Delinquency Case Law Update

September 2022 through July 2024

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In re B.W.C.

877 S.E.2d 444 (N.C. Ct. App. 2022)
Gaston County
September 6, 2022
https://appellate.nccourts.org/opinions/?c=2&pdf=41544

Summary: Juvenile-appellant "Brian" appealed from an order adjudicating him as delinquent for indirect contempt and placing him on probation for six months. In April of 2021, Brian admitted to truancy in an undisciplined action for accruing 58 absences from school. During that proceeding, he was not represented by counsel. The matter was continued for disposition until June of 2021 with conditions imposed by the Court expressly requiring attendance at school with no further absences, amongst other requirements, with a warning that violation of the conditions may result in Brian being held in Contempt. At the undisciplined disposition hearing in June, Brian was placed on probation under the supervision of a court counselor with terms of probation including the contempt warning order previously entered. In August, a probation violation was filed alleging failure to attend school and a separate delinquency petition was filed alleging violation of the contempt warning. At this time, Brian was appointed counsel on the delinquency petition and counsel filed a motion to dismiss the petition, arguing violation of his due process and statutory rights as "N.C. Gen. Stat. § 7B-2505 read together with § 7B-2503 did not allow the trial court to pursue delinquency actions following an adjudication of undisciplined, and emphasizing the General Assembly's distinction between 'children adjudicated undisciplined versus children adjudicated delinquent[.]'" The trial court denied the motion to dismiss, and Brian admitted the indirect contempt alleged in the petition. The trial court found Brian to be delinquent and entered disposition.

Issues Affecting Youth: Whether the State may seek a delinquency adjudication for contempt in response to noncompliance with orders arising from an undisciplined adjudication? Yes, it may.

"Under a plain reading of N.C. Gen. Stat. §§ 7B-1501 and 5A-31, it is clear that [ ] Brian committed indirect contempt when he violated his disposition order by failing to attend school regularly, an action which was done outside of the direct presence of the trial court. Under N.C. Gen. Stat. § 5A-33, it was proper for the trial court to find Brian delinquent as a result of such contempt, as a juvenile's indirect contempt may be 'adjudged and sanctioned only pursuant to the procedures in Subchapter II of Chapter 7B of the General Statutes[,]' which contains N.C. Gen. Stat. § 7B-1501." (internal citations omitted).

In re J.M.

876 S.E.2d 874 (N.C. Ct. App. 2022)
Forsyth County
September 6, 2022
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=41541

Summary: Juvenile-appellant "James" appealed from an adjudication order finding him responsible for simple assault. James took the witness stand to testify on his own behalf during the hearing and made several self-incriminating statements including linking his personal identity to that of social media identity otherwise implicated in the proceedings. The Court did not conduct any colloquy with James regarding his privilege against self-incrimination before James took the stand.

Issues Affecting Youth: Whether failure to hold the colloquy as required by N.C.G.S. §7B-2405 (privilege against self-incrimination) before a juvenile testifies on his own behalf constitutes reversible error? Yes, it can.

"In an adjudicatory hearing held 'to determine whether the juvenile is undisciplined or delinquent[,] . . . the [trial] court shall protect' the juvenile's 'privilege against self-incrimination[.]' '[P]ursuant to this statute, the trial court shall protect the juvenile's delineated rights, including the right against self-incrimination.' 'The use of the word 'shall' by our Legislature has been held by this Court to be a mandate, and the failure to comply with this mandate constitutes reversible error.'" (internal citations omitted).

In re A.O.

878 S.E.2d 657 (N.C. Ct. App. 2022)
Mecklenburg County
October 4, 2022
https://appellate.nccourts.org/opinions/?c=2&pdf=41679

Summary: "Anthony" was charged with common law robbery in regard to an attack on Mr. Rodriguez in the parking lot of a Fast Mart convenience store. Anthony was alleged to be one of five male, minority teenagers involved in the fight with Mr. Rodriguez. At trial, Mr. Rodriguez was unable to identify whether Anthony was the teenager who took Mr. Rodriguez's wallet, or "if it was another one." Anthony's motion to dismiss at close of State's evidence was denied. Anthony testified on his own behalf. The trial court provided no warnings to Anthony before he testified. Anthony testified that while he was not involved in the fight, he was the one to take the wallet. Anthony was adjudicated delinquent.

Issues Affecting Youth: Whether failure to hold the colloquy as required by N.C.G.S. §7B-2405 (privilege against self-incrimination) before a juvenile testifies on his own behalf constitutes reversible error? Yes, it can.

"Our courts have consistently recognized that the State has a greater duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution.' The General Assembly has taken measures to ensure that a juvenile's rights are protected during a delinquency adjudication. N.C. Gen. Stat. § 7B-2405 states, 'In the adjudicatory hearing, the court shall protect

the following rights of the juvenile and the juvenile's parent, guardian, or custodian to assure due process of law: . . . [t]he privilege against self-incrimination.'" (internal citations omitted).

"'[A]t the very least, some colloquy [is required] between the trial court and juvenile to ensure the juvenile understands his right against self-incrimination before choosing to testify at his adjudication hearing.'" (internal citations omitted).

In re H.T.S.

2022-NCCOA-754 (N.C. Ct. App. 2022)
Unpublished Opinion
Cumberland County
November 15, 2022
https://appellate.nccourts.org/opinions/?c=2&pdf=41605

Summary: Cumberland County Department of Social Services (CCDSS) appeals a Level 2 disposition order for a delinquent juvenile in which the juvenile was placed in CCDSS's custody following an admission of guilt to assault with a deadly weapon. The disposition order did not contain findings of fact as required by NCGS §7B-2501(c), leaving the section of the Disposition Order for findings under §7B-2501(c) entirely blank, nor under §7B-2506, requiring a finding that placement with county DSS requires a finding that the juvenile's continuation in his own home would be contrary to the juvenile's best interest, and the related section on the Disposition Order was left blank for this section as well. During the hearing, counsel for DSS and the juvenile's mother were asked if they wished to be heard; counsel for DSS provided a blanket objection to the juvenile being placed in DSS custody and the juvenile's mother provided some remarks to the Court. Neither presented evidence. On appeal, CCDSS argued that the mother's constitutional rights to parent the juvenile was infringed upon by the award of custody to CCDSS and that, by extension, custody with CCDSS was improper. It was also argued that failure to make the appropriate findings of fact in the Dispositional Order constituted fatal deficiency.

