

## GUILTY PLEA APPEALS

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## What's a plea?

- Any guilty, Alford, or no contest plea
- To any felony or misdemeanor in superior court



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## What about district court felony pleas?

- G.S. 7A-272—authorizes district court to accept pleas to class H/I felonies
- G.S. 7A-272(d) and 15A-1029.1—“as if plea had been entered in superior court”
- Appeals are to the appellate division



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## Grounds for Direct Appeal After a Plea

- 15A-1444(a1), (a2), (e) and 15A-979



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- 15A-1444 (a1): whether the sentence is supported by the evidence
- ONLY if sentence is outside of the presumptive range
- Otherwise, D. may petition for certiorari.



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## 15A-1444(a2)

(a2) A defendant who has entered a plea of guilty or no contest to a felony or misdemeanor in superior court is entitled to appeal as a matter of right the issue of whether the sentence imposed:

- (1) Results from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;
- (2) Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or
- (3) Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level.



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### 15A-1444(a2)

- (1) Incorrect record level  
E.G.—Client is properly a level I, but was found to be a level II by counting convictions for which no points should have been assessed
- (2) Sentence type not authorized by law  
E.G.—Client given an active sentence where only an intermediate sentence was authorized
- (3) Term of sentence not authorized by law  
E.G.—Too long a sentence for the class of offense and record level

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### Even then . . .

- *State v. Hamby*, 129 N.C. App. 366 (1998)
- Where D. agreed to specific sentence range and record level in plea transcript that trial judge then imposed, issue of sentence was “moot,” regardless of 15A-1444.

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### Tension with *Hamby*

- *State v. Gardner*, 736 S.E.2d 826 (2013) (distinguishing *Hamby* where only stipulated to PRL, not sentence range too)
- *State v. Jennings* (unpublished COA 2008)(applying *Hamby* to moot PRL issue where stip to PRL)
- *State v. Burgess*, 715 S.E.2d 867 (2011) (PRL stipulation to out of state convictions reviewable under 15A-1444)
- *State v. Edgar*, 777 S.E.2d 766 (2015) (distinguishing *Gardner*; out of state conviction classified at default level was stip. of fact and issue moot)

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### 15A-1444(e)

Motions to Suppress

(e) Except as provided in subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State.

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### 15A-979(b)

(b) An order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty.

#### Properly preserved:

- Notice of intent to appeal on the record (usually in the plea transcript)
- Appeal given from the final judgment (not the ruling on the motion)
- Proper form and timing of Notice of Appeal

} PWC cannot cure this defect

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## Denial of Motions to Withdraw Plea

- 15A-1444(e)
- Before sentencing? Any fair and just reason. *State v. Handy*, 326 N.C. 532 (1990).
- After sentencing? Only to avoid manifest injustice. *State v. Suites*, 109 N.C. App. 373 (1993).

## So....

- G.S. 15A-1444 allows direct appeal following guilty pleas in these situations:
- 1) Felony Sentence outside of presumptive range
- 2) Prior Record Level, Sentence Duration, or Type
- 3) Denial of Motion to Suppress
- 4) Denial of Motions to Withdraw Plea

## Wrinkles

- DWI—not subject to sentencing provisions of G.S. 15A-1444
- But motions to suppress or to withdraw the plea can still be heard on direct appeal

## 15A-1444(a2)

(a2) A defendant who has entered a plea of guilty or no contest to a felony or misdemeanor in superior court is entitled to appeal as a matter of right the issue of whether the sentence imposed:

- (1) Results from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;
- (2) Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or
- (3) Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level.

## Subject Matter Jurisdiction

“While it is true that a defendant may challenge the jurisdiction of the trial court [at any time], such challenge may be made in the appellate division only if and when the case is properly pending before the appellate division.”

- *State v. Absher*, 329 N.C. 264 (1991)

## Indictment Defects

- Defendant may:
  - Petition for writ of certiorari
  - File an MAR at the trial level
  - File a writ of habeas corpus

## Restitution

- 15A-1446 (d)(18) – no objection needed to preserve issue of whether the sentence was unauthorized at the time imposed, exceeded the maximum by law, was illegally imposed, or is otherwise invalid as a matter of law.

## Restitution

- *State v. Riley*, 167 N.C. App. 346 (2004) (reviewing an order of restitution on direct appeal as sole issue without discussing 15A-1444)
- *State v. Davis*, 206 N.C. App. 545 (2010) (reviewing restitution on direct appeal)
- But, *State v. Mungo*, 213 N.C. App. 400 (2011)

## What cannot be raised on direct appeal after a plea

- Double Jeopardy Claims
- Eighth Amendment Claims
- Speedy Trial Claims
- Vagueness/overbreadth
- Denial of Continuance Motions



## What cannot be raised on direct appeal after a plea

- Whether the plea was knowing and voluntary
- Insufficient factual basis to support plea
- Errors or omissions in the plea colloquy
- Breach of the plea agreement?



## Ledbetter

- “Absent specific statutory language limiting the COA’s jurisdiction, the court maintains its jurisdiction and discretionary authority to issue the prerogative writs, including certiorari.”
- “Rule 21 does not prevent the COA from issuing writs of certiorari or have any bearing upon the decision as to whether [the writ] should issue.”

## Certiorari Jurisdiction

- Art. IV, Sec. 12 of the N.C. Constitution
- G.S. 7A-32(c) – “jurisdiction . . . to issue prerogative writs, including . . . certiorari . . . in aid of its own jurisdiction, or to supervise and control the proceedings of any of the trial court . . .”

## Petitions for Writ of Certiorari

(e) Except as provided in subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State.

## Juvenile Transfer Orders

- *State v. Evans*, 184 N.C. App. 736 (2007)
  - Applied 15A-1444 to deny review of juvenile transfer order to superior court
- *State v. Brooks*, 148 N.C. App. 191 (2001)
  - Reviewing transfer order on the merits without discussing 15A-1444
- G.S. 7B-2603 sure makes it sound like it appealable

## Emerging Issues and Conflicts

- Juvenile cases—adjudicatory hearing and disposition;
- *In re: J.B.*, 809 S.E.2d 353 (Jan. 2, 2018)
- *In re: J.B.*, 820 S.E.2d 369 (Sept. 18, 2018)

- Not a “trial”; it’s an adjudicatory hearing
- Not a “sentence”; it’s a disposition
- Same thing with juvenile admissions- it’s not a “plea of guilty”; it’s an admission of responsibility



## Questions?

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