

POST-CONVICTION PROCEEDINGS: SENTENCING ERRORS

Jamie Markham
Assistant Professor, School of Government
919.843.3914
markham@sog.unc.edu

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Assume each of the defendants below has filed a motion for appropriate relief on the grounds that his or her "sentence imposed was unauthorized at the time imposed, contained a type of sentence disposition or a term of imprisonment not authorized for the particular class of offense and prior record or conviction level, was illegally imposed, or is otherwise invalid as a matter of law." G.S. 15A-1415(b)(8).

1. A defendant was convicted of felony larceny. He was sentenced to community punishment, 36 months of supervised probation. The trial court made no findings related to the length of the probation period. ERROR or NO ERROR?
2. As part of a plea agreement, a defendant stipulated in writing to a prior record worksheet, making him a prior record level III. Included on the worksheet was a prior Virginia conviction for armed robbery, which was counted as Class D (6 points). The defendant stipulated to the "classification and points assigned to any out-of-state convictions." ERROR or NO ERROR?
3. A defendant was convicted of AWDWISI (Class E), common law robbery (Class G), and possession of firearm by a felon (Class G). The convictions were consolidated for judgment, with a sentence entered for the Class E felony. The defendant had a prior conviction for armed robbery. Based on that prior conviction, the trial court added the additional sentencing point available when all elements of the present offense are included in any prior offense for which the offender was convicted (G.S. 15A-1340.14(b)(6)). The additional point raised the defendant from Prior Record Level II to Level III. ERROR or NO ERROR?
4. A defendant pled guilty to financial card theft and to having attained habitual felon status. The court ran the habitualized financial card theft sentence concurrent with a federal sentence the defendant is serving at the time of sentencing. ERROR or NO ERROR?
5. In sentencing a defendant for trafficking in cocaine and conspiracy to traffic cocaine, the trial court said "General Statute 90-95(h) requires these sentences to run consecutively." He sentenced the defendant to two consecutive terms of imprisonment. ERROR or NO ERROR?

6. At a probationer's violation hearing, two suspended sentences that had been set to run concurrently by the original sentencing judge were run consecutively by the revoking judge. ERROR or NO ERROR?

7. A defendant was convicted of involuntary manslaughter. At sentencing, the court counted prior record points for a felony habitual DWI and the three misdemeanor DWIs that led to the habitual DWI conviction. ERROR or NO ERROR?

8. A defendant was convicted of possession of firearm by a felon. At sentencing, the trial court counted for prior record points the defendant's only prior felony conviction—the crime that cost him his guns. ERROR or NO ERROR?

9. A defendant was found guilty of second-degree kidnapping. The State proved one aggravating factor and the court found 19 mitigating factors (5 statutory and 14 non-statutory). The trial judge sentenced the defendant in the aggravated range. ERROR or NO ERROR?

For the scenarios below, assume the defendant is before you on a petition for credit against service of a sentence under G.S. 15-196.4.

1. A defendant was ordered to spend 90 days at DART-Cherry as a special condition of probation. He did so, successfully completing the program. He later violated probation and had his probation revoked. He now argues that the 90 days spent at DART-Cherry should be credited against his activated sentence. CREDIT or NO CREDIT?

2. A defendant spent 211 days on electronic house arrest as a condition of pretrial release. She petitions the court for credit against her sentence for this time. CREDIT or NO CREDIT?

3. A probationer had her probation revoked. During her probation period, she had been found in contempt of court under G.S. 15A-1344(e1) and jailed for 30 days. She petitions the court for credit against the activated sentence for the time spent jailed pursuant to the contempt finding. CREDIT or NO CREDIT?