Issues Affecting Youth: Whether the trial court must make findings of fact showing the trial court considered all five factors in §7B-2501(c) and the single factor in §7B-2506(1)(c)? Yes, it must. Whether placement with the local Department of Social Services is contrary to the parent's constitutional rights to parent the child? The issue was not reached.

"The trial court must consider all five factors under § 7B-2501(c), and the trial court's dispositional order must reflect that the trial court considered all five factors. The trial court may indicate its consideration of the statutory factors in both its findings of fact, and in the conditions of the disposition itself." (internal citations omitted)

In re J.M.M.C.

No. COA22-524, 2022 N.C. App. LEXIS 763 (Ct. App. Nov. 15, 2022)
Unpublished Opinion
Richmond County
November 15, 2022
https://appellate.nccourts.org/opinions/?c=2&pdf=41844

Summary: James was adjudicated delinquent of simple possession of marijuana and a Level 1 disposition was entered, ordering that James be placed on supervised probation for a term of 6 months. Trial counsel appealed prior to the court's entry of the written final order. The disposition order did not contain findings demonstrating it considered the factors listed in NCGS §7B-2501(c) in entering the dispositional order.

Issues Affecting Youth: Whether the trial court must make findings of fact showing the trial court considered all five factors in §7B-2501(c)? Yes, it must.

""The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law.' 'The plain language of Section 7B-2501(c) compels us to find that a trial court must consider each of the five factors in crafting an appropriate disposition.'" (internal citations omitted).

In re A.M.S.

No. COA22-266, 2022 N.C. App. LEXIS 821 (Ct. App. Dec. 6, 2022)
Unpublished Opinion
Davidson County
December 6, 2022
https://appellate.nccourts.org/opinions/?c=2&pdf=41758

Summary: Juvenile entered an *Alford* admission in district court to Possession of a Weapon on School Property and First-Degree Trespass. An assessment conducted by the Court Counselor indicated mental health concerns. During the admission, the Trial Court engaged in a colloquy with the juvenile including the following question by the trial court: "Do you understand at this hearing you have the right to say anything about your charge, and any statement that you make can be used as evidence against you?" The Trial Court accepted the admission and ordered Level 1 disposition with probation for 12 months and cooperation with any residential treatment programs recommended. The order did not refer the juvenile for a mental health evaluation.

Issues Affecting Youth: Whether the trial court must strictly comply with the statutory requirements of NCGS 7B-2407, which requires the Court ensure the juvenile's admission is the product of a fully informed choice by the juvenile? Yes, it must. Whether the trial court must make a mental health evaluation referral if there is any evidence of mental health issues? Yes, it must.

"Here, the Record reflects the trial court may have simply misspoken when it informed A.M.S. he had the right to 'say anything about your charge[.]' Indeed, this appears to be a simple mis-recitation of the pre-printed form, which states: 'you have the right to *not* say anything about your charge[s] . . .' (emphasis added). Nevertheless, our case law compels a trial court's oral inquiry 'strictly comply' with each requirement of N.C. Gen. Stat. § 7B-2407(a)." (internal citations omitted).

"…NC. Gen. Stat. § 7B-2502(c)—now repealed but applicable to the Petitions in this case—required the trial court to refer [the juvenile] to the area mental health services director. The State [agrees, however] points to the more recently applicable N.C. Gen. Stat. § 7B-2502(a) as the statutory mandate requiring referral for a mental health evaluation." (internal citations omitted).

In re J.B.

No. COA22-605, 2022 N.C. App. LEXIS 789 (Ct. App. Dec. 6, 2022)
Unpublished Opinion
Union County
December 6, 2022
https://appellate.nccourts.org/opinions/?c=2&pdf=41880

Summary: Juvenile "Jacob" appeals from orders adjudicating him delinquent for second-degree forcible rape and placing him on probation for twelve months. The matter was calendared, with consent of the parties, for a date certain "for probable cause and adjudication." The court held a combined probable cause and adjudication hearing on that date after hearing evidence and entered disposition to include twelve months of probation. On appeal, the Court reviewed the colloquies in court regarding the calendaring of the court dates and noted that trial counsel objected to a virtual hearing but did not otherwise object to scheduling the probable cause and adjudication hearings together for the same date.

Issues Affecting Youth: Whether Jacob "invited error" by seeking a combined hearing and thus waived the right to appellate review concerning the invited error? Yes, he did.

"[A] defendant who invites error cannot be prejudiced as a matter of law. 'The doctrine of invited error applies to a legal error that is not a cause for complaint because the error occurred through the fault of the party now complaining.' 'Thus, a defendant who invites error has waived his right to all appellate review concerning the invited error . . . .'." (internal citations omitted).

In re L.D.G.

No. COA22-286, 2022 N.C. App. LEXIS 804 (Ct. App. Dec. 6, 2022)
Unpublished Opinion
Buncombe County
December 6, 2022
https://appellate.nccourts.org/opinions/?c=2&pdf=41667

Summary: "Luke" was adjudicated delinquent for misdemeanor simple assault and misdemeanor disorderly conduct after the trial court denied his motions to dismiss for insufficient evidence. Luke was involved in an altercation in which law enforcement became involved in an attempt to break up the fight. The officer provided testimony during trial, including that Luke was at the bottom of two individuals in a fight. Parts of the officer's testimony conflicted with his body cam footage, which was made a part of the record on appeal. The trial court denied Luke's motion to suppress, adjudicated Luke to be delinquent, and ordered Level 1 disposition.

Issues Affecting Youth: Whether sufficient evidence was presented to survive a motion to dismiss? No, it was not.

"This Court reviews motions to dismiss for insufficient evidence de novo. In its ruling, the lower court must decide 'whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense.' 'Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.' The trial court should deny the motion to dismiss if 'substantial' direct or circumstantial evidence exists 'to support a finding that the offense charged has been committed and that the [juvenile] committed it.'" (internal citations omitted).

"This Court must consider the evidence 'in the light most favorable to the State,' entitling the State to 'every reasonable inference of fact that may be drawn from the evidence.' When a party presents circumstantial evidence, 'the court must consider whether a reasonable inference of [the juvenile's] guilt may be drawn from the circumstances.' When an inference is drawn, the court, as the fact finder in the juvenile matter, must then determine 'whether the facts taken singly or in combination, satisfy [the court] beyond a reasonable doubt that the juvenile is delinquent.' However, when the evidence presented advances 'no more than a suspicion or conjecture as to . . . the commission of the offense . . . the motion should be allowed.'" (internal citations omitted).

