

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-930
NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

STATE OF NORTH CAROLINA

v.

Wake County
No. 05CRS115060

BRIAN CHRISTOPHER PUGH

Appeal by Defendant from order entered 28 February 2014 by Judge Carl R. Fox in Wake County Superior Court. Heard in the Court of Appeals 12 January 2015.

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

Russell J. Hollers III, for the Defendant.

DILLON, Judge.

Brian Christopher Pugh ("Defendant") appeals from the trial court's order requiring him to enroll in satellite-based monitoring ("SBM") for the remainder of his natural life. We affirm.

On 6 February 2006, Defendant pleaded guilty to second-degree rape and second-degree sex offense. On 11 September 2006, the

trial court sentenced Defendant to seventy-three to ninety-seven months in prison.

Thereafter, the Department of Correction made an initial determination that Defendant falls into one of the categories requiring satellite-based monitoring pursuant to N.C. Gen. Stat. § 14-208.40B (2014). On 28 February 2014, the trial court conducted a hearing on the matter. Upon finding that Defendant was convicted of a reportable conviction and an aggravated offense, the trial court ordered Defendant to enroll in the SBM program for the remainder of his natural life. Defendant appeals.

Defendant claims that SBM violates the constitutional prohibitions on ex post facto laws, the Double Jeopardy Clause, and due process rights related to his guilty plea. Defendant acknowledges that our Supreme Court has held satellite-based monitoring is not a criminal punishment. *See State v. Bowditch*, 364 N.C. 335, 352, 700 S.E.2d 1, 13 (2013) (holding that the SBM program is a civil regulatory scheme and therefore "does not violate the Ex Post Facto Clauses of the state or federal constitution"). He nonetheless requests that this Court re-examine the holding in *Bowditch* and declare that SBM is a criminal punishment.

We are bound by *Bowditch*. We have “no authority to overrule decisions of the Supreme Court[.]” *Dunn v. Pate*, 334 N.C. 115, 118, 431 S.E.2d 178, 180 (1993) (internal marks omitted).

Furthermore, we have previously rejected Defendant’s double jeopardy and due process arguments. See *State v. Anderson*, 198 N.C. App. 201, 204-05, 679 S.E.2d 165, 167 (2009) (holding that SBM does not constitute a violation of a defendant’s right to be free from double jeopardy because it is not a punishment), *disc. review denied*, 364 N.C. 436, 702 S.E.2d 491 (2010); *State v. Bare*, 197 N.C. App. 461, 479-80, 677 S.E.2d 518, 531-32 (2009) (holding that SBM enrollment was not a direct consequence of a no contest plea and therefore the defendant’s plea was not involuntary and his due process rights were not violated). We are bound by our prior decisions in *Anderson* and *Bare*. See *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.”). Defendant has raised no other issues for review, and we are bound by both our own decisions and our Supreme Court’s decision. We therefore affirm the order of the trial court.

AFFIRMED.

Judges ELMORE and STEELMAN concur.

Report per Rule 30(e).