IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-359

Filed 19 December 2023

Forsyth County, No. 20CRS51343

STATE OF NORTH CAROLINA

v.

JOSEPH JORDAN JOHNSON, Defendant.

Appeal by defendant from judgment entered 6 October 2022 by Judge Michael A. Stone in Forsyth County Superior Court. Heard in the Court of Appeals 15 November 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Kayla D. Britt, for the State.

Holton Law Firm, PLLC, by Walter C. Holton, Jr., for appellant-defendant.

FLOOD, Judge.

Joseph Jordan Johnson ("Defendant") appeals the trial court's order that he register as a sex offender. After careful review, we find no error.

I. Factual and Procedural Background

On 7 February 2020, Defendant and his girlfriend were shopping at a Belk store in Hanes Mall in Winston-Salem, North Carolina. They both entered a women's dressing room, and while Defendant's girlfriend was changing in a stall, Defendant waited outside. Defendant stood outside the door for approximately four to five minutes. When Defendant's girlfriend exited the dressing room, she sent Defendant to get more clothes for her to try. While Defendant was getting more clothes, another customer, "Jessie,"[1] informed Defendant's girlfriend that Defendant had taken a photo of Jessie while she was changing in the adjacent stall.

Jessie reported the incident to Lieutenant Dorn and Detective Darga, two police officers working at the mall in an off-duty capacity. The officers apprehended Defendant and requested to search his phone, to which Defendant consented. The officers found two videos in the "trash" folder of his phone: the first was a video of an unknown female trying on pants in a dressing room, and the second showed an attempt by Defendant to record a video up the skirt of an unknown woman in a Victoria's Secret store. Following the discovery of the two videos, Defendant was arrested and charged with misdemeanor "secret peeping."

Following Defendant's arrest, officers seized Defendant's phone for evidentiary purposes, and, after officers confirmed the phone belonged to Defendant and obtained a search warrant, they discovered three more videos, each with different subjects,

[1] A pseudonym has been used for the name of the victim pursuant to N.C.R. App. P. 42(b).

taken without the subjects' consent on Defendant's phone. The first video found on Defendant's phone featured a topless Jessie, who, after she saw Defendant's phone's reflection in the dressing room mirror, quickly covered herself with her arms. The second video showed an unknown woman in her underwear, who was changing clothes in a dressing room. The third video depicted another unknown woman, whose breasts were exposed, while she was trying on bras in a dressing room.

On 3 May 2021, a Forsyth County Grand Jury indicted Defendant on one count of peeping into a room and using a device to create a photographic image in violation of N.C. Gen. Stat. § 14-202(d) (2021), and two counts of possessing a photo obtained by peeping in violation of N.C. Gen. Stat. § 14-202(g) (2021). Defendant entered into a plea agreement in which he pled guilty "as charged in the indictment," and the State agreed to sentence Defendant in the mitigated range and to a term of probation. Immediately following Defendant's guilty plea, the State requested, and the trial court granted, a hearing on whether Defendant should be required to register as a sex offender pursuant to N.C. Gen. Stat. § 14-202(*l*) (2021).

At the hearing, a letter from Greg Letourneau ("Letourneau"), a licensed clinical social worker who served as Defendant's counselor, was entered into the record. The letter stated that, in Letourneau's view, Defendant suffered from "borderline sexual addiction/compulsivity," which can cause people with "similar sexual templates and behavior to progress into compulsive sexual predators." The

trial court also received a Static-99 report[2] into evidence that supported this contention. The Static-99 report determined Defendant was "well above [the] average risk" of reoffending. Still, Letourneau did not recognize Defendant as a sexual predator and expressed that Defendant displayed remorse and a level of self-control since his arrest. The State's evidence also included a victim-impact statement made by Jessie. Jessie testified that she was twenty-one years old at the time of the incident, and it was concerning to her that Defendant had no reason to know whether she was over the age of eighteen when he decided to film her. She further told the trial court the unknown women Defendant had recorded would only receive justice "by everyone knowing who [Defendant] is, where [Defendant] is, and more importantly, what [Defendant] is, and that is a sexual predator."

