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TRIAL JUDGE'S AUTHORITY TO *SUA SPONTE* CORRECT ERRORS AFTER ENTRY OF JUDGMENT IN A CRIMINAL CASE

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One question that frequently arises is this: What authority does the trial court have to correct an error on its own motion after entry of judgment in a criminal case? The answer depends on when the error is discovered and who benefits from it.

Correction of an Error that is Discovered Before the Session Ends

If the error is brought to the court's attention prior to adjournment of the session, the court may correct it. Until the expiration of the session, the court's judgment is *in fieri*¹ and the judge has the power, in his or her discretion, to amend it or set it aside.² The court retains this

1. The term *in fieri* means "[i]n being made; in process of formation and development; hence, incomplete or inchoate." Black's Law Dictionary (5th ed. 1979).

2. See *State v. Godwin*, 210 N.C. 447, 448–49 (1936) (affirming the trial judge's modification of the original judgment increasing the prison sentence); *State v. Sammartino*, 120 N.C. App. 597, 600 (1995) (affirming the trial judge's modification of sentences from two years, suspended on conditions, to four years, suspended on the same conditions); *State v. Quick*, 106 N.C. App. 548, 561 (1992) (upholding the trial court's modification of a sentence to have it run at the expiration of any sentence then required to be served by the defendant); *State v. Oakley*, 75 N.C. App. 99, 102 (1985) (upholding trial court's action vacating the judgment); *State v. Brown*, 59 N.C. App. 411, 417 (1982) (trial court had authority to change the defendant's sentence after discovering that it had mistakenly applied the wrong parole law when originally sentencing the defendant); *State v. Davis*, 58 N.C. App. 330, 332–33 (1982) (upholding the trial court's amendment to the judgment deleting one of its findings in aggravation); *State v. Morehead*, 46 N.C. App. 39, 41 (1980) (holding that an order dismissing the case remained *in fieri* during the remainder of the session and the court had authority to reopen the hearing or change the order); *State v. Edmonds*, 19 N.C. App. 105, 106 (1973) (holding that the trial court did not err in entering a modified second judgment that changed the prison sentence from suspended on conditions to active).

authority even if notice of appeal has been filed.³ When exercising it, the judge may hear further evidence in open court.⁴ The cases suggest that both parties must be present when further evidence is taken.⁵ This discretionary authority to modify the judgment ends when the session ends.⁶

A session is the time during which a court sits for business and refers to a typical one-week assignment of court.⁷ A trial session ends when the time set for it by the Chief Justice expires, unless extended by order.⁸ A session can end earlier if, before this time, “the judge finally leaves the bench.”⁹ A judge finally leaves the bench when there is an announcement in open court that the court is adjourned *sine die*.¹⁰ *Sine die* means “without assigning a day for a further meeting or hearing.”¹¹

3. See *Davis*, 58 N.C. App. at 333 (upholding the trial judge’s amendment to the judgment deleting one of its findings in aggravation although notice of appeal had been filed; noting that “[c]ontrary to defendant’s argument, there is no evidence that the court changed the judgment because defendant had given notice of appeal”).

4. See *Godwin*, 210 N.C. at 449 (a judge has power to modify a judgment before the expiration of the session “and to this end he may hear further evidence, in open court”); *Quick*, 106 N.C. App. at 561; *Brown*, 59 N.C. App. at 417.

5. See *Quick*, 106 N.C. App. at 561 (trial court did not err in modifying the defendant’s sentence when the court received additional evidence in the defendant’s presence in open court); *Brown*, 59 N.C. App. at 417 (finding no error when defendant’s sentence was changed only after a hearing in open court at which both parties, represented by counsel, were present).

6. See *State v. Jones*, 27 N.C. App. 636, 638–39 (1975) (holding that the trial judge was not authorized to modify a term of imprisonment, changing it from a total of twenty to a total of thirty years, after the court had adjourned *sine die*, stating: “[I]t is the general rule that the trial court loses jurisdiction to modify or amend a judgment after the adjournment of the trial session.”); see also *State v. Kelly*, 5 N.C. App. 209, 211–12 (1969) (holding that because the judge who imposes a sentence cannot modify it after expiration of the session, neither can a second judge).

