

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-420

Filed: 19 November 2019

Cabarrus County, No. 18 JB 38

IN THE MATTER OF N.S.

Appeal by Juvenile from orders entered 28 September 2018 and 24 October 2018 by Judge D. Brent Cloninger in Cabarrus County Juvenile Court. Heard in the Court of Appeals 30 October 2019.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Stephanie A. Brennan, for the State-Appellee.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for Juvenile-Appellant.*

COLLINS, Judge.

Juvenile appeals from an order adjudicating him delinquent for committing the offense of making a false report of mass violence on educational property and a dispositional order entered thereupon. Juvenile contends that the court erred by (1) exercising subject-matter jurisdiction over the juvenile petition,<sup>1</sup> (2) finding that

---

<sup>1</sup> As noted below, the State filed multiple juvenile-delinquency petitions against Juvenile, but only one is at issue in this appeal.

the State had proved all necessary elements of the offense, and (3) failing to make sufficient findings of fact in the two orders. Because we conclude that the court lacked subject-matter jurisdiction over the juvenile petition, we vacate both orders.

### **I. Background**

On 13 March 2018, complaints were submitted to the Department of Juvenile Justice and Delinquency Prevention alleging that Juvenile had committed the offenses of (1) making a false report of mass violence on educational property, as prohibited by N.C. Gen. Stat. § 14-277.5(b), and (2) possession of a weapon on educational property, as prohibited by N.C. Gen. Stat. § 14-269.2. The complaints stated that on 21 February 2018, Juvenile (1) made a threat on a social-media application that Northwest Cabarrus County High School “will be bombed and shot up[,]” and (2) willfully possessed two razor blades at Northwest Cabarrus County High School. That same day, the State filed the complaints as juvenile-delinquency petitions in Cabarrus County Juvenile Court. Neither of the petitions were marked as “Approved for Filing” or signed by a juvenile-court counselor before they were filed.

The matter came on for hearing on 28 September 2018, after which the court entered an order (1) dismissing the petition concerning Juvenile’s alleged possession of weapons but (2) adjudicating Juvenile delinquent for making the alleged false report of mass violence on educational property. On 24 October 2018, the court held

a dispositional hearing, after which the court entered a Level 1 delinquency disposition ordering, *inter alia*, that Juvenile be placed on nine months' probation.

Juvenile appealed from both the adjudication and dispositional orders.

## **II. Appellate Jurisdiction**

Juvenile concedes that his appeal was filed one day after the relevant appeal period expired. However, Juvenile filed a petition for a writ of certiorari with this Court asking that we review his appeal, and attaches to his petition an affidavit signed by Juvenile's counsel at the hearings below indicating that Juvenile expressed to her his intent to appeal on the day the dispositional order was entered against him, and that the failure to timely appeal was thus her mistake alone. The State did not file a response.

We exercise our discretion under North Carolina Rule of Appellate Procedure 21 to issue the writ of certiorari and review the merits of Juvenile's appeal.

## **III. Discussion**

Juvenile first contends that the court erred by exercising subject-matter jurisdiction over the juvenile petition. We agree.

We review a lower court's exercise of subject-matter jurisdiction *de novo*. *State v. Oates*, 366 N.C. 264, 266, 732 S.E.2d 571, 573 (2012).

The Juvenile Code sets forth that a juvenile-court counselor must approve a complaint alleging that a juvenile is delinquent before the State may file it as a

IN RE N.S.

*Opinion of the Court*

juvenile-delinquency petition. N.C. Gen. Stat. § 7B-1703(a) (2018) (“The juvenile court counselor shall decide . . . whether a complaint shall be filed as a juvenile petition.”). In order to approve a complaint for filing as a petition, the counselor must mark the petition “Approved for Filing[,]” sign it, and transmit it to the clerk of court. *Id.* § 7B-1703(b) (2018).

In *In re T.K.*, this Court said:

Where jurisdiction is statutory and the Legislature requires the Court to exercise its jurisdiction in a certain manner, to follow a certain procedure, or otherwise subjects the Court to certain limitations, an act of the Court beyond these limits is in excess of its jurisdiction. Where it is required by statute that a petition be signed and verified, these essential requisites must be complied with before the petition can be used for legal purposes. . . . *[A] petition alleging delinquency that does not include the signature of a juvenile court counselor, or other appropriate representative of the State, and the language “Approved for Filing,” . . . fails to invoke the trial court’s jurisdiction in the subject matter.*

*In re T.K.*, 253 N.C. App. 443, 445, 448, 800 S.E.2d 463, 465-67 (emphasis added) (internal quotation marks, brackets, and citations omitted), *disc. review denied*, 370 N.C. 216, 804 S.E.2d 527 (2017).

As in *In re T.K.*, the record in this case reflects that the complaint alleging that Juvenile was delinquent was not approved for filing as a juvenile-delinquency petition and signed by a representative of the State. Thus, the court erred by exercising subject-matter jurisdiction over the petition.

IN RE N.S.

*Opinion of the Court*

The State concedes that *In re T.K.* is indistinguishable from the instant case, but argues that Juvenile’s appeal is moot because the nine-month probationary period imposed by the court in its dispositional order has expired. However, as noted by Juvenile in his brief on appeal, a juvenile-delinquency adjudication carries the potential for adverse collateral consequences that endures beyond the expiration of any probationary period imposed in a dispositional order entered upon the adjudication. For example, a prior juvenile-delinquency adjudication will increase a juvenile’s delinquency-history level, which can support the imposition of a more-severe punishment in a subsequent disposition than would be warranted absent the prior adjudication. *See* N.C. Gen. Stat. §§ 7B-2507-08 (2018). The State’s argument that Juvenile’s appeal is moot fails in light of such potential adverse collateral consequences. *See In re Hatley*, 291 N.C. 693, 694, 231 S.E.2d 633, 634 (1977) (“When events occur during the pendency of an appeal which cause the underlying controversy to cease to exist, this Court properly refuses to entertain the cause merely to adjudicate abstract propositions of law. However, even when the terms of the judgment below have been fully carried out, if collateral legal consequences of an adverse nature can reasonably be expected to result therefrom, then the issue is not moot and the appeal has continued legal significance.” (citations omitted)).

IN RE N.S.

*Opinion of the Court*

#### **IV. Conclusion**

Because we conclude that the court erred by exercising subject-matter jurisdiction over the juvenile petition, we need not address Juvenile's remaining arguments. We vacate the court's 28 September 2018 and 24 October 2018 adjudication and dispositional orders.

VACATED.

Judges TYSON and BROOK concur.

Report per Rule 30(e).