on 7 January 2014, during which the State again presented a "STATIC-99" risk form which placed defendant in the "high risk" category. Defendant did not contest the assessment. The trial court found that defendant was convicted of a reportable offense that involved the physical, mental, or sexual abuse of a minor and, therefore, ordered him to enroll in a SBM program. The trial court also ordered that defendant be enrolled in the SBM program for the remainder of his natural life.

On 22 January 2014, defendant filed a pro se notice of appeal that failed to fully comply with the requirements of N.C.R. App. P. 3. After defendant was appointed counsel, he filed an amended but untimely notice of appeal. Defendant,

however, has filed an alternative petition for writ of certiorari acknowledging that his notice of appeal is deficient. In the interest of justice, we hereby allow his petition. See *State v. Clark*, 211 N.C. App. 60, 71, 714 S.E.2d 754, 762 (2011) (granting defendant's petition for certiorari after defendant gave ineffective notice of appeal from SBM order).

Discussion

Defendant contends, and the State concedes, that the trial court erred in ordering him to enroll in SBM for the duration of his natural life. Defendant does not contest the validity of the "STATIC-99" assessment and concedes that there is adequate evidence to support a determination that he is subject to SBM for a definite term of years. Consequently, he argues, and the State agrees, that the order should be vacated and the case should be remanded for further proceedings for a determination of an appropriate term of years for SBM. We also agree.

Under the framework of N.C. Gen. Stat. § 14-208.40B, a trial court is required to first determine whether the defendant was convicted of a reportable offense. If the trial court finds that the defendant was convicted of a reportable offense, then the trial court must determine whether the defendant falls into one of the following four categories: "(i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-

208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A[.]" N.C. Gen. Stat. § 14-208.40B(c). If the trial court finds that the defendant falls into one of these categories, the trial court "shall order the offender to enroll in satellite-based monitoring for life." *Id.*

If the trial court determines that the defendant does not fall into one of those four categories, but "committed an offense that involved the physical, mental, or sexual abuse of a minor," the trial court is required to order the Division of Adult Correction to complete a risk assessment on the offender. *Id.* Upon receipt of the risk assessment, the court must determine whether, based on the risk assessment, "the offender requires the highest possible level of supervision and monitoring." *Id.* If the court determines that the defendant does require the highest level of monitoring, the court "shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court." *Id.*

Here, the trial court correctly found that taking indecent liberties with a child is a reportable offense as defined by N.C. Gen. Stat. § 14-208.6(4) (2013) and that the offense involved the physical, mental, or sexual abuse of a minor.

However, defendant does not fall into any of the categories requiring lifetime monitoring. Specifically, the trial court did not find that defendant was a recidivist or a sexually violent predator. Additionally, defendant was not convicted of a violation of N.C. Gen. Stat. § 14-27.2A or -27.4A (2013). Further, this Court has previously held that taking indecent liberties with a child is not an aggravated offense pursuant to N.C. Gen. Stat. 14-208.6(1a). See *State v. Davison*, 201 N.C. App. 354, 361, 689 S.E.2d 510, 515 (2009). Therefore, the trial court erred in ordering defendant to enroll in SBM for the remainder of his natural life.

We note that defendant does not contest the risk assessment or that he is required to enroll in SBM for a definite term of years. Because the trial court has already found (1) that defendant committed an offense involving the physical, mental, or sexual abuse of a minor; (2) that defendant is "high risk" based on his "STATIC-99" assessment; and (3) that defendant requires the highest level of supervision and monitoring, the only issue left for the trial court to determine is the specific period of time for which defendant is required to enroll in SBM. See N.C. Gen. Stat. § 14-208.40A(e) (2013). Accordingly, we vacate the order of the trial court and remand the case for further proceedings consistent with this opinion.

Vacated and remanded.

Judges CALABRIA and McCULLOUGH concur.

Report per Rule 30(e).