IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-433

No. COA21-331

Filed 21 June 2022

Forsyth County, Nos. 20 CRS 55284–86

STATE OF NORTH CAROLINA

v.

ENRIQUE MARTINEZ GARCIA

Appeal by defendant from judgment and order entered 18 November 2020 by Judge David L. Hall in Forsyth County Superior Court. Heard in the Court of Appeals 23 March 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Chris D. Agosto Carreiro, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defenders Heidi E. Reiner and Daniel Shatz, for defendant-appellant.

ZACHARY, Judge.

¶ 1 Defendant Enrique Martinez Garcia appeals from the judgment and order entered upon his plea of guilty to two counts of first-degree statutory rape of a child under 13, one count of first-degree statutory sexual offense with a child, and two counts of taking indecent liberties with a child. After careful review, we affirm.

Background

¶ 2 On 22 June 2020, a Forsyth County grand jury returned indictments charging Defendant with two counts of first-degree statutory rape of a child under 13, one count of first-degree statutory sexual offense with a child, and two counts of taking indecent liberties with a child. When the matter came on for hearing in Forsyth County Superior Court on 18 November 2020, Defendant agreed to enter a guilty plea to all charges in exchange for which Defendant would receive a single, consolidated sentence in the presumptive range for one count of first-degree statutory rape of a child under 13. The trial court accepted Defendant's plea and entered judgment sentencing him to a term of 275 to 390 months in the custody of the North Carolina Division of Adult Correction, in accordance with the terms of the plea agreement.

¶ 3 After accepting Defendant's guilty plea and announcing his sentence, the trial court proceeded to address the post-release issues of sex-offender registration and satellite-based monitoring. The trial court found that Defendant had been convicted of a reportable conviction pursuant to N.C. Gen. Stat. § 14-208.6(5) (2019), as well as an aggravated offense pursuant to N.C. Gen. Stat. § 14-208.6(1a), and ordered that Defendant register as a sex offender for the remainder of his natural life. The trial court then considered satellite-based monitoring[1] and heard arguments from counsel

[1] During the pendency of this appeal, the General Assembly substantially revised the satellite-based monitoring statutes. *See State v. Hilton*, 378 N.C. 692, 2021-NCSC-115, ¶ 3 n.1. "The relevant amendments, however, d[id] not become effective until 1 December 2021.

regarding *Grady v. North Carolina* (*Grady I*), 575 U.S. 306, 191 L. Ed. 2d 459 (2015), and several subsequent opinions of the North Carolina appellate courts concerning the constitutionality of satellite-based monitoring. Defense counsel argued that, at the time of the hearing, the case law interpreting North Carolina's satellite-based monitoring statutes made clear

> that there must be a substantive hearing in which the State puts on evidence and the Court makes findings of fact and conclusions of law based on the evidence that ha[s] not happened in this case, and, as such, the Court cannot make any findings of fact or conclusions of law or enter any order that would allow the entry of a requirement for satellite-based monitoring for [Defendant].

¶ 4 The trial court responded that it "d[id not] disagree with" Defendant's argument, and inquired as to whether the State had "evidence in terms of the reasonableness [of satellite-based monitoring] as of 22 years from now," referring to the minimum term (275 months) in the range of Defendant's active sentence. State replied that it did not have any such evidence. In light of Defendant's argument and the State's response, the trial court rendered its order in open court:

> I intend to order that [Defendant], if he is not immediately deported -- and we do not know what the state of the immigration and deportation laws might be 22 years from now -- given that, I'm going to order that he be subject to satellite-based monitoring as a condition of his post-release

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Therefore, the version of the [satellite-based monitoring] program in effect on the date of the trial court's [satellite-based monitoring] order governs the present case." *Id.* (citation omitted).

> supervision, whatever that duration may be.
>
> I order that if the State wishes to seek satellite-based monitoring beyond post-release supervision wherein [Defendant] enjoys a lesser degree of liberty, the State must hold a hearing before the Superior Court during the period of post-release supervision for the Court to take evidence and for the State to prove by the appropriate standard that satellite-based monitoring, given the technology as it may exist and the circumstances as they may exist roughly 22 years from now, would constitute an unreasonable search under the law.

