

THE RIGHT TO NOTICE: Challenging Untimely Petitions

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Chapter 7B. Juvenile Code.
Article 15. Purposes; Definitions.

§ 7B-1500 Purpose.

To deter delinquency and crime by providing swift, effective dispositions emphasizing the juvenile's accountability for the juvenile's actions and to provide uniform procedures to assure fairness and equity and to encourage the court and others involved to proceed with "all possible speed in making and implementing determinations" required.

§ 7B-1500 Purpose.

SUBCHAPTER II. UNDISCIPLINED AND DELINQUENT JUVENILES.

This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

(1) To protect the public from acts of delinquency.

(2) To deter delinquency and crime, including patterns of repeat offending:

a. By providing swift, effective dispositions that emphasize the juvenile offender's accountability for the juvenile's actions; and

b. By providing appropriate rehabilitative services to juveniles and their families.

(3) To provide an effective system of intake services for the screening and evaluation of complaints and, in appropriate cases, where court intervention is not necessary to ensure public safety, to refer juveniles to community-based resources.

(4) To provide uniform procedures that assure fairness and equity; that protect the constitutional rights of juveniles, parents, and victims; and that encourage the court and others involved with juvenile offenders to proceed with all possible speed in making and implementing determinations required by this Subchapter. (1979, c. 815, s. 1; 1987 (Reg. Sess., 1988), c. 1090, s. 1; 1998-202, s. 6.)

Chapter 7B. Juvenile Code.

Article 17. Screening of Delinquency and Undisciplined Complaints

§ 7B-1700 Intake services.

Juvenile court counselor charged with determining whether reasonable grounds exist to believe the facts alleged are true, whether to institute court action or whether to involve community resources when court referral is not necessary.

§ 7B-1701 Preliminary inquiry.

Juvenile court counselor makes preliminary determination regarding jurisdiction over the juvenile and whether the facts alleged state a case within the jurisdiction of the court. Certain offenses are nondivertible.

§ 7B-1702 Evaluation.

Juvenile court counselor shall determine whether a complaint should be filed as a petition, diverted, or resolved without further action.

§ 7B-1703 Evaluation decision.

Evaluation pursuant to 7B-1702 must be made within 15 days of the receipt of the complaint (a 15-day extension may be granted by supervisor). Petition must also be filed within this time period.

§ 7B-1704 Request for review by prosecutor.

If juvenile court counselor decides not to approve the filing of a petition, the complainant has five calendar days to request review by prosecutor.

§ 7B-1705 Review of determination that petition should not be filed.

Prosecutor has 20 days after complainant is notified to review juvenile court counselor's determination and make determination.

§ 7B-1706 Diversion plans and referral.

Unless prohibited by 7B-1701, juvenile court counselor may divert the case pursuant to a diversion plan (contract) and may refer juvenile to community resources. Juvenile court counselor may file the complaint as a petition at any time if juvenile is in non-compliance with diversion contract. Unless it has been filed as a petition, the juvenile's file must be closed in regard to the diverted matter within six months after the date of the contract.

§ 7B-1700 Intake services.

The chief court counselor, under the direction of the Department, shall establish intake services in each judicial district of the State for all delinquency and undisciplined cases.

The purpose of intake services shall be to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true, to determine whether the facts alleged constitute a delinquent or undisciplined offense within the jurisdiction of the court, to determine whether the facts alleged are sufficiently serious to warrant court action, and to obtain assistance from community resources when court referral is not necessary. The juvenile court counselor shall not engage in field investigations to substantiate complaints or to produce supplementary evidence but may refer complainants to law enforcement agencies for those purposes. (1979, c. 815, s. 1; 1998-202, s. 6; 2000-137, s. 3; 2001-490, s. 2.3.)

§ 7B-1702 Evaluation.

Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out in G.S. 7B-1701, the juvenile court counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without further action. In making the decision, the counselor shall consider criteria provided by the Department. The intake process shall include the following steps if practicable:

- (1) Interviews with the complainant and the victim if someone other than the complainant;
- (2) Interviews with the juvenile and the juvenile's parent, guardian, or custodian;
- (3) Interviews with persons known to have relevant information about the juvenile or the juvenile's family.

Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone. (1979, c. 815, s. 1; 1981, c. 469, s. 5; 1998-202, s. 6; 2000-137, s. 3; 2001-490, s. 2.5.)

§ 7B-1701 Preliminary inquiry.

When a complaint is received, the juvenile court counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the juvenile court counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, the juvenile court counselor, without further inquiry, shall refuse authorization to file the complaint as a petition.

When requested by the juvenile court counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of offenses.

The juvenile court counselor, without further inquiry, shall authorize the complaint to be filed as a petition if the juvenile court counselor finds reasonable grounds to believe that the juvenile has committed one of the following nondivertible offenses:

- (1) Murder;
- (2) First-degree rape or second degree rape;
- (3) First-degree sexual offense or second degree sexual offense;
- (4) Arson;
- (5) Any violation of Article 5, Chapter 90 of the General Statutes that would constitute a felony if committed by an adult;
- (6) First degree burglary;
- (7) Crime against nature; or
- (8) Any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon. (1979, c. 815, s. 1; 1983, c. 251, s. 1; 1998-202, s. 6; 2001-490, s. 2.4.)

§ 7B-1703 Evaluation decision.

(a) The juvenile court counselor shall complete evaluation of a complaint within 15 days of receipt of the complaint, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall decide within this time period whether a complaint shall be filed as a juvenile petition.

(b) Except as provided in G.S. 7B-1706, if the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and the words "Approved for Filing", shall sign it, and shall transmit it to the clerk of superior court.

(c) If the juvenile court counselor determines that a petition should not be filed, the juvenile court counselor shall notify the complainant immediately in writing with reasons for the decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The juvenile court counselor shall sign the complaint after indicating on it:

- (1) The date of the determination;
- (2) The words "Not Approved for Filing"; and
- (3) Whether the matter is "Closed" or "Diverted and Retained".

Except as provided in G.S. 7B-1706, any complaint not approved for filing as a juvenile petition shall be destroyed by the juvenile court counselor after holding the complaint for a temporary period to allow review as provided in G.S. 7B-1705. (1979, c. 815, s. 1; 1998-202, s. 6; 2001-490, s. 2.6.)

§ 7B-1704 Request for review by prosecutor.

The complainant has five calendar days, from receipt of the juvenile court counselor's decision not to approve the filing of a petition, to request review by the prosecutor. The juvenile court counselor shall notify the prosecutor immediately of such request and shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify the complainant and the juvenile court counselor of the time and place for the review. (1979, c. 815, s. 1; 1998-202, s. 6; 2001-490, s. 2.7.)

§ 7B-1705 Review of determination that petition should not be filed.

No later than 20 days after the complainant is notified, the prosecutor shall review the juvenile court counselor's determination that a juvenile petition should not be filed. Review shall include conferences with the complainant and the juvenile court counselor. At the conclusion of the review, the prosecutor shall: (i) affirm the decision of the juvenile court counselor or direct the filing of a petition and (ii) notify the complainant of the prosecutor's action. (1979, c. 815, s. 1; 1981, c. 469, s. 6; 1998-202, s. 6; 2001-490, s. 2.8.)