7. See *Sammartino*, 120 N.C. App. at 599.

8. See *Jones*, 27 N.C. App. at 638; *Sammartino*, 120 N.C. App. at 599 (quoting same from *Jones*).

9. See *Jones*, 27 N.C. App. at 638; *Sammartino*, 120 N.C. App. at 599–600 (quoting same from *Jones*).

10. See *Jones*, 27 N.C. App. at 639; *Sammartino*, 120 N.C. App. at 600 (quoting same from *Jones*).

11. Black’s Law Dictionary (5th ed. 1979); see also *Sammartino*, 120 N.C. App. at 600 (same); *Jones*, 27 N.C. App. at 639 (same).

Correction of an Error that is Discovered After the Session Ends

What if the error does not appear until after the session ends? Because the session has ended, the judgment is no longer *in fieri*. Thus, the court’s authority to *sua sponte* correct it must derive from some other source.

Authority under the Motion for Appropriate Relief Statute

The motion for appropriate relief statute,¹² authorizes a trial judge to make a motion for appropriate relief *sua sponte*. Specifically, G.S. 15A-1420(d) provides that “[a]t any time that a defendant would be entitled to relief by motion for appropriate relief, the court may grant such relief upon its own motion.” Thus, G.S. 15A-1420(d) is one source of authority for the court to *sua sponte* correct errors after the session has ended. This authority, however, is limited.

If the error works to the defendant’s disadvantage, G.S. 15A-1420(d) authorizes the judge to correct it. Such authority stems directly from the language of the statute, which provides that the court may grant relief on its own motion “[a]t any time that a defendant would be entitled to relief by motion for appropriate relief.”¹³ Thus, for example, if after the session has ended, the Department of Correction notifies the trial court that it sentenced the defendant to a term of imprisonment in excess of the statutory maximum, the court need not await a motion for appropriate relief from the defendant to correct its sentencing error.¹⁴ Because the defendant would be entitled to relief,¹⁵ the trial court may exercise its authority under G.S. 15A-1420(d) and move, *sua sponte*, to correct the error.

A different result obtains if the error is one that works to the defendant’s advantage. The North Carolina Court of Appeals’ decision in *State v. Oakley*,¹⁶ is on point. In *Oakley*, the defendant pleaded guilty to assault with a deadly weapon inflicting

12. See G.S. 15A-1411 to -1422.

13. G.S. 15A-1420(d).

14. The Department of Correction has no authority to modify a judgment, even when the modification conforms the judgment to applicable law. See *Hamilton v. Freeman*, 147 N.C. App. 195 (2001). Rather, the Department of Correction should notify the court and the parties of the sentencing error. See *id.*

15. See G.S. 15A-1415(b)(8) (providing that a defendant may file a motion more than ten days after entry of judgment when the sentence is unauthorized at the time imposed).

16. 75 N.C. App. 99 (1985).

serious injury. The trial judge accepted the plea, entered it in the record, and held a sentencing hearing. The judge imposed a six-year suspended sentence, placed the defendant on supervised probation for five years, and ordered him to pay \$10,380.06 in restitution to the victim for her medical bills. The victim was not present at either the entry of the plea or the sentencing hearing, when the State presented evidence that her medical bills totaled over \$10,000. The following day, the victim appeared before the court expressing dissatisfaction with the proceedings and indicating that her medical bills totaled over \$40,000. The State immediately made a motion for appropriate relief to set aside the judgment. The trial court responded by setting aside the judgment, striking the guilty plea, and setting the case for trial. The defendant appealed.

The court of appeals began by holding that the trial court erred in hearing the State's motion because the State had no authority under the motion for appropriate relief statute to move to set aside the judgment based on the victim's new evidence. It went on to note, however, that because the session had not ended and the judgment was *in fieri*, the court had authority to set it aside. Finally, the court of appeals turned to the trial court's action of striking the guilty plea and setting the case for trial. It found this action unauthorized under G.S. 15A-1420(d), holding that the provision authorizes the trial court to grant relief on its own motion "only if the defendant would be entitled to such relief by motion for appropriate relief."¹⁷ The court continued, stating: "It follows that the trial court does not have the authority to grant appropriate relief which benefits the State. In this case, striking the guilty plea . . . and setting the case for trial on the original charge benefited the State exclusively."¹⁸

Thus, under *Oakley*, and consistent with the language of the statute, the court has no authority under G.S. 15A-1420(d) to grant relief which benefits the State.¹⁹

Inherent Authority

The trial court has inherent authority to correct clerical errors, in or out of session. That reservoir of authority,

17. *Id.* 103–04.