¶ 5 Defense counsel objected to the trial court's order, contending that the satellite-based monitoring regime was unconstitutional as applied to Defendant, specifically asserting in part that because Defendant received a -3 STATIC-99R[2] score—the lowest possible score for risk of recidivism—the imposition of satellite-based monitoring constituted cruel and unusual punishment under the Eighth Amendment to the United States Constitution. The trial court indicated that it found Defendant's low STATIC-99R score to be "the most compelling argument"; nonetheless, the court stated:

> That objection is overruled, but the argument is brought forward, [and] preserved for the record. I have given great thought into this process, and my belief is the hearing, prospective hearing that I anticipate will give -- will address any constitutional concern at a time when

[2] The STATIC-99R "is an actuarial instrument designed to estimate the probability of sexual and violent recidivism among male offenders who have already been convicted of at least one sexual offense against a child or non-consenting adult." *State v. Morrow,* 200 N.C. App. 123, 125 n.3, 683 S.E.2d 754, 757 n.3 (2009) (citation omitted), *aff'd per curiam,* 364 N.C. 424, 700 S.E.2d 224 (2010).

> [Defendant] has a lessened expectation of privacy because he is on post-release supervision, but I recognize your arguments. I recognize them as valid or viable, and I seek direction from the Appellate Courts should they choose to examine them.

¶ 6 The trial court entered judgment later that same day, along with its judicial findings and order for sex-offender registration and satellite-based monitoring. In the satellite-based monitoring portion of its order, the trial court found that Defendant was convicted of an aggravated offense pursuant to N.C. Gen. Stat. § 14-208.6(1a), which did involve the physical, mental, or sexual abuse of a minor, and ordered that Defendant required the highest possible level of supervision and monitoring based on those findings and the STATIC-99R risk assessment. However, the court's written order differed from its oral rendition. In open court, the trial court ordered that Defendant was required to enroll in satellite-based monitoring during the period of his post-release supervision, with the State having the discretion to calendar an additional hearing on the continued post-supervision imposition of satellite-based monitoring, to be conducted during the period of Defendant's post-release supervision. But in its written judgment and order, the trial court required Defendant to enroll in satellite-based monitoring for a period of ten years following his release from incarceration.

¶ 7 On 20 November 2020, Defendant timely filed written notice of appeal from both the judgment and the satellite-based monitoring order.

Discussion

¶ 8 On appeal, Defendant argues that (1) "[t]he trial court erred by imposing [satellite-based monitoring] because the State failed to present any evidence to meet its burden" to prove that satellite-based monitoring would be a reasonable search of Defendant upon his release from prison; and (2) the satellite-based monitoring order compelling Defendant "to appear for a second [satellite-based monitoring] hearing after completing his prison sentence is void because the trial court lacked jurisdiction to order another [satellite-based monitoring] hearing" under the relevant statutes. Defendant also argues that the trial court's satellite-based monitoring order contains a clerical error, in that the written order requires a ten-year term of satellite-based monitoring upon Defendant's release from prison, in contravention of the trial court's oral ruling that Defendant be subject to satellite-based monitoring for the duration "of his post-release supervision, whatever that duration may be."

¶ 9 Between the filing of Defendant's brief and the State's brief in this case, our Supreme Court issued a pair of opinions concerning satellite-based monitoring: *State v. Hilton*, 378 N.C. 692, 2021-NCSC-115, and *State v. Strudwick*, 379 N.C. 94, 2021-NCSC-127. In its brief, the State argues that *Hilton* and *Strudwick* are dispositive. For the following reasons, we agree that *Hilton* and *Strudwick* control the outcome of this appeal and affirm the trial court's order.

I. Standard of Review

¶ 10 When a criminal defendant alleges violations of his constitutional rights, this Court conducts de novo review. *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009), *appeal dismissed and disc. review denied*, 363 N.C. 857, 694 S.E.2d 766 (2010). "When an appellate court conducts de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Billings*, 278 N.C. App. 267, 2021-NCCOA-306, ¶ 14 (citation and internal quotation marks omitted).

II. Reasonableness of Satellite-Based Monitoring

¶ 11 On appeal, Defendant first argues that the trial court erred by ordering him to enroll in satellite-based monitoring "because the State failed to present any evidence to meet its burden" that satellite-based monitoring constituted a reasonable search under the Fourth Amendment to the United States Constitution. Pursuant to our Supreme Court's recent opinion in *Hilton*, we disagree.

