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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-813

Filed 6 February 2024

Mecklenburg County, Nos. 03 CRS 233731, 233733

STATE OF NORTH CAROLINA

v.

WILLIE KENNETH MCKINNON, Defendant.

Appeal by defendant from an order entered 8 May 2015 by Judge Robert C. Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 12 April 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert C. Ennis, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for the defendant-appellant.

STADING, Judge.

Willie Kenneth McKinnon (“defendant”) appeals an order imposing lifetime satellite-based monitoring. For the reasons set forth below, we dismiss the appeal.

I. Background

On 9 November 2004, defendant pled guilty to two counts of second-degree rape and two counts of indecent liberties with a minor. The trial court imposed a

consolidated sentence of 80 to 105 months' imprisonment for the rape convictions, a consecutive sentence of 19 to 23 months, suspended for 36 months of supervised probation for one indecent liberties conviction, and a consecutive sentence of 19 to 23 months, suspended for 36 months of supervised probation for the other indecent liberties conviction. At the time of conviction, the trial court did not impose satellite-based monitoring ("SBM").

Defendant was released from incarceration on 1 July 2011. On 8 May 2015, defendant was brought back to Mecklenburg County Superior Court for a determination of whether he should be subject to SBM. The trial court found that defendant's two convictions for second-degree rape constituted aggravated offenses and, per N.C. Gen. Stat. § 14-208.40B(c), ordered defendant to enroll in lifetime SBM. N.C. Gen. Stat. § 14-208.40B(c) (2023) (prior version held unconstitutional as applied by *State v. Grady*, 372 N.C. 509, 831 S.E.2d 542 (2019)). On 3 June 2015, defendant filed a notice of appeal from the SBM order. For unknown reasons, defendant's appeal was never perfected.

On 12 June 2021, defendant was charged with failing to enroll in SBM monitoring and failing to return previously issued SBM monitoring equipment. The trial court appointed new counsel to represent defendant. Based on changes in the law, defendant's trial counsel believed he may be entitled to relief from lifetime SBM. Hence, defendant's counsel then filed a motion for appropriate relief ("MAR") in

superior court. On 18 August 2021, the trial court ordered an evidentiary hearing to address the constitutionality of defendant's lifetime SBM.

At the outset of the hearing—before addressing the merits of the MAR—defendant's counsel notified the trial court that he had discovered the unperfected notice of appeal from 2015. The hearing's focus then shifted to protecting defendant's appeal. All parties agreed that defendant's appeal was timely filed but unperfected. The trial court then entered an order finding that the appeal was timely filed and deprived the trial court of jurisdiction pending resolution of the appeal.

II. Jurisdiction

“[T]his Court has jurisdiction to consider appeals from SBM monitoring determinations under N.C. Gen. Stat. § 14-208.40B pursuant to N.C. Gen. Stat. § 7A-27.” *State v. Singleton*, 201 N.C. App. 620, 626, 689 S.E.2d 562, 566 (2010), *disc. rev. improv. allowed*, 364 N.C. 418, 700 S.E.2d 226 (2010) (per curiam).

III. Analysis

The sole issue on appeal is whether defendant's due process rights were violated on account of the delay in perfecting his appeal. Defendant filed a written notice of appeal on 8 June 2015 from the order imposing lifetime SBM. No action was taken with respect to his notice of appeal until six-and-a-half years later, and the applicable law changed in the intervening years. Thereby, defendant argues that he was deprived of the relief he would have obtained through a timely direct appeal and

contends that his due process rights to a speedy appeal were violated. He argues this multi-year delay in processing the review of the SBM order was prejudicial.

A. Speedy Appeal

The right to appeal in a criminal proceeding is a statutory creation. *State v. Shoff*, 118 N.C. App. 724, 725, 456 S.E.2d 875, 876 (1996). Generally, a defendant who pleads guilty in a criminal case is not entitled to appellate review as a matter of right, except for in certain statutorily enumerated circumstances. N.C. Gen. Stat. § 15A-1444(e) (2023). While the United States Supreme Court has yet to recognize a constitutional right to a speedy appeal, this Court—in addressing an appeal from a criminal conviction—held that “undue delay in processing an appeal may rise to the level of due process violation.” *State v. Hammonds*, 141 N.C. App. 152, 164, 541 S.E.2d 166, 175 (2000) (citing *United States v. Johnson*, 732 F.2d 379, 381 (4th Cir. 1984)). However, for the reasons provided below, an extension of logic employed in *Hammonds* is unavailable in the present matter. *Id.*

B. Civil Proceeding

Here, our caselaw treats appeals such as the one before us—seeking a remedy from a SBM order—as civil proceedings. *Singleton*, 201 N.C. App. at 626, 689 S.E.2d at 566. Although an order for SBM stems from a criminal conviction, this Court has held that “for purposes of appeal, a SBM hearing is not a ‘criminal trial or proceeding’ for which a right of appeal is based upon § 15A-1442 or § 15A-1444.” *Id.* Moreover, this Court has previously declined to extend the speedy trial right as guaranteed by

the Sixth Amendment of the United States Constitution and Article I, section 18 of the North Carolina Constitution to civil cases. *See Washington v. Cline*, 267 N.C. App. 370, 375, 833 S.E.2d 219, 222–23, (2019). While we are cognizant of the potential effects of a long delay in completing an appeal, we are also unable to find legal precedent extending the speedy trial right to civil matters.

IV. Conclusion

For the reasons set forth above, defendant’s appeal is dismissed without prejudice.

DISMISSED.

Judges WOOD and GORE concur.

Report per Rule 30(e).