I Want a New Trial! Now What? A District Court Judge's Authority to Act Following Entry of Notice of Appeal for Trial De Novo (Part I)

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Jay Jones is charged with possession of drug paraphernalia and given an unsecured bond of $1,000. He is convicted following a bench trial in district court. Noting that Jones is a prior conviction level III and has previously violated probation, the judge imposes an active sentence of 120 days. Jones enters notice of appeal in open court because he wants a jury trial. What may the district court judge properly say at this point?

(1) Bailiff, he's in your custody to begin serving his active sentence unless and until a different result is reached in superior court.

(2) Mr. Jones, it is your right to appeal. However, I am securing and doubling your bond pending your trial in superior court. Bailiff, he's in your custody.

(3) Mr. Jones, you are free to leave after the DA notifies you of your court date for superior court. The current bond remains in effect and this court has no power to do anything further in this matter.

Discussion:

Statement (1). The issue is whether entry of notice of appeal stays execution of the judgment. Clearly, it does. Pursuant to G.S. 15A-1431(f1), an appeal from a district court conviction "stays the execution of all portions of the judgment," including active punishment. What if Mr. Jones does not enter notice of appeal in open court, but instead sends written notice to the clerk four days after starting his sentence? There does not appear to be authority for the jail to continue to hold him. Execution of the judgment is stayed, regardless of whether notice of appeal was entered in open court or in writing. The original bond is in effect and, in our scenario, the original bond was an unsecured one. G.S. 7A-290 ("original bail shall stand pending appeal" unless modified); G.S. 15A-1431(e) ("order of pretrial release remains in effect pending appeal" unless modified). Upon receiving notice of appeal, clerks are advised to notify the jail that execution of the sentence is stayed and the defendant should be released (unless, of course, the defendant was in custody prior to the bench trial because he had not met the conditions of pretrial release), according to the NC Administrative Office of the Courts (AOC).

May Jones be held in custody for the period of time it takes to get him before a district court judge for reconsideration of his bond? Again, there does not appear to be legal support for such a practice and the AOC advises against it. A person who has met the conditions of release must be released. G.S. 15A-537(a). "[I]n the absence of a judicial official, any law-enforcement officer or custodial official having the person in custody must effect the release…." *Id.* North Carolina has a statutory mechanism that automatically puts the original bond in effect pending appeal; no hearing is contemplated unless a party makes a motion to have one.

Holding the defendant in custody for reconsideration of his bond is analogous to holding him without bond or delaying the setting of conditions, practices that are authorized only in limited circumstances and with explicit statutory authority. *See* G.S. 15A-533(b) (every defendant charged with a noncapital offense must have conditions of pretrial release determined); *but see* John Rubin, *Exceptions to Pretrial Release Procedures: A Guide for Magistrates* (rev. Dec. 2009)

(noting, for example, that there is no right to pretrial release pursuant to G.S. 15A-533(a) where a person is alleged to have committed a crime while involuntarily committed). By way of illustration, the hold for a judge to set pretrial release conditions under G.S. 15A-534.1 is carefully tailored; the hold is allowable only for specified domestic violence offenses, where a certain relationship exists (defined more narrowly than the "personal relationship" for purposes of G.S. 50B-1), and for a time period that may not exceed 48 hours. North Carolina courts have upheld G.S. 15A-534.1 as constitutional but have found that the failure to bring a defendant before a judge at the earliest reasonable opportunity results in a violation of procedural due process and may require dismissal. *See State v. Thompson*, 349 N.C. 483 (1998). In sum, absent an explicit exception to G.S. 15A-533(b), a detainee may have grounds for dismissal or for a writ of habeas corpus. *See* G.S. 17-1, *et. seq.*

While holds based on entry of notice of appeal do not appear to find support in the law, the State's hands are not tied if there is reason to believe that reconsideration of a defendant's bond is warranted (e.g., after entering notice of appeal, the defendant is overheard to say that he plans to leave the state—a factor that may justify imposition of a secured bond under G.S. 15A-534(b)). The prosecutor "may at any time apply to an appropriate district court judge or superior court judge for modification or revocation of an order of release," pursuant to G.S. 15A-539(a). To which judge should the prosecutor apply? That is a thorny question as you will see from the discussion of statements (2) and (3) in tomorrow's blog post.