

## Probation Violation Hearings after Expiration: The Importance of a File Stamp

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In general, a court only has jurisdiction to act on a probation case until the period of probation expires. There is a limited exception to that rule in [G.S. 15A-1344\(f\)](#). Under that law, the court may act on the case after it expires if the State filed a violation report with the clerk before expiration. The law is essential when a hearing cannot be held before a supervision period ends because, for example, the alleged violation happened near the end of the supervision period or the probationer absconded.

I refer to this grant of additional jurisdiction as “holding the case open” for hearing. Some people say the filing of the violation report “tolls” the period of probation, but that can be misleading. Tolling has a special meaning in the probation context, referring to the now-repealed provision (first codified in G.S. 15A-1344(d) and later in G.S. 15A-1344(g)) that kept a person on probation during the pendency of a new criminal charge. Unlike tolling, the filing of a violation report does not actually keep a person on probation, it just preserves the court’s authority to respond to a violation alleged during the term of supervision.

Timelines become important when it comes to holding a case open for hearing. The probation officer must be careful to file a violation report before the case expires to satisfy G.S. 15A-1344(f). The standard way to establish that the report was timely filed is to show that the report was file stamped by the clerk before expiration. Under a series of cases decided over the past decade or so, the black-letter rule is clear: in the absence of a file-stamped motion or any other evidence of the motion’s timely filing, the trial court is without subject matter jurisdiction to act after the case expires. *State v. Moore*, 148 N.C. App. 568, 570 (2002).

A recent case from the court of appeals serves as a good reminder of the file stamp issue. In [State v. High](#), the defendant was sentenced in 2008 to two 6–8 month felony sentences, suspended and set to run consecutively in the event of revocation. His original 24-month term of probation was set to expire on July 20, 2010. Several months before that date his probation officer prepared violation reports alleging multiple violations of probation. The reports were signed and dated March 1, 2010 by both the probation officer and the deputy clerk of superior court, and the defendant acknowledged receipt of them by his signature on March 18, 2010. Neither report bore a time stamp indicating a date of filing. [Cue ominous music.]

The hearing on the violation did not take place until September 20, 2010—two months after the original expiration date. At the eventual hearing, the court extended the probation period by 24 months. After additional violations in 2011 and 2012, the court revoked the defendant’s probation in August 2012.

On appeal, the defendant argued that the court erred by revoking probation in 2012 because, with no file stamps on the 2010 violation reports, there was no subject matter jurisdiction for the September 2010 order extending probation. The State replied that the holding of *State v. Moore* allows for jurisdiction to be preserved under G.S. 15A-1344(f) by a “file-stamped motion *or any other evidence of the motion’s timely filing*” (emphasis added), and the dated signature of the clerk of superior court should be considered as “any other evidence” in this case.

The court of appeals agreed with the defendant, concluding that the clerk’s signature was not sufficient to prove

beyond a reasonable doubt that the violation reports were timely filed. With no jurisdiction to extend in 2010, everything that followed was improper, leading the court of appeals to vacate the defendant's activated felony sentences.

The *High* case confirms something we already knew: file stamps are important. And if the clerk's signature isn't sufficient "other evidence" of filing, I'm not sure what is. So, probation officers and prosecutors: get those violation reports stamped! Defense lawyers: check to see if those reports are stamped, and argue a lack of jurisdiction if they aren't! Everyone: make sure the file stamp machine is working properly! See *State v. Askew*, \_\_ N.C. App. \_\_, 727 S.E.2d 905, 907 n.1 ("The file stamp states that the violation report was filed on 31 June 2011, which is not a day . . .").