18. *Id.* at 104.

19. If, however, the defendant files a motion for appropriate relief, the court may order "[a]ny . . . appropriate relief," G.S. 15A-1417(a)(4), including correction of a erroneous sentence that benefits the defendant. *See State v. Roberts*, 351 N.C. 325 (2000).

however, does not allow it to correct all judicial errors out of session.

Inherent Authority Allows the Court to Correct Clerical Errors After the Session Ends

After the session ends, the trial court may correct the record to make it "speak the truth,"²⁰ provided the case has not been docketed on appeal.²¹ Thus, the court may amend its records "to correct clerical mistakes or supply defects or omissions therein."²² When the court amends its records to correct a clerical error, the amended record "stands as if it had never been defective, or as if the entry had been made at the proper time."²³ That is, the amended order is a *nunc pro tunc* entry.²⁴ Although there does not appear to be a case on point, a prudent practice would be for the trial court to provide notice and an opportunity to be heard before correcting a clerical error.

The North Carolina Court of Appeals has instructed that actions involving "judicial reasoning or determination" are judicial, not clerical.²⁵ When there is uncertainty regarding whether an error is clerical, the appellate courts have indicated that they "err on the side of caution and resolve in the defendant's favor [a] discrepancy between the trial court's statement in open court, as revealed by the transcript, and the [relevant] form [recording the court's decision]."²⁶ Although

20. *State v. Lineman*, 135 N.C. App. 734, 738 (1999) (quoting *State v. Cannon*, 244 N.C. 399, 403 (1956)); *State v. Davis*, 123 N.C. App. 240, 242 (1996); *State v. Dixon*, 139 N.C. App. 332, 337–38 (2000).

21. *See Dixon*, 139 N.C. App. at 338 (holding that after the record on appeal has been filed with the appellate court, the trial court only may amend or correct the record upon a directive from the appellate court). *Dixon* went on to hold that a motion to correct or amend a judgment to make it "speak the truth" should be made in the appellate division once the record on appeal has been filed with the appellate court. *See id.*

22. *Davis*, 123 N.C. App. at 242–43; *Dixon*, 139 N.C. App. at 337.

23. *Dixon*, 139 N.C. App. at 338 (quotation omitted); *see also Lineman*, 135 N.C. App. at 738.

24. *See Dixon*, 139 N.C. App. at 338.

25. *State v. Jarman*, 140 N.C. App. 198, 202 (2000).

26. *State v. Morston*, 336 N.C. 381, 410 (1994); *see also Jarman*, 140 N.C. App. at 203 (quoting *Morston*). In *Morston*, the defendant argued that the trial court improperly employed the same evidence to find two aggravating factors: (1) the offense was committed to disrupt the lawful exercise of a governmental function or the enforcement of laws and

some cases adhere strictly to these rules, others do not. Thus, a survey of the relevant law is informative. In that vein, the following errors have been found to be clerical:

- The trial court's error in granting the defendant credit against service of a sentence for time served while under house arrest, when the error resulted from inaccurate information inadvertently provided by the deputy clerk;²⁷
- The trial court inadvertently listed larceny as the offense for which it was arresting judgment, when in fact it arrested judgment on possession of stolen property;²⁸
- After the jury returned a guilty verdict for possession of marijuana and a not guilty verdict for possession with intent to sell and defendant was sentenced, the trial judge

