

SATELLITE BASED MONITORING

(1) Definition of “Aggravated Offense” in G.S. 14-208.6(1a) Is Not Unconstitutionally Vague

(2) Second-Degree Rape Is an “Aggravated Offense” to Support Trial Court’s Order That Defendant Be Enrolled in Lifetime Satellite-Based Monitoring

State v. McCravey, ___ N.C. App. ___, ___ S.E.2d ___ (4 May 2010).

The defendant was convicted of second-degree rape and other offenses, and the trial court ordered that the defendant be enrolled in lifetime satellite-based monitoring (SBM) when his prison sentences were completed. The court ruled: (1) the definition of “aggravated offense” in G.S. 14-208.6(1a) is not unconstitutionally vague; and (2) second-degree rape is an “aggravated offense.”

When Considering Whether A Plead-To Offense Is An Aggravated One For Purposes of SBM, Trial Court May Look Only To Elements Of Offense, Not Factual Basis For Plea.

State v. Phillips, ___ N.C. App. ___, ___ S.E.2d ___ (April 6, 2010).

Following *Davison* and holding that when considering whether a pleaded-to offense is an aggravated one for purposes of SBM, the trial court may look only to the elements of the offense, and not at the factual basis for the plea. In this case, the defendant pleaded guilty to felonious child abuse by the commission of a sexual act in violation of G.S. 14-318.4(a2) and taking indecent liberties with a child. Following *Singleton* and holding that notwithstanding the factual basis for the plea, taking indecent liberties was not an aggravated offense. The court went on to hold that considering the elements only, the trial court erred when it determined that the defendant’s conviction for felonious child abuse by the commission of any sexual act under G.S. 14-318.4(a2) was an aggravated offense.

Trial Court Improperly Determined That Defendant Must Be Enrolled in Satellite-Based Monitoring for Life

State v. Davison, ___ N.C. App. ___, 689 S.E.2d 510 (8 December 2009).

The defendant was convicted of attempted first-degree sexual offense and indecent liberties with a child and sentenced to imprisonment. The trial court ordered enrollment in a satellite-based monitoring program for life after his release from his prison sentence. The court ruled that the trial court erred by failing to follow the statutory procedure under G.S. 14-208.40A when it failed to properly make determinations pursuant to subsection (b), and by doing so prematurely ordered a risk assessment and improperly considered sentencing pursuant to subsections (c) and (d). The court also ruled that the trial court incorrectly found that the defendant had been convicted of an “aggravated offense” because neither offense fits the statutory definition in G.S. 14-208.6(1a). In determining what constitutes an “aggravated offense,” a court may only consider the elements of the offense and not the underlying facts of the offense. For other rulings finding error in trial court orders to enroll defendants in satellite-based monitoring, see *State v. Smith*, ___ N.C. App. ___, 687 S.E.2d 525 (5 January 2010), and *State v. Singleton*, ___ N.C. App. ___, 689 S.E.2d 562 (5 January 2010) (Author’s note: The North Carolina Supreme Court on April 14, 2010, granted the state’s petition to review this ruling).

Satellite Based Monitoring Is A Civil Remedy

State v. Hagerman, ___ N.C. App. ___, ___ S.E.2d ___ (Nov. 3, 2009).

Rejecting the defendant's *Apprendi* challenge to SBM. The court reasoned that because SBM is a civil remedy, it did not increase the maximum penalty for the crime.

Satellite Based Monitoring Statute Does Not Violate the Ex Post Facto Clause

State v. Morrow, ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 6, 2009).

Concluding, over a dissent, that the SBM statute does not violate the Ex Post Facto clause. In determining whether the defendant requires the highest possible level of supervision and monitoring, the trial court may consider any evidence relevant to the defendant's risk and is not limited to the DOC's risk assessment. Because evidence supporting a finding of high risk was presented in a probation revocation hearing held the same day (the defendant admitted that he failed to attend several sexual abuse treatment program sessions), the court remanded for an evidentiary hearing as to the defendant's risk. Concluding that it was error for the trial court to order that the defendant enroll in SBM for a period of 7-10 years; G.S. 14-208.40B(c) requires the trial court to set a definite period of time for SBM enrollment.

