

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

██████████

STATE OF NORTH CAROLINA)
)
v.)
)
DEFENDANT'S NAME,)
 Defendant.)

MOTION FOR APPROPRIATE RELIEF

NOW comes the Defendant, by and through her attorney, Cara Smith, and moves this Court pursuant to N.C.G.S. §15A-1415(b)(8), to correct the illegal judgment entered on November 27, 2001. In support of this motion, the Defendant respectfully shows the Court the following:

1. That on November 27, 2001, in Forsyth County, the Hon. ██████████ entered judgment in the above captioned matter.
2. That His Honor entered a sentence of a minimum of 19 months and a maximum of 23 months in the custody of the N.C. D.O.C., and he suspended that sentence and placed Mr. ██████████ on supervised probation for a term of 42 months.
3. That the 42-month probationary sentence included as an intermediate punishment the requirement that the defendant serve an active term of 24 days in the custody of the Sheriff of this County.
4. That N.C. Gen. Stat. §15A-1343.2 (d) states that, “[u]nless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B (Structured Sentencing) shall be as follows:

...(4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.”
5. That on November 27, 2001, Judge ██████████ did not “make specific findings that longer or shorter periods of probation are necessary,” and therefore should have entered a term of suspension for no more than 36 months.
6. That N.C. Gen. Stat. §15A-1342(d) is captioned “Mandatory Review of Probation” and states that “[e]ach probation officer must bring the cases of each probationer assigned to him before a court with jurisdiction to review the probation when the probationer has served three years of a probationary period greater than three years...The court must review the case file of a probationer so brought before it and determine whether to terminate his probation.”

7. The review required by N.C. Gen. Stat. §15A-1342(d) did not occur in this case.

WHEREFORE, the Defendant prays the Court to correct the judgment entered on November 27, 2001, in that the sentence imposed was unauthorized at the time imposed, contained a type of sentence disposition not authorized for the particular class of offense and prior record, and is otherwise invalid as a matter of law; and further, Defendant prays the Court to successfully terminate this probationary sentence in that the defendant was deprived of his 3-year review and accordingly remained on probation without due process of law.

Respectively submitted, this the ____ day of February, 2005.

Cara Smith
Assistant Public Defender

Certificate of Service

I hereby certify that I have served the foregoing Motion for Appropriate Relief on the Office of the District Attorney for the Twenty-First Judicial District by hand delivery to an employee of that office on this the _____ day of February, 2005.

Cara Smith
Assistant Public Defender

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION



STATE OF NORTH CAROLINA)
)
 V)
)
 DEFENDANT'S NAME,)
 Defendant.)

AFFIDAVIT IN SUPPORT OF
MOTION FOR APPROPRIATE RELIEF

THE AFFIANT, having been first duly sworn now deposes and says based upon information and belief from court records in Forsyth County criminal case

1. That I am the attorney of record for the defendant.
2. That on November 27, 2001, in Forsyth County, the Hon. entered judgment in the above captioned matter.
3. That His Honor entered a sentence of a minimum of 19 months and a maximum of 23 months in the custody of the N.C. D.O.C., and he suspended that sentence and placed Mr. on supervised probation for a term of 42 months.
4. That the 42-month probationary sentence included as an intermediate punishment the requirement that the defendant serve an active term of 24 days in the custody of the Sheriff of this County.
5. That on November 27, 2001, Judge did not "make specific findings that longer or shorter periods of probation are necessary," and therefore should have entered a term of suspension for no more than 36 months.
6. The review required by N.C. Gen. Stat. §15A-1342(d) did not occur in this case.

Respectively submitted, this the ___ day of February, 2005.

Cara Smith
Assistant Public Defender and Affiant

Sworn to and subscribed
before me this the ___ day of _____, 20__.

Notary Public
My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
[REDACTED]

STATE OF NORTH CAROLINA)
)
 VS.)
)
 DEFENDANT'S NAME,)
 Defendant.)

MOTION FOR APPROPRIATE RELIEF

NOW comes the Defendant, by and through his attorney, Cara Smith, and moves this Court pursuant to N.C.G.S. § 1415(b)(8), to correct the illegal judgment entered on March 25, 2003. In support of this motion, the Defendant respectfully shows the Court the following:

1. On February 28, 2003, the defendant was charged by Warrant for Arrest in the above-captioned matter with the charges of assault on a female, misdemeanor larceny, and injury to personal property.

2. Paragraph Three of the aforementioned Warrant for Arrest alleged as follows: "I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did wantonly injure personal property, PRESCRIPTION PILLS, the property of JANE DOE. The damage caused was under \$200.00."

3. That on March 25, 2003, in Forsyth County District Court, the defendant plead not guilty to and was tried before the Hon. [REDACTED] on the charges of assault on a female, misdemeanor larceny, and injury to personal property.

4. Pursuant to that March 25, 2003 trial, Judge [REDACTED] acquitted the defendant of assault on a female and misdemeanor larceny. She convicted him of injury to personal property and entered judgment on that charge.

5. The recorded judgment memorialized findings that the defendant was convicted of a Class 1 misdemeanor. That recorded judgment further memorialized findings that the defendant had three (3) prior convictions and was a Record Level II for sentencing.

6. That recorded judgment imposed a sentence of 120 days in the custody of the sheriff, suspended, with specified terms of supervised probation.

7. On October 19, 2004, Judge [REDACTED] revoked the defendant's probation, modified the term of imprisonment to run consecutively with the sentence in case number 02CR64295, and activated the term of imprisonment.

8. On October 19, 2004, the defendant appealed the revocation of his probation and modification of the term of imprisonment to Superior Court. Pursuant to proceedings in Forsyth County Superior Court, on December 13, 2004 the Hon. [REDACTED] revoked the defendant's probation, modified the term of imprisonment to restore the original requirement that it run concurrently with the sentence in case number 02CR64295, and activated the term of imprisonment.

