

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-1295-2

Filed: 16 June 2020

Rowan County, Nos. 15 CRS 55421–22

STATE OF NORTH CAROLINA

v.

JESSE JAMES TUCKER

On remand by order of the North Carolina Supreme Court on 4 December 2019 in *State v. Tucker*, 373 N.C. 251, 835 S.E.2d 442 (2019), remanding this Court’s decision filed 6 August 2019 for reconsideration in light of the Supreme Court’s opinion in *State v. Grady*, 372 N.C. 509, 831 S.E.2d 542 (2019). Case originally appealed by defendant from order entered 4 April 2018 by Judge Anna Mills Wagoner in Rowan County Superior Court.

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

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Heidi Reiner, for defendant.*

DIETZ, Judge.

Defendant Jesse James Tucker appeals the trial court’s imposition of lifetime

STATE V. TUCKER

*Opinion of the Court*

satellite-based monitoring. We reverse the trial court's order for the reasons discussed in *State v. Gordon*, \_\_ N.C. App. \_\_, 840 S.E.2d 907 (2020).

In *Gordon*, this Court reversed the imposition of lifetime satellite-based monitoring, imposed at the time of criminal sentencing, for a defendant who would first serve time in prison. *Id.* \_\_, 840 S.E.2d at 913–14. The Court held that the State failed to meet its burden to show reasonableness under the Fourth Amendment because there was “a lack of knowledge concerning the unknown future circumstances relevant to that analysis” such as whether “the nature and extent of the monitoring that is currently administered, and upon which the present order is based, will remain unchanged by the time that Defendant is released from prison.” *Id.* at \_\_, 840 S.E.2d at 913.

The facts of this case are indistinguishable from those in *Gordon*. Accordingly, under *Gordon*, we must reverse the trial court's imposition of lifetime satellite-based monitoring.

The Supreme Court allowed the State's motion for a temporary stay in *Gordon*, but the Court's order does not indicate whether it stayed only the effect of the judgment and mandate with respect to that particular defendant, or whether the Court intended for this Court's decision in *Gordon* not to have any precedential effect in the lower courts. *State v. Gordon*, \_\_ N.C. \_\_, \_\_, 839 S.E.2d 351, 352 (2020). The effect of a temporary stay by the Supreme Court is an area of confusion in this Court's

STATE V. TUCKER

*Opinion of the Court*

jurisprudence and one for which we could use guidance from the Supreme Court. Compare *State v. Gonzalez*, \_\_ N.C. App. \_\_, \_\_, 823 S.E.2d 886, 888 (2019), with *State v. Cooper*, \_\_ N.C. App. \_\_, 824 S.E.2d 209, 2019 WL 1035382, at \*1 (2019) (unpublished), *remanded*, 372 N.C. 720, 831 S.E.2d 588 (2019).

Were this a case where there was no obvious prejudice from a delay in our decision, we might hold the matter in abeyance and await the outcome of the Supreme Court's review in *Gordon*. But it appears from the record that Tucker may have completed his sentence and thus is now subjected to the monitoring that he alleges violates his Fourth Amendment rights. We therefore issue this opinion, which follows this Court's controlling decision in *Gordon*. The State, if it chooses, may seek a stay in this case as it did in *Gordon*.

REVERSED.

Judges BERGER and HAMPSON concur.

Report per Rule 30(e).