An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-652

Filed: 7 August 2018

Carteret County, No. 13 CRS 54303

STATE OF NORTH CAROLINA

v.

ROBERT HUGHES SPRINGLE

Appeal by defendant from order entered 14 February 2017 by Judge Benjamin G. Alford in Carteret County Superior Court. Heard in the Court of Appeals 14 November 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Joseph Finarelli, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for defendant-appellant.

BRYANT, Judge.

Where a jurisdictional default was created by defendant's failure to give a notice of appeal in compliance with Rule 3 of our Rules of Appellate Procedure and where defendant's petition for a writ of certiorari was denied by a prior panel of this Court, we dismiss defendant's appeal.

On 4 September 2014, in Carteret County Superior Court, before the Honorable Benjamin G. Alford, Judge presiding, defendant pled guilty to two counts of felonious indecent exposure. The State had previously dismissed one charge of indecent exposure. The trial court entered judgment in accordance with defendant's plea agreement, and defendant was sentenced to concurrent active terms of eight-to-ten months. Defendant was given credit for time served, both active terms were suspended, and defendant was placed on supervised probation for a period of sixty months.

On 10 November 2014, defendant was the subject of a probation review hearing for satellite-based monitoring (SBM). Following the hearing conducted before the Honorable Jack Jenkins, Judge presiding, the trial court entered an order in which it found that felonious indecent exposure was a sexually violent offense, as defined by our General Statutes, section 14-208.6(5), and that defendant was a recidivist, as defined by section 14-208.6(1a). The court ordered defendant to register as a sex offender for his natural life. The court further ordered that defendant be enrolled in a SBM program for his natural life. Defendant appealed the 2014 order.

On appeal, this Court noted that defendant's written notice of appeal failed to comply with Rule 3 of our Rules of Appellate Procedure (Appeal in Civil Cases—How and When Taken). Defendant had failed to provide a certificate of service with his notice—a jurisdictional default—and thus, his appeal was subject to dismissal. *State*

v. Springle, 244 N.C. App. 760, 763, 781 S.E.2d 518, 520 (2016) (hereinafter *Springle I*). However, this Court granted a writ of certiorari to review defendant's SBM order, acknowledging that the State conceded it suffered no prejudice as a result of defendant's defective notice.

The matter was heard before this Court on 3 November 2015, and on 5 January 2016, this Court issued an opinion reversing the trial court's SBM order on the ground that there was insufficient evidence to conclude defendant was a recidivist sex offender. In *Springle I*, this Court remanded the matter to the trial court for a new SBM hearing to determine if any of defendant's prior out-of-state convictions were substantially similar to North Carolina sex offenses and thus supported the conclusion that defendant was a recidivist sex offender.

A new SBM hearing was held on 13 February 2017, this time before Judge Alford. Following the hearing, the trial court concluded that: defendant's prior out of state convictions for "lewd and lascivious exhibition" were substantially similar to North Carolina offenses; the current offenses were sexually violent offenses; and defendant was a recidivist sex offender. After the trial court made findings and conclusions that the search inherent in SBM was reasonable as to defendant, defendant was again ordered to register as a sex offender for life and to enroll in the SBM program for life. Defendant appeals.

Again, we note that defendant's notice of appeal fails to comply with Rule 3 of our Rules of Appellate Procedure. As stated in *Springle I*, "[o]ur Court has interpreted SBM hearings and proceedings as civil, as opposed to criminal, actions, for purposes of appeal. Therefore, 'a defendant must give notice of appeal pursuant to N.C. R. App. P. 3(a),' from an SBM proceeding." 244 N.C. App. at 763, 781 S.E.2d at 520 (quoting *State v. Brooks*, 204 N.C. App. 193, 194–95, 693 S.E.2d 204, 206 (2010));[1] *see also State v. Bowditch*, 364 N.C. 335, 352, 700 S.E.2d 1, 13 (2010) ("The SBM program at issue was enacted with the intent to create a civil, regulatory scheme . . . .").

Pursuant to Rule 3, "[a]ny party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding *may take appeal by filing notice of appeal with the clerk of superior court* and serving copies thereof upon all other parties . . . ." N.C. R. App. P. 3(a) (2018) (emphasis added). At the conclusion of the 13 February 2017 hearing after the trial court rendered its judgment imposing lifetime SBM, defendant gave oral notice of appeal.

"Because the record on appeal does not contain a written notice of appeal filed with the clerk of superior court, which was served upon the State, this appeal must be dismissed." *Brooks*, 204 N.C. App. at 195, 693 S.E.2d at 206 (citations omitted).

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[1] This Court has held that "[w]hile oral notice of appeal is proper in 'criminal action[s,]' as permitted under N.C. R. App. P. 4(a)(1), oral notice of appeal is insufficient to confer jurisdiction on this Court in civil proceedings. N.C. R. App. P. 3(a); *Melvin v. St. Louis*, 132 N.C. App. 42, 43, 510 S.E.2d 177, 177 (1999)." *Brooks*, 204 N.C. App. at 194, 693 S.E.2d at 206.

Realizing his oral notice of appeal rendered his appeal subject to dismissal, defendant filed a petition for writ of certiorari with this Court pursuant to Rule 21 of our Rules of Appellate Procedure. In support of his petition, defendant cited, *inter alia*, *State v. Blue*, 246 N.C. App. 259, 263, 783 S.E.2d 524, 526 (2016) (granting the defendant's petition for writ of certiorari after giving oral notice of appeal from SBM order).

On 7 July 2017, this Court sent the parties an order indicating that defendant's petition for a writ of certiorari and the State's response was referred to the panel that would hear the appeal. However, the petition had been denied by a prior sitting panel of this Court. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 36 (1989) ("[O]ne panel of the Court of Appeals may not overrule the decision of another panel on the same question in the same case." (citation omitted)). An amended order to that effect was recently issued to the parties.

As the failure of defendant's notice of appeal to comply with Rule 3 represents a jurisdictional default and defendant's petition for a writ of certiorari has been denied by a panel of this Court, we dismiss defendant's appeal.

DISMISSED.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).