State v. Smith

No. COA22-719, 2023 N.C. App. LEXIS 292
Buncombe County
June 6, 2023
https://appellate.nccourts.org/opinions/?c=2&pdf=42349

Summary: Mr. Smith was tried by jury and found guilty in Buncombe County for a first-degree murder offense. He was 16 years old at the time of the offense, a shooting murder in Asheville, NC. During the trial, and on appeal, defense objected and appealed on many grounds, including voluntary intoxication, lesser-included charge jury instructions, and of particular interest to youth defenders, a request for a special jury instruction on intent, premeditation, and deliberation for adolescents.

Issues Affecting Youth: Whether youth may receive a special jury instruction related to adolescent brain development and its effect on culpability in the absence of evidence of adolescent brain function. No, they may not.

"Although we agree the Supreme Court of the United States has stated 'children are constitutionally different from adults for purposes of sentencing [,]' it has never found this difference relevant to a finding of guilt. In fact, the Supreme Court has articulated their decisions do not 'suggest an absence of legal responsibility where crime is committed by a minor.' Defendant concedes that no court has held such and we decline to announce a new legal precedent.

Here, even if the statements in defendant's proposed instructions are, arguably supported by current scientific research, they are not supported by the evidence, since no evidence was presented on adolescent brain function, and they are not a correct statement of the law. The instruction for first-degree murder provided by the trial court fully encompassed the elements of the offense. Defendant's age is not considered nor contemplated in the analysis of premeditation and deliberation; therefore, this instruction would be incorrect and likely to mislead the jury." (Internal citations omitted)

The Court's reference to the lack of evidence presented on adolescent brain development being different than that of adults' brain development, and thus the relevance to culpability, leaves open the door for defenders to ask for this special jury instruction during trials in which an expert or other witness provides testimony or evidence on the difference (and relevance) of adolescents' brains and their culpability.

In re: J.U.

No. 263PA21, 2023 N.C. LEXIS 419
Cumberland County
June 16, 2023
(On discretionary review of an unpublished opinion)
https://appellate.nccourts.org/opinions/?c=1&pdf=42371

Summary: The youth was charged adjudicated delinquent on misdemeanor sexual battery, the petition for which alleged that "the juvenile did unlawfully, willfully engage in sexual contact with [B.A.] by touching [her] vaginal area, against the victim[']s will for the purpose of sexual gratification." (While other charges were petitioned and adjudicated, this was the only remaining

charge that was appealed to the NC Supreme Court.) The trial court entered a Level II disposition order, and the youth was required to complete twelve months of probation and up to fourteen twenty-four-hour periods of secure custody in addition to fulfilling certain other requirements.

Issues Affecting Youth: Whether a sexual battery petition that fails to specifically allege the element of force was fatally defective and failed to invoke the trial court's jurisdiction. Under these circumstances, it was not.

"The petition here alleged that J.U. 'engage[d] in sexual contact with [B.A.] by touching [her] vaginal area, against the victim[']s will for the purpose of sexual gratification.' By alleging that J.U. touched B.A.'s vaginal area without her consent, the petition asserted a fact from which the element of force was, at the very least, 'clearly inferable,' such that 'a person of common understanding may know what [wa]s intended.' Thus, the factual allegations in the juvenile petition supported each element of misdemeanor sexual battery. The petition, therefore, complied with statutory pleading standards, and no jurisdictional defect existed." (Internal citations omitted)

Justice Earls dissented, with Justice Morgan joining, noting that the misdemeanor sexual battery statute requires an element of force, and that if the General Assembly had intended for the omission of the element of force, it could have constructed the statute like that of other states whose statutes do not require a showing of the element of force.

"'[T]]he state has a *greater* duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution.' Accordingly, our Court 'shall' protect '[t]he right to written notice of the facts alleged in the petition' in order 'to assure due process of law.'" (Internal citations omitted)

Justice Earls distinguishes that "acting against the will of the victim and acting with force are not synonymous, and the law draws a distinction between both actions," and "[w]hile the majority characterizes the pleading requirements listed in section 7B-1802 as 'highly technical[ ] [and] archaic[,]' those requirements are more properly characterized as constitutional procedural due process protections. Procedural due process is 'a guarantee of fair procedure.' While state action that deprives a person of 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*." (Internal citations omitted)

In re: S.C.

No. COA22-965, 2023 N.C. App. LEXIS 529
Onslow County
September 5, 2023
https://appellate.nccourts.org/opinions/?c=2&pdf=42606

Summary: A hearing was held in delinquency court on a petition for misdemeanor assault in which the youth testified on her own behalf. Before allowing the youth to take the stand, the Court did not conduct any colloquy with the youth nor advise her of her rights, including fifth amendment rights and protections. During her testimony, the youth made incriminating statements against herself, which statements were used by the State in its closing arguments. The youth was found responsible, and an adjudicatory order was entered. On appeal, the State conceded that the failure to advise the youth constituted reversable error; the adjudication was vacated and remanded.

Issues Affecting Youth: It is a clearly established statutory mandate that a youth must be advised of their rights before testifying on their own behalf in a delinquency proceeding, and that youth are afforded greater protections than adults during such proceedings.

"'Our courts have consistently recognized that the State has a greater duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution.' … '[T]he court shall protect the following rights of the juvenile and the juvenile's parent, guardian, or custodian to assure due process of law,' including '[t]he privilege against self-incrimination.' '[B]y stating that the trial court shall protect a juvenile's delineated rights, [the General Assembly] places an affirmative duty on the trial court to protect . . . a juvenile's right against self-incrimination.' 'The plain language of N.C.G.S. § 7B-2405 places an affirmative duty on the trial court to protect the rights delineated therein during a juvenile delinquency adjudication.'" (internal citations omitted)

In re: N.M.

No. COA23-100, 2023 N.C. App. LEXIS 601
Surry County
September 19, 2023
https://appellate.nccourts.org/opinions/?c=2&pdf=42606

Summary: A hearing was had in delinquency court in this matter in regard to a fight on a school bus. The youth charged was found to be delinquent and adjudicated for simple assault and Level 1 disposition, including 12 months of probation. In the disposition order, the Court marked the pre-printed checkbox that it had received and considered the predisposition report, risk assessment, and needs assessment, as well as a Youth Assessment and Screening Instrument (YASI) full narrative assessment, but left the section entitled "Other Findings" blank, and did not make any independent findings about the contents of the submitted documents or any other dispositional factors required to be considered pursuant to NCGS §7B-2501(c). The Court of Appeals reversed the dispositional order and remanded for a new dispositional hearing.