¶ 12 The United States Supreme Court has concluded that, "by physically intruding on a subject's body," satellite-based monitoring "effects a Fourth Amendment search." *Grady I*, 575 U.S. at 310, 191 L. Ed. 2d at 462. "That conclusion, however, does not decide the ultimate question of the program's constitutionality. The Fourth Amendment prohibits only *unreasonable* searches." *Id.* As the United States Supreme Court explained, "[t]he reasonableness of a search depends on the totality of the circumstances, including the nature and purpose of the search and the extent to

which the search intrudes upon reasonable privacy expectations." *Id.*

¶ 13 "Whether a search is reasonable is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Samson v. California*, 547 U.S. 843, 848, 165 L. Ed. 2d 250, 256 (2006) (citation and internal quotation marks omitted). In our appellate courts, this "reasonableness" test has developed into "a three-pronged inquiry into (1) the nature of the . . . defendant's privacy interest itself, (2) the character of the intrusion effected" by satellite-based monitoring, and (3) "the nature and purpose of the search where we consider[ ] the nature and immediacy of the governmental concern at issue here, and the efficacy of this means for meeting it." *Strudwick*, 379 N.C. 94, 2021-NCSC-127, ¶ 19 (citations and internal quotation marks omitted).

¶ 14 Defendant contends that, because "the State failed to present any evidence about the nature of the [satellite-based monitoring] search, how [satellite-based monitoring] would promote the government's interests, or [satellite-based monitoring's] efficacy," the State failed to carry its burden of proving that satellite-based monitoring would be a reasonable search in this case, thus mandating reversal of the satellite-based monitoring order. However, in *Hilton*, our Supreme Court conducted a categorical examination of the reasonableness of lifetime satellite-based monitoring as applied to individuals convicted of aggravated offenses, and concluded

that "searches effected by the imposition of lifetime [satellite-based monitoring] are reasonable as applied to the aggravated offender category[.]" 378 N.C. 692, 2021-NCSC-115, ¶ 37.

¶ 15 Critically for Defendant's argument here, our Supreme Court arrived at this conclusion in *Hilton* despite the trial court only making findings of fact that concerned the nature of the defendant's privacy interest and the character of satellite-based monitoring's intrusion on that interest, while failing to make any findings of fact regarding the nature and purpose of the State's governmental interest. *See id.* ¶ 6 (quoting the trial court's findings of fact). Further, in *Hilton*, "the trial court made no findings of fact regarding the efficacy of the program in preventing or solving sex crimes. Nor did the State present any witnesses to testify that [satellite-based monitoring] is an effective law enforcement tool." *Id.* ¶ 11 (citation omitted).

¶ 16 Instead, our Supreme Court in *Hilton* conducted its own inquiry, noting that "the State's interest in protecting the public from aggravated offenders is paramount." *Id.* ¶ 21. Our Supreme Court also "recognized the efficacy of [satellite-based monitoring] in assisting with the apprehension of offenders and in deterring recidivism" as a matter of law, and thus determined that "there is no need for the State to prove [satellite-based monitoring]'s efficacy on an individualized basis." *Id.* ¶ 28. Accordingly, because "[t]he touchstone of the Fourth Amendment is reasonableness, not individualized suspicion[,]" *id.* ¶ 37 (quoting *Samson*, 547 U.S.

at 855 n.4, 165 L. Ed. 2d at 261 n.4), the *Hilton* Court categorically concluded that "searches effected by the imposition of lifetime [satellite-based monitoring] are reasonable as applied to the aggravated offender category," *id.*

¶ 17 Defendant attempts to distinguish *Hilton* by noting that "the State did not present any evidence at the [satellite-based monitoring] hearing in this case that would support a determination that [satellite-based monitoring] was constitutionally reasonable. To the contrary, when given an opportunity to present evidence by the trial court, the State declined."

¶ 18 However, as the State notes, this case shares much in common with *Hilton*. Just as in that case, Defendant became eligible for satellite-based monitoring because he was convicted of an aggravated offense, thus diminishing his privacy interests. *Id.* ¶ 29. Further, just as in *Hilton*, the State here did not present evidence at the satellite-based monitoring hearing as to satellite-based monitoring's efficacy in achieving that interest. *Id.* ¶ 11. But just as these facts did not control the outcome of *Hilton*, neither do they determine the case before us. *See id.* ¶ 28 (concluding that "there is no need for the State to prove [satellite-based monitoring]'s efficacy on an individualized basis").

