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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-644

No. COA18-637-3

Filed 20 September 2022

Beaufort County, No. 11 CRS 50617

STATE OF NORTH CAROLINA

v.

ORLANDO COOPER

On remand by order of the North Carolina Supreme Court on 14 December 2021 in *State v. Cooper*, 379 N.C. 669, 865 S.E.2d 855 (2021), remanding this Court's decision filed 20 October 2020 for reconsideration. Case originally appealed by defendant from order entered 19 February 2018 by Judge Wayland J. Sermons, Jr. in Beaufort County Superior Court.

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. Woomer-Deters, for defendant.

DIETZ, Judge.

¶ 1 Defendant Orlando Cooper appeals the trial court's imposition of lifetime satellite-based monitoring. We affirm the trial court's order applying the reasoning from this Court's recent decision in *State v. Gordon*, 2022-NCCOA-559 (*Gordon III*).

Facts and Procedural History

¶ 2 In 2011, the State charged Defendant Orlando Cooper with first degree rape and indecent liberties with a child. Cooper pleaded guilty to second degree rape, an aggravated offense, and ultimately was sentenced to 58 to 79 months in prison. In 2016, Cooper was released from prison.

¶ 3 After Cooper's release from prison, the State sought to impose satellite-based monitoring because Cooper met the statutory criteria. On 22 January 2018, the trial court conducted a "bring-back" hearing to determine Cooper's eligibility for the program. At the hearing, the State did not introduce any evidence regarding the efficacy of satellite-based monitoring or how that monitoring would protect the public from Cooper's potential recidivism. On 19 February 2018, the trial court ordered Cooper to enroll in lifetime satellite-based monitoring. Cooper appealed.

¶ 4 On appeal, this Court vacated the trial court's imposition of lifetime satellite-based monitoring, holding that the case was controlled by this Court's decision in *State v. Griffin*, 260 N.C. App. 629, 818 S.E.2d 336 (2018), *remanded*, 372 N.C. 723, 839 S.E.2d 841 (2019), *on remand*, 270 N.C. App. 98, 840 S.E.2d 267 (2020), *remanded again*, 379 N.C. 671, 865 S.E.2d 849 (2021). *See State v. Cooper*, 264 N.C. App. 249, 824 S.E.2d 209 (2019) (unpublished).

¶ 5 The State petitioned for discretionary review with the Supreme Court. The Supreme Court allowed the State's petition for the limited purpose of remanding this

case for reconsideration in light of the Supreme Court's decision in *State v. Grady*, 372 N.C. 509, 831 S.E.2d 542 (2019) (*Grady III*). On remand, we reversed the trial court's imposition of lifetime satellite-based monitoring, holding that the case was controlled by *State v. Griffin*, 270 N.C. App. 98, 840 S.E.2d 267 (2020) (*Griffin II*), which interpreted the Supreme Court's decision in *Grady III*. *See State v. Cooper*, 274 N.C. App. 157, 848 S.E.2d 756 (2020) (unpublished).

¶ 6 The State again petitioned for discretionary review with the Supreme Court. The Supreme Court allowed the State's petition "for the limited purpose of remanding to the Court of Appeals to reconsider its holding in light of this Court's decisions in *State v. Hilton*, 378 N.C. 692, 2021-NCSC-115, 862 S.E.2d 806, and *State v. Strudwick*, 2021-NCSC-127, 864 S.E.2d 231, as well as the General Assembly's recent amendments to the satellite-based monitoring program." *State v. Cooper*, 379 N.C. 669, 865 S.E.2d 855 (2021).

Analysis

¶ 7 After this appeal returned to us on remand from the Supreme Court, we asked the parties to submit supplemental briefing addressing the impact of *Hilton*, *Strudwick*, and the statutory amendments to the satellite-based monitoring program on this case.

¶ 8 After the parties submitted that briefing, this Court issued its opinion on remand in *State v. Gordon*, 2022-NCCOA-559 (*Gordon III*), which our Supreme Court

also had remanded for reconsideration in light of *Hilton* and *Strudwick*. *Gordon III* is controlling here and compels us to affirm the imposition of satellite-based monitoring.

¶ 9 In *Gordon III*, this Court examined "(1) the legitimacy of the State's interest; (2) the scope of Defendant's privacy interests; and (3) the intrusion imposed by satellite-based monitoring" using the analysis set out by our Supreme Court in *Hilton* and *Strudwick*. *Gordon III*, ¶ 17.

¶ 10 With respect to the first factor, this Court held that the State's interest was legitimate because "our Supreme Court and General Assembly have recognized satellite-based monitoring's efficacy as a matter of law; thus, there is no need for the State to prove satellite-based monitoring's efficacy on an individualized basis." *Id.* ¶ 18 (cleaned up).

¶ 11 With respect to the second factor, the Court held that, because the defendant in *Gordon III* was an aggravated offender "his expectation of privacy is diminished" and, thus, "this factor supports the conclusion that the imposition of lifetime satellite-based monitoring on Defendant was reasonable." *Id.* ¶ 19.

¶ 12 Finally, with respect to the third factor, this Court held, as "determined in *Hilton* and reinforced in *Strudwick*, the search effected by satellite-based monitoring presents a narrow, tailored intrusion into the defendant's expectation of privacy in his person, home, vehicle, and location when the defendant is an aggravated

offender." *Id.* ¶ 20 (cleaned up). Thus, the Court held, "this factor suggests that the imposition of lifetime satellite-based monitoring in this case was reasonable." *Id.*

¶ 13 This case is factually indistinguishable from *Gordon III*. Like the defendant in *Gordon III*, Cooper is an aggravated offender with a diminished expectation of privacy. Considering the reasonableness of the search by balancing the relevant factors and examining the totality of the circumstances, "we weigh the State's significant interest in protecting the public and the recognized efficacy of satellite-based monitoring in promoting that interest against the 'incremental intrusion' of lifetime satellite-based monitoring into Defendant's 'diminished expectation of privacy' as an aggravated offender" and conclude that the satellite-based monitoring order as imposed is reasonable under the Fourth Amendment. *Id.* ¶ 21 (citations omitted).

Conclusion

¶ 14 We affirm the trial court's order.

AFFIRMED.

Chief Judge STROUD and Judge MURPHY concur.

Report per Rule 30(e).