§ 7B-1706 Diversion plans and referral.

(a) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the juvenile court counselor may divert the juvenile pursuant to a diversion plan, which may include referring the juvenile to any of the following resources:

- (1) An appropriate public or private resource;
- (2) Restitution;
- (3) Community service;
- (4) Victim-offender mediation;
- (5) Regimented physical training;
- (6) Counseling;
- (7) A teen court program, as set forth in subsection (c) of this section.

As part of a diversion plan, the juvenile court counselor may enter into a diversion contract with the juvenile and the juvenile's parent, guardian, or custodian.

(b) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the juvenile court counselor may enter into a diversion contract with the juvenile and the parent, guardian, or custodian; provided, a diversion contract requires the consent of the juvenile and the juvenile's parent, guardian, or custodian. A diversion contract shall:

- (1) State conditions by which the juvenile agrees to abide and any actions the juvenile agrees to take;
- (2) State conditions by which the parent, guardian, or custodian agrees to abide and any actions the parent, guardian, or custodian agrees to take;
- (3) Describe the role of the juvenile court counselor in relation to the juvenile and the parent, guardian, or custodian;
- (4) Specify the length of the contract, which shall not exceed six months;
- (5) Indicate that all parties understand and agree that:
 - a. The juvenile's violation of the contract may result in the filing of the complaint as a petition; and
 - b. The juvenile's successful completion of the contract shall preclude the filing of a petition.

After a diversion contract is signed by the parties, the juvenile court counselor shall provide copies of the contract to the juvenile and the juvenile's parent, guardian, or custodian. The juvenile court counselor shall notify any agency or other resource from which the juvenile or the juvenile's parent, guardian, or custodian will be seeking services or treatment pursuant to the terms of the contract. At any time during the term of the contract if the juvenile court counselor determines that the juvenile has failed to comply substantially with the terms of the contract, the juvenile court counselor may file the complaint as a petition. Unless the juvenile court counselor has filed the complaint as a petition, the juvenile court counselor shall close the juvenile's file in regard to the diverted matter within six months after the date of the contract.

(c) If a teen court program has been established in the district, the juvenile court counselor, upon a finding of legal sufficiency, may refer to a teen court program, any case in which a juvenile has allegedly committed an offense that would be an infraction or misdemeanor if committed by an adult. However, the juvenile court counselor shall not refer a case to a teen court program (i) if the juvenile has been referred to a teen court program previously, or (ii) if the juvenile is alleged to have committed any of the following offenses:

(1) Driving while impaired under G.S. 20-138.1, 20-138.2, 20-138.3, 20-138.5, or 20-138.7, or any other motor vehicle violation;

(2) A Class A1 misdemeanor;

(3) An assault in which a weapon is used; or

(4) A controlled substance offense under Article 5 of Chapter 90 of the General Statutes, other than simple possession of a Schedule VI drug or alcohol.

(d) The juvenile court counselor shall maintain diversion plans and contracts entered into pursuant to this section to allow juvenile court counselors to determine when a juvenile has had a complaint diverted previously. Diversion plans and contracts are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, and shall be withheld from public inspection or examination. Diversion plans and contracts shall be destroyed when the juvenile reaches the age of 18 years or when the juvenile is no longer under the jurisdiction of the court, whichever is longer.

(e) No later than 60 days after the juvenile court counselor diverts a juvenile, the juvenile court counselor shall determine whether the juvenile and the juvenile's parent, guardian, or custodian have complied with the terms of the diversion plan or contract. In making this determination, the juvenile court counselor shall contact any referral resources to determine whether the juvenile and the juvenile's parent, guardian, or custodian complied with any recommendations for treatment or services made by the resource. If the juvenile and the juvenile's parent, guardian, or custodian have not complied, the juvenile court counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition within 10 days after making the determination. If the juvenile court counselor does not file a petition, the juvenile court counselor may continue to monitor the case for up to six months from the date of the diversion plan or contract. At any point during that time period if the juvenile and

the juvenile's parent, guardian, or custodian fail to comply, the juvenile court counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition. After six months, the juvenile court counselor shall close the diversion plan or contract file. (1979, c. 815, s. 1; 1998-202, s. 6; 2001-490, s. 2.9.)

Case Law

In the Matter of: L.O.

The only indication of when the court counselor received the complaint is the sworn and subscribed juvenile petition signed by the petitioner on March 31, 2005. The intake counselor approved the petition for filing on April 21, 2005 and the petition was filed with the court on May 19, 2005. The lapse of time from March 31, 2005 to May 19, 2005 is more than 30 days. The Court of Appeals found the court lacked jurisdiction over L.O. because the petition was filed outside the statutory maximum time of 30 days in accordance with 7B-1703(b). Adjudication and disposition orders of the trial court were vacated and case was remanded for an entry of an order dismissing respondent's action.

In Re: M.C.

The only indication of when the juvenile court counselor received the complaint is the date the petition was verified by the petitioner – November 1, 2005. The petition was filed with the trial court on December 2, 2005, more than 30 days after the complaint was received. The Court of Appeals found the court lacked jurisdiction over M.C. because the petition was filed outside the statutory maximum time of 30 days in accordance with 7B-1703(b). Adjudication and disposition orders of the trial court were vacated and case was remanded for an entry of an order dismissing the action

In the Matter of: K.E.

Juvenile argued that the alleged date of offense occurred on March 11, 2004 and that, because the police investigated, the court counselor "would have been informed of the complaint immediately thereafter." Thus, the juvenile argued, the approval of the filing of the petition on April 29, 2004 was outside the statutory maximum time of thirty days. The Court of Appeals, however, found that the only indication in the record of when notice was given to the court counselor is the sworn and subscribed petition signed by the petitioner and dated April 13, 2004. Therefore, filing the petition on April 29, 2004 was not outside the thirty-day statutory time limit. This assignment of error was overruled.

In the Matter of: D.E.L.

The alleged date of offense was October 18, 2003 and the intake counselor signed the petition on December 2, 2003. Juvenile argued this violated the thirty-day statutory time limit set forth in 7B-1703. However, the Court of Appeals found that the only available complaint of criminal activity in the record was dated November 19, 2003 and signed by an employee of the local sheriff's department. The lapse of time from November 19 to December 2 was well within the statutory time limits and the assignment of error was overruled.

IN THE MATTER OF: L.O.

NO. COA05-1495

NORTH CAROLINA COURT OF APPEALS

Filed: July 18, 2006

Wake County No. 05 J 336

Appeal by respondent juvenile from orders entered 14 June 2005 by Judge Robert Rader in the District Court in Wake County. Heard in the Court of Appeals 10 July 2006.

Attorney General Roy Cooper, by Assistant Attorney General Kathleen U. Baldwin, for the State.

Kevin P. Bradley, for respondent-appellant.

HUDSON, Judge.

Respondent L.O. appeals from adjudication and disposition orders finding him delinquent for injury to personal property and placing him on probation.

