IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-769

Filed 18 July 2023

Nash County, No. 19CRS50811

STATE OF NORTH CAROLINA

v.

WALLACE BELFIELD, JR., Defendant.

Appeal by defendant from judgment entered 21 July 2021 by Judge Quentin T. Sumner in Nash County Superior Court. Heard in the Court of Appeals 10 May 2023.

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

Office of the Appellate Defender, by Appellate Defender Glenn Gerding and Assistant Appellate Defender James R. Grant, for defendant-appellant.

FLOOD, Judge.

Wallace Belfield, Jr. ("Defendant") appeals from the trial court's final order imposing satellite-based monitoring ("SBM"). On appeal, Defendant argues the trial court erred by ordering him to submit to twenty-five years of SBM when he scored a four on the Static-99, indicating a "moderate-high" risk of recidivism; further, the court failed to make additional findings of facts showing Defendant required "the

highest possible level of supervision and monitoring." After careful review, we conclude that the court erred when it failed to make additional findings of fact to support its imposition of SBM on Defendant. Accordingly, we remand to the trial court for further findings of fact regarding whether Defendant requires SBM.

I. Factual and Procedural History

On 19 August 2020, this matter was heard in Nash County Superior Court. The same day, Defendant pleaded guilty to, *inter alia*, one count of indecent liberties with a child. Defendant was sentenced as a prior record Level VI with twenty-six points, to a presumptive range of thirty-three to forty-nine months, and to a second presumptive range of twenty to thirty-three months.

On 27 October 2020, the State and Defendant appeared for an SBM hearing. The State provided that Defendant, while on post-release supervision for a different offense, pleaded guilty to indecent liberties after "a teenager snuck into the halfway house" and "had sex with" Defendant. Defendant scored a five on the Static-99, a risk assessment tool used by the Department of Correction to assess a criminal defendant's likelihood of reoffending. Defendant contended that the Static-99 contained irregularities regarding the name of the person being evaluated by the Static-99. The trial court continued the matter to allow the State an opportunity to correct the Static-99.

On 21 July 2021, the trial court reconvened to determine whether Defendant required SBM. Dr. Vernon Ted Jamison ("Dr. Jamison"), the State's witness and a

psychologist who conducted the new Static-99 assessment, testified that Defendant's score was four, which is a "moderate-high" or "above average risk" of recidivism. Dr. Jamison noted he was not aware of any prior sexual offenses on Defendant's record, and Dr. Jamison attributed Defendant's "moderate-high" Static-99 score to Defendant's criminal record related to violent crimes.

The State next called as a witness Ron West ("Mr. West"), who is a chief probation officer and sex offender supervisor in Nash County. During his testimony, Mr. West read aloud a relevant portion of the Static-99, which stated that offenders with a score of four "have been found to sexually recidivate at 6.1 to 12.2 percent after five years." The State then asked Mr. West what his "normal recommendation" would be for an offender with a score of four, to which Mr. West replied, "[t]hat the offender definitely be placed on SBM." The State also asked Mr. West if there were any additional factors that would contribute to the higher risk level that are not factored into the Static-99 test. Mr. West replied that, upon review of Defendant's criminal history,

> [Mr. West's] major concern with [Defendant] would be locating him, based upon his frequent use of halfway houses and not having a stable place to live. The primary use of the SBM is just being able to locate an offender that has sex offenses. With a person that does not have a stable residence, it's very important to know where they're at.

After Defendant testified on his own behalf, Defendant's counsel objected to the entry of a finding that SBM is required. After allowing Defendant to make a final

statement, the trial court orally ordered that Defendant submit to twenty-five years of SBM, and specifically provided that:

> The Static-99, having revealed that . . . Defendant is a Level [four] for the purposes of determination of [SBM], the Court makes the following findings to support a decision that the use of [SBM] is not cruel and unusual punishment as defined by the State of North Carolina Constitution or the United States Federal Constitution; therefore, the use of this instrument does not violate either the State or Federal Constitution.
>
> In addition, the Court finds that the use of [SBM] reduces recidivism and is a reliable instrument for the stated purpose therein.
>
> The Court orders that . . . Defendant be enrolled in a[n SBM] program for a . . . period of [twenty-five] years upon his release from the Department of North Carolina Public Safety.

The trial court entered its written order on the AOC-CR-615 (11/18) form, concluding Defendant requires "the highest possible level of supervision and monitoring" and requiring Defendant to enroll in SBM for twenty-five years upon release from imprisonment. The written order provides that the trial court's conclusion was based on the risk assessment contained in the Static-99. The checkbox was marked denoting that the court's conclusion was also based on "additional findings [found] on the attached [form 618]." The Record on appeal, however, does not contain a form 618. Defendant provided timely, written notice of appeal.

II. Jurisdiction

"[T]his [C]ourt has jurisdiction to consider appeals from SBM monitoring determinations under N.C. Gen. Stat. § 14–208.40B pursuant to N.C. Gen. Stat. § 7A–27." *State v. Singleton*, 201 N.C. App. 620, 626, 689 S.E.2d 562, 566 (2010).

III. Analysis

Defendant argues the trial court erred by imposing SBM when Defendant scored a four on his Static-99, and the trial court failed to make additional factual findings. We agree.

On appeal from an order imposing SBM, "we review the trial court's findings of fact to determine whether they are supported by competent record evidence, and we review the trial court's conclusions of law for legal accuracy and to ensure that those conclusions reflect a correct application of law to the facts found." *State v. Kilby*, 198 N.C. App. 363, 367, 679 S.E.2d 430, 432 (2009) (quoting *State v. Garcia*, 358 N.C. 382, 391, 597 S.E.2d 724, 733 (2004)). Accordingly, we review the trial court's conclusion that Defendant required "the highest possible level for supervision and monitoring" to ensure that it "reflect[s] a correct application of law to the facts found." *See id.* at 367, 679 S.E.2d at 432.