Issues Affecting Youth: In crafting dispositional orders, Courts must consider all five factors required by NCGS §7B-2501(c): (1) The seriousness of the offense; (2) The need to hold the juvenile accountable; (3) The importance of protecting the public safety; (4) The degree of culpability indicated by the circumstances of the particular case; and (5) The rehabilitative and

treatment needs of the juvenile indicated by a risk and needs assessment. The Court must make *independent* findings on each of these factors, which means something above and beyond reading, considering, and/or incorporating by reference the predisposition report, risk assessment, needs assessment, or YASI assessment (or other such submitted documentation); while the information can come *from* these documents, the Court should make independent findings from the documents and indicate that each prong of NCGS §7B-2501(c) was thus considered.

"This Court has held 'the trial court is required to make findings demonstrating that it considered the [N.C. Gen. Stat.] § 7B-2501(c) factors in a dispositional order entered in a juvenile delinquency matter.' 'The plain language of Section 7B-2501(c) compels us to find that a trial court must consider each of the five factors in crafting an appropriate disposition.' (internal citations omitted)

In re J.M.

No. COA23-215, 2023 N.C. App. LEXIS 623
Cumberland County
October 3, 2023
https://appellate.nccourts.org/opinions/?c=2&pdf=42645

Summary: In a delinquency matter, custody of the youth was granted to the Cumberland County Department of Social Services. CCDSS appealed from this order, seeking relief from the grant of custody. By the disposition of the matter, custody was given to the youth's grandmother. The Court of Appeals determined the issue to be moot and that no exception to reviewing the matter existed, and as such dismissed the appeal.

Issues Affecting Youth: While this case didn't address a delinquency issue directly, it is likely the first case in which the issue of mootness, and the exceptions to that doctrine, are addressed in a delinquency case. While the Court of Appeals found that none of the exceptions applied in this case, Defenders should take note that the explanation of the "capable of repetition" prong may be applicable to many areas of delinquency defense, including but not limited to secure custody issues, and other issues that resolve at disposition of a matter and as such are generally not appealed, especially when an interlocutory appeal is not available. The argument is not one that is necessarily to be used in the courtroom (no immediate relief for the youth in custody), but defenders should keep in mind to contest secure custody, particularly if the youth is being detained illegally, so that the issue is preserved for appellate review.

"Nevertheless, there are five exceptions to this general rule of dismissal [for mootness]: (1) when a defendant voluntarily stops the challenged conduct; (2) when the challenged conduct involves an important public interest; (3) when the challenged conduct evades review but is capable of repetition; (4) when there are adverse collateral consequences of denying review; and (5) when other claims of class members remain."

"[A] case is capable of repetition, yet evades review, when: (1) the challenged conduct is too fleeting to be litigated before the conduct ends; and (2) there is a reasonable expectation that the complaining party will be affected by the same conduct again. Under this exception, 'the underlying conduct upon which the relevant claim rests [must be] necessarily of such limited duration that the relevant claim cannot be fully litigated prior to its cessation and the same complaining party is likely to be subject to the same allegedly unlawful action in the future.'"

"The first prong requires a brief controversy with a 'firmly established' endpoint. An example of such a controversy includes election misconduct. An election is short, and its conclusion is established by statute and 'beyond the control of litigants.' Because an election winner is declared soon after any alleged election misconduct, the scenario is too fleeting to be litigated before the election ends. Juvenile-custody controversies, however, are not too fleeting to be litigated before the controversy ends. Indeed, we regularly review juvenile-custody cases." (all internal citations omitted)

In re: A.G.J.

No. COA23-323
Rockingham County
21 November 2023
https://appellate.nccourts.org/opinions/?c=2&pdf=42749

Summary of the Case: "Annie" admitted responsibility on two misdemeanors and disposition was entered, placing her on twelve months of probation and in the custody of the Rockingham Department of Social Services. Timely notice of appeal was filed, albeit not drafted with technical correctness, as the appeal did not indicate to which Court the appeal was being taken. Disposition was vacated and remanded for a new dispositional hearing that considered all factors required by statute.

Issues Affecting Youth: What findings by a court satisfy the requirement that all factors in NCGS 7B-2501(c) be considered? The majority opinion held that each factor must be individually considered within the dispositional order itself. However, Judge Stroud's dissent indicated that "incorporating documents by reference" should satisfy the requirements of the statute if those referenced documents address all the factors.

"This Court's precedents have made it clear that the trial court is required to make written findings in a disposition order entered in a juvenile delinquency matter, demonstrating it considered all the factors in Section 7B-2501(c)."

"As the dissenting judge, I will not attempt to reconcile years of arguably inconsistent case law and remain 'trapped in a chaotic loop as different panels disagree[.]' I simply note that here, by incorporating the pertinent documents into its order along with its additional findings of fact, the trial court satisfied North Carolina General Statute Section 7B-2501(c)"… (internal citations omitted)

Other Topic Affecting Youth Defenders: The process of appealing a juvenile delinquency matter can be a little tricky from some aspects – and yet very straightforward on others. Defenders should familiarize themselves with the appeals process – check out thoughts from Assistant Appellate Defender David Andrews on the specifics of appealing delinquency cases at the end of today's Case Law Corner!

The appellate courts can get ugly when an appeal isn't entered properly: "[I]t was 'readily apparent that [the] defendant has lost his appeal through no fault of his own, but rather as a result of sloppy drafting of counsel.'" State v. Hammonds, 218 N.C. App. 158, 163, 720 S.E.2d 820, 823 (2012) Remember that improper appeals create jurisdictional issues and leaves the appellate defenders begging the courts to hear the case anyway. If you are unsure, please reach out to us or the Appellate Defender's office and we will be happy to help!

In re: T.L.B.