Respondent's sole assignment of error is that the trial court lacked jurisdiction over him because the juvenile petition was not filed within the statutorily prescribed time period. At the outset, we note that although respondent did not raise this issue before the trial court, questions regarding whether the trial court had subject matter jurisdiction over the case may be raised for the first time on appeal and, therefore, the issue is properly before us. *See State v. Beaver*, [291 N.C. 137](#), 139-40, 229 S.E.2d 179, 181 (1976). The statutory timeline for processing and filing juvenile petitions is governed by N.C. Gen. Stat. § 7B-1703, which provides:

(b) Except as provided in G.S. 7B-1706, if the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and 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)(2006). Thus, the court counselor must file the juvenile petition within a maximum of thirty days after the complaint is received. Respondent asserts that the court counselor failed to file the juvenile petition within the thirty-day time period.

Here, the only indication of when the court counselor received the complaint is the sworn and subscribed juvenile petition signed by Raleigh Police Officer T.A. Brown on 31 March 2005. The intake counselor approved the petition for filing on 21 April 2005. The petition was filed

with the court on 19 May 2005. The lapse of time from 31 March 2005 to 19 May 2005 is more than thirty days. We, therefore, conclude the trial court erred by asserting jurisdiction over L.O., as the petition was filed outside the statutory maximum time of thirty days in accordance with N.C. Gen. Stat. § 7B-1703(b). For the reasons stated, the adjudication and disposition orders of the trial court must be vacated and this case remanded to the Wake County District Court for entry of an order dismissing respondent's action.

Vacated and remanded.

Judges MCCULLOUGH and STEELMAN concur.

N RE: M.C., A Minor Juvenile.

NO. COA06-886

NORTH CAROLINA COURT OF APPEALS

Filed: May 1, 2007

New Hanover County No. 05 J 529

Appeal by respondent juvenile, M.C., from orders entered 17 March 2006 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 16 April 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General Mabel Y. Bullock, for the State.

Peter Wood for respondent appellant.

McCULLOUGH, Judge.

Respondent M.C. appeals from adjudication and disposition orders finding him delinquent for misdemeanor larceny. On appeal, respondent raises two assignments of error. However, the dispositive issue is whether the trial court lacked subject matter jurisdiction to enter the adjudication and disposition orders due to the untimely filing of the juvenile petition. In its brief, the State concedes that the petition was not timely filed and the trial court's orders must be vacated.

As an initial matter, we note that respondent did not raise this issue before the trial court. Nevertheless, questions regarding whether the trial court had subject matter jurisdiction over the case may be raised for the first time on appeal and, therefore, the issue is properly before us. *See State v. Beaver*, [291 N.C. 137](#), 139-40, 229 S.E.2d 179, 181 (1976).

Pursuant to N.C. Gen. Stat. § 7B-1703(b), a juvenile petition must be filed "within 15 days after the complaint is received" by the juvenile court counselor. N.C. Gen. Stat. § 7B-1703(b) (2005). The statute also provides that an extension of an additional fifteen days may be granted at the discretion of the chief court counselor. *Id.* Consequently, the juvenile petition must be filed within a maximum of thirty days after the complaint is received by the juvenile court counselor.

Here, the only indication of when the juvenile court counselor received the complaint is the date that the petition was verified by a Wilmington Police Department detective: 1 November 2005. The petition was filed with the trial court on 2 December 2005. The time period from 1 November 2005 to 2 December 2005 is more than thirty days. As the petition was filed outside the statutory maximum time of thirty days in accordance with N.C. Gen. Stat. § 7B-1703(b), we conclude the trial court erred by asserting jurisdiction over M.C. Accordingly, the adjudication

and disposition orders of the trial court must be vacated and this case remanded to the New Hanover County District Court for entry of an order dismissing the action.

Vacated and remanded.

Judges STEELMAN and LEVINSON concur.

IN THE MATTER OF: K.E.

NO. COA05-196

NORTH CAROLINA COURT OF APPEALS

Filed: January 17, 2006

New Hanover County No. 03 J 263

Appeal by defendant from adjudication and disposition orders entered 1 September 2004 by Judge John W. Smith in New Hanover County District Court. Heard in the Court of Appeals 27 December 2005.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Jane T. Hautin, for the State.

Lisa Skinner Lefler, for defendant-appellant.

JACKSON, Judge.

K.E. ("the juvenile") appeals from an order adjudicating him delinquent and a dispositional order placing him on probation and ordering him to make restitution.

On appeal, the juvenile makes the following assignments of error:

1. The trial court committed reversible error by adjudicating the juvenile delinquent where the testimony of the state's witness was that she was "not actually sure" that she saw the juvenile throw the rock at her car.
2. The trial court committed reversible error by adjudicating the juvenile delinquent where the testimony of the state's witness was that she "never saw him [the juvenile] throw rocks at [her] jeep.
3. The trial court committed reversible error by adjudicating the juvenile delinquent because, in the words of the trial court, "[the juvenile] was probably throwing rocks at people and hit the car" as the standard of proof was incorrect as used by the trial court.

None of these assignments of error state the legal basis for the alleged error. "Each assignment of error . . . shall state plainly, concisely and without argumentation the legal basis upon which error is assigned." N.C. R. App. P. Rule 10(c)(1)(2005). "[T]he scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10." N.C. R. App. P. Rule 10(a)(2005). In his brief, the juvenile argues that the trial court erred by failing to grant his motion to dismiss at the close of the State's evidence. The assignments of error set forth in the record on appeal do not contain this legal argument, however, and therefore it is not properly before us.

Accordingly, this assignment of error is dismissed.

Even assuming *arguendo* that the propriety of the trial court's denial of his motion to dismiss was properly before us, the juvenile could not prevail. At trial, the juvenile's counsel made a motion to dismiss the charge for insufficient evidence at the close of the State's evidence. The trial court denied that motion. The juvenile then presented evidence by testifying in his own defense. No motion to dismiss for insufficient evidence was made at the close of all evidence.

Rule 10(b)(3) of the North Carolina Rules of Appellate Procedure provides:

If a defendant makes [a motion to dismiss] after the State has presented all its evidence and has rested its case and that motion is denied and the defendant then introduces evidence, his motion for dismissal or judgment in case of nonsuit made at the close of State's evidence is waived. Such waiver precludes the defendant from urging the denial of such motion as a ground for appeal.

...

[I]f a defendant fails to move to dismiss the action or for judgment as in case of nonsuit at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged.

As the juvenile failed to make a motion to dismiss after the close of all evidence, he cannot argue on appeal that the evidence was insufficient to prove his guilt.

In his brief, the juvenile also argues that the trial court lacked subject matter jurisdiction over the action as the juvenile petition was not filed within the statutorily prescribed time. This issue was not raised before the trial court, nor was it included in an assignment of error in the record. Generally, issues not raised before, and ruled upon by, the trial court or included in the assignments of error in the record may not be considered on appeal. N.C. R. App. P. Rule 10(b)(1) and (a). However, questions regarding whether the trial court had subject matter jurisdiction over the case may be raised by arguing the issue in the brief, even if it was not raised before the trial court nor included in the assignments of error in the record. *State v. Beaver*, [291 N.C. 137](#), 139-40, 229 S.E.2d 179, 181 (1976). This issue is, therefore, properly before us for review.