(2) the offense was committed to hinder the lawful exercise of a governmental function or the enforcement of laws. While the sentencing form indicated that the trial court found both of these factors, the transcript revealed that it found the following aggravating factors in open court: (1) the offense was committed to hinder the lawful exercise of a governmental function or the enforcement of the law; (2) the offense was committed against a present or former law enforcement officer; and (3) the defendant had prior convictions for criminal offenses punishable by more than sixty days confinement. Based on the transcript, the State contended that the sentencing form contained a clerical error. Acknowledging that the State's assertion might be correct, the North Carolina Supreme Court determined "that the better course is to err on the side of caution and resolve in the defendant's favor the discrepancy between the trial court's statement in open court, as revealed by the transcript, and the sentencing form." *Morston*, 336 N.C. at 410. The court concluded that the trial court improperly found two factors in aggravation on the basis of the same evidence and remanded for resentencing. *See id.*

27. *See Jarman*, 140 N.C. App. at 203 (finding that the judge "did not exercise any judicial discretion or undertake any judicial reasoning" when signing an order providing credit against the defendant's sentence, when the order was prepared by a deputy clerk and the judge was required to give the defendant credit for time spent in custody pending trial; the "judge's action in signing the order giving defendant credit to which he believed she was legally entitled was a mechanical and routine, though mistaken, application of a statutory mandate").

28. *See State v. Hendricks*, 138 N.C. App. 668, 672-73 (2000) (noting clerical error and remanding for entry of a corrected judgment).

erroneously dismissed the possession of marijuana case but entered judgment against defendant for that crime;²⁹

- The trial judge failed to check the box on the relevant form indicating that the aggravating factors outweighed the mitigating factors, but the actual transcript of the proceeding revealed that the judge in fact did make such a finding;³⁰
- The judgment indicated that the trial court found that the mitigating factors outweighed the aggravating factor and that a mitigated sentence was justified but the transcript of the proceedings indicated that the judge had found that the aggravating factor outweighed the mitigating factors and imposed an aggravated sentence;³¹
- The judgment indicated that findings of factors in aggravation and mitigation were rendered by the trial court but the sentencing hearing transcript contained no recitation of such findings by the court and the defendant was sentenced in the presumptive range;³²
- The trial court checked the wrong aggravating factor or failed to check a factor on the Felony Judgment Findings of Factors in Aggravation and Mitigation of Punishment form³³ but clearly stated its findings in open court;³⁴
- The judgment contained a citation to the wrong statute for the offense that resulted in conviction;³⁵

29. *See State v. McGill*, 296 N.C. 564 (1979).

30. *See State v. Sellers*, 155 N.C. App. __ (Dec. 31, 2002) (directing trial court to correct error on remand); *State v. Murphy*, 152 N.C. App. 335, 338 n.3 (2002).

31. *See State v. Brooks*, 148 N.C. App. 191, 194-98 (2001) (remanding for correction of error).

32. *See State v. Hilbert*, 145 N.C. App. 440, 446 (2001) (remanding for correction of the error).

33. The relevant Administrative Office of the Courts form is AOC-CR-303.

34. *See State v. Gell*, 351 N.C. 192, 218 (2000); *State v. Thomas*, 153 N.C. App. 326 (2002) (record "clearly" shows that the trial court found the aggravating factor that the defendant committed the offense for the purpose of avoiding or preventing arrest; court stated its finding in open court but checked the wrong box on the form); *Murphy*, 152 N.C. App. at 337 n.1, 338 n.2.

35. *See State v. McKinnon*, 35 N.C. App. 741, 743 (1978).

- The judgment contained an erroneous statement regarding the crime of which the defendant had been convicted;³⁶
- A discrepancy between the trial court's pronouncement in open court regarding the defendant's sentence of imprisonment and the sentence of imprisonment listed in the judgment;³⁷
- Typographical error in the judgment regarding the term of imprisonment;³⁸
- Incorrect case numbers in the judgment;³⁹
- Error on judgments regarding dates when offenses occurred;⁴⁰

36. *See* State v. Jamerson, 64 N.C. App. 301, 306 (1983) (judgment erroneously stated that the defendant was found guilty of two counts of sale and delivery of cocaine, when the defendant actually was convicted of one count of sale and one count of possession of cocaine).

