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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-651

Filed: 3 March 2020

Pitt County, Nos. 77CRS581-82, 77CRS726-27, 77CRS7711

STATE OF NORTH CAROLINA

v.

RODERICK THOMAS JOYNER, Defendant.

Appeal by Defendant from order entered 5 November 2018 by Judge J. Carlton Cole in Pitt County Superior Court. Heard in the Court of Appeals 5 February 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Narcisa Woods, for the State.

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

BROOK, Judge.

Roderick Thomas Joyner (“Defendant”) appeals the trial court’s denial of his petition for termination of sex offender registration. Defendant argues he was never required to register as a sex offender because he was not convicted of an offense that constituted a “reportable offense” under the sex offender registration statutes. Defendant further argues that the retroactive application of federal standards

violates the *ex post facto* clauses of the federal and state constitutions. For the following reasons, we affirm the order of the trial court.

I. Factual and Procedural History

On 14 September 1977, Defendant, then 16 years old, was convicted of first-degree rape, robbery with a firearm, felonious breaking and entering, crime against nature, and assault inflicting serious injury. The trial court consolidated judgment on the first-degree rape and robbery with a firearm convictions and sentenced Defendant to life imprisonment, consolidated judgment on the felonious breaking and entering and crime against nature convictions, and sentenced Defendant to 10 years' imprisonment, to run consecutively.

In January 2008, Defendant was released from prison, began a five-year period of parole supervision, and registered as a sex offender as required by statute. Defendant successfully completed parole on 13 January 2013.

On 14 May 2018, Defendant petitioned for termination of sex offender registration. In support of his petition, Defendant attached certificates of completion from a number of recidivism reduction programs, a letter from a program coordinator noting Defendant had spoken with current incarcerated participants twice since his release from prison, a letter of support from his current employer with whom Defendant had been employed since April 2014, a letter from his parole officer noting Defendant's successful completion of parole and "good attitude throughout his period

of supervision,” and a clinical assessment which found Defendant “[p]ersonable” and “[f]riendly” and recommended Defendant needed no further treatment. At the petition hearing, Defendant also submitted a letter from a law enforcement officer who noted Defendant is “hardworking,” “caring,” and “will be the first to tell you about his past and how he has grown and overcome obstacles in his life.”

The trial court heard arguments on Defendant’s petition for termination of sex offender registration on 5 November 2018. The State’s sole argument for denying the petition was that Defendant “has been convicted of a Tier III crime under the Jacob Wetterling Act, the federal act, and is not eligible for early termination from the Registry.” The prosecutor also “acknowledge[d] that if anybody has done the things that a person needs to do to rehabilitate themselves, that [Defendant] has done that. We commend him for that.” Defense counsel argued Defendant’s continued subjection to North Carolina’s various sex offender registration statutes violated his right to be free from *ex post facto* laws under the state and federal constitutions.

The trial court denied Defendant’s petition, finding Defendant “would fall under the Tier III of the federal law, [which] would make him ineligible” for removal from the sex offender registry “at this time.” After announcing his decision, the trial court stated,

I would certainly like to join with the State. If there is anybody who has jumped through all of the hoops that you have jumped through, you deserve it. And my feelings wouldn’t be hurt one bit if the Court smacked my decision

down and allowed you to—allowed you to be removed from the Registry.

Defendant timely noticed appeal.

II. Analysis

On appeal, Defendant makes two arguments: first, that he was never required to register as a sex offender because he was not convicted of an offense that constitutes a “reportable offense” under the sex offender registration statutes; and second, retroactive application of federal standards, resulting in Defendant’s continued subjection to North Carolina’s sex offender registration restrictions, violates the *ex post facto* clauses of the federal and state constitutions.

For the following reasons, we affirm the trial court’s order.

A. Requirement of Registration

Defendant first argues that he was never required to register as a sex offender because his offense is not included in the list of reportable convictions requiring sex offender registration.

i. Standard of Review

When the trial court sits as fact-finder without a jury: it must (1) find the facts on all issues joined in the pleadings; (2) declare the conclusions of law arising from the facts found; and (3) enter judgment accordingly. . . . In turn, [t]he standard of appellate review for a decision rendered in a non-jury trial is whether there is competent evidence to support the trial court’s findings of fact and whether the findings support the conclusions of law and ensuing judgment.

In re Hamilton, 220 N.C. App. 350, 353, 725 S.E.2d 393, 396 (2012) (citations and marks omitted). “Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal.” *Food Town Shores, Inc. v. Salisbury*, 300 N.C. 21, 26, 265 S.E.2d 123, 127 (1980) (citation omitted).

ii. Merits

Defendant was convicted of first-degree rape under N.C. Gen. Stat. § 14-21(a), which was repealed in 1979 and eventually replaced with N.C. Gen. Stat. § 14-27.21. See N.C. Gen. Stat. § 14-21(a) (1977), *repealed by* N.C. Sess. Laws 1979, c. 682, s. 7. While N.C. Gen. Stat. § 14-27.21 is included in the list of reportable convictions, N.C. Gen. Stat. § 14-21 is not. See N.C. Gen. Stat. § 14-208.6(4), (5) (2019). Also included is “[a] violation of former G.S. 14-27.6 (attempted rape or sexual offense).” *Id.* The absence of N.C. Gen. Stat. § 14-21 and inclusion of prior versions of statutes, Defendant argues, “evinces a legislative intent to exclude those convicted of violating former N.C.G.S. § 14-21 from the sex offender registration requirement.”