A juvenile complaint must be evaluated, and a determination of whether it will be filed as a juvenile petition must be made, within fifteen days of receipt of the complaint. N.C. Gen. Stat. . 7B-1703(a) (2003). North Carolina General Statutes, section 7B- 1703(a) further provides for an additional fifteen day extension at the discretion of the chief court counselor. If the complaint is approved for filing as a petition, the petition must be filed as soon as practicable but not later than fifteen days after receipt of the complaint, unless a fifteen day extension is granted at the discretion of the chief court counselor. N.C. Gen. Stat. . 7B- 1703(b) (2003).

The juvenile argues that the alleged offense occurred on 11 March 2004 and that, because the police were called to investigate the incident, the court counselor "would have been informed of the complaint immediately thereafter" and accordingly the approval of the filing of the petition on 29 April 2004 was outside the statutory maximum time of thirty days. In the record, however, the only indication of when notice was given to the court counselor is the sworn and subscribed petition signed by Officer Betts of the Wilmington Police Department dated 13 April 2004. The

court counselor approved the petition for filing on 29 April 2004, sixteen days after Officer Betts verified the allegations in the petition. The petition was filed on 3 May 2004. The approval and filing of the petition both were completed within the maximum statutorily prescribed time limits, including the discretionary fifteen day extension.

Accordingly, this assignment of error is overruled.

Affirmed.

Judges WYNN and CALABRIA concur.

IN THE MATTER OF: D.E.L.

NO. COA04-1430

NORTH CAROLINA COURT OF APPEALS

Filed: August 2, 2005

Alamance County No. 03 J 296

Appeal by juvenile from orders entered 15 January 2004 by Judge J. Kent Washburn in Alamance County District Court. Heard in the Court of Appeals 15 June 2005.

Attorney General Roy Cooper, by Assistant Attorney General Lori A. Kroll, for the State.

George E. Kelly, III, for juvenile-appellant.

TYSON, Judge.

D.E.L. ("juvenile") appeals from adjudication and dispositional orders finding him delinquent for: (1) a class I felony, attempting to break or enter a residence in violation of N.C. Gen. Stat. § 14-54(b); and (2) a class A1 misdemeanor, by attempting to break or enter a motor vehicle in violation of N.C. Gen. Stat. § 14-56. We affirm in part, reverse in part, and remand.

I. Background

On 18 October 2003, C.P., a nine-year-old boy, observed D.E.L. and one other boy on the property of Kenneth Norris ("Norris"). C.P. observed the two boys looking into the windows of Norris's mobile home and at Norris's vehicle parked close by. C.P. stated he observed only one of the boys "trying to get into the door." C.P. stated he did not know which of the two boys was actually looking into the window of Norris's home. C.P. recognized one of the boys as D.E.L., with whom he attended school. C.P. and his mother, ("K.M."), stated both boys were about the same size and wore hooded coats.

K.M. testified she exited her home to get her son and noticed two boys across the street and called the sheriff's department. K.M. observed the boys trying to open a window of Norris's mobile home. Both fled when they saw her. At trial, K.M. testified she could not identify D.E.L. as one of the boys she observed trying to gain entry to Norris's mobile home or his vehicle.

D.E.L.'s fifteen-year-old brother and grandfather testified D.E.L. was home all day on restriction for earlier discipline problems at school. Both testified the only time D.E.L. left the house was when he accompanied them to pick up a friend between 6:00 and 7:00 p.m.

Two juvenile petitions were issued alleging D.E.L. was a "delinquent" for offenses committed on 18 October 2003. The petitions alleged D.E.L. committed: (1) a class I felony, attempting to break or enter a residence in violation of N.C. Gen. Stat. § 14-54(b); and (2) a class

A1 misdemeanor, by attempting to break or enter a motor vehicle in violation of N.C. Gen. Stat. § 14-56. On 15 January 2004, D.E.L. was found to be responsible for both charges. The trial court found D.E.L. to be a level two disposition and ordered twelve months supervised probation. D.E.L. appeals.

II. Issues

D.E.L. argues the trial court erred in: (1) asserting jurisdiction over him in this matter by not filing the petitions within the statutory limit of thirty days; (2) allowing the State to proceed on and amend defective petitions; (3) denying D.E.L.'s motion to dismiss the charge of "attempted breaking or entering" when insufficient evidence establishes the elements of the crime; and (4) denying D.E.L.'s motion to dismiss the charge of "attempted breaking or entering of a motor vehicle" when insufficient evidence establishes the elements of the crime.

D.E.L. also argues the trial court committed plain error in: (1) intervening in the examination of witnesses; (2) finding D.E.L. at a "juvenile level 1 and 2 disposition" when a clerical error and findings of fact do not support a level two; and (3) entering a "juvenile adjudication order (delinquent)" inconsistent with the findings of fact.

III. Jurisdiction

D.E.L. argues the trial court erred in asserting jurisdiction over him when the petitions were not filed within the statutory limit of thirty days.

N.C. Gen. Stat. § 7B-1703(b) (2003) provides:

Except as provided in G.S. 7B-1706, if the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and the words "Approved for Filing," shall sign it, and shall transmit it to the clerk of superior court.

Here, the only available complaint of criminal activity in the record is dated 19 November 2003, and signed by an employee of Alamance County Sheriff's Department. The intake counselor signed the petition on 2 December 2003. The lapse of time from 19 November to 2 December is less than the fifteen day maximum.

The trial court did not err by asserting jurisdiction over D.E.L. when the petition was filed less than fifteen days from when the complaint was received in accordance with N.C. Gen. Stat. § 7B-1703(b). This assignment of error is overruled.

IV. Defective Petitions

D.E.L. argues the trial court erred in allowing the State to amend and proceed on defective petitions. In N.C. Gen. Stat. § 7B-2400 (2003), the General Assembly sets forth certain restrictions regarding motions to amend juvenile petitions. "The court may permit a petition to be amended when the amendment does not change the nature of the offense alleged. If a motion to amend is allowed, the juvenile shall be given a reasonable opportunity to prepare a defense to the amended allegations." *Id.* If the amendment requires respondent to reassess his defense, the court is required, if requested by the juvenile, to grant a continuance for a "reasonable" period of time to allow the juvenile to prepare a defense against the amended petition. *Id.* The phrase, "shall be given a reasonable opportunity to prepare a defense," is a mandate to the juvenile court. See *Blackmon v. N.C. Dept. of Correction*, [343 N.C. 259](#), 265-66, 470 S.E.2d 8, 12 (1996). N.C. Gen. Stat. § 7B-2400 does not require the court to grant a continuance on its own initiative.

