An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-637

Filed: 5 March 2019

Beaufort County, No. 11 CRS 50617

STATE OF NORTH CAROLINA

v.

ORLANDO COOPER

Appeal by defendant from order entered 19 February 2018 by Judge Wayland J. Sermons, Jr., in Beaufort County Superior Court. Heard in the Court of Appeals 28 November 2018.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant.

DIETZ, Judge.

Defendant Orlando Cooper appeals the trial court's imposition of lifetime satellite-based monitoring. We vacate the trial court's order for the reasons discussed in *State v. Griffin*, __ N.C. App. __, 818 S.E.2d 336 (2018).

In *Griffin*, this Court held that the Fourth Amendment prohibits a trial court from imposing lifetime satellite-based monitoring on a convicted sex offender unless the State presents evidence that this type of monitoring "is effective to protect the public from sex offenders." *Id.* at __, 818 S.E.2d at 337. The Court further held that the efficacy of satellite-based monitoring is not self-evident—that is, that the State cannot rely solely on the common-sense assumption "that an offender's awareness his location is being monitored does in fact deter him from committing additional offenses." *Id.* at __, 818 S.E.2d at 341. Likewise, the Court held that the State cannot rely on "decisions from other jurisdictions stating that [satellite-based monitoring] curtails sex offender recidivism." *Id.* Simply put, after *Griffin*, trial courts cannot impose satellite-based monitoring unless the State presents actual evidence—such as "empirical or statistical reports"—establishing that lifetime satellite-based monitoring prevents recidivism. *Id.*

Here, the State did not present the sort of evidence required by *Griffin*—likely because the hearing in this case occurred before this Court decided *Griffin*. Nevertheless, *Griffin* is controlling precedent on direct appeal. Although the Supreme Court stayed the judgment of this Court in *Griffin*, it did not stay our mandate. *See State v. Griffin*, __ N.C. __, 817 S.E.2d 210 (2018). Moreover, *Griffin* largely relies on the reasoning of *State v. Grady*, __ N.C. App. __, __, 817 S.E.2d 18, 27–28 (2018) (*Grady II*), which the Supreme Court has not stayed. Thus, we are bound by the

Griffin holding in this appeal. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). We therefore vacate the imposition of lifetime satellite-based monitoring in this case.

We note that there is disagreement amongst the judges of this Court concerning the holdings of *Griffin* and its companion cases, and that review of several of those cases is pending in our Supreme Court. *See, e.g.*, *Griffin*, __ N.C. App. at __, 818 S.E.2d at 342–44 (Bryant, J., dissenting); *Grady*, __ N.C. App. at __, 817 S.E.2d at 28–31 (2018) (Bryant, J., dissenting); *State v. Westbrook*, __ N.C. App. __, 817 S.E.2d 794, 2018 WL 4200974, at *4–7 (2018) (Dillon, J. dissenting) (unpublished); *State v. White*, __ N.C. App. __, 817 S.E.2d 795, 2018 WL 4200979, at *9 (2018) (Dillon, J., dissenting) (unpublished); *State v. Gordon*, __ N.C. App. __, __, 820 S.E.2d 339, 349–50 (2018) (Dietz, J., concurring in the judgment). Thus, although we reject the State's arguments as squarely precluded by *Griffin* and *Grady II*, we emphasize that the State has preserved those arguments for further review in the Supreme Court.

VACATED.

Judges STROUD and MURPHY concur.

Report per Rule 30(e).