37. *See* State v. Lawing, 12 N.C. App. 21, 23 (1971) (discrepancy between the pronouncement in open court that defendant be imprisoned for six years and the written judgment signed by the judge indicating that he be imprisoned for eight years; remanding to the trial court to have the commitment corrected to conform to the sentence of six years pronounced in open); State v. Brown, 7 N.C. App. 372, 375 (1970) (judgment imposed a prison sentence "for the term of not more than two (2) nor less than six (6) years"; original transcript disclosed that the sentence as actually pronounced in open court correctly imposed a sentence of "not less than two nor more than six years"; remanding to have the judgment corrected to conform to the sentence actually pronounced in open court).

38. *See* State v. Spooner, 28 N.C. App. 203, 204 (1975) (judgment provided for a sentence of "not less than five (7) years"; court concluded this "is obviously a clerical error," and directed the clerk of superior court to correct the judgment and commitment by deleting the numeral (7) and substituting (5) to conform to the written "five" and to enter and issue the corrected judgment and commitment).

39. *See* State v. Barber, 9 N.C. App. 210, 212–13 (1970) (in case No. 6, the defendant was charged with burglary; in case No. 7, he was charged with rape; however, judgment was entered as follows: "In Case #5, assault with intent to commit rape, let the defendant be committed . . . for imprisonment for a period of ten years. In Case No. 6, non-burglarious breaking and entering, let the defendant be committed . . . for imprisonment for a period of five years. This sentence to run concurrently with the sentence in Case No. 5."; court found it "obvious" that the two references to case No. 5 were intended to be references to case No. 7 and remanded for correction of the judgments).

40. *See* State v. Murray, 154 N.C. App. __, __ (Dec. 17, 2002).

- The trial court's indication on the Felony Judgment Findings of Aggravating and Mitigating Circumstances form for second degree murder that it found a non-statutory aggravating factor that the murder was committed with malice, premeditation, and deliberation; although malice was an element of the substantive offense and thus could not be used as an aggravating factor, it was apparent that the trial court's use of that term in open court was a *lapsus linguae*;⁴¹
- The trial court's statement on the judgment that it made no written findings of fact because the prison term was imposed pursuant to a plea arrangement, when written findings were unnecessary since the defendant received the minimum sentence possible;⁴²
- Incorrect listing on the judgment of the defendant's race as "H" instead of "W";⁴³
- Incorrect listing of an offense class on the judgment;⁴⁴
- Language on the judgment instructing the defendant to report to the probation officer when released from an active sentence on an unrelated charge on appeal, when the defendant subsequently was found not guilty of the unrelated charge.⁴⁵

Generally, Inherent Authority Does Not Allow the Court to Correct Judicial Errors After the Session Ends

Although the court has inherent authority to correct clerical errors to make the record speak the truth, this authority only allows it to "make the record correspond to the actual facts."⁴⁶ The court cannot, "under the

41. *See* State v. Pimental, 153 N.C. App. 69, 80 (2002) (remanding for correction of the clerical error).

42. *See* State v. Leonard, 87 N.C. App. 448, 451–52 (1987).

43. *See* State v. Linemann, 135 N.C. App. 734, 737–738 (1999).

44. *See id.* (attempted simple assault incorrectly listed as a Class 1 misdemeanor instead of a Class 3 misdemeanor; simple assault conviction incorrectly listed as a Class 1 misdemeanor instead of a Class 2 misdemeanor); State v. Hammond, 307 N.C. 662, 669 (1983) (felony judgment and commitment form erroneously listed the crime of robbery with a deadly weapon as a Class C felony, when in fact it is a Class D felony).

45. *See* Linemann, 135 N.C. App. at 736–37.

46. State v. Cannon, 244 N.C. 399, 404 (1956)); *see also* Davis, 123 N.C. App. at 243 (quoting Cannon).

guise of an amendment of its records, correct a judicial error or incorporate anything in the minutes except a recital of what actually occurred.”⁴⁷ Several North Carolina appellate cases apply this rule.

