When a Criminal Sentence Begins

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Sometimes there is a delay between when the court pronounces a sentence and when the judgment is actually signed. When that happens, questions can arise about when the sentence begins. Is it when the judge says it, or when he or she signs it?

Under G.S. 15A-101(4a), in criminal matters, "[j]udgment is entered when sentence is pronounced." That is different from civil matters, where Rule 58 says "a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court." So, aside from delayed active sentences (allowed under G.S. 15A-1353(a), as described here), sentences set to run at the expiration of other sentences, or contingent probation cases (allowed under G.S. 15A-1346(b), as described here), a sentence begins when the judge says it, not when the judgment is signed. State v. Trent, 359 N.C. 583 (2005).

Probationary sentences raise some special concerns. Anecdotally, I hear that it can sometimes take weeks to get a signed probation judgment in some parts of the state. Nevertheless, under G.S. 15A-101(4a) and G.S. 15A-1346(a) ("a period of probation commences on the day it is imposed"), the person is on probation from the moment the court says so in open court. That means time starts ticking toward expiration on that day, not on the day the order is signed. The difference between those dates will sometimes matter at the end of a case, where a court will only have jurisdiction under G.S. 15A-1344(f) if a violation was filed (and stamped) before expiration. So watch out for that.

The delay in getting a signed judgment can cause issues on the front end of a probation case, too. Even though the person technically is under supervision from the time of the court's oral pronouncement, under G.S. 15A-1343(c), a defendant "must be given a written statement explicitly setting forth the conditions on which he is being released." In general, a condition is not enforceable until a defendant receives it in writing. *See* State v. Seek, 152 (2002). *Cf.* State v. Brown, 222 N.C. App. 738 (2012) (setting forth a limited exception to condition-in-writing rule for the baseline condition that a person report to his or her probation officer in the first place). And so if a violation were to arise shortly after a person was placed on probation and before the judgment was reduced to writing and provided to the defendant, he or she would have a good defense to it. (Probation staff may ameliorate that concern to some extent; their standard practice is to give the defendant a copy of at least the standard conditions of probation before he or she leaves court on the day of sentencing, even if the signed judgment isn't yet ready.)

Incidentally, the delay between issuance of sentence and receipt of a written judgment really shouldn't be very long. By statute, when a superior court judge sentences a person to imprisonment, the clerk shall provide the sheriff with a signed order of commitment within 72 hours of the issuance of the sentence. When a district court judge does it, the commitment must be furnished to the sheriff within 48 hours. G.S. 7A-109.3. It's good for the sheriff and county when that happens promptly, because the person can be moved more quickly from the jail to prison.

If there is any delay in that transfer after the judgment is received, under G.S. 148-29, "[b]eginning on the day after [DAC] has been notified by the sheriff that a prisoner is ready for transfer . . . and continuing through the day the prisoner is received by [DAC]," the state pays the county $40 per day plus the costs of extraordinary medical expenses—the so-called jail backlog fee. Before 1999, the fee began accruing on the sixth day after sentencing, but the law was amended that year to say it would begin accruing the day after the sheriff told DAC to come get the inmate.

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