




Vehicle Seizure Law Issues
March 2021 Clerks of Superior Court Conference

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Vehicle Seizure Law Issues


- What if the petitioning owner is not the owner of record with DMV?
- What are the pretrial release options where the owner also is the defendant?
- What are the options for a remote petition?



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Issue #1: What if the petitioning owner is not the owner of record with DMV?

- A situation that arises from time to time is a petitioner who recently purchased a vehicle and does not yet show as the owner in DMV's records. When the clerk reviews STARS following the seizure, the seller still is listed as the owner.
- In this situation, neither the buyer nor the seller have clear standing to petition.
- G.S. 20-28.2(a1)(3a) defines a "motor vehicle owner" for seizure law purposes as "[a] person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure."
- So, if DMV has not yet issued a registration card or title certificate in the buyer's name, then the buyer does not appear to be an owner for seizure law purposes.
- Having assigned all of his or her interest in the vehicle to the buyer, the seller does not appear to qualify as an owner either.



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What if the petitioning owner is not the owner of record with DMV? (continued)

- The NCAOC refers to this as the “title gap” situation.
- A common approach over the years has been for the buyer to file a motion in the cause in the criminal case and ask a judge to hear the matter.
- There are two theories underlying this approach:
 - First, judges have inherent authority that they exercise in appropriate circumstances.
 - Second, G.S. 20-28.3(b1) provides in its last sentence that a court may authorize the transfer of the title to a seized vehicle.
- It is the judge’s decision whether he or she has the authority to hear the buyer’s motion and enter an order. It is not something the seizure law expressly addresses.



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What if the petitioning owner is not the owner of record with DMV? (continued)

- Special Rule #1: There is a special rule that applies when the motor vehicle is part of the resale inventory of a licensed motor vehicle dealer.
 - Under G.S. 20-73 and G.S. 20-75, when a licensed dealer takes a vehicle into its inventory for the purpose of resale, the dealer is not required to title or register the vehicle in its name.
 - Accordingly, the NCAOC’s view is that a licensed motor vehicle dealer has standing to petition for the release of a seized motor vehicle that was being held in the dealer’s inventory for resale even if the dealer does not appear in STARS as the owner of the vehicle.



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What if the petitioning owner is not the owner of record with DMV? (continued)

- Special Rule #2: There is a special rule that applies when the petitioner possesses a temporary registration for the vehicle.
 - Upon the sale of a vehicle, the dealer often will provide the buyer with a temporary registration tag and temporary registration certificate. See G.S. 20-79.1(c) (“Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Division and deliver it with the registration plate or marker to the owner.”)
 - DMV informed the NCAOC in May 2015 that “DMV considers the person with the temporary tag and the registration certificate provided by the dealer to be the owner of the vehicle.”
 - So, in this situation, the NCAOC recommends that clerks honor DMV’s position, and recognize the buyer with the temporary tag and temporary registration as the owner for seizure law purposes.



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Issue #2: What are the pretrial release options where the owner also is the defendant? (G.S. 20-28.3(e2))

- The defendant-owner pretrial release options are different depending on whether the seizure is an impaired driving seizure or a felony speeding to elude seizure.
- For an *impaired driving seizure*, the defendant's only option is to demonstrate that, at the time of the offense that resulted in the seizure, the defendant's license was not revoked as the result of an impaired driving revocation.
 - The defendant-owner files the petition (form CR-333A) with the clerk. The clerk (i) schedules a hearing before a judge and (ii) forwards a copy to the DA's Office.
 - If the DA's Office consents to the release, then the clerk enters an order releasing the vehicle upon proof of liability insurance coverage, and there is no need for the hearing.
 - If the DA's Office does not consent, then the judge will make the release determination at the previously scheduled hearing.



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What are the pretrial release options where the owner also is the defendant? (continued)

- For a *felony speeding to elude seizure*, the defendant's only option is to seek temporary bond release.
 - The defendant-owner files the petition (form CR-333B) with the clerk, and the clerk makes the release decision.
 - The motor vehicle must have been seized for at least 24 hours prior to the release, the defendant-owner must execute a bond for the fair market value of the vehicle as shown in STARS (using form CR-331B), and a bond posted to secure the release of this same motor vehicle under this same defendant-owner statutory release provision must not previously have been ordered forfeited.
- The impaired driving release on form CR-333A is a permanent release. The felony speeding to elude release on form CR-333B is a temporary release.



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What are the pretrial release options where the owner also is the defendant? (continued)

- The defendant-owner also will be entitled to release if he or she is not convicted of the offense that triggered the seizure. G.S. 20-28.4(a). Forms CR-336A and CR-336B cover this situation. (At a later stage of the case, though, the vehicle no longer may be available for release. The statewide contractor already may have sold the vehicle under the G.S. 20-28.3(j) expedited sale provision.)
- For a comparison of impaired driving seizure and felony speeding to elude seizure, see the 4 November 2013 memo on JUNO entitled, "Changes to DWI Seizure and Felony Speeding to Elude Seizure Laws." The comparison table begins on page 5 of the memo.



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Issue #3: What are the options for a remote petition?

- Sometimes the owner lives outside NC and would prefer not to travel to NC to appear before the clerk, or the owner (and the clerk) may want to limit in-person appearances during the pandemic period.
- One option is for the owner to retain legal counsel.
 - An attorney who has been retained by or appointed for a person is that person's agent. *See, e.g., State v. Mitchell*, 353 N.C. 309 (2001) (noting that the attorney-client relationship is a principal-agent relationship in nature).
 - In light of this agency relationship, the NCAOC's view is that an attorney may sign and present a vehicle seizure release petition on behalf of the client.



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What are the options for a remote petition? (continued)

- If it is a straightforward case (e.g., if the owner clearly is an innocent owner), then it may be easy to dispose of it by relying on the information provided by the attorney. If, however, it is a close case in which the clerk needs to evaluate the truthfulness of the owner, it may be difficult to do that without speaking directly to the owner.
- Another option during the pandemic period may be to have the owner appear by WebEx under Emergency Directive 3 in Chief Justice Newby's February 13 order.
 - This may be an option to supplement the information provided by the attorney, or it may be an option when the owner is appearing on his or her own.
 - ED 3 permits audio-video proceedings in those contexts not addressed by a specific audio-video statutory provision, and there is no statutory provision addressing audio-video seizure proceedings before the clerk, so ED 3 applies.



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What are the options for a remote petition? (continued)

- ED 3 requires the presiding official to "preserve the integrity of the judicial process," so the clerk must conduct the proceeding in a manner as close as practicable to an in-person proceeding. This includes allowing the petitioner to consult fully and confidentially with counsel if the petitioner is represented.
- Clerks utilizing remote audio-video transmission for seizure proceedings may want to follow the same procedures that they or their judges are using in other remote proceedings, such as ensuring at the outset that everyone is able to see and hear each other, asking the participants to notify the clerk immediately if they experience any problem hearing or seeing at any time during the proceeding, and emphasizing that this still is a solemn judicial proceeding despite its remote audio-video nature.



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Thank You

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