Here, D.E.L. failed to object to the amendment and did not request a continuance to reassess his defense. N.C. Gen. Stat. § 7B-2400. Our Supreme Court stated in *State v. Leggett*, a failure to except or object to errors at trial constitutes a waiver of the right to assert the alleged error on appeal. [305 N.C. 213](#), 219, 287 S.E.2d 832, 836 (1982) (citations omitted).

D.E.L. failed to properly preserve this assignment of error for review and is dismissed.

V. Motion to Dismiss

The standard of review for denial of a juvenile's motion to dismiss for insufficient evidence is whether the State has offered substantial evidence to show the juvenile committed each element required to be convicted of the crime charged. *In re Bass*, [77 N.C. App. 110](#), 115, 334 S.E.2d 779, 782 (1985) (citation omitted). Substantial evidence is relevant evidence sufficient to persuade a rational fact finder to accept a conclusion. *State v. Frogge*, [351 N.C. 576](#), 584, 528 S.E.2d 893, 899, *cert. denied*, 531 U.S. 994, 148 L. Ed. 2d 459, 121 S. Ct. 487 (2000) (citation omitted). When deciding a motion to dismiss for insufficient evidence, the evidence must be considered in the light most favorable to the State. *State v. Brown*, [310 N.C. 563](#), 566, 313 S.E.2d 585, 587 (1984) (Branch, C.J., dissenting).

A. Attempted Breaking or Entering of a Residence

__A person commits the crime of breaking and entering buildings if he violates N.C. Gen. Stat. § 14-54. Misdemeanor breaking and entering does not require an intent to commit a larceny or felony therein, but rather a breaking or an entering of any building without permission. See *State v. Jones*, [264 N.C. 134](#), 136, 141 S.E.2d 27, 29 (1965); see also *State v. Freeman*, [307 N.C. 445](#), 451, 298 S.E.2d 376, 380 (1983). The crime of attempt requires an act done with the specific intent to commit the underlying offense. See *State v. Hageman*, [307 N.C. 1](#), 13, 296 S.E.2d 433, 441 (1982); *State v. Brayboy*, [105 N.C. App. 370](#), 374, 413 S.E.2d 590, 593 (citation omitted), *disc. rev. denied*, [332 N.C. 149](#), 419 S.E.2d 578 (1992). "Unless a different classification is expressly stated, an attempt to commit a misdemeanor or a felony is punishable under the next lower classification as the offense which the offender attempted to commit." N.C. Gen. Stat. § 14-2.5 (2003).

The element of breaking may be met by a mere opening of a door or window, even if unlocked. *State v. Shaw*, [106 N.C. App. 433](#), 438-39, 417 S.E.2d 262, 266 (1992) (citations omitted).

A breaking . . . constitutes any act of force, however slight, employed to effect an entrance through any usual or unusual place of ingress, whether open, partly open, or closed. Thus, this Court has held that [t]he breaking of the store window, with the requisite intent to commit a felony therein, completes the offense even though the defendant is interrupted or otherwise abandons his purpose without actually entering the building. Thus, the dislocation of the door from its locked position was a sufficient breaking even if defendant did not otherwise enter the building. *State v. Myrick*, [306 N.C. 110](#), 114-15, 291 S.E.2d 577, 580 (1982) (internal quotations and citations omitted).

C.P. observed two boys looking into the windows of Norris's mobile home and the windows of Norris's car. Cody testified he knew all the doors and windows were closed and locked on Norris's mobile home because he has observed in the past that Norris always locks his doors. One of the boys attempted to enter the mobile home through the door. K.M. testified she "saw the two young men . . . trying to get in the window of the mobile home" by "trying to raise the window of the mobile home." C.P. identified D.E.L. as one of the boys present. The acts of looking into the windows of the mobile home, attempting to get into the mobile home through the door, and attempting to enter into the mobile home by trying to raise the window are evidence of an intent to commit the crime of misdemeanor breaking and entering. *Myrick*, 306 N.C. at 114-15, 291 S.E.2d at 580. Evidence shows the intent to commit the crime was carried beyond mere preparation but fell short of its actual commission. *Id.*; *see also Hageman*, 307 N.C. at 13, 296 S.E.2d at 441.

Considering the evidence in the light most favorable to the State, sufficient evidence tends to show D.E.L. attempted to gain access to Norris's home by means of breaking. *See* N.C. Gen. Stat. § 14-54(b); *see also Brown*, 310 N.C. at 566, 313 S.E.2d at 587 (Branch, C.J. dissenting); *see also Myrick*, 306 N.C. at 114-15, 291 S.E.2d at 580. The trial court did not err in denying D.E.L.'s motion to dismiss at the close of the State's evidence. This assignment of error is overruled.

B. Attempted Breaking or Entering of a Motor Vehicle

D.E.L. argues the trial court erred in denying D.E.L.'s motion to dismiss the charge of "attempted breaking or entering of a motor vehicle" when there was insufficient evidence to establish the elements of the crime.

Unlike *Jones* and *Freeman* discussed above which involved a misdemeanor breaking and entering of a building, the specific statute for breaking and entering of a vehicle requires the State to prove the defendant "with intent to commit any felony or larceny therein, breaks or enters any . . . motor vehicle[,] . . . that person is guilty of a Class I felony." N.C. Gen. Stat. § 14-56; *see also* N.C. Gen. Stat. §§ 14-53 and 14-54(a) (2003) (which require an intent to commit a larceny or felony therein); *cf.* N.C. Gen. Stat. § 14-54(b) (2003) (which does not require an

"intent to commit a felony or larceny" but rather any person who wrongfully breaks and enters any building).

The crime of attempt requires an act done with the specific intent to commit the underlying offense. *See Hageman*, 307 N.C. at 13, 296 S.E.2d at 441; *Brayboy*, 105 N.C. App. at 374, 413 S.E.2d at 593. In order to meet the element of any felony or larceny for the crime charged, there must be evidence introduced that the victim's vehicle contained items, even of trivial value. *State v. McLaughlin*, [321 N.C. 267](#), 270, 362 S.E.2d 280, 282 (1987) (where the record was devoid of evidence that the victim's vehicle contained any items of even trivial value, the trial court erred in submitting the issue of the defendant's guilt of this offense to the jury).

Here, D.E.L. was identified by C.P. as one of the boys attempting to gain access to Norris's vehicle. He further testified one of the two boys was trying to gain access to the vehicle by pulling up on the door handle. The State failed to present any evidence regarding D.E.L.'s intent or that any items of value were located in Norris's vehicle that could establish the element of any felony or larceny therein of the crime charged. *Id.* at 270, 362 S.E.2d at 282.

Considering the evidence in light most favorable to the State, insufficient evidence shows D.E.L. intended to commit a larceny or felony in the vehicle or items located in the vehicle to facilitate a larceny or felony therein. The trial court erred in not granting D.E.L.'s motion to dismiss at the close of the State's evidence. The trial court's order as to the charge of attempted breaking or entering of a motor vehicle is reversed.

VI. Plain Error

__D.E.L. argues the trial court committed plain error when it intervened in the examination of witnesses.

Under Rule 10(b)(1) of our Rules of Appellate Procedure,

[a]ny such question which was properly preserved for review by action of counsel taken during the course of proceedings in the trial tribunal by objection noted or which by rule or law was deemed preserved or taken without any such action, may be made the basis of an assignment of error in the record on appeal.

