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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-669

No. COA 22-122

Filed 4 October 2022

Montgomery County, No. 17CRS50405

STATE OF NORTH CAROLINA

v.

NATHAN GABRIEL MCBRYDE

Appeal by Defendant from Judgment dated 10 September 2021 by Judge V. Bradford Long in Montgomery County Superior Court. Heard in the Court of Appeals 24 August 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Yvonne B. Ricci, for the State.

Devereux & Banzhoff, PLLC, by Andrew B. Banzhoff, for Defendant-Appellant.

HAMPSON, Judge.

¶ 1

Nathan Gabriel McBryde (Defendant) appeals from a Judgment¹ rendered in Montgomery County Superior Court following a bench trial at which Defendant was

¹ The written Judgment in the Record before us does not include any file-stamp reflecting its entry or when it was filed with the Montgomery County Clerk of Superior Court. We also note this written judgment incorrectly reflects Defendant was convicted by a jury.

found guilty of Misdemeanor Impaired Driving in violation of N.C. Gen. Stat. § 20-138.1. The Record before us, however, fails to include any record of proceedings in the District Court which would have had exclusive original jurisdiction over this matter before any appeal de novo to Superior Court. *See* N.C. Gen. Stat. § 7A-272 (2021). The Record is also silent on how this matter ended up before the Superior Court and whether Defendant properly perfected any appeal from District Court to Superior Court. Defendant’s briefing also sheds no light on how this misdemeanor came before the Superior Court for trial. As such, we are unable to discern whether the trial court below had jurisdiction in this matter or not. Thus, we are compelled to dismiss Defendant’s appeal. *See State v. Felmet*, 302 N.C. 173, 176, 273 S.E.2d 708, 711 (1981) (“When the record is silent and the appellate court is unable to determine whether the court below had jurisdiction, the appeal should be dismissed.”).

¶ 2 The Record before us shows the following:

Factual and Procedural Background

¶ 3 On 22 April 2017, Defendant received a citation for unlawfully and willfully operating a motor vehicle while subject to an impairing substance in violation of N.C. Gen. Stat. § 20-138.1. On 19 December 2018, Defendant filed a Motion to Suppress and a Motion to Dismiss in Montgomery County Superior Court. On 16 September 2019, the Superior Court conducted a hearing on Defendant’s Motion to Dismiss and

Motion to Suppress. On 19 November 2019 the Superior Court entered an Order denying Defendant’s Motion to Dismiss and Motion to Suppress.

¶ 4

This matter was tried in Superior Court on 10 September 2021. Prior to trial, Defendant waived his right to a jury trial electing instead a bench trial. At the conclusion of the trial, the Superior Court returned a Verdict finding Defendant guilty of Driving While Impaired. The trial court rendered judgment against Defendant and sentenced Defendant to 12-months imprisonment suspended upon Defendant’s completion of 12-months of supervised probation and service of a 7-day active term in the custody of the Montgomery County Sheriff.

¶ 5

Defendant, through counsel, gave oral notice of appeal. On appeal, it appears—although not expressly made clear—Defendant seeks to challenge the trial court’s denial of his Motion to Suppress as the sole issue presented.

Analysis

¶ 6

Defendant was cited with Impaired Driving in violation of N.C. Gen. Stat. § 20-138.1 and ordered to appear in District Court. A violation of Section 20-138.1 is a misdemeanor. N.C. Gen. Stat. § 20-138.1(d) (2021) (“Impaired driving as defined in this section is a misdemeanor.”). With certain exceptions not applicable here, “the district court has exclusive, original jurisdiction for the trial of criminal actions, including municipal ordinance violations, below the grade of felony, and the same are hereby declared to be petty misdemeanors.” N.C. Gen. Stat. § 7A-272 (2021). “The

jurisdiction of the superior court for the trial of a misdemeanor, unless a circumstance enumerated in G.S. 7A-271(a) arises, is derivative and arises only upon appeal from a conviction of the misdemeanor in district court.” *Felmet*, 302 N.C. at 174-75, 273 S.E.2d at 710; *see also* N.C. Gen. Stat. § 7A-271(b) (2021). The Superior Court has no jurisdiction to try a defendant on a citation for a misdemeanor charge unless the defendant is “first tried, convicted and sentenced in district court and then appeals that judgment for a trial de novo in superior court.” *Id.*

¶ 7

As in *Felmet*, however: “The record does not show [D]efendant was ever tried in district court on this charge. The record reveals only that [D]efendant was convicted . . . in superior court and a suspended sentence imposed. The record fails to disclose derivative jurisdiction in the superior court through appeal of a district court conviction.” *Id.* at 175, 273 S.E.2d at 710. As in *Felmet*, the Record in this case also contains no statement or stipulation setting forth the District Court proceedings or appeal to Superior Court. “These items should have been included in the record on appeal in this case but were not. Defendant had the duty to see the record on appeal was properly compiled.” *Id.* at 176, 273 S.E.2d at 711 (1981). Unlike *Felmet*, however, there has been no attempt to remedy these deficiencies, or, indeed, even any acknowledgement of those deficiencies. In fairness, the State also did not raise these jurisdictional deficiencies.

¶ 8 Thus, here, the record is silent as to whether the Superior Court had jurisdiction to try Defendant for the Misdemeanor Impaired Driving. Therefore, we are unable to determine whether the court below had jurisdiction. Consequently, we are compelled to dismiss Defendant’s appeal. *Id.* (“When the record is silent and the appellate court is unable to determine whether the court below had jurisdiction, the appeal should be dismissed.”).

Conclusion

¶ 9 Accordingly, for the foregoing reasons, Defendant’s appeal is dismissed.

APPEAL DISMISSED.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).