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NORTH CAROLINA
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
97 CRS 2064

STATE OF NORTH CAROLINA

FILED IN COURTROOM
CABARRUS COUNTY

v.

ORDER Date 5 27 99

MICHAEL DEJEAN GARSKA,
Defendant

By LT
Ass't./Deputy Clerk

This cause, coming on to be heard, and being heard before the undersigned judge presiding at the May 24, 1999, criminal session of the Superior Court for Cabarrus County, North Carolina, upon motion by the defendant, through his attorney of record, William W. White, Jr., of Greensboro, North Carolina, to dismiss this case and to strike all orders heretofore entered herein on the grounds that this court lacks both personal and subject matter jurisdiction;

AND THE COURT, after reviewing the record, considering the evidence presented and the arguments of counsel, makes the following:

FINDINGS OF FACT

1. On January 31, 1997, the defendant was issued a North Carolina Uniform Citation by Trooper K.D. Kubas of the North Carolina State Highway Patrol wherein the defendant was charged with operating a motor vehicle, in violation of G.S. 20-28, on North Carolina Highway No. 24 in Cabarrus County while his drivers license was revoked. In addition, the defendant was charged with operating a motor vehicle on said highway without having registered the vehicle with the Division of Motor Vehicles, such vehicle being one required to be registered, provided in G.S. 20-111(1).
2. On May 6, 1997, the defendant was found by the District Court of this county to be guilty of both charges. The defendant appealed to this court, and was tried on his plea of not guilty on January 16, 1998. His Honor Thomas W. Ross dismissed the charge of operating a motor vehicle on a public highway without having it registered with the Division of Motor Vehicles. The jury found the defendant guilty of driving while his drivers license was revoked. Judge Ross sentenced the defendant to a term of imprisonment for 45 days and suspended the sentence. The defendant was placed on unsupervised probation for 12 months on the conditions that he pay a fine of \$500, and pay the costs of court. The court allowed the defendant 10 days from January 16, 1998, to comply with the monetary portion of the judgment.

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BY Amie McInnes
Assistant, Deputy, Clerk Superior Court

3. On January 16, 1998, the defendant gave notice of appeal to the North Carolina Court of Appeals from the judgment entered by Judge Ross.
4. The defendant did nothing to perfect the appeal to the North Carolina Court of Appeals. On May 6, 1999, the defendant, through his attorney of record, appeared in this court before the undersigned and, in open court, withdrew defendant's appeal to the North Carolina Court of Appeals. An Order was entered on May 6, 1999, allowing the defendant until May 24, 1999, to comply with the judgment entered by Judge Ross on January 16, 1998, wherein the defendant is required to pay the fine and costs of this action.
5. On May 24, 1999, the defendant filed his motion to dismiss alleging the lack of personal and subject matter jurisdiction of this court. The defendant has willfully failed and refused to pay either the fine or the costs.
6. In his motion to dismiss for lack of jurisdiction the defendant alleges that the District Court judge or judges who heard his case in District Court "purported" to be judges, and "apparently" presided over the District Court, but due to the fact that the United States flag displayed in the "Trial Court" had a "yellow fringe" on all sides, the flag was not the official flag of the United States. The defendant contends that such a flag is, therefore, a "foreign flag", and that and "judge" sitting under a "foreign flag" has no jurisdiction over him. The defendant contends that the United States flag adorned with yellow fringe around it is not the official flag of this country, that such a flag would be "in fact the flag...of some other, and obviously foreign, jurisdiction." Finally, the defendant alleges that "whoever was the so called "judge" sitting in the above case was sitting without any jurisdiction, whatever, and only has the power to dismiss this said action and to strike all orders entered herein."
7. If the District Court lacked personal or subject matter jurisdiction in this matter, then the Superior Court would not have jurisdiction either, because the flag of the United States on display from the bench in this court also has yellow fringe around it, as do all such flags in each courtroom in the Cabarrus County Courthouse.
8. The sole purpose of defendant's motion to dismiss is to delay and obstruct the administration of justice and to avoid payment of the fine and costs assessed in this matter 16 months ago.
9. The purpose and intent of counsel for the defendant in filing said motion is entirely vexatious and willful. Counsel for the defendant filed the motion to dismiss on absurd and ludicrous grounds, totally lacking in good faith, with the intent to hold this court up to ridicule and to obfuscate the simple issue in this matter, i.e., that the defendant contends he cannot be required to have

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BY Linda McTear
Assistant, Deputy, Clerk Superior Court

drivers license in order to drive legally upon the public streets and highways of this State.