N.C.R. App. P. 10(b)(1) (2004).

Rule 10 functions as an important vehicle to insure that errors are not 'built into' the record, thereby causing unnecessary appellate review. We have stated on numerous occasions, most recently in *State v. Leggett*, [305 N.C. 213](#), 287 S.E.2d 832 (1982), that a failure to except or object to errors at trial constitutes a waiver of the right to assert the alleged error on appeal.

State v. Oliver, [309 N.C. 326](#), 334, 307 S.E.2d 304, 311 (1983) (citations omitted).

In *State v. Odom*, our Supreme Court adopted the plain error rule exception to Rule 10 of our Rules of Appellate Procedure. [307 N.C. 655](#), 660, 300 S.E.2d 375, 378 (1983) (applied to

assignments of error regarding jury instructions). A defendant seeking plain error review must "specifically and succinctly" argue the alleged error committed by the trial court amounted to plain error. *State v. Nobles*, [350 N.C. 483](#), 514-15, 515 S.E.2d 885, 904 (1999), *vacated and remanded*, [357 N.C. 433](#), 584 S.E.2d 765 (2003). Our Supreme Court "has applied the plain error analysis only to instructions to the jury and evidentiary matters." *State v. Atkins*, [349 N.C. 62](#), 81, 505 S.E.2d 97, 109 (1998), *cert denied*, 526 U.S. 1147, 143 L. Ed. 2d 1036 (1999).

Although D.E.L. asserts plain error review, plain error review has not been extended to include a judge's interview of a witness and is unavailable to D.E.L. D.E.L. failed to take exception or object to the court examining the witnesses at trial and has waived review of this issue on appeal. *See Oliver*, 309 N.C. at 334, 307S.E.2d at 311 ("[A] failure to except or object to errors at trial constitutes a waiver of the right to assert the alleged error on appeal."). This assignment of error is dismissed.

VII. Dispositional Order Juvenile Level and Delinquency

D.E.L. argues in his assignment of error number six that the trial court committed plain error by entering the "Juvenile Level 1 and 2 Disposition Order" because a "Level 2 Disposition" was not supported by the findings and is not ordered pursuant to N.C. Gen. Stat. § 7B-2508. D.E.L. also argues in his assignment of error number seven that the trial court committed error in finding him "delinquent." D.E.L. further argues because the trial court ordered disposition levels contrary to the statutory mandate, his right of appeal is preserved automatically. *See State v. Jones*, [336 N.C. 490](#), 497, 445 S.E.2d 23, 26 (1994) (right to appeal is preserved, notwithstanding no objection at trial, because the trial court acted contrary to a statutory mandate).

In light of our holding vacating the breaking and entering of a motor vehicle charge and remand on the breaking and entering of a building, we do not address these assignments of error.

VIII. Conclusion

__The trial court properly asserted jurisdiction over D.E.L. when the petitions charging him with the crime were filed within fifteen days after the juvenile coordinator received the complaint. This Court is unable to hear D.E.L.'s defective petitions assignment of error due to D.E.L.'s failure to preserve his right of appeal by taking exception to or objecting to an amendment to the petitions at trial.

The trial court properly denied D.E.L.'s motion to dismiss at the close of the State's evidence on the charge of attempted breaking or entering a building when the State submitted substantial evidence to establish the elements of the crime. The trial court erred when it denied D.E.L.'s motion to dismiss at the close of the evidence on the charge of breaking or entering a vehicle. The State failed to proffer any evidence D.E.L. intended to commit a felony or larceny of Norris's vehicle or that the vehicle contained any property that would facilitate a felony or larceny. That part of the order is vacated.

Plain error is not an applicable standard of review nor does it properly preserve D.E.L.s claim that the trial court improperly interviewed witnesses.

In summary, we affirm the trial court's order on all counts, except the breaking or entering a motor vehicle which is reversed, and this case is remanded for a disposition consistent with this opinion.

Affirmed in Part, Reversed in Part, and Remanded.

Judge MCCULLOUGH concurs.

Judge BRYANT concurs in result only by separate opinion. Report per Rule 30(e).

NO. COA04-1430

NORTH CAROLINA COURT OF APPEALS

Filed: August 2, 2005'

IN THE MATTER OF: D.E.L.

Alamance County No. 03 J 296

BRYANT, Judge, concurring in result.

I fully concur in most of the majority opinion but write separately to address a concern regarding N.C. Gen. Stat. § 14-56 (2003). As the majority states and I agree, the evidence in the instant case was insufficient to show the necessary "intent to commit a felony or larceny therein" element required for **felonious** breaking and entering of a motor vehicle. Here, the trial court found the juvenile responsible and sentenced him on the charge of "attempted misdemeanor breaking and entering a motor vehicle" under N.C.G.S. § 14-56, and deemed such offense a class A1 misdemeanor. N.C.G.S. § 14-56 only allows for **felonious** breaking and entering a motor vehicle. Because I do not find authority in our statutory or case law to allow sentencing someone based on a crime of "misdemeanor breaking and entering a motor vehicle", I would reverse the trial court judgment on those grounds.

Fact Patterns & Sample Motions

Hypothetical #1

Willie was charged with Injury to Real Property for an offense alleged to have occurred on February 17, 2007. The local intake/court counselor stamped the petition “Received 3-16-07.” The petition was verified by the officer on March 16, 2007 and filed on April 16, 2007. The portion on the back of the Juvenile Petition designating the “Decision of Intake Counselor Regarding the Filing of the Petition” is blank. What should Willie’s attorney do? (*see Sample Motion to Dismiss #1*)

Hypothetical #2

Suppose the Assistant District Attorney dismissed Willie’s first petition as set forth in Hypothetical #1. Magically, a brand new petition alleging the same facts and same date of offense appears in Willie’s attorney’s mailbox several months later. This petition was stamped on the back as “Received 7-11-07” and was verified by the petitioner on July 11, 2007. The juvenile court counselor made her decision regarding the filing of the petition on July 13, 2007, the same date on which it was file-stamped by the clerk. What arguments can Willie’s attorney make? (*see Sample Motion to Dismiss #2*)

Hypothetical #3

Bobby was charged with various felony drug charges, the offenses alleged to have occurred on February 26, 2007. When the District Attorney complies with a discovery motion filed in the matter, Bobby’s attorney receives information that the alleged crimes were investigated on February 26, 2007 and that the complaint was submitted to the office of the juvenile court counselor for consideration regarding possible criminal charges on February 26, 2007. The juvenile petition is stamped “Received 3-26-07,” although all of the other documents regarding the delivery to the juvenile court counselor indicate that the complaint was received on or about March 1, 2007. The petition was file-stamped on April 23, 2007. What is the difference between the “complaint” and the “petition” for purposes of interpreting 7B-1703? (*see Sample Motion to Dismiss #2 and Actual Order*)

Hypothetical #4

Jessie was charged with simple assault for an offense alleged to have occurred on January 14, 2007. Her petition was stamped received by the juvenile court counselor and verified on March 1, 2007. The intake counselor made her decision to file the petition on March 26, 2007 and the petition was filed on April 1, 2007. Does the court have jurisdiction over this matter?

