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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-794

Filed: 6 August 2019

Mecklenburg County, No. 16CRS210771

STATE OF NORTH CAROLINA

v.

TENEDRICK STRUDWICK

Appeal by defendant from order entered 19 December 2017 by Judge Yvonne Mims Evans in Superior Court, Mecklenburg County. Heard in the Court of Appeals 13 February 2019.

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. Woome-Deters, for defendant-appellant.

STROUD, Judge.

Defendant, Tenedrick Strudwick, appeals the trial court's order imposing lifetime satellite-based monitoring ("SBM"). We reverse the trial court's order for the reasons discussed in *State v. Grady*, ___ N.C. App. ___, 817 S.E.2d 18 (2018) ("*Grady II*"), and *State v. Griffin*, ___ N.C. App. ___, 818 S.E.2d 336 (2018).

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Defendant pleaded guilty to first degree rape, first degree kidnapping, and robbery with a dangerous weapon and was sentenced to 30 years minimum to 43 years maximum in prison. At a later hearing on SBM, the State presented Shakira Jones, a probation officer with the Department of Public Safety for the sex offender population. Ms. Jones testified about SBM and the Static-99 form which is used to “determine the offender’s risk level . . . to determine whether they’re a risk for future offenses or to re-offend.” Ms. Jones filled out a Static-99 form for defendant, and he had a total score of 3, which placed him in the “Average Risk” category. At the conclusion of the State’s evidence, the trial court denied defendant’s motion to dismiss the SBM proceedings and subsequently ordered defendant to submit to lifetime SBM. Defendant timely appealed.

Defendant argues that the State failed to meet its burden for the trial court to approve its application for SBM, and SBM is an unreasonable search under the Fourth Amendment of the United States Constitution and the North Carolina Constitution as applied to him and in general. In relevant part, the trial court concluded,

5. Although imposing lifetime SBM results in an intrusion of privacy; when considering the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable expectation of privacy, lifetime enrollment in the State’s SBM program is reasonable in this case.

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“An appellate court reviews conclusions of law pertaining to a constitutional matter de novo.” *Grady II*, ___ N.C. App. ___, ___, 817 S.E.2d 18, 21 (quoting *State v. Bowditch*, 364 N.C. 335, 340, 700 S.E.2d 1, 5 (2010)).

The State has not distinguished this case from prior cases in which this Court has reversed SBM orders for the same reasons as are argued by Defendant, and we are bound by our prior precedent. *See Grady II*, ___ N.C. App. ___, 817 S.E.2d 18; *Griffin*, ___ N.C. App. ___, 818 S.E.2d 336. This Court determined in *Griffin* that “because the State failed to present any evidence that SBM is effective to protect the public from sex offenders, this Court’s decision in *Grady II* compels us to reverse the trial court’s order requiring Defendant to enroll in SBM” *Griffin*, ___ N.C. App. at ___, 818 S.E.2d at 342.¹

While defendant has facially challenged the constitutionality of North Carolina’s SBM program, we decline to address this argument as the order requiring Defendant to submit to SBM was unreasonable as applied to him and must be reversed. As has been noted by other SBM cases, we emphasize that the State has

¹ The parties disagree about the proper mandate given this Court’s mandates in *State v. Greene*, ___ N.C. App. ___, 806 S.E.2d 343 (2017) (reversing the SBM order), and *State v. Gordon*, ___ N.C. App. ___, 820 S.E.2d 339 (2018) (vacating the SBM order), among other cases. Because “the State will have only one opportunity to prove that SBM is a reasonable search of the defendant[.]” *Grady II*, ___ N.C. App. at ___, 817 S.E.2d at 28, and, in this case, where the trial court held a hearing on SBM, considered the constitutionality of enrolling Defendant in SBM, and denied Defendant’s motion to dismiss, it is appropriate to reverse the trial court’s order requiring defendant to enroll in lifetime SBM.

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preserved its arguments for review pending the outcome of the SBM cases with the Supreme Court of North Carolina.

REVERSED.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).