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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-954

Filed: 6 March 2018

Durham County, No. 16JB23

IN THE MATTER OF: J.D.

Appeal by Defendant from order entered 16 February 2017 by Judge Marcia Morey in Durham County District Court. Heard in the Court of Appeals 8 February 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kimberly N. Callahan, for the State.*

*Geeta N. Kapur for the Defendant.*

DILLON, Judge.

J.D. (“Jasper”)<sup>1</sup> appeals the trial court’s adjudication extending his probation for an additional six months. Jasper brings challenges to this most recent extension, as well as the trial court’s initial adjudication finding him delinquent and granting probation, and a subsequent disposition extending that probation for six months. After careful review, we dismiss Jasper’s appeal.

I. Background

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<sup>1</sup> A pseudonym is used to protect the anonymity of the juvenile and for ease of reading. See N.C. R. App. P. 3.1(b) (2015).

In December 2015, police arrested Jasper after discovering him in possession of a stolen vehicle, pursuing the vehicle in a high-speed chase, and ultimately finding marijuana on his person.

At a hearing in March 2016, Jasper admitted responsibility for possession of marijuana and resisting, delaying, and obstructing an officer in exchange for dismissal of charges regarding the stolen vehicle. The trial court accepted Jasper's admissions and adjudicated him delinquent, ordering a short term of confinement followed by six months of probation to expire in September 2016. Jasper filed no appeal.

In September 2016, Jasper admitted to violating the terms of his probation and the trial court extended his probation for six months, to expire in March 2017. Jasper filed no appeal.

On 16 February 2017, Jasper's case came on for review to evaluate his ongoing need for court assistance and services. During the hearing, Jasper admitted once again to violating his probation, and the trial court extended his probation for an additional six months, to expire September 2017.

Jasper now appeals.

## II. Analysis

Jasper challenges the trial court's extension of his probation, arguing that the trial court made several errors of law in its initial adjudication declaring Jasper to be

a delinquent juvenile and its first extension of his probation. Jasper's appeal is untimely, so we must dismiss on procedural grounds.

The State contends that Jasper's appeal of his most recent, February 2017 adjudication is not properly before this Court because Jasper failed to properly notice his appeal. Notice of a party's intent to appeal a final disposition in a juvenile case must be given either "[1] in open court at the time of the hearing or [2] within 10 days after entry of the order." N.C. Gen. Stat. § 7B-2602 (2015). Failure to appeal within this time prevents review by this Court due to a lack of jurisdiction. *See In re M.L.T.H.*, 200 N.C. App. 476, 481, 685 S.E.2d 117, 121 (2009).

It is true that the record on appeal contains no evidence that Jasper formally appealed his February 2017 adjudication. There is no notice of appeal in the record, nor does the transcript contain an oral notice of appeal in open court. However, Jasper asserts that the documentation reflecting his formal appeal was not available to his appellate counsel before the record on appeal was officially settled. As such, Jasper submits with his briefs on appeal an official notice of appeal from the 16 February 2017 adjudication, with a time stamp evidencing a 24 February 2017 filing date, within the ten day limit. In light of this information, despite the errors in his attempt to appeal, we could elect to exercise our discretion pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure and grant *certiorari* to review Jasper's case. *See* N.C. R. App. P. 21(a)(1) (2015).

However, this case presents procedural deficiencies beyond Jasper's possibly improper notice of appeal that prevent us from reaching its merits. Jasper failed to bring timely appeals to both the original adjudication declaring him delinquent, as well as the first disposition extending his probation. As such, he may not appeal them now. The original adjudication was entered by the trial court on 22 March 2016, and the first extending disposition was entered on 15 September 2016. Jasper never appealed from either order, and the putative notice of appeal in this case was filed on 24 February 2017, well beyond the ten day deadline to wage an appeal.

Further, Jasper's attempts to challenge the validity of the original adjudication and the first extension of his probation constitute an impermissible collateral attack on those orders. Our Supreme Court has frequently addressed the appealability of an initial judgment and sentence where the time for appeal elapsed and the petitioner effectively appealed a later modification of the initial judgment. *See State v. Pennell*, 367 N.C. 466, 758 S.E.2d 383 (2014); *State v. Holmes*, 361 N.C. 410, 646 S.E.2d 353 (2007). In *Holmes*, the defendant attempted to challenge the activation of sentences that were previously suspended, despite having failed to challenge the judgment suspending those sentences. *Holmes*, 361 N.C. at 412, 646 S.E.2d at 354. In *Pennell*, the defendant failed to timely appeal a judgment sentencing him with probation, and instead brought a jurisdictional challenge to the order revoking his probation. *Pennell*, 367 N.C. at 471, 758 S.E.2d at 387. In each case, our Supreme Court held

that the challenge was an improper and impermissible collateral attack. *Id.* at 472, 758 S.E.2d at 387; *Holmes*, 361 N.C. at 413, 646 S.E.2d at 355.

Similar to the situations in *Pennell* and *Holmes*, Jasper failed to bring a timely appeal from the two prior dispositions in his case. His current appeal from the February 2017 disposition extending his probation does not claim that the trial court erred in finding that he had violated the terms of his probation or that the review hearing was commenced in error. Rather, Jasper solely advances arguments against the trial court's procedure regarding the two prior dispositions. "[B]y failing to appeal from the original judgment[s] . . . , [Jasper] waived any challenge to [those] judgment[s] and thus [can] not attack [them] in the appeal of a subsequent order [extending his] sentence." *Holmes*, 361 N.C. at 413, 646 S.E.2d at 355. "He may not now appeal the matter[s] collaterally via a proceeding contesting the [extension] of the sentence imposed in the original judgment." *Pennell*, 367 N.C. at 471, 758 S.E.2d at 387.

We hold that Jasper's appeal is not properly before this Court. While we could consider Jasper's appeal of the February 2017 disposition for review, he has not presented any arguments that may be addressed in such an appeal. We conclude that Jasper's claims constitute impermissible collateral attacks, and therefore dismiss.

DISMISSED.

IN RE J.D.

*Opinion of the Court*

Judges STROUD and INMAN concur.

Report per Rule 30(e).