

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA25-903

Filed 16 September 2026

Beaufort County, No. 23CR324716-060

STATE OF NORTH CAROLINA

v.

VINCENT BRADLEY SMITH, Defendant,

ALLEGHENY CASUALTY COMPANY, Surety,

WILLIAM A. DOWNING, Bail Agent.

Appeal by Beaufort County Board of Education from order entered 16 June 2025 by Judge Cynthia K. Sturges in Beaufort County Superior Court. Heard in the Court of Appeals 24 February 2026.

Attorney General Jeff Jackson, for the State, no brief filed.

Tharrington Smith, LLP, by Stephen G. Rawson, for appellant Beaufort County Board of Education.

Davis Hartman Wright, LLP, by M. Brad Hill for third-party defendant-appellee Allegheny Casualty Company.

William A. Downing, pro se, no brief filed.

Vincent Bradley Smith, pro se, no brief filed.

GORE, Judge.

The Beaufort County Board of Education (“Board”) appeals the order setting aside the notice of forfeiture. The Board argues the trial court lacked authority to set aside the notice of forfeiture because Alleghany Casualty Company (“Surety”) did not comply with the statutory requirements for relief. Upon reviewing the briefs, the record, and governing law, we vacate the trial court’s order.

I.

On 3 June 2023, defendant Smith was charged with possession of a firearm by a felon. Surety, through its bond agent, “undertook a \$25,000.00 bond on defendant’s behalf, and defendant was released from custody.” On 7 May 2024, defendant failed to appear for his scheduled court date. The trial court entered an order to arrest defendant. On 18 July 2024, the trial court issued a bond forfeiture notice.

On 12 December 2024, Surety, through its bond agent, moved to set aside the forfeiture (via AOC-CR-213 form) pursuant to N.C.G.S. § 15A-544.5(b)(6). Surety attached a certified copy of a warrant for defendant’s arrest with the United States District Court for the Eastern District of North Carolina. The Board filed an objection to the motion to set aside the bond forfeiture because there was “no proof defendant was incarcerated and serving a sentence” in either a North Carolina prison or federal

prison within North Carolina when defendant failed to appear. A hearing on the motion and objection occurred on 3 March 2025.

The trial court granted the motion to set aside the forfeiture and entered an order with findings of fact and conclusions of law on 16 June 2025. The trial court included findings that the parties did not dispute defendant was in federal custody at a Kentucky facility on 7 May 2024. The trial court found that defendant's custody at a Kentucky facility was the reason behind defendant's failure to appear for his 7 May 2024 court date in Beaufort County. The trial court included the following pertinent findings relevant to this appeal:

9. At the conclusion of the 3 March 2025 hearing, the [c]ourt understood Defendant was held in a county facility in Kentucky on federal charges on 7 May 2024. The Bond Agent failed to access the appropriate paperwork because he misunderstood how a defendant with federal charges could be held in an out-of-state county facility pending the resolution of those charges. The Bond Agent's misunderstanding explained his failure to check the appropriate box on the "Motion to Set Aside Forfeiture" box, obtain the appropriate paperwork, and timely notice the D.A.'s office.

...

14. The Bond Agent acted in good faith in trying to locate Defendant, and his "checking the wrong box" resulted from his misunderstanding how a Defendant in federal custody could be held in an out-of-state county facility pending disposition of Defendant's federal case. The Bond Agent's failure to acquire the correct documentation and his failure to timely notify the Beaufort County D.A.'s office also resulted from this misunderstanding.

STATE V. SMITH

Opinion of the Court

15. The Board does not dispute Defendant was held in an out-of-state county facility pending the disposition of Defendant's federal case at the time relevant to this Motion.

16. If the [c]ourt allowed the Bond Agent to amend his pleading in the "Motion to set Aside Forfeiture" and check "box 7," Bond Agent would be able to fully comply with the statutory requirements set forth in "box 7" and the Forfeiture would be set aside.

17. The [c]ourt finds continuing this hearing would result in additional time and expense to the parties, all courtroom personnel, and to the court system.

The trial court made the following conclusions of law:

1. During the 3 March 2025 hearing, the [c]ourt heard sufficient evidence to find and conclude Defendant was in fact held in an out-of-state facility pending the disposition of Defendant's federal case at the time relevant to this Motion.

