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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-637-2

Filed: 20 October 2020

Beaufort County, No. 11 CRS 50617

STATE OF NORTH CAROLINA

v.

ORLANDO COOPER

On remand by order of the North Carolina Supreme Court on 4 September 2019 in *State v. Cooper*, 372 N.C. 720, 831 S.E.2d 588 (2019), remanding this Court's decision filed 5 March 2019 for reconsideration in light of the Supreme Court's opinion in *State v. Grady*, 372 N.C. 509, 831 S.E.2d 542 (2019). Case originally appealed by defendant from order entered 19 February 2018 by Judge Wayland J. Sermons, Jr. in Beaufort County Superior Court.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Sonya M. Calloway-Durham, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant.*

DIETZ, Judge.

Defendant Orlando Cooper appeals the trial court's imposition of lifetime

satellite-based monitoring. We reverse the trial court's order for the reasons discussed in *State v. Griffin*, \_\_ N.C. App. \_\_, 840 S.E.2d 267 (2020).

### **Facts and Procedural History**

In 2011, Defendant Orlando Cooper was indicted for first degree rape and indecent liberties with a child. Cooper entered into a plea agreement with the State, pleaded guilty to second degree rape, and ultimately was sentenced to 58 to 79 months in prison. In 2016, Cooper was released from prison.

After Cooper's release from prison, the State sought to impose satellite-based monitoring because Cooper met the statutory criteria. On 22 January 2018, the trial court conducted a "bring-back" hearing to determine Cooper's eligibility for the program. At the hearing, the State did not introduce any evidence regarding the efficacy of satellite-based monitoring or how that monitoring would protect the public from Cooper's potential recidivism. On 19 February 2018, the trial court ordered Cooper to enroll in lifetime satellite-based monitoring. Cooper appealed.

On appeal, this Court vacated the trial court's imposition of lifetime satellite-based monitoring, holding that the case was controlled by this Court's decision in *State v. Griffin*, 260 N.C. App. 629, 630, 818 S.E.2d 336, 337 (2018), *remanded*, 372 N.C. 723, 839 S.E.2d 841 (2019). *See State v. Cooper*, 264 N.C. App. 249, 824 S.E.2d 209 (2019) (unpublished).

The State petitioned for discretionary review with the Supreme Court. The

Supreme Court allowed the State's petition for discretionary review for the limited purpose of remanding this case for reconsideration in light of the Supreme Court's decision in *State v. Grady*, 372 N.C. 509, 831 S.E.2d 542 (2019) (*Grady III*).

### **Analysis**

After this appeal returned to us on remand from the Supreme Court, we asked the parties to submit supplemental briefing addressing the impact of *Grady III* on this case. After the parties submitted that briefing, this Court issued its opinion on remand in *State v. Griffin*, \_\_ N.C. App. \_\_, 840 S.E.2d 267 (2020) (*Griffin II*). That case is controlling here and compels us to reverse the imposition of satellite-based monitoring.

In *Griffin II*, this Court held that a convicted criminal defendant who served his prison sentences has “appreciable privacy interests in his person, his home, and his movements” and that these interests are impaired by satellite-based monitoring. \_\_ N.C. App. at \_\_, 840 S.E.2d at 275–76. The Court further held that, in light of these privacy interests, the State cannot establish the reasonableness of the monitoring without at least some evidence of its “efficacy in accomplishing the State’s professed aims.” *Id.* at \_\_, 840 S.E.2d at 276. This means that the State has “the burden of coming forward with some evidence that its SBM program assists in apprehending sex offenders, deters or prevents new sex offenses, or otherwise protects the public.” *Id.* at \_\_, 840 S.E.2d at 275. The State did not present this sort of evidence in *Griffin*

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*II* and the Court therefore reversed the imposition of satellite-based monitoring.

This case is factually indistinguishable from *Griffin II*. As in that case, the State in this case did not present any evidence concerning the efficacy of the monitoring. Accordingly, we are bound by *Griffin II* and must reverse the trial court's order.

We recognize that this Court recently has reversed the imposition of satellite-based monitoring in a number of cases, all relying on *Griffin II* and related decisions from this Court. The Supreme Court allowed the State's motion for a temporary stay in *Griffin II* and has stayed a number of other recent satellite-based monitoring decisions from this Court. *See State v. Griffin*, 374 N.C. 265, 838 S.E.2d 460 (2020); *State v. Gordon*, 374 N.C. 430, 839 S.E.2d 351 (2020). Because it appears from the record that Cooper has served his sentence and is now subject to satellite-based monitoring under the trial court's order, we issue this opinion despite the uncertainty in the jurisprudence on this issue. The State, if it chooses, may seek a stay in this case from the Supreme Court, as it did in *Griffin II* and related cases.

REVERSED.

Judges STROUD and MURPHY concur.

Report per Rule 30(e).