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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-148

Filed 3 September 2024

Cleveland County, Nos. 20 CRS 54831, 22 CRS 18

STATE OF NORTH CAROLINA

v.

DEVASHIA ONEIL MADDOX

Appeal by Defendant from judgments entered 24 July 2023 by Judge W. Todd Pomeroy in the Cleveland County Superior Court. Heard in the Court of Appeals 13 August 2024.

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

Appellate Defender Glenn Gerding by Assistant Appellate Defender Brandon Mayes, for the Defendant.

WOOD, Judge.

DeVashia Oneil Maddox (“Defendant”) appeals from judgments entered following his guilty plea to second-degree rape, second-degree kidnapping, and an *Alford* plea to indecent liberties with a child. The trial court ordered Defendant to enroll in satellite-based monitoring (“SBM”) for a period of ten years as a result of his second-degree rape conviction. On appeal, Defendant challenges the trial court’s

imposition of SBM, arguing that the trial court made insufficient findings to support its conclusion that he required the highest level of supervision and monitoring. After careful review, we hold that the trial court made sufficient findings to subject Defendant to ten years of SBM, and therefore, we affirm the trial court's order.

I. Factual and Procedural Background

On 24 November 2020, S.B.¹, along with her daughter, A.B.², went to the Sheriff's Office for an interview after it was reported that Defendant inappropriately touched A.B. while she was visiting Defendant's home. The interview and investigation conducted by law enforcement uncovered that A.B. was not the only victim, as S.B. was initially targeted by Defendant many years prior. Defendant was a friend of S.B.'s family during that time. When S.B. was twelve or thirteen years old and Defendant was twenty-three years old, Defendant began engaging in sexual acts with S.B. This progressed into sexual intercourse. Defendant engaged in such acts with S.B. at the homes of relatives. On one occasion, Defendant drove S.B. to a hotel to have intercourse, without the knowledge or consent of her parents.

When S.B. was fourteen years old she became pregnant with Defendant's child. Thereafter, Defendant ceased further sexual contact with her. S.B. gave birth to A.B. when she was fifteen years old. Defendant was twenty-four or twenty-five years old

¹ A pseudonym is used to protect the identity of the juvenile pursuant to N.C. R. App. P. 42(b).

² See n.1.

at that time. DNA testing later confirmed Defendant to be the father of A.B. When A.B. described her experiences, she stated that Defendant would enter her room while everyone was asleep and touch her. A.B. was seven years old at the time of the events and reported to law enforcement that this happened more than once.

On 10 May 2021, a grand jury indicted Defendant on one count each of statutory rape of a person fifteen years or younger, statutory sex offense with a person fifteen years or younger, and first-degree kidnapping for the sexual offenses committed against S.B. On 14 February 2022, a grand jury indicted Defendant on one count each of statutory sex offense with a child by an adult and indecent liberties with a child for the sexual offenses committed against A.B. On 24 July 2023, Defendant's case came on for a plea hearing. Pursuant to a plea agreement, Defendant pleaded guilty to second-degree rape and second-degree kidnapping of a minor and entered an *Alford* plea to indecent liberties with a child. In exchange for his plea, the State dismissed the remaining charges. The State presented, and Defendant stipulated to, the factual basis for the plea. The factual basis included: A.B. reported she was seven years old when Defendant touched her; S.B. was twelve or thirteen years old when Defendant began a sexual relationship with her; Defendant was twenty-three years old at the earliest of these events; Defendant and S.B. engaged in sexual intercourse on a few occasions; Defendant engaged in sexual acts with S.B. at the home of relatives and at a hotel room; S.B. became pregnant at fourteen years old and gave birth at fifteen years old.

After hearing the factual basis presented by the prosecutor, Defendant stated to the trial court that he knowingly, intelligently, and voluntarily accepted the plea agreement. The trial court entered three judgments, respectively: (1) an active sentence of 66 to 140 months of imprisonment for the second-degree rape charge; (2) a consecutive sentence of 29 to 95 months of imprisonment for the second-degree kidnapping charge, suspended for 36 months of supervised probation; (3) a consecutive sentence of 19 to 32 months of imprisonment for the indecent liberties with a child charge, suspended for 36 months of supervised probation.