In *State v. Ransom*,⁴⁸ the defendant pleaded guilty to multiple breaking or entering and larceny charges. The trial court consolidated all of the charges for purposes of judgment, found one aggravating factor, no mitigating factors, and sentenced the defendant to a term of twenty years. Subsequently, the State made a motion for appropriate relief, contending it was obvious that the court intended to consolidate the bills of indictment, not the offenses, for sentencing. The court found that there was an error in its judgment, and struck it. It then consolidated the breaking or entering charges and sentenced the defendant to ten years in prison. It also consolidated the larceny charges and sentenced the defendant to a term of ten years in prison, to commence at the expiration of the sentence on the breaking or entering charges. The defendant appealed.

The court of appeals began by noting that the maximum term for any of the charges to which the defendant pleaded guilty was ten years. The court then held that by imposing a sentence of twenty years on the consolidated charges, the trial court violated G.S. 15A-1340.4 because it enhanced the presumptive sentence by more than the maximum for any of the charges. Continuing, it found that the State had no right to file a motion for appropriate relief under G.S. 15A-1416 to correct the error. It also rejected the State’s argument that the trial court’s action was merely correction of a clerical error, stating: “We do not believe it was the correction of a clerical error for the Court to change a judgment so that the defendant’s sentence could be enhanced by ten years.”⁴⁹

A second case is *State v. Davis*.⁵⁰ In *Davis*, after the jury returned verdicts finding the defendant guilty of felonious breaking or entering, felonious larceny, and felonious possession of property, the defendant admitted his status as an habitual felon. The record reflected that the trial court then entered a written order indicating that on the State’s motion, it was arresting judgment on the substantive offenses. The court also entered a judgment and commitment, sentencing the defendant to twenty-five years’ imprisonment as an habitual felon. Apparently, the trial court failed to

47. *Cannon*, 244 N.C. at 404; see also *Davis*, 123 N.C. App. at 243 (quoting *Cannon*); *State v. Jarman*, 140 N.C. App. 198, 202 (2000) (same).

48. 74 N.C. App. 716 (1985).

49. *Id.* at 719.

50. 123 N.C. App. 240 (1996).

recognize that habitual felon status is not a crime and, standing alone, cannot support a sentence.

After the defendant in *Davis* filed notice of appeal, the trial court held a hearing to settle the record and found that its order arresting judgment and the judgment and commitment did not accurately reflect the judgment delivered in open court. It entered an amended judgment, arresting judgment only on the possession charge. The court indicated that its ruling was made on a motion by the State at the earlier sentencing hearing to arrest judgment as to this charge. In its amended judgment, the court sentenced the defendant to twenty-five years in prison for felonious breaking or entering and felonious larceny while being an habitual felon.

On appeal, the defendant asserted, in part, that the trial court had no jurisdiction to amend the original judgment. The North Carolina Court of Appeals agreed, noting that the transcript revealed no motion by the State to arrest judgment on the possession charge. In fact, the judgment as rendered in open court indicated that the court did not arrest judgment as to any of the felonies for which the defendant was convicted. Instead, it indicated that after the court accepted the jury’s verdicts, the defendant admitted the existence of the prior convictions necessary to establish his habitual felon status. The trial court then entered judgment, finding that the defendant had “other convictions that would be aggravating factors outweighing any mitigating factors” and ordering that the defendant be sentenced to twenty-five years in prison. On these facts, the court of appeals concluded that the amended judgments did not accurately reflect the actual proceedings and, therefore, could not be corrected through an exercise of the court’s inherent power to make its records correspond to the actual facts and “speak the truth.” “To the contrary,” it concluded, “it appears that the amended judgments impermissibly corrected a judicial error.” It continued, finding that although the original judgment clearly did not reflect the trial court’s intentions as stated at the sentencing hearing, the court “was without jurisdiction to amend the judgments in the course of settling the record on appeal” and the judgment must be vacated.⁵¹ The court then sustained the defendant’s challenge to the original judgment, holding that since being a habitual felon is a status and not a crime, it could not support a sentence.

Similarly, in *State v. Taylor*,⁵² the defendant pleaded guilty to multiple counts of obtaining property by false pretenses, felonious breaking and entering,

51. *Id.* at 243.

