IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-335

Filed 6 February 2024

Forsyth County, No. 20 CRS 52316

STATE OF NORTH CAROLINA

v.

VINCENT LEONARD ROEBUCK

Appeal by defendant from judgment entered 13 September 2022 by Judge Steve R. Warren in Forsyth County Superior Court. Heard in the Court of Appeals 14 November 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Meredith L. Britt, for the State.

Mark Montgomery for defendant-appellant.

ZACHARY, Judge.

Defendant Vincent Leonard Roebuck appeals from the judgment entered upon his conviction of sexual activity by a custodian in order to raise an argument which he concedes is precluded by binding Supreme Court precedent. We conclude that Defendant received a fair trial, free from error.

BACKGROUND

On 20 July 2020, a grand jury indicted Defendant for two counts of sexual activity by a custodian (government or private institution employee) pursuant to N.C. Gen. Stat. § 14-27.31(b). In particular, Defendant was alleged to have (1) "engage[d] in a sexual act with [Stella][1] at a time when [she] was in custody of Addiction Recovery Care Association, Inc. (ARCA), an institution at which [Defendant] was then employed[,]" and (2) "engage[d] in vaginal intercourse with [Stella] at a time when [she] was in custody of [ARCA], an institution at which [Defendant] was then employed."

On 12 September 2022, Defendant's case was called for trial. Defendant moved to dismiss the charges against him, which the trial court denied, and the jury found him guilty of one count of sex activity by a custodian (government or private institution employee). The trial court entered judgment against Defendant and sentenced him to a minimum of 30 to 96 months in the custody of the North Carolina Division of Adult Correction. The trial court also ordered that, upon Defendant's release from custody, Defendant register as a sex offender for the remainder of his natural life. Defendant gave oral notice of appeal in open court.

DISCUSSION

N.C. Gen. Stat. § 14-27.31(b) defines criminal sexual activity by a custodian as follows:

> If a person having custody of a victim of any age or a person

[1] A pseudonym is used to protect the identity of the victim.

> who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony.

N.C. Gen. Stat. § 14-27.31(b) (2021).

Defendant argues that "the trial court erred by denying [his] motion to dismiss because there was insufficient evidence that ARCA had Stella in 'custody' " within the meaning of N.C. Gen. Stat. § 14-27.31 where she was free to leave the in-patient drug treatment facility at which Defendant was employed. This argument has no merit.

As Defendant concedes, our Supreme Court has concluded that "a facility such as ARCA has 'custody' of its residents within the meaning of [N.C. Gen. Stat. § 14-27.31] as a matter of law." In *State v. Raines*, our Supreme Court held that the ordinary meaning of the word "custody" as employed in this statute "include[s] an aspect of care" such that the statute "applies to voluntary patients in a private hospital." 319 N.C. 258, 262, 354 S.E.2d 486, 489 (1987). On appeal to this Court, Defendant seeks to preserve for Supreme Court review the argument that the *Raines* "holding should be reconsidered and [Defendant]'s conviction set aside."

"We acknowledge that [Defendant has] presented . . . arguments . . . to depart" from the Supreme Court's holding in *Raines*. *Connette v. Charlotte-Mecklenburg Hosp. Auth.*, 272 N.C. App. 1, 6, 845 S.E.2d 168, 172 (2020) (holding no error where this Court recognized that the party raised the argument in order to preserve the

issue for Supreme Court review of its prior precedent), *rev'd*, 382 N.C. 57, 58, 876 S.E.2d 420, 422 (2022) (overruling *Byrd v. Marion General Hosp.*, 202 N.C. 337, 162 S.E. 738 (1932)). "We lack the authority to consider those arguments." *Id.* Moreover, *Raines* "is a Supreme Court opinion. We have no authority to modify [*Raines*]'s comprehensive holding . . . . Only the Supreme Court can do that." *Id.*

Accordingly, we do not further address Defendant's arguments, "but recognize that [the arguments] were presented to us and thus are preserved should [Defendant] seek further appellate review." *Id.* at 7, 845 S.E.2d at 172.

CONCLUSION

For the reasons stated above, we conclude that the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Chief Judge DILLON and Judge STROUD concur.

Report per Rule 30(e).