Following sentencing, pursuant to the plea agreement, the trial court entered a permanent no contact order. Defendant declined his opportunity to be heard and indicated his consent to the order. The trial court found the following grounds existed:

Defendant molested his first victim beginning at age 12 and caused her to become pregnant as a minor. After she gave birth to their daughter, he began to sexually assault the child who was under the age of 10 years. He has continued his pattern of sexually assaulting minors [for] many years. Both victims fear any further contact with the Defendant.

The Defendant consents to the entry of this order.

The trial court ordered Defendant not to have any form of future communication or interaction with S.B. and A.B.

The trial court then heard from the parties regarding Defendant's eligibility for enrollment in SBM and his registration as a sex offender. The trial court assessed

the completed Static-99R Form³. Defendant's score on the Static-99R Form was two, putting him in the "average risk" category. The State requested that Defendant be required to submit to SBM for a period of ten years, arguing that the factual basis in the no contact order, the number of victims, and his score on the Static-99R Form indicates that he requires the highest level of supervision and monitoring. Defendant objected to the State's position and argued that SBM was not a necessary measure. Ultimately, the trial court ordered Defendant to enroll in SBM for a period of ten years upon his release from imprisonment. In its SBM order, the trial court made a finding that "the permanent no-contact order is hereby incorporated in this [SBM] order by reference." The trial court clarified that the imposition of SBM applied to the second-degree rape charge. The trial court also ordered Defendant to register as a sex offender for life. Defendant filed written notice of appeal from the SBM order on 7 August 2023.

II. Analysis

Defendant raises one issue on appeal, arguing the trial court erred by ordering him to submit to ten years of SBM when the Static-99R Form determined that he was an "average risk," and the trial court failed to make additional findings sufficient to

³ "The Static-99 Risk Assessment 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). It is used "to determine [the] levels of supervision required for offenders." *Id.*

support its conclusion that he required the highest level of supervision and monitoring. In *State v. Kilby*, this Court first set forth the standard of review regarding a defendant's appeal from a trial court's imposition of SBM and its findings as to the required level of supervision. *State v. Kilby*, 198 N.C. App. 363, 366-67, 679 S.E.2d 430, 432 (2009). "[W]e review the trial court's findings of fact to determine whether they are supported by competent record evidence, and we review the trial court's conclusions of law for legal accuracy and to ensure that those conclusions reflect a correct application of law to the facts found." *Id.* at 367, 679 S.E.2d at 432 (citation omitted). Thus, we "review the trial court's [SBM] order to ensure that the determination that defendant requires the highest possible level of supervision and monitoring reflects a correct application of law to the facts found." *Id.* (cleaned up).

The purpose of SBM is to "supervise certain offenders whom the legislature has identified as posing a particular risk to society." *State v. Morrow*, 200 N.C. App. 123, 131, 683 S.E.2d 754, 760 (2009) (citation omitted). The procedure for SBM hearings is found in N.C. Gen. Stat. §§ 14-208.40A and 14-208.40B. If the trial court determines enrollment in SBM is necessary during the sentencing phase, N.C. Gen. Stat. § 14-208.40A applies. Pursuant to N.C. Gen. Stat. § 14-208.40A, "the court shall determine whether, based on the Department's [Static-99R] risk assessment, the offender requires the highest possible level of supervision and monitoring." *Kilby*, 198 N.C. App. at 369, 679 S.E.2d at 433–34 (citation omitted). Stated differently, "the highest possible level of supervision and monitoring simply refers to SBM, as the

statute provides only for SBM and does not provide for any lesser levels or forms of supervision or monitoring of a sex offender.” *Morrow*, 200 N.C. App. at 131, 683 S.E.2d at 760 (cleaned up). If a trial court determines that a defendant is eligible for SBM, “the State shall bear the burden of proving that the [SBM] program is reasonable.” *State v. Greene*, 255 N.C. App. 780, 783, 806 S.E.2d 343, 345 (2017) (citation omitted). Moreover, “the State must present additional evidence to support a determination that the offender requires the highest possible level of supervision and monitoring.” *State v. Thomas*, 225 N.C. App. 631, 633, 741 S.E.2d 384, 386 (2013) (citation omitted).

