10.7 Subject Matter Jurisdiction of Superior Court

The superior court has general jurisdiction over felonies. It also has jurisdiction over misdemeanors that are: (i) lesser included offenses of felonies, (ii) joined with felonies or (iii) initiated by presentment. *See* G.S. 7A-271(a). The superior court also has jurisdiction to hear misdemeanor cases on appeal from the district court. *See* G.S. 7A-271(b).

A. Felonies

Generally. The superior court has original jurisdiction over all felonies, including possibly the authority to hear motions before indictment. *See State v. Jackson*, 77 N.C. App. 491 (1985) (court notes jurisdiction of superior court before indictment to enter commitment order to determine defendant's capacity to stand trial). The district court also has authority to hear pretrial motions in felony cases before indictment. *See supra* § 10.5D, District Court Responsibilities for Felonies before Indictment. Evidentiary matters ordinarily should be brought before the superior court because these proceedings are recorded and can be reviewed by an appellate court.

When a felony indictment is returned, the superior court has jurisdiction to hear the offense charged in the indictment notwithstanding that misdemeanor warrants are pending in district court involving the same conduct. *See State v. Austin*, 31 N.C. App. 20 (1976) (trial court properly denied defendant's motion to dismiss indictment, rejecting defendant's argument that district court had exclusive jurisdiction because misdemeanor warrants had issued first). However, if the misdemeanors are resolved first (by trial or plea), the State may be barred on double jeopardy grounds from proceeding on the felony in superior court. *See supra* § 8.6, Limits on Successive Prosecution (2d ed. 2013).

Infamous misdemeanors. Certain common law misdemeanors for which no specific punishment is prescribed may be elevated to Class H felonies if the misdemeanor is "infamous," done "in secrecy and [with] malice," or committed "with deceit and intent to defraud." *See* G.S. 14-3(b); *see also State v. Glidden*, 317 N.C. 557 (1986) (discussing the test for determining whether offense is infamous, done in secrecy and malice, or committed with deceit and intent to defraud). If a misdemeanor is elevated to a felony in this way, then the superior court has jurisdiction. The allegation that a misdemeanor is infamous or is otherwise elevated to a felony must be stated in the pleading to confer superior court jurisdiction. *See State v. Rambert*, 116 N.C. App. 89 (1994) (indictment that fails to allege that misdemeanor offense is infamous will not confer superior court jurisdiction), *aff'd in pertinent part*, 341 N.C. 173 (1995). The circumstance that elevates

the offense to a Class H felony must be submitted to the jury and proved beyond a reasonable doubt unless the defendant admits to it. *See Blakely v. Washington*, 542 U.S. 296 (2004).

B. Misdemeanor Appeals from District Court

Scope of jurisdiction on appeal. The superior court has jurisdiction to hear misdemeanor cases on appeal from the district court. *See* G.S. 7A-271(b). This appellate jurisdiction of the superior court is derivative of the district court's jurisdiction and is therefore limited—generally, the superior court is authorized to impose judgment only for the same offense, or a lesser included offense of the crime, for which there was a conviction in the district court below. *See State v. Hardy*, 298 N.C. 191 (1979) (defendant was charged with and convicted of assault on officer in district court; on appeal, superior court did not have jurisdiction to try defendant for resisting arrest); *State v. Guffey*, 283 N.C. 94 (1973) (appeal from district court conviction of fourth DWI offense will support superior court trial for lesser included offense of first DWI offense); *State v. Reeves*, 218 N.C. App. 570 (2012) (finding that superior court lacked jurisdiction on appeal to try defendant on reckless driving charge that was voluntarily dismissed by the State, without a plea agreement, in district court); *State v. Phillips*, 127 N.C. App. 391 (1997) (in district court, defendant was tried and convicted of impaired driving, but State took voluntary dismissal of speeding charge; superior court lacked jurisdiction to try speeding charge on appeal of impaired driving conviction); *State v. Martin*, 97 N.C. App. 19 (1990) (defendant could not be tried in superior court for misdemeanor possession of drug paraphernalia without prior district court conviction for same offense); *State v. Caldwell*, 21 N.C. App. 723 (1974) (defendant was charged and convicted of assault on officer in district court; on appeal, superior court did not have jurisdiction to try defendant for assault by pointing gun).