Sample Motion to Dismiss #1

STATE OF NORTH CAROLINA
COUNTY OF []

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO.: []

STATE OF NORTH CAROLINA,

v.

MOTION TO DISMISS

X.X.,

A Juvenile.

NOW COMES the Juvenile, by and through his attorney, and moves this Honorable Court, to dismiss the Juvenile Petition for Injury to Real Property filed in this matter on April 16, 2007, for lack of jurisdiction, and in support of this motion shows unto the Court the following:

1. That the Juvenile is alleged to have committed the offense of Injury to Real Property, said date of offense being February 17, 2007.
2. That the Juvenile Petition was stamped on the back as "Received 3-16-07."
3. That the Juvenile Petition was verified on March 16, 2007.
4. That the portion on the back of the first Juvenile Petition designating the "Decision of Intake Counselor Regarding the Filing of the Petition" was blank – indicting that no decision was ever entered regarding the filing of the petition.
5. N.C. Gen. Stat. § 7B-1703(a) (2006) provides: The juvenile court counselor shall complete evaluation of a complaint within 15 days of receipt of the complaint, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall decide within this time period whether a complaint shall be filed as a juvenile petition.
6. N.C. Gen. Stat. § 7B-1703(b) (2006) provides: Except as provided in G.S. 7B-1706, if the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and the words "Approved for Filing", shall sign it, and shall transmit it to the clerk of superior court.

7. N.C. Gen. Stat. § 7B-1703(c) (2006) provides: If the juvenile court counselor determines that a petition should not be filed, the juvenile court counselor shall notify the complainant immediately in writing with reasons for the decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The juvenile court counselor shall sign the complaint after indicating on it: (1) The date of the determination; (2) The words "Not Approved for Filing"; and (3) Whether the matter is "Closed" or "Diverted and Retained".
8. As set out in N.C. Gen. Stat. § 7B-1703 and as noted in In the Matter of: D.E.L., No. COA04-1430 (N.C. App. August 2, 2005); In the Matter of: L.O., No. COA05-1495 (N.C. App. July 18, 2006); and In RE: M.C., No. COA06-886 (N.C. App. May 1, 2007), this Court lacks jurisdiction over the Juvenile because the decision to approve the case for filing was not made within the statutory period and the case was filed without the required statutory approval. Further, the case was filed on April 16, 2007, more than 30 days after the Juvenile Court Counselor received the complaint.

WHEREFORE, the Juvenile prays that this Honorable Court:

1. Dismiss the petition filed in this matter on April 16, 2007 with prejudice; and
2. For such other and further relief as the Court may deem just and proper.

This the ____ day of _____, 2007.

Sample Motion to Dismiss #2

STATE OF NORTH CAROLINA
COUNTY OF []

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO.: []

STATE OF NORTH CAROLINA,

v.

MOTION TO DISMISS

X.X.,

A Juvenile.

NOW COMES the Juvenile, by and through his attorney, and moves this Honorable Court, to dismiss the Juvenile Petition for Injury to Real Property filed in this matter on April 16, 2007, for lack of jurisdiction, and in support of this motion shows unto the Court the following:

1. That the Juvenile is alleged to have committed the offense of Injury to Real Property, said date of offense being February 17, 2007.
2. That the first Juvenile Petition filed in this matter on April 16, 2007 was stamped on the back as "Received 3-16-07."
3. That the first Juvenile Petition filed in this matter on April 16, 2007 was verified on March 16, 2007.
4. That the portion on the back of the first Juvenile Petition filed in this matter on April 16, 2007 designating the "Decision of Intake Counselor Regarding the Filing of the Petition" was blank – indicating that no decision was ever entered regarding the filing of the petition.
5. N.C. Gen. Stat. § 7B-1703(a) (2006) provides: The juvenile court counselor shall complete evaluation of a complaint within 15 days of receipt of the complaint, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall decide within this time period whether a complaint shall be filed as a juvenile petition.
6. N.C. Gen. Stat. § 7B-1703(b) (2006) provides: Except as provided in G.S. 7B-1706, if the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall assist the complainant when necessary with the

preparation and filing of the petition, shall include on it the date and the words "Approved for Filing", shall sign it, and shall transmit it to the clerk of superior court.

7. N.C. Gen. Stat. § 7B-1703(c) (2006) provides: If the juvenile court counselor determines that a petition should not be filed, the juvenile court counselor shall notify the complainant immediately in writing with reasons for the decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The juvenile court counselor shall sign the complaint after indicating on it: (1) The date of the determination; (2) The words "Not Approved for Filing"; and (3) Whether the matter is "Closed" or "Diverted and Retained".
8. As set out in N.C. Gen. Stat. § 7B-1703 and as noted in In the Matter of: D.E.L., No. COA04-1430 (N.C. App. August 2, 2005); In the Matter of: L.O., No. COA05-1495 (N.C. App. July 18, 2006); and In RE: M.C., No. COA06-886 (N.C. App. May 1, 2007), this Court lacked jurisdiction over the Juvenile because the decision to approve the case for filing was not made within the statutory period and the case was filed without the required statutory approval. Further, the original petition was filed on April 16, 2007, more than 30 days after the Juvenile Court Counselor received the complaint.
9. For those reasons, the Juvenile Petition file-stamped April 16, 2007 in this matter was dismissed by the District Attorney's Office on May 10, 2007.
10. That a new petition was filed in this matter on July 13, 2007.
11. That this new petition was stamped "Received 7-11-07" and was verified on July 11, 2007. The Juvenile Court Counselor made her decision regarding the filing of this petition on July 13, 2007.
12. That this petition is outside the statutory guidelines because the original complaint regarding this juvenile's activities was received March 16, 2007, nearly four months before the petition now pending in this matter was file-stamped by the Clerk of Court.
13. That this new petition was solely filed to circumvent the statutory time guidelines set forth above.

WHEREFORE, the Juvenile prays that this Honorable Court:

1. Dismiss the petition filed in this matter on July 13, 2007 with prejudice;
and
2. For such other and further relief as the Court may deem just and proper.

This the _____ day of _____, 2007.

Sample Motion to Dismiss #3

STATE OF NORTH CAROLINA
JUSTICE

COUNTY OF []

STATE OF NORTH CAROLINA,

v.

X.X.,

A Juvenile.

