IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-552

Filed: 6 December 2016

Pamlico County, Nos. 13 CRS 50198-99

STATE OF NORTH CAROLINA

v.

TRAVIS LEE MEEKER, Defendant.

Appeal by Defendant from order entered 28 September 2015 by Judge Kenneth Crow in Pamlico County Superior Court. Heard in the Court of Appeals 17 November 2016.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for Defendant-Appellant.

INMAN, Judge.

Travis Lee Meeker ("Defendant") appeals from an order subjecting him to satellite-based monitoring ("SBM"). Because there is insufficient competent evidence in the record to support the court's finding that Defendant requires the highest possible level of supervision and monitoring, we reverse the order.

On 22 September 2014, Defendant pled guilty pursuant to a plea agreement to two counts of taking indecent liberties with a child, and one count each of second

degree sexual offense and disseminating obscenity to a minor under the age of thirteen. The trial court sentenced Defendant to an active term of 48 to 118 months of imprisonment for the charge of second degree sexual offense. The trial court sentenced Defendant to consecutive terms of 16 to 29, 16 to 29, and 6 to 17 months of imprisonment for the remaining charges, but suspended the sentences and ordered that Defendant be placed on 60 months of supervised probation upon his release from incarceration.

On 28 September 2015, the trial court held a hearing to determine whether Defendant should be enrolled in SBM. Thereafter, the trial court entered an order which included findings that: (1) Defendant was convicted of a reportable conviction as defined by N.C. Gen. Stat. § 14-208.6; (2) the offense was committed against a minor or an attempt to commit such an offense, and Defendant was not the parent; (3) the offense was a sexually violent offense or an attempt to commit such an offense; (4) the offense was not an aggravated offense; (5) Defendant was not a recidivist or predator; and (6) the offense did involve the physical, mental, or sexual abuse of a minor. Accordingly, the trial court ordered Defendant, upon his release from prison, to be enrolled in a SBM program for twenty years. Defendant appeals.

Defendant argues that the trial court erred in ordering him to enroll in SBM. The State concedes error. We agree.

In the present case, Defendant pled guilty to a reportable offense as defined by N.C. Gen. Stat. § 14-208.6(4) (2015). Where, as here, the reportable offense involves the physical, mental, or sexual abuse of a minor, and the defendant was not convicted of an aggravated offense, or determined to be a recidivist or a sexually violent predator, the trial court must order that the Division of Adult Correction ("DAC") conduct a risk assessment of the defendant. N.C. Gen. Stat. § 14-208.40A(d) (2015). If the trial court determines that the defendant requires "the highest possible level of supervision and monitoring" based on DAC's risk assessment that defendant poses a "high" risk of re-offending, the court is required to order the defendant to enroll in a SBM program for a period of time to be specified by the court. N.C. Gen. Stat. § 14-208.40A(e) (2015).

In both *State v. Kilby*, 198 N.C. App. 363, 679 S.E.2d 430 (2009), and *State v. Causby*, 200 N.C. App. 113, 683 S.E.2d 262 (2009), this Court reversed an order enrolling the defendant in an SBM program when the trial court found that the defendant required "the highest possible level of supervision and monitoring" notwithstanding the Department of Correction's risk assessment that the defendant posed only a "moderate" risk of re-offending. In both cases, this Court held that the Department's "moderate" rating was not sufficient standing alone to support the SBM order. *Kilby*, 198 N.C. App. at 369, 679 S.E.2d at 434; *Causby*, 200 N.C. App. at 117, 683 S.E.2d at 265.

Here, the sole evidence presented by the State was a referral form or "Static-99R Coding Form" upon which DAC indicated that Defendant had a score of 5 and was a "Moderate-High" risk. This Court has held that "Moderate–High . . . constitutes 'Moderate' for the purposes of our precedent." *State v. Smith*, __ N.C. App. __, __ n. 1, 769 S.E.2d 838, 840 n.1 (2015). Pursuant to *Kilby* and *Causby*, we conclude that the State's evidence was insufficient to support the trial court's determination that Defendant required the highest possible level of supervision and monitoring. Accordingly, we reverse.

REVERSED.

Judges STROUD and TYSON concur.

Report per Rule 30(e).