No. COA23-565
Lincoln County
21 November 2023
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=42933

Summary of the Case: Timothy admitted to the allegations of Secret Peeping, a class 1 misdemeanor, and Dissemination of Images Obtained in Violation of the Peeping Statute, a class H felony. The trial Court found Timothy to have a "Low" delinquency history and advised Timothy during the admission colloquy that the most serious or severe disposition level that could be imposed was a Level 1 Disposition. In fact, a class H felony, even for a Low Delinquency History, can be sentenced as Level 1 or Level 2. The trial court imposed a Level 1 disposition. Timely notice of appeal was filed, albeit not technically correct in its timing as the appeal was filed before the written order was filed.

Issues Affecting Youth: Whether the language on the AOC provided Transcript of Admission meets the statutory requirements to advise the youth of his right to confront witnesses? Yes, it does.

Jurisprudence "require[s] the juvenile to be informed of all six of the rights enumerated by the statute. Had the Supreme Court intended for a verbatim reading by the trial court of Section 7B-2407(a), it would have clearly stated so." (Citations omitted)

Whether advising a youth that the most serious disposition a court could impose is a Level 1 disposition, even if the youth is eligible for Level 2 disposition, is a knowing and voluntary admission if the Court actually imposes Level 1 disposition? Yes, it is.

"[A] trial court does not err when it advises a juvenile of a specific disposition level it could receive, then orders the juvenile to the advised-of disposition level, even though it could have ordered a higher level. This is necessarily so because it cannot be said the admission was not knowing or voluntary when a juvenile receives the disposition level of which they were advised.

Are there exceptions to the mootness rule (which bars appellate courts from reviewing matters if they have become moot)? Yes. Two exceptions to this rule are the "capable of repetition, yet evading review" exception, and the "public interest" exception.

"The capable of repetition, yet evading review exception applies when: "(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action again." (Citations omitted)

"Under the public interest exception to mootness, an appellate court may consider a case, even if technically moot, if it involves a matter of public interest, is of general importance, and deserves prompt resolution." (Citations omitted)

Trial defenders should remember that appellate defenders can always make an argument that an issue should be reviewed even if it is moot under these exceptions. This may be particularly applicable in situations where judges routinely hold children in secure custody on illegal or improper grounds. Please contact us or the Appellate Defenders office if you'd like to become more familiar with this concept and how you might help preserve these issues for appellate review.

Thoughts on Appealing Juvenile Delinquency Matters from Appellate Defender David Andrews

In a very timely conversation on the juvenile defense listserv, a defender asked a question to which Assistant Appellate Defender David Andrews responded with a fantastic list of tips and things to remember when appealing juvenile delinquency cases. I've reproduced a lightly edited version of his response here – please reach out to us or to David with any questions or thoughts! (And if you're not on the listserv but would like to be added, just let us know!)

The relevant statute for the right to appeal in delinquency cases is N.C. Gen. Stat. 7B-2602.

Take a minute to read it. It's not long.

As a general matter, it's easier to give oral notice of appeal. It's just less complicated. However, you must be sure to give oral notice of appeal ***after the judge orally enters disposition.*** *There are lots of cases where attorneys give notice of appeal after the client*

enters an admission (pleads guilty), but before the judge issues the disposition. Don't do that! The notice of appeal in that scenario is premature, invalid, and subjects the appeal to dismissal.

Also, as a general matter, you can't appeal directly from the adjudication order. Instead, ***you can only appeal from a dispositional order.*** *Again, this is in the text of NCGS 7B-2602. (There's one complicated exception where you can give written notice of appeal from the adjudication order between the 60th and 70th day after the adjudication if no disposition has been entered)*

NCGS 7B-2602 also says you can give written notice of appeal within 10 days after the disposition has been entered. The problem is that if you didn't give oral notice of appeal, you must keep checking with the clerk to see when the judge files the written dispositional order in the court file. That is, you cannot enter written notice of appeal until there is a file-stamped written order. If you give written notice of appeal on the same day of the dispositional hearing, but the judge doesn't file the written dispositional order until a week later, your written notice of appeal will – again – be premature, invalid, and subject the appeal to dismissal. (All of this is obviously complicated and frustrating. I've argued against some of this insanity to no avail) I've attached a sample written notice of appeal. ***If you file a written notice of appeal, be sure to file it after the written order is file-stamped and serve a copy on the prosecutor.***

When you give notice of appeal, you can also ask, orally or in writing, that the dispositional order be stayed. A sample written stay motion is available in the Trial Motions and Forms Index section of the Defenders Portal. If you ask for a stay and your request is denied, then the appellate attorney could potentially ask the Court of Appeals for a stay. However, if you don't ask for a stay in juvenile court, the appellate attorney cannot ask for a stay. (This is a function of Rule 8 of the North Carolina Rules of Appellate Procedure)

Lastly, you might want to fill out and include with your notice of appeal an appellate entries. The appellate entries is an order where the trial judge appoints the Office of the Appellate Defender to represent the client. You can find an appellate entries for delinquency cases here. Whether you prepare the appellate entries or the clerk does, ***please make sure that any and all hearings that occurred in the case are included in the box on the top left box on the front page.*** *If you don't, the appellate attorney will have to figure when any relevant hearings were – and that is time-consuming, difficult, and makes the appeal last longer. If is far easier and much more efficient if you, the trial attorney, include those dates on the appellate entries at the beginning of the appeal.*

If you have questions, please post them email on the juvenile listserv so everyone case see the questions and answers. These issues come up frequently, and I think an open discussion would help everyone become more familiar with what needs to be done to get an appeal up to the Appellate Division. Please also feel free to reach out to me by sending an email to David.W.Andrews@nccourts.org

In re: M.E.W.

No. COA23-21
Guilford County
19 December 2023
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=42469

Summary of the Case: The youth, a 16-year-old male, was charged with misdemeanor assault and felony possession of a stolen firearm in Greensboro. The charges arose from an allegation that the youth had pointed a rifle at his stepfather, who called the police. Police only located the rifle under a pile of clothing in the youth's bedroom after questioning the youth multiple times. Evidence was admitted as to the rifle being stolen, but no direct evidence as to the youth's knowledge of the stolen status of the gun. Trial counsel moved to suppress the youth's statement as to the location of the gun as well as moved to dismiss for lack of evidence of the youth's knowledge of the status of the gun. Both motions were denied by the trial court.

