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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-500

Filed 3 September 2024

Iredell County, Nos. 21 CRS 752, 51155; 22 CRS 50197, 50865

STATE OF NORTH CAROLINA

v.

JERICO SHAMON GIVENS, JR., Defendant.

Appeal by Defendant from judgment entered 2 November 2022 by Judge William Anderson Long, Jr., in Iredell County Superior Court. Heard in the Court of Appeals 10 January 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Joseph Finarelli for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for defendant-appellant.

PER CURIAM.

Defendant Jerico Shamon Givens, Jr., entered into a plea agreement whereby he agreed to plead guilty to two counts of first-degree statutory rape and one count of taking indecent liberties with a minor. In exchange, the charges would be consolidated for a term of imprisonment as determined by the trial court, Defendant

would register as a sex offender, and Defendant would be subject to a no contact order regarding his three victims. Also, as part of the plea agreement, the State agreed to dismiss the other crimes he had been charged with.

On 2 November 2022, the trial court accepted the plea agreement and sentenced Defendant to an active term of imprisonment of 192 months to 291 months, including 60 months of post-release supervision.

The following day, the trial court conducted a satellite-based monitoring (“SBM”) determination hearing. At the conclusion of the hearing, the trial court entered an order that Defendant be enrolled in the SBM program for 60 months to run during Defendant’s post-release supervision. Defendant appealed.

Argument

In this appeal, Defendant’s arguments only concern the order enrolling him in the SBM program. Defendant has filed a petition for a writ of *certiorari*. To the extent that Defendant’s notice of appeal was defective, in our discretion, we allow Defendant’s petition in the aid of our jurisdiction. N.C. Gen. Stat. § 7A-32 (2023).

Defendant makes two arguments on appeal, which we address in turn.

Defendant’s first argument concerns the testimony of the State’s only witness at the SBM hearing. Specifically, at the hearing, a probation officer testified regarding the STATIC-99R form she prepared in Defendant’s case. Based on the evidence at the hearing, including the STATIC-99R form and the information provided to the trial court on the prior date regarding the plea agreement, the trial

court determined that Defendant required the highest possible level of supervision, resulting in the order enrolling Defendant into the SBM program for the entirety of his post-release supervision.

The probation officer calculated a score of “4” on the STATIC-99R form she prepared for Defendant’s hearing. The form states that a score of “4” indicates an “above average” risk of recidivism. Other information beyond the STATIC-99R form considered by the trial court included that Defendant had committed statutory rape while on pretrial release for a statutory rape charge regarding a different victim. In rendering its order, the trial court noted “the nature and circumstances of the offenses” and “the pattern or what appears to the [trial] court as a pattern” of those offenses.

Defendant contends that the trial court impermissibly allowed the probation officer to testify as an expert, as she was tendered as a lay witness. Specifically, he complains in his brief about the officer’s describing “to the court how she scored each risk factor on the [STATIC-99R form] and what information she used as the basis for each score . . . [and] then explained how she categorized [Defendant] as an ‘Above Average Risk’ based on his ‘Total Score.’”

We have reviewed the officer’s testimony and conclude the officer’s testimony was permissible. She was never asked to render an opinion about the likelihood that Defendant would reoffend. She merely testified about the STATIC-99R form, her

extensive experience in filling out that form, and how she determined the score for each of the ten questions on the form in Defendant's hearing.

It may be that some of the officer's testimony bolstered the reliability of the STATIC-99R form as a predictor of recidivism. We, however, conclude that it is unlikely that any such statements by the officer influenced the trial court. Our General Assembly has mandated that trial courts utilize the form as an "assessment" tool. *See State v. Oxendine*, 206 N.C. App. 205, 210-11, 696 S.E.2d 850, 854 (2010) (interpreting N.C. Gen. Stat. § 14-208.40A (2010)).

In his second argument, Defendant contends that the trial court did not make sufficient findings to support the order enrolling Defendant in the SBM program. Indeed, where a defendant is deemed to be a moderate risk of reoffending, a trial court must make additional findings to support a determination that the defendant should be subject to SBM monitoring. *See State v. Kilby*, 198 N.C. App. 363, 366, 679 S.E.2d 430, 434 (2009) (concluding that the trial court erred by ordering SBM enrollment for an offender of "moderate" risk of reoffending without sufficient factual findings to support the determination).

Here, as outlined in part above, the State did offer sufficient evidence from which the trial court could have made additional findings to support its order that Defendant be enrolled in the SBM program. However, the trial court did not complete the form where it could make such additional findings. We therefore vacate the order enrolling Defendant in the SBM program and remand to allow the trial court to make

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additional findings on the matter. We note the State's argument that the term of Defendant's enrollment should be ten years rather than five years. If, on remand, the trial court determines based on adequate findings that Defendant is to be enrolled in the SBM program, the trial court shall prescribe the term of the period of enrollment as provided by statute.

VACATED AND REMANDED.

Panel consisting of Chief Judge DILLON and Judges MURPHY and CARPENTER.

Report per Rule 30(e).