IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-80

No. COA21-266

Filed 1 February 2022

Stanly County, Nos. 17 CRS 51000, 50997–98

STATE OF NORTH CAROLINA

v.

BRUCE ALAN MCCAULEY

Appeal by defendant from order entered 27 October 2020 by Judge Kevin M. Bridges in Stanly County Superior Court. Heard in the Court of Appeals 1 December 2021.

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

Sarah Holladay for defendant-appellant.

ZACHARY, Judge.

¶ 1 Defendant Bruce Alan McCauley appeals from an order imposing ten years of satellite-based monitoring following his *Alford* plea[1] to an "aggravated offense" as

[1] An *Alford* plea is a guilty plea in which the defendant does not admit to any criminal act, but admits that there is sufficient evidence to convince the judge or jury of the defendant's guilt. *See North Carolina v. Alford*, 400 U.S. 25, 37, 27 L. Ed. 2d 162, 171 (1970); *State v. Baskins*, 260 N.C. App. 589, 592 n.1, 818 S.E.2d 381, 387 n.1 (2018), *disc. review denied*, 372 N.C. 102, 824 S.E.2d 409 (2019).

defined in N.C. Gen. Stat. § 14-208.6(1a) (2021). We affirm the trial court's order for the reasons articulated by our Supreme Court in *State v. Hilton*, 378 N.C. 692, 2021-NCSC-115, and *State v. Strudwick*, 2021-NCSC-127.

¶ 2 This matter came on for hearing in Stanly County Superior Court on 27 October 2020. The trial court entered judgment upon Defendant's negotiated *Alford* plea to one count of second-degree rape and two counts of sex offense (parental role), and sentenced Defendant to 120 to 223 months in the custody of the North Carolina Division of Adult Correction. The court further ordered that Defendant register as a sex offender for the remainder of his natural life, and after a satellite-based monitoring hearing, ordered that Defendant—who had been convicted of an "aggravated offense" as defined in N.C. Gen. Stat. § 14-208.6(1a)—enroll in satellite-based monitoring for ten years upon his release from incarceration. The trial court made the following additional findings in support of its satellite-based monitoring order:

> The State has shown by a preponderance of the evidence that [satellite-based monitoring] is warranted based on the child predatory conduct of the Defendant over many years; that based on the totality of the circumstances and upon a consideration of the Defendant's reasonable privacy expectations and the interests of safeguarding children in the public at large, [satellite-based monitoring] for a period of 10 years after Defendant's incarceration is reasonable in light of his conviction of second degree rape, an aggravated offense. This is not unduly burdensome under the circumstances. It does not constitute an intrusive open-

> ended search of the Defendant's person. It is reasonable under the [Fourth] Amendment.

Defendant timely filed written notice of appeal from the satellite-based monitoring order.

¶ 3 Our Supreme Court recently addressed the constitutionality of the imposition of lifetime satellite-based monitoring following a defendant's conviction for an aggravated offense as defined in N.C. Gen. Stat. § 14-208.6(1a). In *State v. Hilton* and *State v. Strudwick*, our Supreme Court examined the totality of the circumstances in conducting the requisite Fourth Amendment balancing test to determine the reasonableness of the search imposed by satellite-based monitoring. *See Hilton*, 378 N.C. 692, 2021-NCSC-115; *Strudwick*, 2021-NCSC-127.

¶ 4 The Court concluded that the State has a manifest legitimate interest in protecting the public from certain sex offenders after release from incarceration, and that the efficacy of the program is clear, in that it furthers the legislative purpose of the program by assisting law enforcement agencies in solving crimes and deterring recidivism. *Hilton*, 378 N.C. 692, 2021-NCSC-115, at ¶¶ 22, 25, 27–28; *accord Strudwick*, 2021-NCSC-127, at ¶ 26 (acknowledging that satellite-based monitoring aids "in solving crimes and facilitating apprehension of suspects so as to protect the public from sex offenders") (citations omitted).

¶ 5 Additionally, the Court determined that the State's interest in satellite-based

monitoring outweighs an aggravated offender's diminished expectation of privacy. *Hilton*, 378 N.C. 692, 2021-NCSC-115, at ¶ 35 ("Given the totality of circumstances, [satellite-based monitoring]'s collection of information regarding physical location and movements effects only an incremental intrusion into an aggravated offender's diminished expectation of privacy."); *Strudwick*, 2021-NCSC-127, at ¶ 25 ("[T]he imposition of lifetime [satellite-based monitoring] on [a] defendant constitutes a pervasive but tempered intrusion upon his Fourth Amendment interests.").

¶ 6 In light of these determinations, our Supreme Court concluded that the imposition of lifetime satellite-based monitoring on a convicted sex offender in the aggravated offender category is a reasonable search under the Fourth Amendment. *Hilton*, 378 N.C. 692, 2021-NCSC-115, at ¶ 12; *Strudwick*, 2021-NCSC-127, at ¶ 28 ("When utilized for the stated purpose, the lifetime [satellite-based monitoring] program is constitutional due to its promotion of the legitimate and compelling governmental interest which outweighs its narrow, tailored intrusion into [a] defendant's expectation of privacy in his person, home, vehicle, and location.").

¶ 7 Here, Defendant argues that the trial court erred (1) in denying his motion to dismiss the State's request for satellite-based monitoring or, in the alternative, (2) "in ordering [Defendant] to submit to satellite-based monitoring for a period of ten years[,]" where "the State failed to present any evidence regarding the nature or purpose of [satellite-based monitoring]." We disagree.

¶ 8 Our Supreme Court has made plain that its recognition of the State's legitimate interest in and the efficacy of satellite-based monitoring eliminates the need for the State to prove either on an individualized basis. *Hilton*, 378 N.C. 692, 2021-NCSC-115, at ¶ 28 ("Since we have recognized the efficacy of [satellite-based monitoring] in assisting with the apprehension of offenders and in deterring recidivism, there is no need for the State to prove [satellite-based monitoring]'s efficacy on an individualized basis."); *see also Strudwick*, 2021-NCSC-127, at ¶ 23 (concluding that the purposes of the satellite-based monitoring program "are *universally recognized* as legitimate and compelling" (emphasis added)).

¶ 9 In addition, our Supreme Court has determined that satellite-based monitoring presents a minimal, limited intrusion into a defendant's privacy. *Hilton*, 378 N.C. 692, 2021-NCSC-115, at ¶ 32 (concluding that the "physical limitations [of satellite-based monitoring] are more inconvenient than intrusive and do not materially invade an aggravated offender's diminished privacy expectations"); *accord Strudwick*, 2021-NCSC-127, at ¶ 28 (concluding that lifetime satellite-based monitoring is a "narrow, tailored intrusion into [a] defendant's expectation of privacy"). As the Court explained in *Hilton*, the privacy interests of an aggravated offender "remain impaired for the remainder of his life due to his status as a convicted aggravated sex offender[,]" 378 N.C. 692, 2021-NCSC-115, at ¶ 30, and "the imposition of lifetime [satellite-based monitoring] causes only a limited intrusion into

that diminished privacy expectation[,]" *id*. at ¶ 36.

¶ 10 Accordingly, under the totality of the circumstances, the imposition of a ten-year period of satellite-based monitoring following Defendant's conviction for an aggravated offense does not constitute an unreasonable search under the Fourth Amendment. *See id.* at ¶ 12; *Strudwick*, 2021-NCSC-127, at ¶ 28. We affirm the trial court's order imposing satellite-based monitoring for a period of ten years following Defendant's release from incarceration.

AFFIRMED.

Judges DILLON and COLLINS concur.

Report per Rule 30(e).