After the hearing, Judge Stone found two mitigating factors: Defendant (1) voluntarily acknowledged his wrongdoing to a law enforcement officer at an early stage of the criminal process; and (2) accepted responsibility for his conduct. In determining whether to order Defendant to register as a sex offender, the trial court considered Letourneau's assessment, Hodge's victim statement, and the nature of the events. The trial court ultimately found that Defendant was a danger to the community and ordered that he register as a sex offender, a designation which, in the

[2] A Static-99 Coding Form is a risk prediction instrument used to determine the likelihood a defendant will reoffend. This prediction is based on various aggravating factors, including the age of the victim, the relationship between the victim and the defendant, and the number of prior sex offenses committed by the defendant.

trial court's view, would further the purposes of N.C. Gen. Stat. §14-208.5 (2021). On 20 October 2022, Defendant filed a timely notice of appeal, challenging his designation as a sex offender.

II. Jurisdiction

This Court has jurisdiction to review a final judgment of a superior court. N.C. Gen. Stat. § 7A-27(b)(1) (2021).

III. Analysis

Defendant's only assignment of error on appeal is that the trial court improperly required him to register as a sex offender. Defendant argues that the trial court did not have competent evidence to support a finding that he is a danger to the community—a determination which is necessary to enter a registration order. We disagree.

A trial court's determination that a defendant is a danger to the community pursuant to N.C. Gen. Stat § 14-202(*l*) is neither strictly a question of law nor fact. *State v. Pell,* 211 N.C. App. 376, 380–81, 712 S.E.2d 189, 192 (2011); *see also State v. Kilby*, 198 N.C. App. 363, 366, 679 S.E.2d 430, 432 (2009) ("The standard of review for the trial court's findings of fact is well-established: [t]he trial court's 'findings of fact are conclusive on appeal if supported by competent evidence . . . .'"). As such, this Court will review the trial court's findings of fact to ensure they are supported by competent evidence, and it will review the trial court's conclusions of law to ensure "a correct application of law to the facts." *Pell*, 211 N.C. App. at 381, 712 S.E.2d at

192. Evidence is deemed competent if "a reasonable mind might accept [it] as adequate to support the finding." *State v. Chukwu*, 230 N.C. App. 553, 561, 749 S.E.2d 910, 916 (2013). Conclusions of law are reviewed *de novo*. *State v. Parker*, 285 N.C. App. 610, 625, 878 S.E.2d 661, 673 (2022).

N.C. Gen. Stat. § 14-202(*l*) dictates that when any person is convicted under sub-section (d) or (g), "the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in [Section 14-208.5]." N.C. Gen. Stat. § 14-202(*l*). The General Assembly, in promulgating these rules, recognized that "sex offenders often pose a high risk of engaging in sex offenses even after being released . . . ." N.C. Gen. Stat. § 14-208.5. To address this issue, it created a scheme which recognizes that "law enforcement agencies and the public need additional information about sex offenders because of the risks these individuals pose to communities and children." *State v. Fuller*, 376 N.C. 862, 866, 855 S.E.2d 260, 264 (2021) (interpreting this from "the plain language of [Section 14-208.5]"); *see also* N.C. Gen. Stat. § 14-208.5.

The phrase "danger to the community" is not defined by the statute, but this Court, compelled by an examination of legislative intent, has defined the phrase to apply to those defendants "who pose a risk of engaging in sex offenses following their [convictions.]" *Pell*, 211 N.C. App. at 381, 712 S.E.2d at 192. This determination does not rest solely upon the consideration of a single factor; instead, a trial court must

weigh all the evidence to determine whether a defendant "currently constitutes a 'danger to the community'" or whether, "based upon the defendant's conduct within the relevant past, there is a reasonable probability of similar conduct by the defendant in the near future." *Fuller*, 376 N.C. at 868, 855 S.E.2d at 265–66.

In *Fuller*, our Supreme Court upheld a trial court's finding that the defendant was a danger to the community and should be required to register as a sex offender. *Id.* at 869, 855 S.E.2d at 266. The defendant in *Fuller* lived with the Smith family and, after setting up cameras throughout the house, took pictures of and recorded Mrs. Smith in varying stages of undress. *Id.* at 863, 855 S.E.2d at 262–63. In determining whether to order the defendant to register as a sex offender, our Supreme Court considered the following facts:

> (1) defendant's willingness to take advantage of a close, personal relationship; (2) defendant's use and execution of a sophisticated scheme intended to avoid detection; (3) the extended period of time that defendant deployed the hidden camera and obtained images of the victim; (4) defendant's ability and decision to repeatedly invade the victim's privacy; (5) defendant's ability and willingness to cause significant and lasting emotional harm to his victim; (6) the ease with which defendant could commit similar crimes again in the future; and (7) defendant's lack of remorse.

