

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-663

Filed: 16 February 2016

Pitt County, No. 06 CR 4252

STATE OF NORTH CAROLINA

v.

JOHNNY ALLDRED

Appeal by defendant from order entered 13 January 2015 by Judge Thomas D. Haigwood in Pitt County Superior Court. Heard in the Court of Appeals 27 January 2016.

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

Ryan McKaig for defendant-appellant.

TYSON, Judge.

Johnny Alldred (“Defendant”) appeals from an order directing him to enroll in satellite-based monitoring for the remainder of his natural life. We affirm.

I. Background

Defendant was convicted of one count of taking indecent liberties with a child in 1990. In 2006, he was convicted of two counts of misdemeanor sexual battery. On 13 January 2015, the Superior Court of Pitt County held a hearing to determine Defendant’s eligibility for satellite-based monitoring. *See* N.C. Gen. Stat. § 14-

208.40B(a) (2013) (“When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, the Division of Adult Correction shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).”); N.C. Gen. Stat. § 14-208.40B(b) (2013) (“If the Division of Adult Correction determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Division of Adult Correction, shall schedule a hearing in superior court for the county in which the offender resides.”)

Based on Defendant’s convictions from 1990 and 2006, the court found Defendant to be a recidivist sexual offender, and ordered him to be enrolled in satellite-based monitoring for the remainder of his natural life. Defendant appeals.

II. Issues

Defendant argues the superior court’s order violates the ex post facto and double jeopardy prohibitions contained within the United States and North Carolina Constitutions.

III. Analysis

Defendant concedes in his brief that North Carolina’s appellate courts have previously held that North Carolina’s satellite-based monitoring program is a civil regulatory scheme, which does not implicate either the ex post facto or double

jeopardy constitutional prohibitions or protections. *See State v. Bowditch*, 364 N.C. 335, 352, 700 S.E.2d 1, 13 (2010) (holding the satellite-based monitoring program does not violate the ex post facto clauses of the state or federal constitutions); *State v. Anderson*, 198 N.C. App. 201, 204-05, 679 S.E.2d 165, 167 (2009) (holding that because the satellite-based monitoring program is civil in nature and does not constitute a punishment, it cannot violate a defendant's constitutional right to be free from double jeopardy), *disc. review denied*, 364 N.C. 436, 702 S.E.2d 491 (2010).

Defendant raises these issues solely for “preservation purposes.” Defendant also does not raise or argue any issues regarding the reasonableness of the imposition of satellite-based monitoring under the Fourth Amendment. *Grady v. North Carolina*, ___ U.S. ___, 135 S. Ct. 1368, 191 L. Ed. 2d 459 (2015).

We are bound by these prior and binding opinions and overrule Defendant's arguments. *See Dunn v. Pate*, 334 N.C. 115, 118, 431 S.E.2d 178, 180 (1993) (“[The Court of Appeals] has no authority to overrule decisions of [the] Supreme Court and [has] the responsibility to follow those decisions until otherwise ordered by the Supreme Court.” (quotation marks omitted)); *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.”).

IV. Conclusion

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Opinion of the Court

Based upon the issues before us in this appeal, the superior court's order directing Defendant to be enrolled in satellite-based monitoring for the remainder of his natural life is affirmed.

AFFIRMED.

Judges CALABRIA and DAVIS concur.