DAC's Auditing Authority

Author : Jamie Markham

Categories : Sentencing, Uncategorized

Tagged as : audit, Combined Records, DAC, doc, Hamilton v. Freeman, Sentencing

Date : April 21, 2015

Many of you have received one of those letters: a notice from the N.C. Department of Public Safety, Division of Adult Correction (DAC), Section of Combined Records, seeking "clarification" of a judgment. Combined Records audits judgments as they come in, identifying issues and sentencing errors and bringing them to the attention of the court system. Today's post considers the legal basis for this review, and some of the issues it raises.

DAC's Records Section is established under G.S. 148-74 to "maintain in a single central file system" all correctional records. Under G.S. 148-76, the records section maintains the "combined case records" of all prison, probation, and parole matters, including all "fingerprints, photographs, and other information to assist in locating, identifying, and keeping records of criminals." Thus, the name "Combined Records."

No statute directs Combined Records to audit the records it receives and maintains (unlike, for instance, G.S. 20-179.3(k), which directs DMV to review unauthorized limited driving privileges, as Shea discussed here.) But case law supports DAC's practice. In *Hamilton v. Freeman*, 147 N.C. App. 195 (2001), a group of inmates filed a class action lawsuit complaining that the then–Department of Correction (DOC) was unilaterally modifying sentences it deemed legally erroneous. For example, if a defendant worked out a plea bargain to concurrent sentences for a crime that required consecutive sentences, DOC would, *on its own*, change the sentences so they would be served consecutively.

The court of appeals said that was obviously not the right thing to do. Even when the State had offered a deal that violated our sentencing law, and even though the defendant would not be entitled to specific performance of the unlawful deal, an executive agency can't just change a judicial order. The proper approach, the appellate court said, was the one crafted by the trial judge in the case. I'll paraphrase it:

DOC, when you receive an improper judgment, record it as entered, but promptly inform the sentencing judge, the district attorney, the defendant, and the defendant's trial counsel that you think the judgment needs to be corrected. Tell everyone the defendant is entitled to return to court to either work out a plea to a lawful sentence or to go to trial. Id. at 200.

And so the "*Hamilton v. Freeman*" letter was born. (Some at DAC still refer to the letters by that name.) Following *Hamilton*, DAC does not alter judgments on its own. Rather, Combined Records sends a letter (the most recent version I have looks like this) to the parties seeking clarification or correction, as the case may be. That approach comports with the *Hamilton* court's observation that a final judgment from a court of competent jurisdiction is, even if contrary to law, "binding until vacated or corrected." *Id.* at 204. It is "voidable, but not void *ab initio*."

When a judgment comes back to the trial court by way of Combined Records, the court's authority to act on the case will vary depending on the nature of the alleged error. If the error is merely clerical, the trial court has inherent authority to correct it, in or out of session. State v. Lineman, 135 N.C. App. 734 (1999). If the error is judicial, things are more complicated. If the judgment is indeed illegal, and the error is one that works to the defendant's disadvantage, the defendant (or the judge, sua sponte) will likely have grounds for a motion for appropriate relief. G.S. 15A-1415(b)(8) (unauthorized sentence is an MAR ground that may be raised at any time); -1420(d) (allowing MAR on court's motion

any time a defendant would be entitled to relief). If the error works to the defendant's advantage (like when the sentence is lower than what would be allowed in the defendant's grid cell under Structured Sentencing), the judge apparently has authority to correct it, State v. Branch, 134 N.C. App. 637 (1999), or, as discussed in *Hamilton* itself, to undo the plea on which it was based. (For more information on this subject, see Jessie Smith's bulletin examining a judge's authority to correct errors after entry of judgment.)

A final possibility, of course, is that the parties in receipt DAC's letter will not think the judgment was wrong in the first place. In that case, they should let DAC know they think it is correct. At that point, DAC will either administer the judgment as written or consult with their legal counsel about litigating the issue.

Audit letters are a sensitive business for DAC. One the one hand, the Division wants to do its best to execute the judgment of the court as ordered. On the other hand, it does not want to administer an unlawful order. It's a little odd for an administrative agency to check the homework of the court system's adversarial process, but under *Hamilton*, that is what DAC is supposed to do.