10. The motion filed by counsel for the defendant violates Rule 12 of the General Rules of Practice in the Superior and District Courts, which provides, in pertinent part, as follows: "Counsel are to conduct themselves with...propriety....The conduct of the lawyers before the court and with other lawyers should be characterized by candor and fairness. Counsel shall not knowingly misinterpret the contents of ...the language of a decision or other authority."
11. Counsel for the defendant should be disciplined by this court for filing the said "Motion to Dismiss for Lack of Jurisdiction", and the defendant should be required to comply with the Judgment entered in this matter on January 16, 1998, without further delay.
12. Counsel for the defendant has willfully violated the Rules of Professional Conduct of The North Carolina State Bar in that he has engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4 (d); in that he has knowingly, willfully and with vexatious purpose made a false statement of law to this tribunal, totally disregarding his duty to act with candor toward the court, in violation of Rule 3.3(a)(2); in that he has failed to make reasonable efforts to expedite this litigation, but instead has willfully and with vexatious purpose delayed the conclusion of this case, in violation of Rule 3.2; and he has violated the admonition of the Bar that a lawyer should use the law's procedures only for legitimate purposes and not to harass others, but on the contrary, he has instead used the law's procedures, in filing said motion, for the sole purpose of delaying, obstructing, and harassing the court in the proper discharge of its duties, in violation of the Preamble of the Rules of Professional Conduct, paragraph (4).

Based on the foregoing findings of fact the court makes the following:

CONCLUSIONS OF LAW

1. William W. White, Jr., counsel for the defendant, should be disciplined by this court for his willful violation of Rule 12 of the General Rules of Practice in the Superior and District Courts by filing the motion described in the Findings of Fact.
2. This court has concurrent jurisdiction, together with The North Carolina State Bar, to discipline an attorney such as counsel for the defendant for violations of the Rules of Professional Conduct which occur in the presence of the court. Counsel for the defendant has violated the Rules of Professional Conduct of the

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BY Joseph Houston
Assistant, Deputy, Clerk Superior Court

that he has engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4 (d); in that he has knowingly, willfully and with vexatious purpose made a false statement of law to this tribunal, totally disregarding his duty to act with candor toward the court, in violation of Rule 3.3(a)(2); in that he has failed to make reasonable efforts to expedite this litigation, but instead has willfully and with vexatious purpose delayed the conclusion of this case, in violation of Rule 3.2; and he has violated the admonition of the Bar that a lawyer should use the law's procedures only for legitimate purposes and not to harass others, but on the contrary, he has instead used the law's procedures, in filing said motion, for the sole purpose of delaying, obstructing, and harassing the court in the proper discharge of its duties, in violation of the Preamble of the Rules of Professional Conduct, paragraph (4).

3. The defendant, Michael D. Garska, has willfully failed and refused to pay the fine and costs required by the judgment entered in this matter on January 16, 1998.

IT IS, THEREFORE, ORDERED:

1. The defendant shall be taken into custody forthwith to serve the sentence of forty-five(45) days imprisonment imposed by judgment in this matter on January 16, 1998.
2. William W. White, Jr. of Greensboro, North Carolina, counsel for the defendant shall pay a fine in the sum of Five Hundred Dollars (\$500.00) for his willful violations of the Rules of Practice in the Superior and District Courts and the Rules of Professional Conduct. The said William W. White Jr., shall pay said sum into the Office of the Clerk of the Superior Court for Cabarrus County by certified or cashiers check or in United States Currency by 5 o'clock P.M. on Monday, June 7, 1999. If the said William W. White, Jr. fails to comply with this order then he shall be subject to the contempt powers of this court.

This order is entered in open court in the presence of the defendant and his attorney, the said William W. White, Jr., on this the 27th day of May, 1999.

W. Erwin Applegate
Judge Presiding

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BY *Linda Justice*
Assistant, Deputy Clerk Superior Court