2. Rather than continuing this case to allow the Bond Agent to amend his pleading (to "check the appropriate box") and to attach documentation to prove a fact the parties do not dispute is true, the [c]ourt, in its discretion and in the interests of judicial economy and justice, grants the Bond Agent's Motion to Set Aside Forfeiture, and overrules the Board's objection to the Bond Agent's Motion.

The trial court granted the motion to set aside the forfeiture and overruled the Board's objection. The Board timely noticed appeal of the final order.

II.

The Board appeals of right pursuant to N.C.G.S. § 7A-27(b). We review orders setting aside bond forfeitures to determine "whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were

proper in light of such facts.” *State v. Dunn*, 200 N.C. App. 606, 608 (2009). “Questions of law, including matters of statutory construction, are reviewed de novo.” *State v. Smith*, 272 N.C. App. 193, 199 (2020) (cleaned up).

The Board argues the trial court lacked authority to grant relief beyond the explicit relief allowed in N.C.G.S. § 15A-544.5(b). “The exclusive avenue for relief from forfeiture of an appearance bond (where the forfeiture has not yet become a final judgment) is provided in section 15A-544.5.” *Smith*, 272 N.C. App. at 199 (cleaned up). “Under section 15A-544.5, a trial court may only grant relief from a forfeiture for the reasons listed in the statute, and the only relief it may grant is the setting aside of the forfeiture.” *State v. Knight*, 255 N.C. App. 802, 810 (2017) (cleaned up) (discussing at length the changes in the bond forfeiture statute enacted and specifically recognizing, “[T]he plain language used in [section] 15A-544.5 and the statute’s legislative history demonstrate that the General Assembly intended to limit a trial court’s authority in setting aside a bond forfeiture before the entry of a final judgment.”).

The trial court included findings of fact and conclusions of law to support its determination to set aside the bond forfeiture. The trial court found that the Board agreed that Surety could have possibly obtained relief had it checked “box 7” instead of “box 6.” Based upon the parties’ arguments and the record, we understand box 7 represents section 15A-544.5(b)(7). However, nowhere in the order does the trial court state upon which statute it held authority to set aside the bond forfeiture (apart

from discussing section 15A-544.5(b)(6), which it determined was the improper statute for relief).

Section 15A-544.5(b)(7) states,

The defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, or any time between the failure to appear and the final judgment date, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.

N.C.G.S. § 15A-544.5(b)(7) (2024). Our Courts apply the plain meaning of the statutes for forfeiture relief and strictly construe their application due to the General Assembly's language "there shall be no relief from a forfeiture except as provided in this section." § 15A-544.5(b); *see State v. Sanchez*, 175 N.C. App. 214, 218 (2005); *Smith*, 272 N.C. App. at 202–03 (remanding for the trial court to include proper findings and conclusions because the record contained evidence the bondswoman had provided proper notice and submitted file-stamped documentation in compliance with section 15A-544.5(b)(7), but the order had failed to properly include this); *State v. Largent*, 197 N.C. App. 614, 617–18 (2009) (affirming the trial court's denial of the Surety's motion to set aside forfeiture because section 15A-544.5(b)(7) required ten

days of continuous incarceration by the statutory language “still incarcerated,” and because the defendant was released and reincarcerated later, this statutory subsection did not allow relief from forfeiture).

The trial court recognized Surety was missing the proper documentation and failed to send notice to the district attorney to comply with the statutory requirements for relief. In fact, the court findings explain that Surety relied on compliance with section 15A-544.5(b)(6). It found that “The Bond Agent’s misunderstanding” (he misunderstood a defendant with federal charges could be held in an out-of-state county facility) explained his failure to check the appropriate box on the “Motion to Set Aside Forfeiture”, obtain the appropriate paperwork, and timely notice the district attorney’s office.

However, instead of denying the motion for failure to comply with the statutory requirements for relief, the trial court granted the motion to set aside forfeiture in reliance on its discretionary authority. The trial court suggested it could allow amendment but, to not waste judicial resources because all parties did not dispute that defendant was imprisoned in Kentucky, it would set aside the forfeiture “in its discretion and in the interests of judicial economy and justice.” By relying upon its discretion when the statute does not grant discretion to the trial court, and by relying upon judicial economy rather than proper statutory authority, the trial court acted beyond its authority.

