



Dispositions in Criminal Contempt

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January 2022






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Overview

- Statutory punishment for contempt
- Consecutive sentences
- Probation for contempt
- Future consequences




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G.S. 5A-12: Basic Rules

- Censure
- Imprisonment for up to 30 days
- Fine not to exceed \$500
- Any combination of the three



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G.S. 5A-12: Special Rules

- Refusal to testify after being granted immunity
 - Imprisonment up to 6 months
- Failure to comply with nontestimonial identification order
 - Imprisonment up to 90 days
- **Failure to pay child support**
 - **Imprisonment up to 120 days, if suspended upon conditions related to payment of child support**

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G.S. 5A-12

- Judge has authority to “terminate or reduce a sentence of imprisonment” or “reduce a fine imposed” if “warranted by the conduct of the contemnor and the ends of justice”
- A purportedly “criminal” contempt that allows release upon payment of money (or some other condition) is actually *civil*

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Consecutive Sentences

- Consecutive sentences are permissible
 - State v. Burrow (N.C. App., 2016)
- Structured Sentencing’s limit on consecutive sentences for misdemeanors does not apply
- Beyond 180 days, jury trial rights probably apply

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Probation for Contempt

- Suspended sentence with conditions
- Conditions must be “reasonably related” to payment of child support
- What about other ordinary (Ch. 15A, Art. 82) probation rules?

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Probation for Contempt

§ 15A-1341. Probation generally.

(a) Use of Probation. - Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of

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Probation for Contempt

- Supervision by a probation officer?
- \$40/month supervision fee?
- Length of probation period?
- Warrantless searches?
- Electronic house arrest? (fee?)
- Other regular conditions of probation?

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Probation for Contempt

REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)

NOTE: Any probationary judgment may be extended pursuant to G.S. 15A-1342. The defendant shall: (1) Commit no criminal offenses in any jurisdiction; (2) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269; (3) Remain gainfully and suitably employed or faithfully pursue a course of study or vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution; (4) Satisfy child support and family obligations, as required by the Court; (5) If the defendant is on supervised probation, the defendant shall also: (5) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer; (6) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer; (7) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment; (8) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment; (9) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful; (10) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court; (11) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it, not knowingly associate with any known or previously convicted user, possessor, or seller of any such illegal drug or controlled substance, and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used; (12) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drug or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction for the actual costs of drug or alcohol screening and testing.



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Probation for Contempt

- Matter of Eldridge, 268 N.C. App. 491, 497, 836 S.E.2d 859, 863 (2019), aff'd.
 - Here, the trial court sentenced defendant to be confined in the Macon County Detention Center for thirty days. Defendant's sentence was suspended for twelve months, upon six specific conditions for him to meet during his probationary sentence: 1) serve an active sentence of 96 hours; 2) pay the costs of the action; 3) pay a fine of \$500.00; 4) draft a 2,000-3,000 word essay on the following subject: "Respect for the Court System is Essential to the Fair Administration of Justice," forward the essay to Judge Coward for approval, and following approval, post the essay on all social media or internet accounts that defendant owns or controls or acquires hereafter during his period of probation and attributed to defendant, without negative comment or other negative criticism by defendant or others, during said period of probation; 5) not violate any order of Court or otherwise engage in further contemptuous behavior; and, 6) not attend "any court session in Judicial District *498 30A unless and until his essay has been approved and posted as required herein and he has fully complied with all other provisions of this order."



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Probation for Contempt

- Revocation procedure
 - Notice (violation report)
 - Hearing
 - Opportunity to show violations were non-willful



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Probation for Contempt

- Do limitations on revocation authority (Justice Reinvestment) apply?
 - New criminal offense
 - Absconding
- Other violations: No revocation until defendant has done two “quick dips”?



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Costs and Fees

- Costs?
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Costs and Fees

- Attorney fees
 - Opposing counsel? No. United Artists Records, Inc., v. Eastern Tape Corp., 18 N.C. App. 183 (1973)
 - Defendant’s appointed counsel? G.S. 7A-455



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Future Consequences

- Not a prior conviction for sentencing of future criminal acts. State v. Reaves.
- Related sentencing points and aggravating factors arguably inapplicable