Article 90.

Appeals from Magistrates and District Court Judges.

§ 15A-1431. Appeals by defendants from magistrate and district court judge; trial de novo.

(a) A defendant convicted before a magistrate may appeal for trial de novo before a district court judge without a jury.

(b) A defendant convicted in the district court before the judge may appeal to the superior court for trial de novo with a jury as provided by law. Upon the docketing in the superior court of an appeal from a judgment imposed pursuant to a plea arrangement between the State and the defendant, the jurisdiction of the superior court over any misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall be the same as was had by the district court prior to the plea arrangement.

(c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk must transfer the case to the appropriate court.

(d) A defendant convicted by a magistrate or district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance must be given by the defendant in person to the magistrate or judge who heard the case or, if he is not available, notice must be given:

(1) Before a magistrate in the county, in the case of appeals from the magistrate; or

(2) During an open session of district court in the district court district as defined in G.S. 7A-133, in the case of appeals from district court.

The magistrate or district court judge must review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid must be remitted to the defendant, but the judge, clerk or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

(e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order.

(f) Repealed by Session Laws 2005-339, s. 1, effective August 26, 2005.

(f1) Appeal pursuant to this section stays the execution of all portions of the judgment, including all of the following:

(1) Payment of costs.

(2) Payment of a fine.

(3) Probation or special probation.

(4) Active punishment.

Pursuant to subsection (e) of this section, however, the judge may order any appropriate condition of pretrial release, including confinement in a local confinement facility, pending the trial de novo in superior court.

(g) The defendant may withdraw his appeal at any time prior to calendaring of the case for trial de novo. The case is then automatically remanded to the court from which the appeal was taken, for execution of the judgment.

(h) The defendant may withdraw his appeal after the calendaring of the case for trial de novo only by consent of the court, and with the attachment of costs of that court, unless the costs or any part of the costs are remitted by the court. The case may then be remanded by order of the court to the court from which the appeal was taken for execution of the judgment

with any additional court costs that attached and that have not been remitted. (1977, c. 711, s. 1; 1979, c. 758, p. 2; 1979, 2nd Sess., c. 1328, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 72; 1991, c. 63, s. 1; 2005-339, s. 1.)