

## Consecutive Sentences for Misdemeanors

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A while ago, Alyson Grine and I wrote [a post about consecutive sentences for misdemeanors](#). In it, we discussed the rule that when a court elects to impose consecutive sentences for two or more misdemeanors, the cumulative length of the sentences of imprisonment may not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense. If all the convictions are for Class 3 misdemeanors, consecutive sentences may not be imposed at all. [G.S. 15A-1340.22](#). In that post we also opined about how those rules apply when a judge decides to suspend some or all of the misdemeanor sentences. We wrote that the rules would apply with equal force to suspended sentences, which, under [G.S. 15A-1340.20\(b\)-\(c\)](#), still include a term of "imprisonment." Our thought was that the maximum number of days of imprisonment the court has to work with - active or suspended - in a misdemeanor sentencing episode is twice the maximum for the most serious offense.

A recent court of appeals case, [State v. Remley](#), is leading me to rethink what we wrote in that post. The case doesn't expressly say we were wrong, but it does do the math a little differently than we did. In *Remley*, the Level II defendant was convicted of 8 counts of Class 1 misdemeanor larceny. The trial court sentenced the defendant as follows, with all sentences to run *consecutively*:

1. 45 days, active
2. 45 days, active
3. 45 days, suspended, with 10 days active as a condition of special probation
4. 45 days, suspended, with 10 days active as a condition of special probation
5. 45 days, suspended, with 10 days active as a condition of special probation
6. 45 days, suspended, with 10 days active as a condition of special probation
7. 45 days, suspended, with 10 days active as a condition of special probation
8. 45 days, suspended, with 10 days active as a condition of special probation

The defendant complained that this sentence ran afoul of the rule on consecutive misdemeanor sentences described above by exceeding twice the maximum sentence of imprisonment for the most serious offense - 90 days. The court of appeals agreed and remanded for resentencing, but in doing so noted that the sentence was incorrect because the defendant received *150 days* [45 + 45 + 10 + 10 + 10 + 10 + 10 + 10] of imprisonment. If you had asked me, I would have said the sentence was incorrect because it imposed *360 days* [45 × 8] of imprisonment. That, after all, is the total amount of time the defendant would have faced upon revocation of probation. As mentioned above, I thought the limitation in G.S. 15A-1340.22 on cumulative length of "imprisonment" applied to all sentences imposed in a single episode, active or suspended. The "imprisonment" is still *there* in a probationary sentence, it's just suspended. That's how I read the language of the relevant statutes, and that outcome also makes more sense to me as a policy matter.

Why would a defendant who gets fully active sentences out of the gate be exposed to *less* time behind bars than a defendant for whom some or all sentences are suspended?