10.4 Personal Jurisdiction

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10.4 Personal Jurisdiction

A. Service

In civil cases, once the defendant is properly served, the court may enter judgment even if the defendant is not present. *See* G.S. 1-75.3(b) (service ordinarily required for court to enter judgment in civil case); G.S. 1-75.7 (service of summons not required in civil case if defendant makes general appearance).

In criminal cases, in contrast, the defendant ordinarily must be present to be tried. *See, e.g.*, G.S. 15A-1011(a) (guilty plea must be received by defendant in open court except in limited circumstances). Because the defendant ordinarily must be present in a criminal case, technical defects in service are ordinarily not at issue. *See State v. McKenna*, 289 N.C. 668 (1976) (service of warrant is not constitutional requirement; due process satisfied where defendant received copy of indictment, was advised of charges, and had adequate time to prepare defense), *vacated in part on other grounds*, 429 U.S. 912 (1976); *State v. Ferguson*, 105 N.C. App. 692 (1992) (by entering plea and proceeding to trial without challenging citation's sufficiency, defendant waived any objection to officer's lack of signature on citation attesting to delivery); *State v. Able*, 13 N.C. App. 365 (1971) (failure to serve warrant did not affect validity of trial on indictment).

B. Requirement of Presence

As a general matter, criminal defendants cannot be tried in absentia. They have a constitutional right under the Due Process Clause of the Fourteenth Amendment, the Sixth Amendment Confrontation Clause, and article I, section 23 of the North Carolina Constitution to be present at their trial. *See, e.g., State v. Richardson*, 330 N.C. 174 (1991). A noncapital defendant may waive his or her right to presence by absconding after the trial has commenced, and the trial may proceed without him or her. *Id.* (defendant's voluntary and unexplained absence from court subsequent to commencement of trial constituted waiver of right to presence). However, the cases indicate that if a defendant is absent when the trial concludes, the court lacks jurisdiction to impose a sentence of imprisonment. *See State v. Stockton*, 13 N.C. App. 287 (1971) (setting aside judgment and sentence of imprisonment where entered in defendant's absence); *cf.* G.S. 15A-1011(d) (allowing express waiver of right to presence).

A capital defendant may not waive the right to presence. *See, e.g., State v. Huff*, 325 N.C. 1 (1989), *vacated on other grounds*, 497 U.S. 1021 (1990); *State v. Payne*, 320 N.C. 138

(1987). In one case, where a defendant escaped during a capital sentencing proceeding, a mistrial was declared, and the defendant was given a new sentencing proceeding after he was captured. *State v. Meyer*, 330 N.C. 738 (1992).

Although the defendant may not suffer a conviction if he or she does not appear for trial, a failure to appear may result in other consequences. It is a felony for a person who has been released before trial to fail to appear in connection with a felony charge, and it is a misdemeanor for a released person to fail to appear in connection with a misdemeanor charge. *See* G.S. 15A-543; *State v. Goble*, 205 N.C. App. 310 (2010). A defendant who fails to appear also may be arrested and prosecuted for contempt of court. *See* G.S. 5A-11(a)(3); *see also* G.S. 15A-276 (providing that person may be held in contempt of court for failing to appear in response to nontestimonial identification order). *But see supra* "Citation" in § 8.2C, Types of Misdemeanor Pleadings (Apr. 2020) (person may not be arrested or held in contempt for failing to appear for infraction alleged in citation). DMV also may revoke the driver's license of a person who fails to appear for trial on a motor vehicle offense. *See* G.S. 20-24.1.

For a further discussion of the right to presence, see 2 NORTH CAROLINA DEFENDER MANUAL § 21.1, Right to Be Present (Jan. 2018).

C. Extradition of Defendants to North Carolina

To ensure the return of defendants who leave the state, North Carolina has entered into the Uniform Criminal Extradition Act. *See* G.S. 15A-721 through 15A-750. Under the Act, the governor of North Carolina agrees to extradite any person charged with a crime in another state who has fled from justice and is found in this state. Correspondingly, other states that have adopted the Act agree to return those accused of crimes in North Carolina to this state. The focus of this discussion is on extradition of defendants to North Carolina, a prerequisite to the state's establishing of personal jurisdiction over a defendant who has left the state. For a fuller discussion of both extradition to another state and extradition to North Carolina, *see* ROBERT L. FARB, STATE OF NORTH CAROLINA EXTRADITION MANUAL (UNC School of Government, 3d ed. 2013) [hereinafter NORTH CAROLINA EXTRADITION MANUAL].

A person objecting to his or her extradition *to* North Carolina generally must file a petition for writ of habeas corpus in the state from which he or she is being extradited. *See Michigan v. Doran*, 439 U.S. 282 (1978); *State v. Mourning*, 4 N.C. App. 569, 572 (1969) ("[T]he regularity of extradition proceedings may be attacked only in the asylum state; after an alleged fugitive has been delivered into the jurisdiction of the demanding state, the proceedings may not be challenged." (citation omitted)); *see also State v. Speller*, 345 N.C. 600 (1997) (declining to reach issue of whether asylum state complied with Uniform Extradition Act in obtaining waiver of extradition from defendant). The issues that may be raised at a habeas proceeding are generally limited to: (i) whether the demand for extradition was proper; (ii) whether the defendant is the fugitive sought; (iii) whether the defendant has been charged with a "substantial crime" in the demanding

state; and (iv) whether the accused is a fugitive. *See Doran*, 439 U.S. at 289; *see also* NORTH CAROLINA EXTRADITION MANUAL at 58.

If a person is returned to North Carolina for trial on one charge, he or she may be tried for any other crimes that the person allegedly committed in this state. *See* G.S. 15A-748. However, the person may not be served with civil process for any action arising out of the same facts that gave rise to the crime until the person has been convicted in the criminal proceeding or, if acquitted, has had a reasonable opportunity to return to the state from which he or she was extradited. *See* G.S. 15A-745.

If the defendant voluntarily returns to North Carolina and is taken into custody, North Carolina obtains personal jurisdiction and is able to proceed with the prosecution. *See State v. Speller*, 345 N.C. 600 (1997).

D. Detainers

The state of North Carolina can place a detainer on a person incarcerated in another state and extradite him or her to North Carolina for trial. *See* Interstate Agreement on Detainers, codified at G.S. 15A-761 through G.S. 15A-767. Because it has been approved by the United States Congress, the Interstate Detainer Agreement is treated as a federal law. *See Cuyler v. Adams*, 449 U.S. 433 (1981). Thus, North Carolina courts are bound by federal law interpreting the agreement as well as by state case law. As a matter of federal law, the demanding state's failure to comply with the agreement requires dismissal of the prosecution with prejudice. *See Alabama v. Bozeman*, 533 U.S. 146 (2001). For further discussion of detainers, see *supra* § 7.1E, Rights of Prisoners (Mar. 2019).