Issues Affecting Youth: On appeal, the Court reviewed the denial of the motion to dismiss *de novo* and upheld the decision, citing precedent that "a defendant's 'guilty knowledge may be inferred from
incriminating circumstances. . . .'" (internal citations omitted) and finding that "there is substantial evidence supporting the trial court's determination that M.E.W. had reasonable grounds to believe the property to have been stolen." (citations omitted)

The Court remanded the case for further conclusions of law on the motion to suppress, stating, "we note that the motion to suppress presented the trial court with a couple of issues—a constitutional and statutory challenge. Conducting meaningful appellate review requires the trial court's rationale underlying its decision to deny the motion to suppress." (citations omitted) The Court declined to consider the *Miranda* and Public Safety Doctrine argument presented by the youth without the appropriate conclusions of law by the trial court.

State v. Borlase

No. COA22-985
Watauga County
2 January 2024
https://appellate.nccourts.org/opinions/?c=2&pdf=42764

Summary of the Case: Tristan Borlase was 17 years and 11 months old at the time he was charged with the murder of his parents. The State presented evidence that the youth acted with premeditation and deliberation and presented further evidence of the youth's lack of remorse after the events. Defense presented testimony from various experts and mitigation specialists

for consideration during the trial and sentencing phases. After trial and a *Miller* hearing, he was sentenced to two consecutive LWOP (life without parole) sentences.

Issues Affecting Youth: The majority opinion held that the trial considered all evidence presented and properly used its discretion in imposing two LWOP sentences. The court quoted *Roper v. Simmons* to "reiterate the 'great difficulty [for the sentencing judge] of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender *whose crime reflects* irreparable corruption,'" (citations omitted, emphasis in original) placing literal emphasis on the characteristics of the youth at the time of the offense. The court held that "the trial court complied with the holding when it expressly found that there was no likelihood that Defendant would be rehabilitated during confinement."

Judge Arrowood wrote a lengthy dissent (28 of the 44 page opinion), stating that the majority opinion renders meaningless the requirement that it consider the statutory *Miller* factors "by allowing the trial court to ignore credible evidence." The dissent details the copious amounts of evidence offered as the circumstances of the youth throughout his life and took much issue with the majority opinion's consideration of what constituted credible evidence.

"Such blatant disregard for precedent demands justification, but the majority offers none. Instead, it wrongly concludes that the sentencing judge considered the evidence presented and complied with the statute. Moreover, rather than acknowledge defendant's evidence, the majority concentrates on excusing the trial court for its 'significant consideration' of the crime when sentencing defendant— 'despite the fact that the case law warns against such a focus[.]' In the process, the majority diminishes longstanding concerns surrounding the sentencing of juveniles and the importance of 'considering an offender's youth and attendant characteristics before imposing a life without parole sentence.' (all citations omitted).

In re: G.J.W.L.

No. COA23-458
Surry County
2 January 2024
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=42874

Summary of the Case: "Gregory" was adjudicated responsible for one county of second-degree trespass and one count of disorderly conduct at a school arising out of the youth's non-compliance with an SRO's instructions to leave school property. Defense counsel moved to dismiss the disorderly conduct petition at the close of state's evidence, but the motion was denied. Gregory took the stand to testify, and the trial court did not advise him of his right against self-incrimination. Defense counsel did not renew the prior motion to dismiss at the close of all evidence. The trial court entered a Level 1 disposition with twelve months of probation and community service.

Issues Affecting Youth and Youth Defenders: The challenge to the denial of the motion to dismiss was not addressed by the appellate court as the argument was not preserved and appellate review of the issue was waived when the motion to dismiss was not renewed at the close of all evidence.

However, the appellate court determined that because the trial court did not engage in any colloquy with Gregory in regard to his privilege against self-incrimination, this constituted reversible error and the adjudication order was reversed and a new hearing was ordered. "A trial court overseeing a juvenile-delinquency proceeding has a heightened obligation to protect the constitutional and statutory rights of any minors who appear before it." (citations omitted)

In re: J.U.

No. COA20-812-2
Cumberland County
2 January 2024
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=43065

Summary of the Case: This case is a remand from the Supreme Court from a discretionary review of an unpublished opinion from the Court of Appeals. Because the Supreme Court reversed the Court of Appeals' holding that force was not alleged in the petition (holding that nonconsensual sexual contact with another person must inherently have the application of some 'force,' however slight), the Court of Appeals was unable to address the motion to dismiss as the matter had not been properly preserved for appeal and no manifest injustice existed to allow for invocation of Rule 2 for review of the matter. The court also indicated the issue of the failure of the trial court to include written findings of fact demonstrating it considered the dispositional factors was moot due to the probationary period having previously expired.

In re: K.J.B.H.

No. COA23-632
Davie County
6 February 2024
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=43164

Summary of the Case: Kyle was adjudicated delinquent for sexual battery and the court imposed a Level 1 Disposition for "inappropriate touching" of another student on her breasts while on the school bus. Trial counsel moved to dismiss, both at close of state's evidence, and at the close of all evidence, for failure to show sexual purpose. The trial court found that the State had met its burden to show sexual purpose. The trial court did not provide written findings showing it considered the five factors under NCGS §7B-2501 required for disposition.

Issues Affecting Youth: Defenders should review the opinion as a large portion of the opinion discusses the factual details received as evidence by the trial court that amounted to sufficient evidence of sexual purpose, including concessions of some factors that would seem to disfavor a showing of purpose. Significantly, the Appellate Court indicates that while some evidence was received of the existence of disabilities or other conditions that may have had some bearing on the Court's analysis, sufficient evidence was not presented for the Court to consider those circumstances. Defenders should take note that Appellate Courts typically require evidence in the form of expert testimony or admission of relevant documents to fully establish such factors.

"We note that the Record shows Kyle has been diagnosed with attention deficit hyperactivity disorder and mild intellectual disabilities, and that he receives learning accommodations. While this could have had bearing on our analysis, there was no expert testimony as to Kyle's diagnosis and accommodations…"

State v. Kevin Salvador Golphin

No. COA22-713
Cumberland County
6 February 2024
https://appellate.nccourts.org/opinions/?c=2&pdf=42486

Summary of the Case: In 1997, Defendant and his brother shot and killed two law enforcement officers when the officers attempted to arrest the brothers for stealing a car. Defendant was arrested, indicted, and tried, and in 1998 Defendant was found guilty by a jury of two counts of first-degree murder. Defendant was 17 years, 9 months, and 2 days old at the time of the murders. While originally sentenced to death for the offenses, a *Miller* resentencing hearing was held in April of 2022 and Defendant was resentenced to mandatory life imprisonment without the possibility of parole.

