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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-511

Filed: 6 December 2016

New Hanover County, No. 15 CRS 8129

STATE OF NORTH CAROLINA

v.

JOSHUA STROESSENREUTHER

Appeal by defendant from order entered 13 November 2015 by Judge W. Allen Cobb, Jr. in New Hanover County Superior Court. Heard in the Court of Appeals 22 September 2016.

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

The Law Office of Sterling Rozear, PLLC, by Sterling Rozear, for defendant.

DIETZ, Judge.

Defendant Joshua Stroessenreuther appeals from the trial court's imposition of lifetime satellite-based monitoring and lifetime sex offender registration following his conviction on two child sex offenses charges. Stroessenreuther also seeks to correct a clerical error on the trial court's judgment form.

As explained below, we affirm Stroessenreuther's conviction and sentence but remand for the limited purpose of correcting the clerical error on the judgment form.

We reject Stroessenreuther's facial challenge to our State's satellite-based monitoring laws for the reasons stated in *State v. Stroessenreuther*, COA No. 16-151, __ N.C. App. __, __ S.E.2d __ (2016). The State concedes error in the imposition of lifetime satellite-based monitoring and lifetime sex offender registration on the record before us. We therefore vacate and remand those orders for further proceedings consistent with this opinion.

Facts and Procedural History

On 27 October 2015, Defendant Joshua Stroessenreuther entered an *Alford* plea to one count of sex offense with a child by an adult and one count of indecent liberties with a child. At the sentencing hearing, the trial court determined that Stroessenreuther had a prior record level of I and sentenced him accordingly. But on the written Judgment and Commitment Form, a checkbox indicates that Stroessenreuther had a prior record level of III. The trial court sentenced Stroessenreuther to 300 to 420 months of imprisonment in accordance with his plea agreement and the statutory minimum sentence for the statutory sex offense charge.

The trial court also heard the State's requests to impose satellite-based monitoring and sex offender registration. The trial court found that Stroessenreuther had been convicted of a reportable conviction as defined by N.C. Gen. Stat. § 14-208.6(4) and that he had been convicted of a sexually violent offense involving a sexual offense with a child. The court also found that Stroessenreuther had not been

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classified as a sexually violent predator, that he is not a recidivist, and that he was not convicted of an aggravated offense. Finally, the court found that Stroessenreuther's offenses involved the physical, mental, or sexual abuse of a minor. Based on those findings, the trial court ordered Stroessenreuther both to register as a lifetime sex offender and enroll in lifetime satellite-based monitoring.

During the hearing, Stroessenreuther argued that the satellite-based monitoring statute violates the Fourth Amendment both on its face and as applied to Stroessenreuther, relying on the U.S. Supreme Court's recent decision in *Grady v. North Carolina*, 135 S. Ct. 1368 (2015). The State did not respond to these arguments and the trial court did not address them. Stroessenreuther timely appealed.¹

Analysis

I. Clerical Error on Judgment and Commitment Form

Stroessenreuther first asserts that the trial court made a clerical error on the Judgment and Commitment form by marking the box indicating that he was a Prior Record Level III after the trial court found in open court that he was a Prior Record Level I. He concedes that this error did not impact his sentence, which was imposed

¹ There are some minor irregularities in the written notice of appeal: the caption mistakenly lists "State of Pender" instead of "State of North Carolina" with Pender crossed out and replaced with a handwritten "NC"; the notice contains the wrong file number which is also crossed out; and the file stamp is handwritten rather than stamped. Stroessenreuther filed a precautionary petition for a writ of certiorari with this Court in the event the Court concludes the notice of appeal is defective. We hold that the notice of appeal is sufficient to confer jurisdiction under N.C. R. App. P. 3(d) despite these minor irregularities and therefore dismiss the petition for a writ of certiorari as moot.

in accordance with his plea agreement and the statutory minimum sentence, but requests remand for correction of the clerical error.

“When, on appeal, a clerical error is discovered in the trial court’s judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record ‘speak the truth.’” *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008). “This Court has held that an error on a judgment form which does not affect the sentence imposed is a clerical error, warranting remand for correction but not requiring resentencing.” *State v. Gillespie*, __ N.C. App. __, __, 771 S.E.2d 785, 790 (2015). Accordingly, although we affirm the sentence, we remand for the limited purpose of correcting the clerical error in Stroessenreuther’s prior record level on the Judgment and Commitment form.

II. Facial and As-Applied Challenges to Satellite-Based Monitoring

Stroessenreuther next argues that the trial court erred in ordering him to enroll in lifetime satellite-based monitoring because North Carolina’s satellite-based monitoring statute is unconstitutional on its face and as applied to him under the U.S. Supreme Court’s decision in *Grady*. Stroessenreuther raised the same facial and as-applied constitutional challenges to the satellite-based monitoring program in a separate appeal from a separate set of sex offense convictions. For the reasons stated in our published opinion in that case, *State v. Stroessenreuther*, COA No. 16-151, __ N.C. App. __, __ S.E.2d __ (2016), we reject Stroessenreuther’s facial challenge, vacate

the trial court's imposition of lifetime satellite-based monitoring, and remand for the trial court to conduct a hearing on the reasonableness of the monitoring.

III. Lifetime Sex Offender Registration

Finally, Stroessenreuther argues that the trial court erred in imposing lifetime sex offender registration after finding that he was not a sexually violent predator, was not a recidivist, and was not convicted of an aggravated offense. The State concedes that the trial court erred when it imposed lifetime sex offender registration on this record, and we agree.

Under N.C. Gen. Stat. § 14-208.23, lifetime sex offender registration is authorized only for persons who are recidivists, convicted of an aggravated offense, or classified as a sexually violent predator. Here, the trial court found that Stroessenreuther did not meet any of the three criteria warranting lifetime registration. Accordingly, we vacate the trial court's imposition of lifetime sex offender registration and remand for further proceedings.

Conclusion

For the reasons discussed above, we affirm the trial court's judgment and sentence, but remand for the limited purpose of correcting the clerical error on the judgment form. We vacate the trial court's imposition of lifetime satellite-based monitoring and lifetime sex offender registration and remand for further proceedings consistent with this opinion.

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AFFIRMED IN PART; REMANDED FOR CORRECTION OF CLERICAL
ERROR IN PART; VACATED AND REMANDED IN PART.

Judges HUNTER, JR. and McCULLOUGH concur.

Report per Rule 30(e).