Following the State’s presentation of additional evidence, “the trial court [must] make additional findings, in order to justify a maximum SBM sentence.” *Id.* at 634, 741 S.E.2d at 387 (citations omitted). A trial court is permitted to consider “any proffered and otherwise admissible evidence relevant to the risk posed by a defendant” and “[the] trial court is not limited to the DOC’s risk assessment.” *Morrow*, 200 N.C. App. at 131, 683 S.E.2d at 760-61 (citation omitted). Notwithstanding, “[t]his Court has previously held that a DOC risk assessment of ‘moderate,’ *without more*, is insufficient to support the finding that a defendant requires the highest possible level of supervision and monitoring.” *State v. Jones*, 234 N.C. App. 239, 243, 758 S.E.2d 444, 447-48 (2014) (citations omitted). A “high risk” classification is not “a necessary prerequisite to SBM.” *Morrow*, 200 N.C. App. at 132, 683 S.E.2d at 761. Thus, a trial court must make “additional findings regarding the

need for the highest possible level of supervision” and its findings must be supported by “competent record evidence.” *Jones*, 234 N.C. App. at 243, 758 S.E.2d at 448 (cleaned up). If a trial court determines that the highest level of supervision and monitoring is appropriate, then “the court shall order the offender to enroll in [SBM].” *Kilby*, 198 N.C. App. at 369, 679 S.E.2d at 434 (citation omitted).

Here, Defendant’s Static-99R risk assessment showed an “average risk” of reoffending. During the State’s presentation of additional evidence, the State argued:

That it's an aggravated offense, that the findings in the no-contact order and the multiple victims and the record of the defendant should weigh in favor of the defendant requiring the highest level of supervision and monitoring, and we would ask the Court to adopt those findings and order monitoring for 10 years pursuant to statute.

At the conclusion of the hearing, the Court made the following findings: (1) Defendant has been convicted of a sexually violent offense; (2) Defendant is not a recidivist; (3) Defendant is not a reoffender; (4) Defendant has not been classified as a sexually violent predator; (5) the offense is an aggravated offense; (6) the offense did involve the physical, mental or sexual abuse of a minor; (7) Defendant presents a danger to minors under 18; (8) the victim in this case was age 14 at the time of the commission of the offense; (9) the permanent no-contact order is hereby incorporated by reference. As set forth supra, the no contact order found that Defendant molested S.B. beginning when she was 12 years old, while a minor she became pregnant with A.B., Defendant sexually assaulted A.B. who was less than 10 years old, and Defendant continued his

pattern of sexually assaulting minors for many years. Thus, we conclude Defendant's SBM hearing complied with the requirements pursuant to N.C. Gen. Stat. §§ 14-208.40A.

Defendant contends that the findings in the no contact order are insufficient to support the trial court's determination that he requires the highest level of supervision. Further, Defendant argues that the SBM order is wholly unsupported because it was based on his assessment of an "average risk" and lacked further, additional findings. As a preliminary matter, we note Defendant has not specifically challenged any of the trial court's findings on appeal. Rather, Defendant's sole argument centers on the trial court's lack of additional findings and that the findings the trial court made are insufficient to support its ultimate conclusion. Accordingly, "[f]indings of fact not challenged on appeal are deemed to be supported by competent evidence and are binding on appeal." *State v. Aguilar*, 287 N.C. App. 248, 252, 882 S.E.2d 411, 415 (2022) (cleaned up).