52. __ N.C. App. __ (Feb. 18, 2003).

larceny after breaking and entering, felonious possession of stolen goods, and misdemeanor possession of stolen goods. Additionally, the State indicted the defendant on multiple counts of being an habitual felon, to which the defendant also pleaded guilty. After a sentencing hearing, the trial judge erroneously entered multiple judgments on the habitual felon status. As noted above, habitual felon status is not a crime and, standing alone, cannot support a sentence. The defendant appealed, challenging the judgments on this basis. The State responded, arguing that the trial court's error was clerical because it intended the judgments to reflect both the habitual felon charge and the underlying charges. The State requested that the case be remanded for correction of the clerical error. The court of appeals disagreed, finding that both the judgment and the record indicated that the trial judge intended to enter judgment and sentences on the status of being an habitual felon. Noting that the court of record has inherent authority to correct clerical mistakes, the court continued: "However, it cannot under the guise of an amendment of its records, correct a judicial error. Most assuredly, a trial court's entry of judgment and sentence on a 'non-crime' is not a clerical error."

Thus, *Ransom*, *Davis*, and *Taylor* all support the proposition that as a general matter, a trial court lacks inherent authority to correct judicial errors out of session. Of course, notwithstanding these cases and as discussed above, the trial court retains authority under G.S. 15A-1420(d) to *sua sponte* move to correct an error when the defendant would be entitled to relief. The decision of the North Carolina Court of Appeals in *State v. Branch*⁵³ brings front and center a difficult twist on this issue: What about a judicial error that results in an illegal sentence that benefits the defendant and that the State is powerless to correct?

In *Branch*, the defendant pleaded guilty to several offenses, some committed on September 19, 1994, and some committed on October 4, 1994. The trial court combined the offenses and sentenced the defendant to twelve to fifteen months in jail, under the guidelines of the Structured Sentencing Act. After the session had ended, the Department of Correction notified the trial court that offenses committed before October 1, 1994, could not be combined with offenses committed after that date. The trial judge then resentenced the defendant to twelve to fifteen months for the offenses committed on October 4, 1994, under the Structured Sentencing Act, and ten years for the offenses committed on September 19, 1994, under the Fair

Sentencing Act. The defendant then filed a motion for appropriate relief, which was denied.

On appeal, the defendant argued, in part, that the resentencing hearing was unlawful because the trial court had no jurisdiction over the matter once the term of court had ended. The court of appeals disagreed, citing its prior decision in *State v. Bonds*,⁵⁴ discussed below, for the proposition that trial courts have authority to correct invalid sentences. Citing *Bonds*, it stated: "If a judgment is invalid as a matter of law, North Carolina Courts have the authority to vacate the invalid sentence and resentence the defendant accordingly, even if the term has ended."⁵⁵

In *Bonds*, the defendant filed a motion for appropriate relief challenging his sentence. Without finding any error in the sentence, the trial judge amended it. On appeal, the *Bonds* court held that because the original sentence was lawful, the trial judge had no authority to resentence the defendant. In the course of its holding, it noted:

Until the expiration of the session, the judgments of the court are *in fieri* and the judge has power, in his discretion, to vacate or modify them. After the expiration of the session, this discretionary authority ends. However, if a judgment is invalid as a matter of law, the courts of North Carolina have always had the authority to vacate such judgments *pursuant to petition for writ of habeas corpus and, more recently, by way of post conviction proceedings.*⁵⁶

Thus, what *Bonds* said is that the trial court's authority to correct judicial errors after the session has ended derives from the authority granted in the state's post conviction statutes. It did not hold, as *Branch* suggests, that the trial courts possess some additional reservoir of authority that allows them to *sua sponte* correct judicial errors, detected out of session, that result in an illegal sentence. Notwithstanding this analytical difficulty, *Branch*'s holding is clear: a trial court has authority to correct judicial errors out of session, when those errors result in a sentence that

53. 134 N.C. App. 637 (1999).

54. 45 N.C. App. 62 (1980).

55. *Branch*, 134 N.C. App. at 641.

