

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA	)	
	)	
v.	)	<u>From Forsyth County</u>
	)	No. 11 CRS 14680
Amanda Lea Rose	)	

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RESPONSE IN OPPOSITION TO  
 THE STATE'S MOTION TO DISMISS  
 DEFENDANT'S APPEAL

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TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES OF THE NORTH CAROLINA COURT OF APPEALS

*COMES NOW* Amanda Lea Rose, *Pro Se*, "Defendant" is the above-captioned action and simply "Rose" herein, responding to the *de facto* STATE OF NORTH CAROLINA's ("STATE") motion to dismiss and showing the court why the STATE's motion must be denied:

I

The STATE's statements in its "Procedural History" section are true to a certain extent but are incomplete and misleading. First, from the very beginning of this case Rose has challenged the jurisdiction of the STATE to bring the charges against her and of the STATE's courts to try her on those charges, and as a matter of law and the STATE's own statutes, a challenge to the jurisdiction

of the court may be made *at any time*; e.g. N.C. Gen. Stat. § 15A-952(d).<sup>1</sup> Second, Rose's right to appeal the superior court's ruling was an integral part of the superior court plea agreement, specifically preserved by the superior court itself, and that is evidenced by the Transcript of the superior court proceedings:

THE COURT: Every ruling – and I'm not trying to personally – I say this – that I make – every ruling that a superior court judge makes is subject to review by the appellate courts. (T Vol II p 77).

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MS. ROSE: I will enter with – the plea transcript with the stipulations that it does not provide any additional jurisdiction and do so under duress.

THE COURT: Well, I'd rather not put the words "duress" on there because it makes it look like I'm forcing you to do it. You've got the right to have a jury trial. But I'll allow you to sign it that you convey jurisdiction to this court other than what's found by the North Carolina Court of Appeals; that you reserve your right to appeal all rulings entered by this court concerning jurisdiction; and that your signature conveys no additional jurisdiction to the Court. (T Vol II pp 82–83).

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MS. ROSE: At least now I have a format for the record now.

THE COURT: Okay. Fantastic. Do you want to do the transcript?

MS. ROSE: Sure.

THE COURT: Okay. Mr. Taylor [assistant district attorney], could you help her prepare a transcript of

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<sup>1</sup> *State v. Sturdivant*, 304 N.C. 293, 283 S.E.2d 719 (1981); *In re R.P.M.*, 172 N.C. App. 782, 616 S.E.2d 627 (2005)); see also N.C. Gen. Stat. § 15A-952(d) ("Motions [in adult criminal proceedings] concerning jurisdiction of the court or the failure of the pleading to charge an offense may be made at any time."). – Taken from *In re K.J.H.*, No. COA07-283 (2007).

plea; could you put on there specifically that the defendant reserves her right to challenge the Court's jurisdictional ruling of the North Carolina Court of Appeals; and, secondly, that the defendant's entry of this transcript of plea does not convey any jurisdiction on the Court, which is not found or confirmed by the North Carolina Court of Appeals?

MR. TAYLOR: Okay. (T Vol II p 85).

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MR. TAYLOR: What I've done in the box for the plea arrangement is try to record as best I can what you said from the transcript as it exists now before anybody signs, other than I'm gonna give the two of you an opportunity to go over whatever terminology you wanna use.

THE COURT: Hold on one second.

THE COURT: Okay. Let's see what it says. "One, state will dismiss expired registration charge."

MR. TAYLOR: She's come into compliance with that.

THE COURT: Fantastic. Wonderful. "Two, defendant enters this plea pursuant to Alford and signs this form under protest and upon condition that this plea will not convey any jurisdiction upon the Court which is not established by any court's rulings concerning jurisdiction." Okay. And we need to -

MR. TAYLOR: Your Honor, if that language is acceptable to Miss Rose, I'll need to reapproach to get her to sign the appropriate part on the form.

MS. ROSE: That is acceptable.

THE COURT: And I've written on the front of it: "Defendant reserves her right to appeal the jurisdictional rulings of this court." Okay. Here you go. (T Vol II pp 82-83).