G.S. 14-208.40B (Satellite-Based Monitoring—SBM) Requires Department of Correction to Notify Offender, in Advance of Hearing, of Basis For Its Determination That Offender Falls Within One of Categories Set Out in G.S. 14-208.40(a), Making Offender Subject to SBM

State v. Stines, ___ N.C. App. ___, 683 S.E.2d 411 (6 October 2009).

The court ruled that G.S. 14-208.40B (satellite-based monitoring—SBM) requires the Department of Correction to notify the offender, in advance of the SBM hearing, of the basis for its determination that the offender falls within one of the categories set out in G.S. 14-208.40(a), making the offender subject to SBM. In this case the Department of Correction letter notifying the defendant of the hearing was insufficient because it did not identify which of the criteria in G.S. 14-208.40(a) the department had concluded the defendant met.

(1) Application of Satellite-Based Monitoring Program (SBM) to Defendant Did Not Violate Ex Post Facto Clause Although Legislature Enacted SBM After Defendant Had Been Convicted of Offenses That Subjected Him to SBM

(2) Defendant's Guilty Plea Was Not Involuntary

State v. Bare, ___ N.C. App. ___, 677 S.E.2d 518 (16 June 2009).

The defendant in 1998 was convicted based on a plea of guilty to indecent liberties and sentenced to prison. In 2002, he was convicted based on a no contest plea to failure to register as a sex offender and sexual activity by a custodian of a minor; he was sentenced to prison. In 2006, the legislature enacted the satellite based monitoring program (SBM). The defendant was released in 2007 and enrolled in SBM. In 2008, the trial court held a determination hearing under G.S. 14-208.40B and found that the defendant was convicted of a reportable conviction as defined under G.S. 14-208.6(4) and was a recidivist. The defendant was ordered to enroll in SBM for the remainder of his natural life. The court ruled that application of SBM to the defendant did not violate the Ex Post Facto Clause

although the legislature enacted SBM after the defendant had been convicted of offenses that subjected him to SBM. The court concluded that the legislature intended SBM to be a civil and regulatory scheme, not a criminal punishment. Nor was SBM so punitive in purpose or effect to negate the legislature's intention to deem it civil. (2) The court rejected the defendant's two arguments concerning the trial court's acceptance of his 2002 no contest plea. First, the defendant argued that the trial court violated G.S. 15A-1002(a)(6) (informing defendant of possible sentence and related matters) when it failed to inform him that imposition of SBM would be a direct consequence of his plea. The court stated that the defendant's argument was predicated on the assumption that SBM is punishment, which the court had rejected under its Ex Post Facto Clause analysis. Second, the defendant argued that his plea was involuntary because imposition of SBM was a direct consequence of his no contest plea, and thus he had to be informed of SBM when entering his plea. The court noted that imposition of SBM was not an automatic result of his no contest plea.

Court Affirms Trial Court's Order at Hearing Conducted Under G.S. 14-208.40B That Defendant When Released From Prison Will Be Subject to Satellite-Based Monitoring for His Natural Life

State v. Wooten, ___ N.C. App. ___, 669 S.E.2d 749 (16 December 2008).

The court affirmed the trial court's order at a hearing conducted under G.S. 14-208.40B that the defendant when released from prison will be subject to satellite-based monitoring for his natural life. The defendant on October 23, 2006, had pled no contest to taking indecent liberties, which occurred on October 31, 2001. He was sentenced to prison, and the trial court conducted the hearing on the satellite-based monitoring issue just before his release from prison. The defendant had been previously convicted on April 25, 1989, of taking indecent liberties. The court ruled: (1) the trial court had subject matter jurisdiction to conduct the hearing (see the court's discussion of this issue); (2) the trial court correctly determined that the defendant was a "recidivist" as a result of the 1989 conviction, based on the statutory language in G.S. 14-208.6(2b) [prior conviction for an offense that is "described in" G.S. 14-208.6(4)], even though the 1989 conviction was not a "reportable conviction" because it predated the sex offender registration law; and (3) the issue whether satellite-based monitoring violates ex post facto was not properly preserved for appellate review.