56. See *Bonds*, 45 N.C. App. at 64 (citations omitted) (emphasis added).

benefits the defendant but is invalid as a matter of law.⁵⁷

Although not explored by *Branch*, a strong pragmatic argument supports its holding. If the trial court has no inherent authority to correct, out of session, illegal sentences that benefit defendants, there are certain situations when the errors will remain uncorrected. As noted above, the court has no authority under G.S. 15A-1420(d) to correct an error that works to the defendant's advantage through a *sua sponte* motion for appropriate relief. Thus, the court cannot exercise authority under the motion for appropriate relief statute to correct an illegal sentence that benefits the defendant. If the error is immediately detected, the State can seek to have it corrected through an appeal or a motion for appropriate relief filed within ten days of entry of judgment.⁵⁸ If, however, the error is not immediately detected, the State will be foreclosed from pursuing these options.⁵⁹ Thus, absent a post conviction action by the defendant⁶⁰ or inherent authority of the court to act *sua sponte*, the illegal sentence will remain uncorrected.

Of course, countervailing arguments can be made. First, *Branch*'s holding is contrary to *Ransom*, *Davis*, and *Taylor*, all concluding that a trial court lacks inherent authority to correct judicial errors out of session. Additionally, as a general rule, a "trial court does not have inherent authority to act in a manner inconsistent with a statute addressing such action."⁶¹

57. Cf. *State v. Roberts*, 351 N.C. 325 (2000).

58. See G.S. 15A-1416(a) (within ten days of entry of judgment, the State may file a motion for appropriate relief asserting any error which it may assert on appeal); see generally G.S. 15A-1445 (appeal by the State).

59. G.S. 15A-1416(b) provides that after the ten-day period has expired, the State may make a motion for appropriate relief only for: (1) the imposition of sentence when prayer for judgment has been continued and grounds for the imposition of sentence are asserted and (2) the initiation of any proceeding authorized under Article 82, Probation; Article 83, Imprisonment, and Article 84, Fines, with regard to modification of sentences.

60. See *State v. Wall*, 348 N.C. 671 (1988); cf. *Roberts*, 351 N.C. 325; *Hamilton v. Freeman*, 147 N.C. App. 195 (2001) (affirming the trial court's order requiring that judgments containing errors favoring the defendants be vacated, when the trial court had pending before it a class action complaint filed by the defendants seeking declaratory and injunctive relief); see generally G.S. 15A-1417 (on a motion for appropriate relief, the court may order "[a]ny . . . appropriate relief").

61. *State v. Allen*, 144 N.C. App. 386, 390 n.3 (2001) (acknowledging that the North Carolina Supreme Court has

G.S. 15A-1420(d) specifically addresses when a court can *sua sponte* order relief after entry of judgment and allows such action only when the defendant would be entitled to relief. *Branch*'s holding that the court has inherent authority to *sua sponte* modify judgments when the State is entitled to relief arguably is inconsistent with this provision.⁶² In the end, although *Branch* did not explore these arguments, its holding rejects them.

Limited Authority to Correct Credit for Time Served

Occasionally, a judgment does not give the defendant proper credit against his or her sentence for time served in confinement as a result of the charge that culminated in the sentence. G.S. 15-196.4 authorizes the court, pursuant to a petition seeking credits not previously allowed, to determine the credits due and forward an order setting forth the allowable credit to the defendant's custodian.

Conclusion

When an error is detected before the end of the session, the judgment of the court is *in fieri* and the trial court has unquestioned authority to correct it. Once the session has ended, the court may (1) exercise inherent authority to *sua sponte* correct clerical errors, and (2) exercise authority under the motion for appropriate relief statute to correct judicial errors when the defendant would be entitled to relief. The North Carolina appellate courts have held, as a general matter, that the trial court lacks inherent authority to correct judicial errors that appear after the session has ended. The *Branch* decision, however, carved out an exception to this rule, holding that the court has inherent authority to correct judicial errors resulting in an illegal sentence, regardless of whether the session has ended.

created an exception to this rule: a trial court has inherent authority to order a change of venue even when the statutory power to change venue does not permit such an order).

62. See *id.* (holding that trial court did not have inherent authority to rule on defendant's motions when G.S. 15A-1227 (motion for dismissal) and 15A-1414 (motion for appropriate relief) provided specific statutory rules for when such motions could be made and defendant's motions did not comply with those rules).

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