IN THE GENERAL COURT OF

DISTRICT COURT DIVISION

FILE NO.: []

MOTION TO DISMISS

NOW COMES the Juvenile, by and through his attorney, and moves this Honorable Court, to dismiss the Juvenile Petition for Felony Sale or Delivery of a Schedule II Controlled Substance, Simple Possession of a Schedule III Controlled Substance and Possession of Drug Paraphernalia, filed in this matter on April 23, 2007, for lack of jurisdiction, and in support of this motion, shows unto the Court the following:

1. That the Juvenile is alleged to have committed the offenses of Felony Sale or Delivery of a Schedule II Controlled Substance, Simple Possession of a Schedule III Controlled Substance and Possession of Drug Paraphernalia, said date of offenses being February 26, 2007.
2. According to Discovery provided by the Iredell County District Attorney's Office, law enforcement personnel investigated the alleged crimes on February 26, 2007 and submitted the complaint to Juvenile Services on February 26, 2007.
3. The complaint (information submitted by law enforcement) is stamped "Received 3-1-07" presumably by Juvenile Services.
4. The Juvenile Petition is stamped "Received 3-26-07" and a decision of the court counselor regarding the filing of the petition was made on April 10, 2007, with the Petition being filed on April 23, 2007.
5. That, although the Juvenile Petition is stamped "Received 3-26-07," all other documents regarding the delivery to Juvenile Services indicate that the complaint was received on or about March 1, 2007.
6. N.C. Gen. Stat. § 7B-1703(a) (2006) provides: The juvenile court counselor shall complete evaluation of a complaint within 15 days of receipt of the complaint, with an extension for a maximum of 15

additional days at the discretion of the chief court counselor. The juvenile court counselor shall decide within this time period whether a complaint shall be filed as a juvenile petition.

7. N.C. Gen. Stat. § 7B-1703(b) (2006) provides: Except as provided in G.S. 7B-1706, if the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and the words "Approved for Filing", shall sign it, and shall transmit it to the clerk of superior court.
8. N.C. Gen. Stat. § 7B-1703(c) (2006) provides: If the juvenile court counselor determines that a petition should not be filed, the juvenile court counselor shall notify the complainant immediately in writing with reasons for the decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The juvenile court counselor shall sign the complaint after indicating on it: (1) The date of the determination; (2) The words "Not Approved for Filing"; and (3) Whether the matter is "Closed" or "Diverted and Retained".
9. As set out in N.C. Gen. Stat. § 7B-1703 and as noted in In the Matter of: D.E.L., No. COA04-1430 (N.C. App. August 2, 2005); In the Matter of: L.O., No. COA05-1495 (N.C. App. July 18, 2006); and In RE: M.C., No. COA06-886 (N.C. App. May 1, 2007), this Court lacks jurisdiction over the Juvenile because the petitions were filed on April 23, 2007, more than 30 days after the complaint was forwarded to the Juvenile Court Counselor.
10. That, under N.C. Gen. Stat. §7B-1500, the first statute in the delinquency section of the Juvenile Code, the purpose of the Code is stated, in part: “(2) To deter delinquency and crime, including patterns of repeat offending: (a) by providing swift, effective dispositions that emphasize the juvenile offender’s accountability for procedures that assure fairness and equity; that protect the constitutional rights of juveniles, parents, and victims; and that encourage the court and others involved with juvenile offenders to proceed with all possible speed in making and implementing determinations required by this Subchapter.”
11. That the Juvenile Code requires no less than 64 specific time periods be followed, including periods for screening complaints, first appearance hearings, probable cause, and transfer hearings, and appeals to ensure that “swift, effective dispositions” are provided and that the court process occurs with “all possible speed” (N.C. Gen. Stat. § 7B-1500).

12. That the North Carolina Supreme Court has recently reiterated that “[o]ur courts have consistently recognized that “[t]he [S]tate has a *greater* duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution.” State v. Fincher, 309 N.C. 1, 24, 305 S.E.2d 685, 699 (1983) (Harry Martin, J., concurring) (citing *In re Meyers*, 25 N.C. App. 55, 558, 214 S.E.2d 268, 270 (1975) (holding that in a juvenile proceeding, unlike an ordinary criminal proceeding, the burden upon the State to see that a juvenile’s rights are protected is increased rather than decreased), In re T.E.F., 614 S.E.2d 196, 2005 N.C. LEXIS 642.
13. That the failure of the petitioner or State to file these charges in a timely manner harms the juvenile in failing to address the alleged conduct soon after the act because the juvenile, having not fully matured mentally or emotionally, will have difficulty in connecting the alleged illegal conduct with a properly tailored disposition, if in fact the juvenile is adjudicated delinquent.
14. That if the juvenile cannot comprehend the connection between the alleged illegal conduct and the disposition then the court has failed to “emphasize the juvenile offender’s accountability for the juvenile’s actions” (N.C. Gen. Stat. § 7B-1500).
15. That for the aforementioned reasons the failure of the petitioner or State to file these charges in a timely manner prejudices the juvenile’s defense and is an affront to the stated purposes of the Juvenile Code, juvenile delinquency jurisprudence, and the Juvenile Court process.

WHEREFORE, the Juvenile prays that this Honorable Court:

1. Dismiss the petitions filed in this matter on April 23, 2007 with prejudice; and
2. For such other and further relief as the Court may deem just and proper.

This the _____ day of _____, 2007.

Actual Order

NORTH CAROLINA

IREDELL COUNTY

IN THE MATTER OF
X.X.X.,

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO.: 07JBXX

ORDER

THIS MATTER came on for hearing on May 31, 2007, before the Honorable X, District Court Judge Presiding on Juvenile's Motion to Dismiss. The Juvenile was represented by XX. The State of North Carolina was represented by XX. After hearing arguments of Counsel, the Court makes the following:

FINDINGS OF FACT

1. That the juvenile is alleged to have committed the offenses of Sell and Delivery of a Schedule II Controlled Substance, Possession of a Schedule III Controlled Substance, and Possession of Drug Paraphernalia on February 26, 2007.
2. According to Discovery provided by the Iredell County District Attorney's Office, law enforcement personnel investigated the alleged crimes on or about February 26, 2007 and submitted the complaint to Juvenile Services on March 1, 2006.
3. That the Court specifically finds that the investigative notes and intake information provided by the Iredell County Sheriff's Department to the Department of Juvenile Justice and Crime Prevention on March 1, 2007 is the complaint pursuant to N.C. Gen. Stat. § 7B-1703(a) (2006).
4. That the Juvenile Petition was stamped "Received on 3-26-07."
5. That the Court finds that the Juvenile Court Counselor evaluated the complaint and made a decision to approve the complaint for filing as a petition on March 26, 2007.
6. That the investigative notes and intake information provided by the Iredell County Sheriff's Department was used to prepare the petition and, therefore, served as the complaint in this matter.
7. That the Court finds that the evaluation complied with N.C. Gen. Stat. § 7B-1703(a) (2006) in that the evaluation was completed within thirty days.

8. That the petition was approved for filing by the Juvenile Court Counselor on April 10, 2007.
9. That the juvenile petition was filed with the Iredell County Clerk of Superior Court on April 23, 2007.

Based on the forgoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. That the Court has jurisdiction of the parties and the cause.
2. That the Juvenile Court Counselor complied with the requirements of N.C. Gen. Stat. § 7B-1703(a) (2006).

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, ADJUDGED AND DECREED

1. That the Juvenile's Motion to Dismiss for lack of jurisdiction is dismissed.

This the ____ day of _____, 2007.

Note: This case is now pending appeal.