



FAQ on Consecutive Sentences for Misdemeanors

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The rules limiting consecutive sentences for misdemeanors can be tricky. This post addresses some of the issues that come up from time to time.

First, a reminder about the rules. There are two, and they are both in [G.S. 15A-1340.22\(a\)](#).

If the court imposes consecutive sentences for two or more misdemeanors, and the most serious misdemeanor is in Class A1, Class 1, or Class 2, the cumulative length of the sentences of imprisonment shall not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense.

Consecutive sentences shall not be imposed if all convictions are for Class 3 misdemeanors.

Do the rules apply in superior court? Yes. They are misdemeanor sentencing rules, not district court rules.

The “twice the maximum sentence authorized” rule refers to *this defendant*, not the hypothetical worst-case defendant. The rule says the cumulative length of consecutive sentences shall not exceed twice the maximum sentence authorized for the class *and prior conviction level* of the most serious offense. That means you must take the defendant’s prior conviction level into account when determining the upper boundary of your aggregate sentence.

For example, suppose a defendant is convicted of five counts of Class A1 assault on a female. He has three prior convictions and is prior conviction level II. The longest cumulative sentence of imprisonment the court may impose is 150 days, because the maximum sentence authorized for the class *and prior conviction level* of the most serious offense is 75 days. Double that, and you’ve got your 150-day cap. It would be wrong to view the cap as 300 days (twice the 150-day sentence that would be authorized for a prior conviction level III defendant), because that would ignore the portion of the rule referencing the prior conviction level of the most serious offense.

There is no “two sentence” limit. Perhaps the most common misstatement of the limit on consecutive sentences for misdemeanors is that you can only stack two. That is not the rule and never has been under Structured Sentencing.

I can understand the misunderstanding. The two sentence limit actually does work as a shorthand formulation of the rule *when the defendant is convicted of multiple crimes of the same offense class*. In our example above, for instance, where the defendant had five convictions for assault on a female, a two sentence rule would get you to the right place: you could stack two maxed-out 75-day sentences, and that would bring you right up to the 150-day limit. But you wouldn’t have to do it that way. You could instead give five consecutive 30-day sentences (or 75 + 30 + 15 + 15 + 15, etc.), so long as the total didn’t exceed 150. Why would you do that? I don’t know, maybe there are five different victims and you want to have a judgment for each of them (either for symbolic reasons, or perhaps to assign separate restitution to each). But the point is that the consecutive-sentence limit is based on imprisonment days, not on the number of judgments.

That’s even clearer when the defendant’s multiple sentences are not all for the same offense. Suppose a prior conviction level II defendant is convicted of one Class A1 crime and two Class 1’s. If there were no consecutive

sentence limitation at all, you could impose a consecutive sentence of 165 days (75 + 45 + 45). But there is such a rule, and based on the Class A1 conviction, the maximum length of any consecutive sentences you may impose is 150 days (75 x 2). If you mistakenly thought the rule was a “two sentence” limit, you would have capped yourself out at 120 days (75 + 45), missing out on 30 days of possible imprisonment for the third judgment. (I’m of course not advocating for a maxed-out maximum in every case, I’m just trying to explain the proper rule. I’m Switzerland when it comes to what you do with it.)

What if you have a mix of Class 3’s and other convictions? Can one Class 3 sentence run at the expiration of another Class 3 sentence? Yes. The bright line rule against stacking Class 3’s applies only when “*all* convictions are for Class 3 misdemeanors” (emphasis added). For example, suppose you had a prior conviction level III defendant convicted of a single Class 2 misdemeanor and four Class 3’s. If there were no consecutive sentence rule at all, the aggregate sentence could be 140 days (60 + 20 + 20 + 20 + 20). With the twice-the-maximum rule in effect, the maximum is capped at 120 days (60 x 2). The question is whether the rule against stacking the Class 3 misdemeanor applies here to further limit the cumulative consecutive sentence to 80 days (60 + no more than 20 days of concurrent time for all the Class 3’s). It does not, because, because that additional limit applies only when *all* of the defendant’s convictions are for Class 3’s.

Do the rules apply when the defendant is also sentenced for a felony? Yes and maybe.

As to the “twice the maximum” rule, it continues to apply to the misdemeanor portion of a consecutive sentence even when a consecutive felony sentence is also in the mix. See *State v. Wheeler*, 202 N.C. App. 61 (2010) (applying the misdemeanor sentence limit to a batch of consecutive misdemeanors set to run at the expiration of an active felony sentence).

As to the prohibition on stacking Class 3 misdemeanors, I’m not sure if that rule continues to apply when the misdemeanors follow a felony. The prohibition says it applies when “*all*” convictions are for Class 3 misdemeanors, and so adding a felony would arguably render the rule inapplicable. On the other hand, in context, the rule appears to be focused on “*all*” *misdemeanor* convictions, and so arguably applies to that part of the sentence notwithstanding the felony. It appears to be an open question as far as the case law goes.

Do the limits apply to suspended sentences? Yes. *Id.* at 70 (applying the rule to a set of suspended sentences set to run consecutively in the event of revocation). The rule is defined by reference to terms of “imprisonment,” not by reference to “active” punishments. Under Structured Sentencing, a term of imprisonment is imposed in a suspended sentence, too. So, the cumulative imprisonment time the court may impose is the same regardless of the disposition (active or suspended) of the sentences.

Going back to our first defendant (prior conviction level II with five Class A1 convictions), the cumulative maximum imprisonment is 150 days, regardless of whether the sentences are active or suspended. If you imposed consecutive 75-day active terms for the first two convictions, you would have used up all 150 days of the imprisonment permissible for this sentencing episode, and there would be no time left to suspend for the other three convictions. If you wanted probation to follow the active term, you’d need to discount the active sentences to leave some time available for the ensuing suspended sentences. For example, you could do two consecutive 50-day active sentences with a probationary 50-day suspended sentence to follow.

Do the rules apply to things sentenced at different times? I discussed that issue [here](#), noting that most people read the rules as applicable only to things sentenced at the same time. To read them otherwise would leave a defendant largely immune from punishment for future wrongdoing (future misdemeanor wrongdoing, anyway) if he or she were already on probation with maxed out consecutive suspended sentences. The argument to the contrary is spelled out in the linked post.

The rules do not appear to apply in any way to criminal contempt sentences. See *State v. Burrow*, ___ N.C. App.

___, 789 S.E.2d 923 (2016) (affirming six consecutive 30-day sentences for contempt). That case is discussed [here](#).

This is my last post of 2016. Thank you for another year of hard work and thoughtful engagement. I wish you all a peaceful holiday season and Happy New Year!