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THE COURT: . . . Ma'am, do you understand that your plea of guilty or no contest may limit your right to appeal this case?

And I'm specifically putting down here - I put an asterisk after number 10 -- this does not apply to your right to challenge the jurisdictional rulings of this court; that would be more that you -- you might not be eligible to appeal where the highway patrolman, you know,

did what he was supposed to do while out there that day as opposed to the constitutional underpinnings of your argument.

MS. ROSE: Okay. So that would concern the merits versus constitutionality?

THE COURT: Right.

MS. ROSE: Yes.

THE COURT: Do you understand that your plea of guilty may limit your right to appeal the case?

MS. ROSE: Yes.

THE COURT: And the next one – question 11 revolves around blood evidence or tissue evidence, and there's none in this case. And let the record reflect the Court has put an asterisk after number 10; and at the bottom of this asterisk, the Court has written: "The defendant preserves the right to appeal the jurisdictional rulings of this court." (T Vol II pp 91-92).

Consequently, either the STATE's contention in its "Reasons Why Defendant's Appeal Should Be Dismissed" section that Rose "has no right to appeal the Superior Court's ruling on jurisdiction, nor any of the other proposed issues on appeal, because she pled guilty" is wholly without merit, or superior court judge V. Bradford Long spoke and acted in excess of his authority, in which case the "plea agreement" is null and void, as is the "guilty plea" entered as part of that agreement.

Furthermore, N.C. Gen. Stat. § 15A-1446, Requisites for preserving the right to appellate review, lists statutory provisions for appeal and states in part:

(d) Errors based upon any of the following grounds, which are asserted to have occurred, may be the subject of appellate review even though no objection, exception or motion has been made in the trial division.

(1) Lack of jurisdiction of the trial court over the offense of which the defendant was convicted.

(2) Lack of jurisdiction of the trial court over the person of the defendant.

(3) The criminal pleading charged acts which, at the time they were committed, did not constitute a violation of criminal law.

(6) The defendant was convicted under a statute that is in violation of the Constitution of the United States or the Constitution of North Carolina.

(8) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.

(16) Error occurred in the entry of the plea.

(17) The form of the verdict was erroneous.

The plea agreement which superior court judge V. Bradford Long approved preserved at the very least the provisions of § 15A-1446(d)(1) and (2), and by the same statute (§ 15A-1446(d)) they did not even have to be preserved.

## II

Regarding the STATE's argument that Rose omitted certain documents from the record on appeal, Rose could not include in the record documents she did not have because they either do not exist or were not available to her for whatever reason. Also, on more than once occasion the clerk of superior court file-stamped the top page of a stack of several pages rather than all of them. Simply put, Rose included a copy of every document in her possession or which she was able to obtain from others in the record she prepared for this court and also served on the STATE.

Furthermore, the STATE failed to respond to the proposed record on appeal which Rose served on the STATE's attorney. Consequently, the STATE waived any objection(s) to Rose's proposed record on appeal and it became final when the STATE's time to respond expired. N.C. R. App. P. Rule 11(b).<sup>2</sup>

III

Due to the above-stated facts and presuming that Forsyth county superior court judge V. Bradford Long had the authority under the STATE's laws and legal precedent court rulings to specifically preserve Rose's jurisdictional challenges for review by this court, the STATE's motion to dismiss Rose's appeal is wholly without foundation, wholly without merit, and must be dismissed as a matter of law.

Submitted this 4th day of June 2012. /s/ Amanda Lea Rose

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served an electronic copy of the above and foregoing Response in Opposition to the State's Motion to Dismiss Appeal upon Laura E. Parker, Assistant Attorney General, North Carolina Department of Justice, Appellate Section, P.O. Box 629, Raleigh, NC 27602-0629, by sending the copy via email to lparker@ncdoj.gov.

This, the 4th day of June, 2012.

/s/ Amanda Lea Rose  
Amanda Lea Rose, Appellant

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<sup>2</sup> ". . . If all appellees within the times allowed them either serve notices of approval or fail to serve either notices of approval or objections, amendments, or proposed alternative records on appeal, appellant's proposed record on appeal thereupon constitutes the record on appeal."