

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY 2021 NOV 22 PM 12: 19 SUPERIOR COURT DIVISION

WAKE CO., C.S.C.

STATE OF NORTH CAROLINA

BY 802)

v.)

ORDER

Defendant)

THIS MATTER comes before the undersigned upon the Defendant's Petition for Writ of Certiorari filed April 5, 2021 wherein the Defendant seeks to have this Superior Court reverse the Wake County District Court's denial of Defendant's Motion for Appropriate Relief and vacate a judgment entered against the Defendant in 06 CR 717745 for the offense of reckless driving.

The Court has reviewed the Petition, and the State's Response to Defendant's Motion for Appropriate Relief filed before the District Court on March 22, 2021. Further, the Court, on October 22, 2021, invited the State, if it so chose, to respond with a supplemental memorandum addressing an issue posed by the Court as follows: "In what way are the facts or controlling law of the pending matter distinguishable from the facts at issue in *State v. Bryant*, 267 N.C. App. 575 (2019) and the law established therein." No further response has been received from the State.

The Court makes the following findings and conclusions.

1. On 5 August 2006, the Defendant was charged with misdemeanor speeding in violation of section 20-141(j1) by citation for allegedly driving 81 MPH in a 45 MPH zone.
2. On 15 December 2006, with the Defendant appearing *pro se*, the State hand wrote "C&R" on the citation beneath the printed charging language, and the assistant district attorney initialed the change.
3. Defendant thereafter pled guilty to one count of reckless driving and was sentenced to pay court costs and a fine of \$25.00.
4. Defendant did not appeal his guilty plea or sentence.
5. Fifteen years later, on January 11, 2021, Defendant filed his Motion for Appropriate Relief through counsel.
6. The offense of speeding under G.S. 20-141(j1) and reckless driving under G.S. 20-140(a) or (b) are separate statutory offenses requiring proof of different elements.
7. When the prosecutor wrote "C&R" on the citation, the prosecutor changed the nature of the offense, which is not permissible by amendment. *State v. Bryant*, 267 N.C. App. 575, 577-78 (2019).
8. The amendment deprived the district court of jurisdiction to enter judgment. *Id.*

9. As instructed by the North Carolina Court of Appeals under virtually identical circumstances in *Bryant*, “when a trial court lacks jurisdiction to allow a conviction, the appropriate remedy is to vacate the judgment of the trial court.”
10. As such, the Defendant’s Petition for Writ of Certiorari is ALLOWED, the decision of the District Court denying the Defendant’s Motion for Appropriate Relief is REVERSED, and the judgment in *State v.* in 06 CR is VACATED.
- So ORDERED, this the 22nd day of November, 2021.



Paul C. Ridgeway, Superior Court Judge

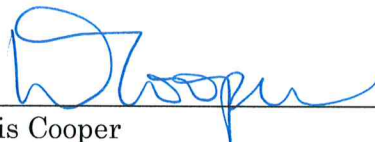
Certificate of Service

THIS IS TO CERTIFY that a copy of the foregoing Order was served upon the following parties and persons by mailing a copy thereof by postage prepaid, first class mail or by otherwise approved delivery addressed as follows:

Daniel Watts
Douglas L. Faucette
Assistant District Attorney
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Post Office Box 31
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Anton M. Lebedev
Attorney for Defendant
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This, the 22nd day of November, 2021.



Davis Cooper
Judicial Assistant
Wake County Superior Court Judges' Office