However, Defendant raises this argument for the first time on appeal, having failed at the trial court to preserve this argument for appellate review. N.C. R. App. P. 10(a)(1). Defendant asks this Court to invoke Rule 2 to review this unpreserved issue in order to “prevent manifest injustice.” N.C. R. App. P. 2.

“Rule 2 relates to the residual power of our appellate courts to consider, in exceptional circumstances, significant issues of importance in the public interest or

to prevent injustice which appears manifest to the Court and only in such instances.” *Steingress v. Steingress*, 350 N.C. 64, 66, 511 S.E.2d 298, 299-300 (1999) (citation omitted). While this Court “has the discretion to alter or suspend its rules,” we have “done so more frequently in the criminal context when severe punishments were imposed.” *State v. Hart*, 361 N.C. 309, 316, 644 S.E.2d 201, 205 (2007) (“This Court has tended to invoke Rule 2 for the prevention of ‘manifest injustice’ in circumstances in which substantial rights of an appellant are affected.”). “Severe punishments” have included, for example, sentences of death or life imprisonment. *See, e.g., State v. Moore*, 335 N.C. 567, 612, 440 S.E.2d 797, 823, *cert. denied*, 513 U.S. 898, 115 S. Ct. 253, 130 L. Ed. 2d 174 (1994) (invoking Rule 2 but upholding death sentence); *State v. Booher*, 305 N.C. 554, 564, 290 S.E.2d 561, 566 (1982) (invoking Rule 2 and vacating life sentence); *State v. Poplin*, 304 N.C. 185, 186-87, 282 S.E.2d 420, 421 (1981) (invoking Rule 2 but upholding life sentence); *State v. Adams*, 298 N.C. 802, 804, 260 S.E.2d 431, 432 (1979) (invoking Rule 2 but upholding life sentence).

While lifetime registration is unquestionably onerous and an imposition on Defendant’s liberty, our courts have held that sex offender registration is qualitatively different from the punishments involved in the cases collected above. *See, e.g., In re Hall*, 238 N.C. App. 322, 332, 768 S.E.2d 39, 46 (2014) (finding that North Carolina’s sex offender registration registry is a nonpunitive civil regulatory

scheme). Therefore, in our discretion, we decline to invoke Rule 2 and do not reach Defendant's argument on this issue.

B. *Ex Post Facto* Law

Defendant next argues the trial court's application of the Sex Offender Registration and Notification Act ("SORNA") to support denying his petition for termination from the sex offender registry violates the *ex post facto* clauses of the federal and state constitutions.

i. Standard of Review

The standard of review for alleged violations of constitutional rights is *de novo*. *State v. Tate*, 187 N.C. App. 593, 599, 653 S.E.2d 892, 897 (2007). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (internal marks and citations omitted).

ii. Merits

Under SORNA, sex offenders are categorized into three "tier" levels based on their prior offense, and each tier sets out a minimum amount of time a registrant must remain on the registry. 34 U.S.C. § 20915(a)(1), (b) (2018). In 2006, the General Assembly amended North Carolina's sex offender registration laws and included, among other changes, a provision requiring trial courts to find that "[t]he requested relief complies with the provisions of [SORNA] . . . , and any other federal standards

applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State[.]” N.C. Gen. Stat. § 14-208.12A(a1)(2) (2019). The statute applied “to persons for whom the period of registration would terminate on or after [1 December 2006].” 2006 N.C. Sess. Laws s. 10(a).

Defendant acknowledges that this Court has previously held that statutes retroactively imposing sex offender registration—including retroactive application of SORNA tiers incorporated into state law by N.C. Gen. Stat. § 14-208.12A(a1)(2)—do not constitute *ex post facto* laws. *See, e.g., State v. Williams*, 207 N.C. App. 499, 505, 700 S.E.2d 774, 777 (2010) (“Because this Court has found that [satellite based monitoring] is a civil remedy, application of the SBM provisions do not violate the *ex post facto* clause.”) (internal marks and citation omitted).

Because this Court is bound by its prior decisions rejecting the argument that our sex offender registration statutes constitute an *ex post facto* law, we must reject Defendant’s argument on point. *See 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.”) (citations omitted).

III. Conclusion

For the abovementioned reasons, we uphold the trial court’s order.

STATE V. JOYNER

Opinion of the Court

AFFIRMED.

Judges TYSON and HAMPSON concur.