Issues Affecting Youth: What is the standard for review of a trial court's analysis of the *Miller* factors during a sentencing or resentencing hearing? The appellate courts will review for abuse of discretion. Defenders should note that a sentencing court's findings of fact may be challenged as unsupported by competent evidence, which may alter the appellate court's review and analysis of the case.

"We first note that Defendant did not challenge any of the sentencing court's findings of fact as unsupported by competent evidence. The sentencing court's findings are therefore binding on appeal. . . . We acknowledge there is room for different views on the mitigating impact of each factor, but given the sentencing court's findings, the court did not abuse its discretion in sentencing Defendant to consecutive terms of life imprisonment without the possibility of parole."

State v. Riley Dawson Conner

No. COA23-470
Columbus County
19 March 2024
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=43132

Summary of the Case: This opinion is the most recent in a series of opinions in the Kelliher/Conner series addressing de facto LWOP sentences for juveniles. In June of 2022, the North Carolina Supreme Court reversed and remanded Riley Dawson Conner's case to the trial court for "further proceedings not inconsistent" with the opinion. The resentencing hearing was set for 1 November 2022 during which the trial court altered the sentence to comport with the 40-year "bright line rule" of the North Carolina Supreme Court, imposing a sentence in the mitigated range for both charges (murder, rape) and calculating that Conner would be eligible for parole at 39.4 years of incarceration.

Issues Affecting Youth: If there is no intent to impose LWOP, may consecutive sentences be imposed in Superior Court if the sum of those sentences are 40 years or less of incarceration before a youth is eligible for parole? Yes, it may.

"At resentencing, the trial court acknowledged its intent to comply with this '40-year bright-line rule,' readopted its findings in mitigation, and imposed a sentence that met this requirement. The trial court followed the instructions outlined within the Supreme Court's opinion. Based upon the analysis of *Conner II* and the trial court's compliance with the opinion, the trial court did not err in its resentence of Defendant. . . . Similarly, '[w]hen multiple sentences of imprisonment are imposed on a person at the same time . . . the sentences may run either concurrently or consecutively, as determined by the court.' N.C. Gen. Stat. § 15A-1354(a) (2023). Therefore, the determination rested within the trial court's discretion to continue to impose consecutive terms on Defendant's sentences."

In re: S.C.

No. COA23-615
Wake County
19 March 2024
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=43187

Summary of the Case: Rachel was charged with petitions arising out of a school fight at her middle school, which included injuries sustained by the assistant principal when attempting to break up the fight. Petitions were taken out for assault inflicting serious bodily injury, assault on a school employee, resisting a public officer, and simple affray, and an adjudicatory hearing was held on the petitions. At the close of all evidence, including the testimonies of the assistant

principal and SRO, Rachel moved to dismiss all allegations for insufficiency of the evidence. The trial court denied the motion and, ultimately, found Rachel was responsible for all four allegations.

The Appellate Court also addressed a question of jurisdiction of the CoA to review the matter.

Issues Affecting Youth: If the Court finds a youth responsible for both Felony Assault Inflicting Serious Bodily Injury and Misdemeanor Assault of a School Employee, must it arrest judgment on the misdemeanor charge? Yes, it must.

"While the State defends the result at trial on the basis that 'felony assault inflicting serious bodily injury [] and misdemeanor assault of a school employee [] involve different statutory provisions and each offense contains an element not present in the other'— seemingly conflating the statutory construction analysis with our elemental test for double jeopardy — it ignores the fact that the same could have been said for the offenses in *Jamison*. Accordingly, we vacate the adjudication order in part inasmuch as it did not arrest judgment for the charge under N.C.G.S. § 14-33(c)(6)." (internal citations omitted)

In re: E.M.

No. COA23-884
Yancey County
2 April 2024
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=43280

Summary of the Case: Fourteen year old E.M. admitted responsibility, pursuant to plea agreement, to felonious breaking and entering, and the state dismissed remaining petitions against the youth for other related felonies. The facts of the case seem to indicate an emotionally charged setting for the victim and possibly community. The Court entered a Level 2 disposition order on the same day as the adjudication, and ordered E.M. to pay restitution, perform community service, and other terms of supervised probation. Notably, there was no specification as to the amount of restitution to be paid within the dispositional order (or the conditions of probation). Some information was presented to the court that other juveniles were involved in the breaking and entering(s), and that total damages came to $20,949.00. The Court also did not make any findings of fact as to why a Level 2 disposition was being imposed since the Court did have authority to issue a Level 1 disposition in this matter.

Issues Affecting Youth: May a Court enter a blanket requirement that "restitution be paid" without consideration of the best interest of the juvenile, the ability of the juvenile to pay said restitution, and by extension, a specification of how much restitution is to be paid? No, it may not.

"The district court's only finding regarding restitution was that E.M. was to pay restitution to the victim's benefit within twelve months, and that there was joint and several liability. Here, the district court did not state with particularity, orally or in writing on the disposition order, the terms of restitution (i.e., the amount E.M. was to pay) or any findings showing that the court considered whether restitution was 'fair and reasonable, and in the best interest of the juvenile.' Thus, based on well-settled case precedent by this Court, we cannot determine whether the conditions of restitution are in the best interest of E.M., and therefore we remand this disposition order with instructions for the district court to make appropriate findings of fact." (internal citations omitted)

"Pursuant to N.C. Gen. Stat. § 7B-2506(4) and (22), if the juvenile establishes to the court that she does not have, and could not reasonably acquire, the means to make restitution, then the court "shall not require the juvenile to make restitution." (internal citations omitted)

May a Court enter a Level 2 Disposition Order when also authorized to enter a Level 1 Disposition Order without making any supporting findings of fact as to why a Level 2 Dispositional Order is the most appropriate disposition? No, it may not.

"Under N.C. Gen. Stat. § 7B-2501(c), the court 'shall select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile.' N.C. Gen. Stat. § 7B-2501(c). The court determines which dispositional level is appropriate based on the juvenile's delinquency history and the level of offense. N.C. Gen. Stat. §7B-2508(f). Finally, 'within the guidelines set forth in [N.C. Gen. Stat. § 7B-2508],' the court shall select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile, based upon: (1) the seriousness of the offense; (2) the need to hold the juvenile accountable; (3) the importance of protecting the public safety; (4) the degree of culpability indicated by the circumstances of the particular case; and (5) the rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment. N.C. Gen. Stat. § 7B-2501(c)."