N.C. Gen. Stat. §§ 14-208.40A and 14-208.40B provide the procedural process for SBM hearings. *See* N.C. Gen. Stat. §§ 14-208.40A–B (2021). When a defendant has been convicted of an applicable offense, and the trial court has not previously determined during the sentencing phase whether SBM is required, N.C. Gen. Stat. § 14-208.40B applies. Here, Defendant had been convicted of indecent liberties with a

child, an applicable offense, and the trial court did not make an SBM determination when Defendant was sentenced; therefore, N.C. Gen. Stat §14-208.40B governs. *See* N.C. Gen. Stat. § 14-208.40B.

In making an SBM determination, based on the results of a defendant's risk assessment and any other evidence presented by the State or by the defendant, the trial court must decide whether the defendant requires "the highest possible level of supervision and monitoring." *See* N.C. Gen. Stat. §14-208.40B; *see Kilby*, 198 N.C. App. at 367, 679 S.E.2d at 432 n.2 ("The 'highest level of supervision and monitoring' simply refers to SBM.") (internal quotation marks omitted). Absent a "high risk" Static-99 score, the trial court must make additional findings of fact to justify its conclusion that the defendant requires SBM. *Kilby*, 198 N.C. App. at 369, 679 S.E.2d at 434.

Here, the second Static-99 assessment scored Defendant as a level four, indicating a "moderate-high" risk of recidivism. Defendant argues that the second Static-99 assessment contained errors; correcting these errors would have resulted in a score of three, "moderate," instead of a score of four, "moderate-high." This distinction is immaterial to our analysis.

For the purposes of determining whether SBM is appropriate, a "moderate-high" score constitutes a "moderate" score, requiring additional findings of fact. *State v. Smith*, 240 N.C. App. 73, 75 n.1., 769 S.E.2d 838, 840 n.1 (2015). "This Court has previously held that a . . . risk assessment of moderate, *without more*, is

insufficient to support the finding that a defendant requires the highest possible level of supervision and monitoring." *State v. Jones*, 234 N.C. App. 239, 243, 758 S.E.2d 444, 447–48 (2014) (emphasis in original) (citation and internal quotation marks omitted). Put another way, a Static-99 score of moderate or moderate-high requires a trial court to make additional findings of fact when deciding to impose SBM. *See Jones*, 234 N.C. App. at 243, 758 S.E.2d at 448. Further,

> if a defendant is assessed as a moderate risk and the State presented no evidence to support findings of a higher level of risk or to support the requirement for the highest possible level of supervision and monitoring, the trial court's order must be reversed. In contrast, if the State presented any evidence at the SBM hearing that would support the highest level, it would be proper to remand this case to the trial court to consider the evidence and make additional findings.

Id. at 243, 758 S.E.2d at 447–48 (citations and internal quotation marks omitted).

Defendant argues that this case is similar to *Kilby*, in which this Court heard a defendant's appeal from a trial court's order imposing five to ten years of SBM following a conviction for second-degree sexual assault and indecent liberties with a minor. *See Kilby*, 198 N.C. App. at 365–66, 679 S.E.2d at 431–32. In reversing the order, this Court held SBM was inappropriate when the defendant was assessed as a "moderate risk," and there was no evidence presented that could support a finding of the highest level of supervision and monitoring. *Id* at 370, 679 S.E.2d at 434.

Unlike the evidence in *Kilby*—which only supported a finding that the defendant was a moderate risk—here, Mr. West's testimony concerning recidivism,

his normal recommendation for an offender with a score of four, and additional factors that would contribute to a higher risk level that are not factored into the Static-99 test would have supported a finding that Defendant required the highest level of supervision and monitoring. *See Jones*, 234 N.C. App. at 247, 758 S.E.2d at 450. While the trial court indicated that their findings of facts concerning the imposition of SBM were contained in the "attached" form 618, no form 618 exists in the Record on appeal, and the Record does not evince the trial court made the requisite findings of fact. Our case law provides that "if the State presented *any* evidence at the SBM hearing that would support the highest level, it would be proper to remand this case to the trial court to consider the evidence and make additional findings." *Jones*, 234 N.C. App. at 243, 758 S.E.2d at 448 (emphasis added) (citations and internal quotation marks omitted).

In his brief, Defendant refers to the need for the trial court's additional findings to be supported by "competent record evidence." Because Mr. West's testimony, however, was not explicit as to the reasonableness of SBM and Defendant did not, pursuant to Rule 10, preserve for our review the competency of the State's evidence, we decline to invoke Rule 2 to consider the competency of the State's evidence. *See Jones*, 234 N.C. App. at 239, 758 S.E.2d at 448 ("A trial court may order a defendant receive the highest level of supervision and monitoring if it makes additional findings regarding the need for the highest level of supervision and where there is competent record evidence to support those additional findings.") (citation and internal

quotation marks omitted); *see* N.C.R. App. P. 2; *see* N.C.R. App. P. 10. As the State produced some evidence which would have supported a finding that Defendant required SBM, we vacate and remand to the trial court to consider the evidence and make findings of fact regarding the imposition of SBM. *See Kilby*, 198 N.C. App. at 369, 679 S.E.2d at 434; *see Jones*, 234 N.C. App. at 243, 758 S.E.2d at 448.

IV. Conclusion

Because the State presented evidence that would support a finding that Defendant required the highest level of supervision and monitoring, we vacate and remand to the trial court to consider the evidence and make the requisite findings of fact.

VACATED AND REMANDED.

Judges MURPHY and GORE concur.

Report per Rule 30(e)