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Credit for Inpatient Treatment in Impaired Driving Cases

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One of the purposes for sentencing for impaired driving, like sentencing generally, is to rehabilitate offenders so that they may be restored to the community as lawful citizens. *Cf.* G.S. 15A-1340.12. The rehabilitative aims of the sentencing scheme for impaired driving are evident in the requirement that offenders obtain substance abuse assessment at treatment as a condition of probation (discussed here) and also in the provisions of G.S. 20-179(k1) that allow a court to order that a defendant serve a term of special probation as an inpatient at a state-operated or licensed facility for the treatment of alcoholism or substance abuse. The latter provision accords with structured sentencing act provisions that allow a judge to order that a defendant serve a period of special probation at a designated treatment facility. *See* G.S. 15A-1351(a). Unlike its structured sentencing counterpart, G.S. 20-179(k1) explicitly requires the defendant to bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and may require that the defendant follow the facility's rules. G.S. 20-179(k1).

G.S. 20-179(k1) also permits a judge to "credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced." This provision is subject to a few interpretations. One narrow interpretation of the provision is that it means only that when a judge orders that a period of imprisonment imposed as a condition of special probation be served at a treatment facility, the judge may credit this time against any suspended sentence that later is activated. Given that the general rules for crediting time served in a treatment facility only award credit for time spent in a state or local institution, such a provision is necessary to allow for credit when the inpatient time is served in a private facility. Thus, even under this narrow view, G.S. 20-179(k1)'s rules about awarding sentencing credit for inpatient treatment are significantly broader than the rules for awarding such credit to sentences generally, including sentences for offenses involving impaired driving that are not sentenced under G.S. 20-179, such as habitual impaired driving. *Cf.* 15-196.1 (requiring credit against the minimum and maximum term of a sentence for "the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence."); State v. Stephenson, ___ N.C. App. ___, 713 S.E.2d 170 (2011) (holding that the defendant was not entitled to credit in structured sentencing case for time spent at Potter's House, an "independent Christian faith-based rehabilitation program [] not affiliated with or operated by either a State or local government agency"). This restrictive interpretation of subsection (k1) has two flaws. First, it renders surplusage language requiring that the credited treatment occur "after the commission of the offense for which the defendant is being sentenced," since treatment ordered at sentencing always will be completed after the offense. Second, subsection (k1) makes no reference to sentences subsequently activated upon violation of probation, which would be the logical time at which post-sentencing treatment credit would be ordered.

Alternatively, G.S. 20-179(k1) might be interpreted as permitting a judge to award credit for qualifying inpatient treatment at a licensed facility only against a sentence that imposes "active punishment" as that term is defined by G.S. 15A-1340.11, that is a sentence that requires a term of imprisonment and is not suspended. Another still-yet broader reading of the provision is that a defendant may receive credit for qualifying inpatient treatment against periods of imprisonment imposed as a condition of special probation as well as against an active sentence. This interpretation of the provision, which strikes me as the one most likely indicative of the legislature's intent and is, I believe, the view shared by most practitioners and judges, considers the term "active" in the context of G.S. 20-179(k1) to mean a

period of imprisonment rather than “active punishment” pursuant to G.S. 15A-1340.11. The pairing of the credit provision in subsection (k1) with authorization for service of a term of imprisonment imposed a condition of special probation at such a treatment facility provides support for the view that the legislature intended to allow for credit against periods of imprisonment served pursuant to active or probationary sentences. If this interpretation is correct, then credit awarded for qualifying inpatient treatment may satisfy the minimum terms of imprisonment required for active sentences or as a condition of special probation for each level of impaired driving. Thus, a defendant who serves 30 days as an inpatient at a licensed treatment facility after committing an impaired driving offense sentenced at Level One, may, in the judge’s discretion, be awarded credit for this time against a term of special probation requiring a term of imprisonment of 30 days. In this circumstance, the defendant will not be required to serve any time in jail unless she violates conditions of probation and imprisonment is ordered in response to such a violation.

As a practical matter, I wonder how often impaired driving defendants receive inpatient treatment in advance of sentencing and how often judges exercise their discretion to award credit for qualifying time. If you have insight regarding this matter or thoughts about the legal interpretation set forth above, please share your views via the comment feature.