

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-939

Filed 21 May 2024

Mecklenburg County, No. 10JB713

IN THE MATTER OF:

G.H., a juvenile.

Appeal by the State from order entered 20 March 2023 by Judge J. Rex Marvel in Mecklenburg County District Court. Heard in the Court of Appeals 17 April 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Marissa K. Jensen, for the State-appellant.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for juvenile-appellee.*

GORE, Judge.

This matter arises from two delinquency petitions filed against John<sup>1</sup> in District Court, Mecklenburg County. Upon review, we determine that the State has no statutory right to appeal. We, therefore, grant John's motion to dismiss the State's appeal and decline to permit review by certiorari in the alternative.

On 3 November 2022, the State filed a juvenile petition alleging that John had

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<sup>1</sup> A pseudonym.

committed the offense of possession of a stolen firearm. At a hearing on the same day, the trial court released John into the custody of his mother. On 18 January 2023, the State filed another juvenile petition charging John with possession of a stolen motor vehicle. At a hearing the following day, court counselor Calvin Hendricks asked the trial court to keep John in secure custody.

At the conclusion of the hearing, the trial court released John into the custody of his mother and directed the court counselor to develop a safety plan for John. The trial court imposed an ankle monitor, directed John to attend school, and stated that John could change schools if needed. John, his mother, and Hendricks signed a plan stating, among other things, that John would live with his mother, attend school, comply with electronic monitoring, and cooperate with a referral to the Bridges Assessment Center (“Bridges”). John was admitted to Bridges on 2 February 2023.

At a hearing on 6 March 2023, the trial court heard John’s oral motion to dismiss the charges. The trial court entered a written order on 24 March 2023, and subsequently an “Amended Order” on 28 March 2023, dismissing the pending juvenile petitions with prejudice. The trial court stated the basis for its determination, concluding:

1. The Juvenile detention at Bridges Assessment Center was not voluntary.
2. There is no Court Order permitting the detention of the Juvenile at the Bridges Crisis Center.
3. Bridges Crisis Center is a State run law enforcement

facility used to detain Juveniles with pending Delinquency Matters.

4. The Department of Juvenile Justice took actions to transport and detain Juvenile without informing Juvenile's counsel.

5. The Department of Juvenile Justice is a law enforcement entity that unlawfully transported and detained the Juvenile.

6. The unlawful detention and transportation of the Juvenile by a state law enforcement entity was in violation of the 4th, 6th, and 14th Amendments of the United States Constitution.

7. The actions of the Department of Juvenile Justice "shock the conscience" of the Court.

8. The actions of the Department of Juvenile Justice prejudiced juvenile and inhibited juvenile's ability to prepare for his defense.

The State gave written notice of appeal.

As a preliminary matter, John argues the State does not have a statutory right to appeal from the trial court's dismissal order. We agree.

"In North Carolina, there is no inherent right to appeal. Rather, avenues of appeal are created by statute." *Northfield Dev. Co. v. City of Burlington*, 165 N.C. App. 885, 887 (2004) (citation omitted). North Carolina General Statutes § 7B-2604(b) grants the State a right to appeal in delinquency cases. The statute expressly provides that "the State is limited to appealing two types of orders in delinquency proceedings." *In re P.K.M.*, 219 N.C. App. 543, 544 (2012) (citation omitted). The State may appeal: "(1) [a]n order finding a State statute to be unconstitutional; and

(2) [a]ny order which terminates the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.” N.C.G.S. § 7B-2604(b) (2023).

In this case, the State has not appealed from an order that satisfies either of the provisions in § 7B-2604(b). We, therefore, grant John’s motion to dismiss the State’s appeal. *See Harris v. Harris*, 307 N.C. 684, 690 (1983) (citation omitted) (“[I]t is well established that if the appealing party has no right to appeal the appellate court should dismiss the appeal *ex mero motu*.”).

In the alternative, the State asks this Court to issue a writ of certiorari to permit review of the trial court’s Order. “Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Grundler*, 251 N.C. 177, 189 (1959). “A petition for the writ must show merit or that error was probably committed below.” *Id.*

We have already determined, however, that § 7B-2604 exclusively defines the circumstances in which the State may appeal in a delinquency case—those circumstances are not present here. Thus, we decline to permit review of that which is not allowed by direct appeal. Rather, the State has not demonstrated extraordinary circumstances that would merit our issuance of the writ and “[t]o bring up the matter in this way would be to accomplish by indirection what the statute expressly forbids.” *State v. Todd*, 224 N.C. 776, 777 (1944).

IN RE: G.H.

*Opinion of the Court*

DISMISSED.

Judges CARPENTER and WOOD concur.

Report per Rule 30(e).