State v. Kelliher

No. COA23-691
Cumberland County
7 May 2024
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=43253

Summary of the Case: This case is the continuing saga of the Kelliher/Connor line of cases dealing with the imposition of Life Without Parole for youth convicted of first-degree murder, and *per se* LWOP sentences created by concurrent sentences. This case is an appeal of the resentencing hearing after remand from the original opinion.

Issues Affecting Youth: May a trial court resentence on any sentences within a judgement upon remand of only one sentence within a judgment? No, it may not.

"When an appellate court remands a matter to the trial court, the remand may be general or limited; and, in the case of a limited remand, the appellate court may divest the trial court of discretion it would otherwise retain were the remand general. Here, where our Supreme Court clearly conveyed to the trial court its intent to limit the scope of its remand from Defendant's prior appeal, the trial court was not authorized to conduct a new, discretionary sentencing hearing."

In re: D.J.Y

No. COA23-1079
Rowan County
7 May 2024
https://appellate.nccourts.org/opinions/?c=2&pdf=43432

Summary of the Case: A petition was filed against "Dawson" alleging injury to personal property greater than $200. The section of the juvenile petition titled "decision of court counselor regarding the filing of the petition" and as such, the box indicating "approved for filing" and the box for the court counselor's signature were all left blank. The adjudication and disposition hearings were held approximately three months later. Dawson appealed, arguing that the Court did not have jurisdiction to hold the adjudication or disposition hearings.

Issues Affecting Youth: Is a petition that does not have the court counselor's signature and decision to approve the filing a valid petition? No, it is not.

"'[I]f the juvenile court counselor determines that a complaint should be filed as a petition,' then he or she '*shall include on it . . . the words 'Approved for Filing', shall sign it*, and shall transmit it to the clerk of superior court.' N.C. Gen. Stat. § 7B-1703(b)." (emphasis in original).
"This Court has held 'that a petition alleging delinquency that does not include the signature of a juvenile court counselor, or other appropriate representative of the State, and the language 'Approved for Filing,' . . . fails to invoke the trial court's jurisdiction in the subject matter.' In so holding, this Court reasoned that finding a juvenile court counselor's approval for filing to be a jurisdictional prerequisite would promote the purposes of the juvenile delinquency system . . ." (internal citations omitted.)

In re: D.R.F., JR.

No. COA23-473
Yadkin County
7 May 2024
https://appellate.nccourts.org/opinions/?c=2&pdf=42897

Summary of the Case: A petition was filed against "Daniel" alleging Communicating a Threat of Mass Destruction on Educational Property. Probable cause was found, and the Court proceeded to adjudicatory and disposition hearings. At the adjudicatory hearing, the State requested the trial court continue disposition for seven days while Daniel was held in secure custody, and the court did so hold Daniel in secure custody for seven days between the adjudicatory and dispositional hearings. The only articulated basis for the holding in secure custody was punitive.

Issues Affecting Youth: See the opinion for a discussion of "true threats," requiring a subjective and objective showing of a true threat. Of note in this opinion, the holding of the youth in secure custody between adjudication and disposition, with no articulated basis for continuing disposition, was found as abuse of discretion by the trial court. Further, despite the issue being moot, such issues can be reviewed on appeal when the issue is "capable of repetition, yet evading review."

"We review the trial court's ruling continuing the disposition hearing and placing Daniel in temporary secure custody pending disposition for an abuse of discretion. . . . there was no good cause for a continuance under N.C. Gen. Stat. § 7B-2406. Moreover, neither the State nor the trial court identified any extraordinary circumstance justifying the continuance. . . . Thus, there was no valid basis demonstrated to continue disposition and place Daniel in secure custody pending disposition. Therefore, the trial court abused its discretion by continuing disposition and placing Daniel in secure custody pending disposition." (internal citations omitted)

"We have previously held a similar temporary secure custody order is reviewable on appeal even after its expiration and is properly before us on the grounds that it 'is capable of repetition, yet evading review.'" (internal citations omitted)

In re: G.H.

No. COA23-939
Mecklenburg County
21 May 2024
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=43527

Summary of the Case: Petitions were sought against "John" in which the court counselor also sought a secure custody order. The Court denied the request to detain John and ordered that the court counselor develop a safety plan for the child. The court counselor did so but also directed John to attend Bridges Assessment Center. Defense moved to dismiss the petitions based on illegal detention of John at the Bridges Assessment Center. The trial court agreed, and after detailing a list of concerns with the court counselor's actions, dismissed the petitions. The State appealed the dismissal.

Issues Affecting Youth: May the State take appeal from a dismissal with prejudice by the trial court? No, it may not.

"The State may [only] appeal: '(1) [a]n order finding a State statute to be unconstitutional; and [a]ny order which terminates the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.' N.C.G.S. § 7B-2604(b) (2023)."

We also recommend defenders read the opinion for the findings by the trial court in regard to Bridges Assessment Center and the reasoning for the trial court's dismissal of the petitions.

State v. Singleton

900 S.E.2d 802
Wake County
23 May 2024
https://appellate.nccourts.org/opinions/?c=1&pdf=43708

Summary of the Issue: An indictment raises a jurisdictional concern only when it wholly fails to charge a crime; indictments with non-jurisdictional defects will not be quashed or cast aside when they provide notice sufficient to prepare a defense and protect against double jeopardy.

In re: K.S.

No. COA24-65
Forsyth County
4 June 2024
Unpublished Opinion
https://appellate.nccourts.org/opinions/?c=2&pdf=43585

Summary of the Case: "Kyle" was ordered to YDC under a Level 3 dispositional order after being found in violation of his terms of probation under a Level 2 dispositional order. Several aspects of the case were appealed, including a challenge to the Level 3 dispositional order and a challenge to anticipatory secure custody, although two of the three issues raised on appeal were not addressed due to what the Appellate Courts deemed was untimely appeal of the issues.

Issues Affecting Youth: The Appellate Court addressed the question of whether "the trial court erred by entering a dispositional order without making any supporting findings of fact, without making a finding that a predisposition report was not needed, and without reviewing the comprehensive clinical assessment before choosing a disposition," and ultimately upheld the decision of the lower court. While this opinion isn't necessarily consistent with previous rulings, this is an unpublished opinion and thus not binding or controlling authority, and defenders should be aware of how the Court's analysis might be replicated in a trial setting.