Id. at 869, 855 S.E.2d at 266. These facts, the Court held, reasonably supported the trial court's determination that the defendant was a danger to the community. *Id.* at 869, 855 S.E.2d at 266.

Defendant seeks to distinguish his situation from *Fuller*, placing heavy emphasis on the seven facts enumerated above and arguing primarily that, unlike the defendant in *Fuller*, Defendant did not employ a sophisticated scheme or take advantage of a close personal relationship. This argument, however, fails to appreciate that the facts used in *Fuller* are not factors that the State is required to meet to sustain an order requiring registration as a sex offender. Instead, a reviewing court must look at *all* the facts presented and consider whether competent evidence supports the trial court's findings. *See id.* at 868, 855 S.E.2d at 266 ("A determination that a defendant 'is a danger to the community' is not based solely upon the consideration of a singular fact or predictive analysis. Rather, a trial court reaches such a finding through considering and weighing all of the evidence."). We now turn to the facts of the case at bar.

Here, there is competent evidence in the Record to support the trial court's finding that Defendant was a danger to the community. First, Letourneau submitted a letter to the trial court representing that Defendant has "borderline sexual addiction/compulsivity," which in people with a similar disposition, has manifested into them becoming compulsive sexual predators. Second, Defendant's Static-99 report stated that Defendant was "well above [the] average risk" of reoffending. Finally, when looking at the incident itself, Defendant repeatedly took advantage of numerous women of unknown ages by recording them in varying degrees of undress without their knowledge or consent. These facts may not be as egregious or long-

lasting as those in *Fuller*, but this is not the standard. We instead must determine whether "a reasonable mind might accept [them] as adequate," *see Chukwu*, 230 N.C. App. at 561, 749 S.E.2d at 916, to support a finding that Defendant "pose[s] a risk of engaging in sex offenses following [his] release from incarceration." *See Pell*, 211 N.C. App. at 381, 712 S.E.2d at 192. For the reasons detailed above, we conclude a reasonable mind might accept those facts as adequate to support the conclusion that Defendant poses a risk of recidivism.

Defendant seeks further refuge in *Pell* where this Court reversed the order of the trial court requiring the defendant to register as a sex offender. This comparison, however, falls flat.

In *Pell*, the defendant pled guilty to eight counts of felony secret peeping, and the trial court subsequently ordered the defendant to register as a sex offender. *Id.* at 376–77, 712 S.E.2d at 190. On appeal, this Court determined that the trial court "erroneously found that [the d]efendant was a 'danger to the community.'" *Id.* at 381, 712 S.E.2d at 192. This Court found it significant that the State's expert witness determined that the defendant represented a low to moderate risk of reoffending, and the defendant's witnesses opined that the violations were driven in part by the defendant's diagnoses of major depressive disorder and alcohol abuse, both of which were in remission. *Id.* at 381–82, 712 S.E.2d at 193.

Here, Defendant points to the State's failure to produce expert testimony regarding Defendant's chance of reoffending and argues that Letourneau's

statements regarding his "borderline sexual addiction/compulsivity" speak only to whether his condition *can* progress into something more, not whether it would. This, however, misses the point. There is no requirement that the trial court determine Defendant will reoffend; it must only determine whether there is a reasonable risk that he will. *See Pell*, 211 N.C. App. at 381, 712 S.E.2d at 192. In this case, unlike in *Pell*, there is evidence that suggests a likelihood of reoffending. Letourneau, while not classifying Defendant as a sexual predator, included in his report that people with similar dispositions *can* progress into becoming predators, and Defendant's Static-99 classified his disposition as *well above* the average risk for reoffending. These facts alone distinguish the case at hand from *Pell.*

The trial court, therefore, did not err in ordering Defendant to register as a sex offender because there is competent evidence that Defendant is a danger to the community.

IV. Conclusion

We conclude there is competent evidence to support the trial court's finding that Defendant was a danger to the community and the trial court, therefore, did not err.

NO ERROR.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).