

Attempted Assault

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I've had a couple of questions lately about whether attempted assault is a crime. Nationally, there appears to be a split of authority on this issue. 6 Am. Jur. 2d *Assault and Battery* § 11 (noting that "[t]he authorities are in conflict whether an attempt to commit an assault is a criminal offense"); Marjorie A. Shields, *Attempt to Commit Assault as Criminal Offense*, 93 A.L.R.5th 683 (2001) (collecting cases).

In North Carolina, the court of appeals has twice held that the answer is no, because the crime of assault itself includes an attempt to injure. *State v. Barksdale*, 181 N.C. App. 302 (2007) (reversing conviction for attempted assault with a deadly weapon on a government officer because that offense would be an "attempt to attempt" and so does not exist); *State v. Currence*, 14 N.C. App. 263 (1972) (trial judge properly refused to accept a verdict of attempted assault with a deadly weapon). *Cf. State v. Hewett*, 158 N.C. 627 (1912) (noting, in a slightly different context, that "one cannot be indicted for an attempt to commit a crime where the crime attempted is in its very nature an attempt").

As an interesting aside, many, many appellate cases, published and unpublished, involve convictions for attempted assaults, and treat those convictions without comment. In some instances, this may simply be a matter of the courts declining to pass on issues not raised by the parties. The apparent prevalence of such convictions, however, suggests that the rule of *Barksdale* and *Currence* is not widely known. *See, e.g., State v. Edwards*, 150 N.C. App. 544 (2002) (finding that a mistrial was properly declared when jury deadlocked on attempted assault with a deadly weapon charges and authorizing retrial on those charges); *State v. Parks*, 2010 WL 1292460 (N.C. Ct. App. April 6, 2010) (unpublished) (affirming habitual felon conviction where one of the defendant's previous felonies was attempted assault with a deadly weapon and stating that "it is immaterial whether defendant was previously convicted of attempted assault with a deadly weapon inflicting serious injury or assault with a deadly weapon inflicting serious injury as both of these offenses are felonies under our General Statutes"); *State v. Franklin*, 2009 WL 368382 (N.C. Ct. App. Feb. 17, 2009) (unpublished) (affirming probation revocation; underlying conviction was "attempted assault with a deadly weapon with intent to kill"); *State v. Vaughan*, 2008 WL 850353 (N.C. Ct. App. April 1, 2008) (unpublished) (affirming habitual felon conviction where one of the defendant's previous convictions was for "attempted assault with a deadly weapon with intent to kill"); *State v. Platt*, 2008 WL 711648 (N.C. Ct. App. Mar. 18, 2008) (unpublished) (holding, in the context of reviewing a trial court's ruling regarding a defendant's prior record level, that "the trial court properly concluded that the Kansas offense of attempted aggravated assault is substantially similar to the North Carolina offense of attempted assault with a deadly weapon"); *State v. Carpenter*, 2007 WL 2473126 (N.C. Ct. App. Sept. 4, 2007) (unpublished) (affirming probation revocation; underlying conviction was for "attempted assault with a deadly weapon on a government official").