Generally, superior court jurisdiction over appeals from district court does *not* include the authority to try new or different offenses, even if the new offense is transactionally related to the district court conviction. Except in limited circumstances, discussed below, if the State wants to charge a new misdemeanor, it must start again in district court or initiate a misdemeanor prosecution by presentment in superior court. The district court record must demonstrate the existence of a proper conviction to support superior court jurisdiction. *See State v. Wesson*, 16 N.C. App. 683 (1972) (jurisdiction of superior court demonstrated by record that showed trial and sentence, notwithstanding that portions of the judgment form were left blank).

Practice note: The superior court does not have jurisdiction to hear an appeal from district court of the revocation of a deferred prosecution agreement. *State v. Summers*, ___ N.C. App. ___, 836 S.E.2d 316 (2019). When deferred prosecution probation is revoked, there has not yet been an adjudication of guilt or final judgment to appeal under G.S. 15A-1347(a) and the defendant therefore has no statutory right of appeal. However, *Summers* observed that the defendant could have petitioned the superior court for certiorari review pursuant to Rule 19 of the General Rules of Practice for Superior and District Court, which would allow review of the matter in the superior court's discretion.

G.S. 15A-1115(a) formerly provided defendants with the right to appeal to superior court for a trial de novo when the defendant denied responsibility for an infraction in district court and was found responsible. With the repeal of that subsection in 2013, there is no longer a right to appeal to superior court for trial de novo for infractions.

Exceptions to derivative jurisdiction rule. There are two exceptions to the above limits on superior court jurisdiction over misdemeanor appeals. First, if the defendant appeals a district court judgment imposed pursuant to a plea agreement, the superior court has jurisdiction over any misdemeanor that was dismissed, reduced, or modified pursuant to that agreement. *See* G.S. 15A-1431(b); G.S. 7A-271(b).

Second, on appeal of a misdemeanor conviction, the superior court has jurisdiction to accept a guilty plea (but not to try the defendant) on any "related charge." G.S. 7A-271(a)(5). To utilize this provision for "related charges" that are not lesser-included offenses of the appealed conviction, the prosecution must file a bill of information in superior court charging the related misdemeanor, to which the defendant then enters a guilty plea. *See State v. Craig*, 21 N.C. App. 51 (1974) (on appeal of impaired driving conviction, superior court accepted plea to reckless driving; assuming that reckless driving is a "related charge" for which superior court may accept guilty plea, prosecution must file written information); G.S. 15A-922(g) (when misdemeanor is initiated in superior court, prosecution must be on information or indictment). No bill of information is required if the charge is a lesser-included offense of the offense of conviction in district court.

If the defendant pleads guilty or is found guilty in superior court, the defendant also may request permission to enter a guilty plea to misdemeanor charges pending in the same or other districts if certain procedural rules are followed. *See* G.S. 15A-1011(c); *see also infra* "Waiver by certain guilty pleas" in § 11.2D, Waiver (venue waived in this instance).

Other limits on new charges in superior court. Following a district court misdemeanor conviction and appeal by the defendant, the State may not charge a felony in superior court based on the same conduct. The bringing of such a charge is considered presumptively vindictive in violation of due process. *See Blackledge v. Perry*, 417 U.S. 21 (1974) (where defendant was convicted of misdemeanor and appealed for trial de novo in superior court, State's later indictment of defendant for felony assault arising out of same incident violated due process, regardless of whether prosecutor acted in good or bad faith); *State v. Bissette*, 142 N.C. App. 669 (2001) (State reduced initial charge of felony larceny by employee to misdemeanor larceny, and defendant appealed for trial de novo after pleading not guilty to reduced charge and being found guilty in district court; under *Blackledge*, State could not charge defendant with larceny by employee in superior court); *State v. Mayes*, 31 N.C. App. 694 (1976) (after defendant appealed district court conviction for misdemeanor assault, State could not seek felony indictment for same offense; showing of actual vindictiveness not required).

The only situation in which the U.S. Supreme Court has suggested that this presumption may be rebutted is when subsequent events form the basis for new charges (for example, the victim dies after appeal). *See Blackledge*, 417 U.S. at 28–29 n.7.