9. North Carolina General Statute Section 14-160 provides that injury to personal property

is a Class 2 misdemeanor unless the damage exceeds two hundred dollars (\$200.00). Pursuant to that statute, if the damage exceeds two hundred dollars (\$200.00), the offense is punishable as a Class 1 misdemeanor.

10. The aforementioned Warrant for Arrest alleged damage under two hundred dollars (\$200.00), and no amendment was made to that Warrant.

11. Additionally, North Carolina General Statute Section 15A-1340.23 sets forth the punishment limits for each class of misdemeanor offense and prior conviction level.

12. Section 15A-1340.23 provides that the sentence for a person sentenced at Level II for a Class 2 misdemeanor may not exceed 45 days, and further provides that the sentence for a person sentenced at Level II for a Class 1 misdemeanor may not exceed 45 days.

WHEREFORE, the Defendant prays the Court to accept and hear this Motion pursuant to N.C.G.S. §1415(b)(8) and to modify the judgment referenced herein in that the sentence imposed was unauthorized at the time imposed, contained a term of imprisonment not authorized for the particular class of offense and prior record or conviction level, and is invalid as a matter of law.

Respectively submitted, this the ____ day of _____, 2005.

Cara Smith
Assistant Public Defender

HEARING CONSENTED TO:

District Attorney

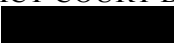
Certificate of Service

I hereby certify that I have served the foregoing Motion for Appropriate Relief on the Office of the District Attorney for the Twenty-First Judicial District by hand delivery to an employee of that office on this the ____ day of _____, 2005.

Cara Smith
Assistant Public Defender

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH




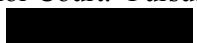
IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION



STATE OF NORTH CAROLINA)
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AFFIDAVIT IN SUPPORT OF
MOTION FOR APPROPRIATE RELIEF

THE AFFIANT, having been first duly sworn now deposes and says:

1. That I am the attorney of record for the defendant.
2. On February 28, 2003, the defendant was charged by Warrant for Arrest in the above-captioned matter with the charges of assault on a female, misdemeanor larceny, and injury to personal property.
3. Paragraph Three of the aforementioned Warrant for Arrest alleged as follows: "I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did wantonly injure personal property, PRESCRIPTION PILLS, the property of JANE DOE. The damage caused was under \$200.00."
4. That on March 25, 2003, in Forsyth County, the defendant plead not guilty to and was tried before the Hon.  on the charges of assault on a female, misdemeanor larceny, and injury to personal property.
5. Pursuant to that March 25, 2003 trial, Judge  acquitted the defendant of assault on a female and misdemeanor larceny. She convicted him of injury to personal property and entered judgment on that charge.
6. The recorded judgment memorialized findings that the defendant was convicted of a Class 1 misdemeanor. That recorded judgment further memorialized findings that the defendant had three (3) prior convictions and was a Record Level II for sentencing.
7. That recorded judgment imposed a sentence of 120 days in the custody of the sheriff, suspended, with specified terms of supervised probation.
8. On October 19, 2004, Judge  revoked the defendant's probation, modified the term of imprisonment to run consecutively with the sentence in case number 02CR64295, and activated the term of imprisonment.
9. On October 19, 2004, the defendant appealed the revocation of his probation and modification of the term of imprisonment to Superior Court. Pursuant to proceedings in Forsyth County Superior Court, on December 13, 2004 the Hon.  revoked the defendant's probation, modified the term of imprisonment to restore the original requirement that it run concurrently with the sentence in case number 02CR64295, and activated the term of imprisonment.

10. North Carolina General Statute Section 14-160 provides that injury to personal property is a Class 2 misdemeanor unless the damage exceeds two hundred dollars (\$200.00). Pursuant to that

statute, if the damage exceeds two hundred dollars (\$200.00), the offense is punishable as a Class 1 misdemeanor.

11. The aforementioned Warrant for Arrest alleged damage under two hundred dollars (\$200.00), and no amendment was made to that Warrant.

12. Additionally, North Carolina General Statute Section 15A-1340.23 sets forth the punishment limits for each class of misdemeanor offense and prior conviction level.

13. Section 15A-1340.23 provides that the sentence for a person sentenced at Level II for a Class 2 misdemeanor may not exceed 45 days, and further provides that the sentence for a person sentenced at Level II for a Class 1 misdemeanor may not exceed 45 days.

Respectively submitted, this the _____ day of _____, 2005.

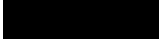
Cara Smith
Attorney for Defendant and Affiant

Sworn to and subscribed
before me this the _____ day of _____, 2005

Notary Public
My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION



STATE OF NORTH CAROLINA)
)
VS.)
)
DEFENDANT'S NAME,)
Defendant.)

ORDER ALLOWING
MOTION FOR APPROPRIATE RELIEF
TO MODIFY JUDGMENT

This cause coming on to be heard before the undersigned Judge Presiding upon Defendant's Motion for Appropriate Relief, this Court for good cause shown accepted and heard the Defendant's Motion, and without further findings of fact, this Court for good cause shown hereby ORDERS that the judgment entered March 25, 2003 be modified to require that the defendant be sentenced at Level II for a Class ____ misdemeanor, and that the defendant be imprisoned for a term of 45 days in the custody of the sheriff, with the execution of that sentence suspended on the terms and conditions originally set forth in the March 25, 2003 Judgment. This Order does not modify the duration or any of the terms and conditions of that probationary period. This Order also does not affect the revocation of probation other than with respect to the length of the term of imprisonment.

This, the _____ day of _____, 2005.

District Court Judge Presiding