In support of his argument, Defendant cites *State v. Cheers*, 285 N.C. App. 394, 878 S.E.2d 149 (2022) and *Jones*, 234 N.C. App. 239, 758 S.E.2d 444. In *Cheers*, this Court affirmed an SBM order where the trial court made eight additional findings to support its determination that the defendant required the highest level of supervision and monitoring. *Cheers*, at 403–04, 878 S.E.2d at 155. By contrast, in *Jones*, this Court reversed an SBM order when the State failed to present any evidence, other than the defendant's risk assessment score, to support a finding that he required the

highest level of supervision and monitoring. *Jones*, 234 N.C. App. at 246-47, 758 S.E.2d at 449-50. We are unpersuaded. To the contrary, we are guided by the holdings of this Court, which addressed whether the trial court made sufficient additional findings. In *Green*, this Court upheld the trial court's determination that the defendant required the highest level of supervision, although assessed in the "moderate-low" risk range, "based on the facts that the victims were very young and that [the defendant] did not receive any sex offender treatment." *State v. Green*, 211 N.C. App. 599, 604-05, 710 S.E.2d 292, 296-97 (2011). In *Smith*, this Court upheld the trial court's SBM order where the basis of its findings was "the age of the alleged victims, the temporal proximity of the events, and [the] defendant's increasing sexual aggressiveness." *State v. Smith*, 240 N.C. App. 73, 76, 769 S.E.2d 838, 841 (2015). Thus, to uphold an SBM order, the State must present relevant evidence, and the trial court must make additional findings to support its determination. Here, the trial court's incorporation of the no contact order constitutes sufficient 'additional findings' to support its conclusion that SBM of Defendant upon his release is warranted. The trial court is not required to make numerous findings as in *Cheers*. Rather, as in *Green* and *Smith*, the trial court's additional findings must satisfy a level of sufficiency, which is met when the findings support its ultimate conclusion to impose post-release SBM.

In the present case, the State offered, and the trial court considered, evidence other than the risk assessment score to determine "the risk posed" by Defendant.

Morrow, 200 N.C. App. at 131, 683 S.E.2d at 760-61 (citation omitted). The State offered the findings in the no contact order, which included the ages of A.B. and S.B. when the sexual acts occurred, that while a minor S.B. became pregnant, and that Defendant had a “pattern of sexually assaulting minors” for years. The State further addressed that there were multiple victims. The trial court found Defendant was a danger to minors under the age of 18, that S.B. was 14 years old at the time of this offense, and thereafter incorporated the findings in the no contact order by reference. These findings sufficiently address the risk that Defendant poses to society, particularly to minors, and supports the determination that Defendant requires the highest level of supervision and monitoring. *See State v. Blankenship*, 270 N.C. App. 731, 736–37, 842 S.E.2d 177, 181 (2020) (citation omitted) (The trial court’s finding that the defendant sexually abused multiple minor victims on multiple occasions, rather than a “single or isolated incident” is “exactly a predictive statement concerning Defendant's likelihood of recidivism.”).

Furthermore, this Court has stated, “the trial court may consider the context under which the crimes occurred, revealed in the factual basis for Defendant's guilty plea, when making additional findings as to the level of supervision required of a defendant.” *Id.* at 737, 842 S.E.2d at 181 (cleaned up); *see also Green*, 211 N.C. App. at 603, 710 S.E.2d at 295 (because the defendant stipulated to the factual basis of the plea, the evidence in the State’s factual summary supported the trial court’s additional finding and could not be disputed on appeal.). As Defendant stipulated to

the State's factual basis, the trial court was permitted to consider the incriminating circumstances summarized by the State. Defendant's pattern of sexually assaulting minors, repeatedly engaging in intercourse with a minor, and causing a minor to become pregnant further justifies the trial court's conclusion that such level of supervision is required for Defendant.

III. Conclusion

For the reasons stated above, we hold the trial court made sufficient findings to support its determination that Defendant required the highest level of supervision and monitoring. Thus, we affirm the trial court's order requiring Defendant to enroll in SBM for a period of ten years.

AFFIRMED.

Judges ZACHARY and CARPENTER concur.

Report per Rule 30(e).