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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-505

Filed: 1 November 2016

Wake County, No. 05 CRS 81735

STATE OF NORTH CAROLINA

v.

RAKEITH LUNSFORD

Appeal by defendant from order entered 8 January 2016 by Judge Michael J. O’Foghludha in Wake County Superior Court. Heard in the Court of Appeals 24 October 2016.

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

Stephen G. Driggers for defendant-appellant.

TYSON, Judge.

Defendant Rakeith Lunsford (“Defendant”) appeals from an order requiring him to enroll in satellite-based monitoring (“SBM”) for the remainder of his natural life. We reverse and remand.

I. Background

On 27 March 2006, Defendant pled guilty to second degree rape, trafficking in cocaine by transportation, and trafficking in cocaine by possession. The trial court

STATE V. LUNSFORD

Opinion of the Court

consolidated the offenses for judgment and sentenced Defendant to 116 to 149 months imprisonment.

On 8 January 2016, Defendant appeared before the trial court for a hearing to determine whether his enrollment in SBM was required by N.C. Gen. Stat. § 14-208.40A (2015). The trial court found that Defendant had been convicted of an aggravated offense and, as a result, ordered Defendant be enrolled in SBM for the remainder of his natural life. *See* N.C. Gen. Stat. § 14-208.40A(c). Defendant gave notice of appeal in open court.

II. Jurisdiction

We first address the issue of whether Defendant's appeal is properly before us. SBM hearings and proceedings are not criminal actions, but are instead a "civil regulatory scheme." *State v. Brooks*, 204 N.C. App. 193, 194, 693 S.E.2d 204, 206 (2010). A defendant must give written notice of appeal in civil actions pursuant to N.C.R. App. P. 3(a), which requires notice of appeal to be filed and entered with the clerk of superior court. *Id.* at 195, 693 S.E.2d at 206. Defendant's oral notice of appeal in the trial court was insufficient to confer jurisdiction upon this Court.

On 23 June 2016, Defendant filed his brief in this Court along with his petition for writ of certiorari. In his petition, Defendant asserts he filed a written notice of appeal on 23 June 2016. Defendant attached a copy of the written notice of appeal to the petition; but the copy is not file stamped. Even if the notice of appeal was filed

STATE V. LUNSFORD

Opinion of the Court

on 23 June 2016, Defendant admits that his written notice of appeal was not timely filed and entered in accordance with Rules 3(a) and 3(c)(1) of the North Carolina Rules of Appellate Procedure. Defendant's appeal must be dismissed, based on his failure comply with N.C.R. App. P. 3. *See Brooks v. Gooden*, 69 N.C. App. 701, 707, 318 S.E.2d 348, 352 (1984) ("Without proper notice of appeal, this Court acquires no jurisdiction.").

Due to his oral notice of appeal's failure to confer jurisdiction upon this Court and the absence of a filed and entered written notice of appeal in the record, Defendant filed a petition for writ of certiorari contemporaneously with the filing of his brief as an alternative basis for our review of his case. In our discretion, we grant Defendant's petition.

III. Issue

Defendant contends the trial court erred by ordering lifetime enrollment in SBM in the absence of evidence from the State that lifetime SBM was a reasonable search of Defendant under the Fourth Amendment of the United States Constitution. U.S. Const. amend. IV. The State concedes it failed to present evidence and the trial court erred by failing to make findings regarding the reasonableness of the search of Defendant prior to enrolling him in SBM.

IV. Analysis

STATE V. LUNSFORD

Opinion of the Court

In *Grady v. North Carolina*, 575 U.S. ___, ___, 191 L. Ed. 2d 459, 462 (2015), the Supreme Court of the United States held that North Carolina's SBM program "effects a Fourth Amendment search." This Court has clarified that the trial court must "determine, based on the totality of the circumstances, if the SBM program is reasonable when properly viewed as a search." *State v. Blue*, ___ N.C. App. ___, ___, 783 S.E.2d 524, 527 (2016) (citations omitted); *see also State v. Morris*, ___ N.C. App. ___, ___, 783 S.E.2d 528, 529-30 (2016).

In *Blue*, we held, under the Fourth Amendment, "the State shall bear the burden of proving that the SBM program is reasonable." *Blue*, ___ N.C. App. at ___, 783 S.E.2d at 527.

The State presented no evidence at the SBM hearing prior to the trial court ordering Defendant to enroll in SBM for the remainder of his natural life. The court made no findings that lifetime SBM constituted a reasonable search of Defendant.

V. Conclusion

Without evidence from the State upon which it could have concluded that SBM was a reasonable search under the circumstances, the trial court erred by ordering Defendant to enroll in SBM. The trial court's SBM order is reversed. This case is remanded for a new hearing, during which the trial court shall determine if lifetime SBM is a reasonable search based on the totality of the circumstances.

REVERSED AND REMANDED.

STATE V. LUNSFORD

Opinion of the Court

Judges STROUD and INMAN concur.

Report per Rule 30(e).