If the defendant appeals from a plea of guilty in district court, offenses that were dismissed as part of any plea agreement, including felonies, may be charged in superior court. *See State v. Fox*, 34 N.C. App. 576 (1977) (State may indict defendant on felony breaking and entering and felony larceny where defendant was initially charged with those offenses but pled guilty to misdemeanor breaking and entering pursuant to a plea agreement in district court and then appealed to superior court for trial de novo). If, however, the defendant is charged with a misdemeanor, pleads guilty in district court without any plea agreement, and then appeals, *Blackledge* bars the State from initiating felony charges based on the same conduct.

C. Misdemeanors Tried Initially in Superior Court

Generally. The superior court has original jurisdiction over misdemeanors where the misdemeanor is:

- a lesser included offense of a properly charged felony,
- initiated by presentment, followed by an investigation and indictment, or
- properly joined for trial with a felony.

See G.S. 7A-271(a).

Joinder of misdemeanor with felony. If the superior court has original jurisdiction over a misdemeanor because it is properly joined with a felony, the superior court retains jurisdiction even if the felony is dismissed. *See State v. Pergerson*, 73 N.C. App. 286 (1985) (superior court retains jurisdiction over unauthorized use of automobile even after felony charge of larceny of same automobile is dismissed; court rejects as unsupported on these facts defendant's argument that felony charge was "sham," manufactured to create superior court jurisdiction). Under G.S. 15A-922(g), where a misdemeanor is first tried in superior court, the misdemeanor must be brought before the superior court by indictment, information, or presentment. *See State v. Price*, 170 N.C. App. 57 (2005) (superior court lacked jurisdiction over misdemeanors that, although joinable with felony charge, were not included in the indictment); *see also State v. Bowden*, 177 N.C. App. 718 (2006) (habitual impaired driving is a substantive offense, and the superior court had jurisdiction to try transactionally related misdemeanors set out in the indictment charging habitual impaired driving).

Misdemeanors initiated by presentment. A presentment is a written accusation by the grand jury accusing a defendant of one or more crimes. It is submitted to the prosecutor, who is statutorily required to investigate the allegations and to submit a bill of indictment to the grand jury if appropriate. Simultaneous submission of a presentment and indictment to the grand jury is not permissible—the district attorney must investigate the accusation in the presentment before submitting the matter to the grand jury for

indictment. *State v. Baker*, ___ N.C. App. ___, 822 S.E.2d 902 (2018). A misdemeanor initiated by presentment is tried in superior court. *See State v. Petersilie*, 334 N.C. 169 (1993) (misdemeanor charges in superior court that are not joined with a felony may be initiated by presentment); *accord State v. Guffey*, 283 N.C. 94 (1973). For more on presentments, see *supra* Chapter 9, Grand Jury Proceedings.

When a presentment is issued, the superior court obtains jurisdiction over the offense, notwithstanding that the defendant may already be charged with the same offense in district court. *See State v. Gunter*, 111 N.C. App. 621 (1993) (superior court obtains jurisdiction over DWI charge following issuance of presentment, despite previous citation in district court charging same offense).

If a misdemeanor is initiated in superior court by presentment, the defendant may be tried only for the matters set out in the presentment. The standard is whether the accusation in the presentment and the charge in the subsequent indictment "are substantively identical." *See State v. Birdsong*, 325 N.C. 418 (1989).

Misdemeanor guilty pleas in superior court. Under G.S. 7A-271(a)(4), the superior court has jurisdiction to accept pleas of guilty to misdemeanors that are "tendered in lieu of a felony charge." In other words, if a defendant who is charged with a felony is offered a misdemeanor plea, the plea may be taken in superior court even when the misdemeanor is not a lesser included offense of the felony. *See State v. Snipes*, 16 N.C. App. 416 (1972) (noting superior court jurisdiction to accept plea of guilty to misdemeanor charge of assault with a deadly weapon following indictment for felony offense of discharging a firearm into a vehicle). This is done by the prosecution's dismissal of the indictment and filing of an information charging the related misdemeanor, to which the defendant then enters a guilty plea. *Id.* at 418. A bill of information is only required where the new offense is not a lesser-included offense of the indicted charge. *See also infra* "Waiver by certain guilty pleas" in § 11.2D, Waiver (discussing superior court's authority to receive guilty pleas to misdemeanors from other districts).