STATE V. SMITH

Opinion of the Court

As previously stated, section 15A-544.5(b)(7) provides plain instructions of which the bond agent must comply to obtain relief from the forfeiture. Surety did not give notice to the district attorney and did not attach the correct documentation to the motion to set aside the bond forfeiture. Relief from the notice of forfeiture must be sought “before the expiration of 150 days after the date on which notice was given[.]” N.C.G.S. § 15A-544.5(d)(1a) (2024). This Court has previously held that Rule 15(a) allows broad discretion for the trial court to amend the motion even after 150 days, but the facts in that case differed from the present case. *See Smith*, 272 N.C. App. at 201–02 (discussing how it appeared the trial court’s intent was to amend the motion at the hearing and that the bond agent had submitted proof of notice to the district attorney’s office and proper documentation in compliance with section 15A-544.5(b)(7)).

Surety relies upon *State v. Isaacs* and *State v. Barbosa* for the precedent that the trial court has broad discretion to allow amendment; but those cases are distinguishable from this case. *Isaacs*, 261 N.C. App. 696 (2018); *Barbosa* COA19-1104, 2020 WL 5153612, at *3 (2020) (unpublished). In *Isaacs*, the bond agent had filed a motion to amend pursuant to Rule 15(a), and we held the trial court had broad discretion to allow the motion to amend in order to attach the appropriate order for arrest unless the opposing party demonstrated material prejudice. 261 N.C. App. at 700, 702. In *Barbosa*, we recognized the precedent set by *Isaacs* and affirmed the

trial court's discretion to grant the bond agent's motion to amend its forfeiture motion. COA19-1104, 2020 WL 5153612, at *3.

Notably, in both cases, efforts were taken to amend the motions because the bond agent failed to check the correct box and/or attach the required documentation as required by statute. *Isaacs*, 261 N.C. App. at 700–02; *Barbosa*, COA19-1104, 2020 WL 5153612, at *3. In the present case, Surety did not seek amendment of its motion, and the trial court although suggesting its ability to allow amendment, instead relied upon discretionary authority to grant the motion to set aside without the proper documentation, without the proper checked box on the motion, and without the proper notice to the district attorney.¹

We have repeatedly stated that when the General Assembly speaks plainly and the words of the statute are without ambiguity—the Courts must apply the plain language and there is “no room for judicial construction.” *State v. Borum*, 384 N.C. 118, 124 (2023); *C Invs. 2, LLC v. Auger*, 383 N.C. 1, 8 (2022); *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 575 (2002). In section 15A-544.5(b), the General Assembly laid out plainly and unambiguously the limited approaches to obtain relief from a notice of forfeiture. Further, the trial court failed to state in its order the statute

¹ The trial court cites to *Mangum v. Surles*, 281 N.C. 91, 98–99 (1972) for the proposition that failure to properly seek amendment should not “jeopardize a verdict” when the record holds competent evidence to support the amendment, and the Appellate Court should “presume” the amendment was made. Yet we cannot reconcile this rule with explicit statutory requirements that have been strictly construed by prior section 15A-544.5(b) precedent, due to concern that this liberal application would relegate the statutes into guidelines rather than the mandates that they are.

upon which it held authority to set aside the forfeiture. *See Smith*, 272 N.C. App. at 202–03 (“Because the Order as entered fails to identify any permissible ground for setting aside the forfeiture under section 15A-544.5(b), the trial court’s Order cannot stand.”). Because the trial court acted contrary to the plain language of the statute by granting relief without requiring proper documentation or notice, it acted beyond its authority. Accordingly, we must vacate the trial court’s order granting Surety’s motion to set aside the forfeiture.²

III.

For the foregoing reasons, the trial court lacked authority to set aside the notice of forfeiture. Therefore, the order granting the motion to set aside the forfeiture is vacated.

VACATED.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).

² This case is unlike *Smith*, in which the record demonstrated the bond agent had evidence she gave notice to the district attorney and had the proper documentation pursuant to section 15A-544.5(b)(7) such that it was proper to remand for the trial court to include findings and conclusions. 272 N.C. App. at 203. In the present case, it is undisputed in the record and is evident by the trial court’s finding that Surety failed to provide notice and documentation. Further, Surety did not seek amendment, and the trial court did not amend the motion during the hearing. Because 150 days has expired, remand is not proper. *See generally State v. Chestnut*, 255 N.C. App. 772, 779–80 (2017).