

Concurrent and Consecutive Sentences Upon Revocation of Probation

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Under G.S. 15A-1344(d), a "sentence activated upon revocation of probation commences on the day probation is revoked and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period *unless the revoking judge specifies that it is to run consecutively with the other period.*"

In *State v. Paige*, 90 N.C. App. 142 (1988), the court of appeals addressed the last clause of that section. The case involved a defendant who was convicted of crime #1 in November of 1986 and given a 1-year sentence, suspended. He was then convicted of crime #2 in January of 1987 and given a 5-year sentence, again suspended. A few months later he violated his probation. At the revocation hearing the judge activated both sentences, ordering the 5-year sentence to begin at the expiration of the 1-year sentence. The defendant argued that the revoking judge could not run these sentences consecutively, but the court of appeals disagreed, pointing to the italicized language above.

The court reaffirmed and extended this rule last year in *State v. Hanner*, 188 N.C. App. 137 (2008). In that case the defendant pled guilty to 16 crimes which were consolidated (pursuant to a plea agreement) into eight judgments with eight 8-10 month sentences, all suspended. Three of the eight sentences were set by the original sentencing judge to run concurrently in the event of revocation. Nevertheless, when Mr. Hanner was found to have violated his probation, the revoking judge set all of the sentences to run consecutively. Citing to *Paige*, the court of appeals said this was permissible under G.S. 15A-1344(d).

The rule that emerges from *Paige* and *Hanner* is that a revoking judge can change the concurrent/consecutive decision made by the original sentencing judge - even when the original concurrent sentences were entered in the same session of court, and even (apparently) when they were entered pursuant to a plea. As to that last point, the original sentence in *Hanner* was entered pursuant to a plea, but it appears in the procedural history of the case that the original sentencing court ran certain sentences concurrently even though the defendant had actually *agreed* that they would run *consecutively*. In that regard *Hanner* is not a good case to test whether G.S. 15A-1344 is trumped by a contract theory of plea negotiation - the revoking judge really didn't do anything the defendant hadn't agreed to.

Suppose the original plea had explicitly been conditioned on concurrent sentences? Could a revoking judge still decide to run the sentences consecutively? Or would the defendant be entitled to the benefit of his or her bargain? I'm interested to hear your thoughts about that.

Just because judges are empowered to do this does not mean they will. As a matter of comity, I imagine many judges are hesitant to tinker with their colleagues' sentences, absent a good reason for doing so. In any event, judges (and everyone else) should be aware that silence at revocation does not necessarily mean the activated sentence will run as originally entered. To the contrary, under the command in G.S. 15A-1344(d) that an activated sentence runs concurrently *unless the revoking judge specifies that it is to run consecutively*, DOC will interpret silence at revocation to mean concurrent, even if the original judgment said consecutive. So, if you want to keep consecutive sentences consecutive upon revocation, be sure to fill in the appropriate boxes at the bottom of the first page of the [AOC form](#).