¶ 19 Finally, our Supreme Court concluded in *Hilton* that *lifetime* satellite-based monitoring is reasonable for individuals convicted of aggravated offenses. *Id.* ¶ 37. Hence, on similar facts, we cannot say that a fixed term of years of satellite-based

monitoring is unreasonable. In light of our Supreme Court's holdings in *Hilton* and *Strudwick*, we conclude that the trial court did not err by ordering satellite-based monitoring in this case.

III. The Trial Court's Order

¶ 20 Defendant next argues that the satellite-based monitoring order is void because the "trial court did not have statutory authority to order, and does not have jurisdiction to hold, a second hearing" if the State wishes to enroll Defendant in further satellite-based monitoring upon the expiration of his period of post-release supervision. Defendant also argues that this case must be remanded "for the correction of a clerical error" in the trial court's written satellite-based monitoring order, because while the trial court ordered in open court that Defendant be subject to satellite-based monitoring for the period of his post-release supervision, the written order mistakenly requires that Defendant enroll in satellite-based monitoring for a period of ten years. We disagree.

¶ 21 Each of these arguments presupposes that the trial court's oral pronouncements control over its written order, which requires—without any reference to a second hearing—that Defendant enroll in satellite-based monitoring for a period of ten years following his release from incarceration. However, "this Court has not generally required written entered judgments to adhere to the prior non-entered, orally rendered judgments upon which they were based." *In re O.D.S.*, 247

N.C. App. 711, 718, 786 S.E.2d 410, 415, *disc. review denied*, 369 N.C. 43, 792 S.E.2d 504 (2016). "The announcement of judgment in open court is the mere rendering of judgment, and is *subject to change* before entry of judgment. A judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court." *Id.* (citation and internal quotation marks omitted); N.C. Gen. Stat. § 1A-1, Rule 58.

¶ 22 "To the extent the trial court's oral findings conflict with its written findings, the trial court's written findings and order control on appeal." *State v. Carter*, 2022-NCCOA-262, ¶ 10 n.2; *see also State v. Johnson*, 246 N.C. App. 677, 684, 783 S.E.2d 753, 759 (2016) ("Even if there is some conflict between oral findings and ones that are reduced to writing, the written order controls for purposes of appeal.").

¶ 23 In *Carter*, the trial court expressed reticence from the bench about ordering lifetime satellite-based monitoring, before "orally order[ing] 'as a condition of [the defendant]'s post-release supervision . . . that he be required to enroll in satellite-based monitoring for the duration of his post-release supervision[.]' " 2022-NCCOA-262, ¶ 9. However, in its written judgment, the trial court ordered the defendant to enroll in satellite-based monitoring for the remainder of his natural life upon his release from incarceration. *Id.* ¶ 10.[3]

[3] Similar to the oral ruling in the case at bar, the trial court's written judgment in *Carter* also ordered that a second hearing be held upon the defendant's release from incarceration to "determine the nature and degree that a 'Search' such as Satellite-Based

¶ 24 Because "[t]he announcement of judgment in open court is the mere rendering of judgment, . . . *subject to change* before entry of judgment[,]" *O.D.S.*, 247 N.C. App. at 718, 786 S.E.2d at 415 (citation and internal quotation marks omitted), and "the trial court's written findings and order control on appeal[,]" *Carter*, 2022-NCCOA-262, ¶ 10 n.2, we disagree with Defendant's assertion that the judgment contains a clerical error. *See State v. Guinn*, 2022-NCCOA-36, ¶ 32 ("This Court has defined a clerical error as an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." (citation and internal quotation marks omitted)).

¶ 25 Accordingly, the trial court did not, in fact, order a second hearing, and Defendant's jurisdictional argument is moot. *See State v. Joiner*, 273 N.C. App. 611, 614, 849 S.E.2d 106, 110 (2020) ("A case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." (citation and internal quotation marks omitted)), *petition for disc. review dismissed*, 376 N.C. 902, 854 S.E.2d 803 (2021). Defendant's remaining arguments are thus dismissed.

Conclusion

Monitoring will constitute under then[-]existing technology, and therefore determine whether Satellite-Based Monitoring is constitutional under then-existing circumstances[.]" 2022-NCCOA-262, ¶ 11. However, the satellite-based monitoring order in the present case contains no such provision.

¶ 26 For the foregoing reasons, we affirm the judgment and satellite-based monitoring order.

AFFIRMED.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).