



What Not to Do in an Impaired Driving Case (Post II)

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The first post in this series discussed [State v. Taylor](#). This one recounts the what not to do lessons from last week's court of appeals' decision in [State v. Petty](#).

The defendant in *Petty* was charged on April 28, 2006 with impaired driving. He moved to dismiss the charges pursuant to *State v. Knoll*, 322 N.C. 535 (1998) (discussed [here](#)) alleging a violation of his right to timely pre-trial release. After a hearing on the motion, a district court judge dismissed the charges. The state appealed from the district court's order. Because the offense was committed before December 1, 2006, it was not governed by the current procedures for motions in implied-consent cases, discussed [here](#). (Under current [G.S. 20-38.6](#), a district court judge may initially enter only a preliminary indication that a motion to dismiss be granted, and may not enter a final judgment until after the State has appealed to superior court or has indicated it does not intend to appeal.)

The superior court reversed the district court's order dismissing the charges but limited the State's case to proof under the *per se* prong of [G.S. 20-138.1](#). (The court of appeals in *State v. Rasmussen*, 158 N.C. App. 544, 554 (2003), characterized dismissal of the appreciable impairment theory of impaired driving in that case as curing any prejudice resulting from the denial of access to witnesses to field sobriety tests.) The superior court remanded the case to district court for further proceedings.

The defendant pled guilty to the impaired driving charges in district court on April 7, 2009. The district court judge arrested judgment by making a handwritten notation on the judgment, which did not explain the basis for the ruling. Three weeks later, the State filed a motion for appropriate relief (MAR) in district court, asserting that the judge was required to conduct a sentencing hearing and enter judgment pursuant to [G.S. 20-179\(a\)](#). After a hearing, the district court judge who had arrested judgment entered judgment, imposing Level V punishment.

The defendant appealed to superior court, where he filed a motion to dismiss the charges on the basis that he had "been prejudiced by further proceeding in this case following the order arresting judgment." The superior court granted the motion. The State appealed to the court of appeals, alleging that the superior court lacked subject matter jurisdiction to review the district court's judgment and thus erred in dismissing the charges rather than proceeding for trial *de novo*. The court of appeals agreed.

The appellate court began its analysis by noting that trial *de novo* is a new trial in every respect, and judgment in superior court is independent of judgment in district court. While a superior court may review proceedings in district court to determine if it has jurisdiction—that is, the power conferred by state constitution or statute to hear and determine the case—it may not engage in appellate review of the correctness of the district court's rulings.

The court rejected the defendant's argument that the State's alleged failure to comply with the MAR statute deprived the district court judge of jurisdiction to enter judgment against the defendant subsequent to the entry of an order arresting judgment. Relying upon *State v. Bonds*, 45 N.C. App. 62 (1980), and *State v. Branch*, 134 N.C. App. 637 (1999), the court explained that while a judge's jurisdiction over a case generally terminates at the end of the session at which the case is heard and decided, a judge retains the power after the session has ended to correct invalid sentences. (For a detailed discussion of *Branch* and the trial court's authority to sua sponte correct errors, read [this](#)

[bulletin](#) by my colleague Jessica Smith.). Because there is no requirement that any particular procedure be utilized to inform a trial judge of a judgment's invalidity, the State's compliance with the MAR statute was a non-issue.

The court of appeals agreed with the superior court's conclusion that the district court judge had no authority to arrest judgment—an action that amounted to the entry of an invalid judgment. The district court judge therefore retained the authority to correct the error after the session ended.

Once the defendant appealed, the superior court obtained jurisdiction over the impaired driving charge and was required to afford defendant a trial de novo pursuant to [G.S. 15A-1431](#). The superior court erred by dismissing the charges based on the alleged defects in the district court proceeding, which did not deprive the superior court of jurisdiction.

Thus, the court of appeals reversed the superior court's order dismissing the charge and remanded the case to superior court for further proceedings.

The “what not to do” lesson in *Taylor* was one for law enforcement. *Petty* is instructional for judges, and, for the district court bench, it again emphasizes what the appellate courts have repeatedly held: Defendants convicted of impaired driving must be sentenced in accordance with G.S. 20-179. See *In re Tucker*, 348 N.C. 677 (1998) (noting in judicial disciplinary action district court judge's mistaken belief that mandatory sentencing provisions of G.S. 20-179 did not apply if he continued prayer for judgment to a date certain and then dismissed the case); *In re Martin*, 333 N.C. 242 (1993) (censuring district court judge for convicting defendants of reckless driving when they were charged with driving while impaired, acts that the judge knew to be improper and beyond the power of his office); *In re Greene*, 297 N.C. 305 (1979) (holding that North Carolina courts do not have an “inherent power” to continue prayer for judgment continued on conditions or to suspend sentence when the sentence (as it is for impaired driving convictions) is mandated by the General Assembly; directing named district court judge in adjudicating convictions for offenses sentenced pursuant to G.S. 20-179 to pronounce judgment in accordance with statute).