

Another New Rule for CRV Jail Credit

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A legislative session wouldn't be complete without a new jail credit rule for confinement in response to violation (CRV).

When a person is on probation for multiple offenses and CRV is ordered in more than one of them, the “period of confinement . . . shall run concurrently on all cases related to the violation.” [G.S. 15A-1344\(d2\)](#). In other words, you can't stack CRV periods consecutively; they must run concurrently. The idea was to limit confinement for technical violations to a maximum of 90 days—primarily as a way to reduce the prison population, but also apparently consistent with research showing that shorter confinement in lieu of revocation leads to better criminal justice outcomes in the long run.

To give an example, suppose a person is on probation for three felonies with three 6–17 month suspended sentences, set to run consecutively in the event of revocation. If he commits one probation violation other than a new crime or absconding, a 90-day CRV may be ordered in each case, but those 90-day periods must run concurrently. The defendant could not, for instance, be ordered to serve 270 days of back-to-back-to-back CRV confinement.

That was all fine—for the most part. (I certainly get my share of questions about whether CRV may be run consecutively to *other* probationary confinement, such as a split sentence or contempt, as a way to lengthen imprisonment for technical violations). The real trouble arises when our thrice-dunked probationer later gets revoked, and his activated sentences are set to run consecutively. Because a CRV was served in each case, 90 days of credit would be applied to each of them—giving the person 270 days of credit for time that took only 90 days to serve. I wrote about this type of situation [here](#), in 2014.

To fix this issue, the General Assembly enacted [S.L. 2016-77](#), amending G.S. 15-196.2, the jail credit rule for defendants subject to multiple sentences. The legislation adds a new provision stating that “[u]pon revocation of two or more consecutive sentences as a result of a probation violation, credit for time served on concurrent confinements in response to violation under G.S. 15A-1344(d2) shall be credited to only one sentence.” So, even though the defendant served CRV in more than one case, credit for that time ultimately gets subtracted from only one of them. It appears to be up to the court to choose the single case to which the credit gets applied.

Applying the new rule to the example set out above, the revoked probationer would get 90 days of credit applied to only one of the three cases. The CRV time served in the other cases is disregarded. (Other creditable time, such as pretrial confinement, prehearing confinement, or prior split sentence confinement still gets applied to each case as appropriate.)

A statutory rule requiring the court to ignore credit for time actually served in a case is, frankly, strange. It is especially odd in the situation where the defendant is being revoked solely for a technical violation (something other than a new crime or absconding) after serving two prior CRVs. In all but one of the cases, the defendant is only eligible for revocation on the basis of prior CRVs for which he or she may not receive any jail credit at all. I expect someone will eventually argue that it can't count as a CRV strike if you don't get credit for the days. But I suppose the same legislature that ordered the time to be served concurrently in the first place may, arguably, later require that it be treated like pretrial jail credit in a consecutive case.

The rule applies only when revoked sentences run consecutively. If the revocations run concurrently—as the revoking court may allow in any case, regardless of how the sentences were set to run by sentencing judge, *see State v. Hanner*, 188 N.C. App. 137 (2008) (discussed [here](#)), and, indeed, as they do by default—CRV time gets credited to every case in which it was served.

The change is effective December 1, 2016, and applicable to offenses committed on or after that date. It was necessary to make the change apply prospectively; it clearly operates to a defendant's disadvantage, and it would violate ex post facto principles to apply it retroactively. With that in mind, remember that it will take a little while for this rule to really kick in. The offenders to whom it will eventually apply will have to commit their crimes after December 1, get convicted and placed on probation for each of them, commit a technical violation, get CRV, return to probation, commit a revocation-eligible violation, and, finally, get revoked and ordered to serve consecutive sentences. With that in mind, I doubt the new rule will be applied until well into 2017.