

## Jail Credit for Split Sentences (Isn't That Special?)

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*Editor's note: SOG faculty member Alyson Grine -- today's guest blogger -- holds the position of Defender Educator. As her title suggests, her principal client group is public defenders and court-appointed lawyers, but she frequently addresses issues of concern to all participants in the criminal justice system.*

Assistant Public Defender "Tom" from eastern North Carolina reports that there is disagreement and confusion among judges, attorneys, and clerks in his region about whether a defendant is entitled to jail credit for time served pursuant to a split sentence following revocation of probation. Tom frames the issue as follows:

*Client pleads to a felony in Superior Court and receives a sentence of 13-16 months in DOC, suspended on various conditions including that client must serve a 90 day split to begin immediately, then be on supervised probation thereafter. Client does the 90 day split, comes out on probation, and 6 months later is back in court for a probation violation hearing. Judge finds willful violation, revokes the suspended sentence, and activates the 13-16 months in DOC. "Sheriff, he's in your custody." Does client get 90 days credit towards the 13-16 months?*

Good news, Tom: this is a rare "cut-and-dried" legal issue. A defendant *does* get credit upon revocation of probation for time spent in jail pursuant to a split sentence. This issue was squarely addressed in *State v. Farris*, 111 N.C. App. 254 (1993), *aff'd* 336 N.C. 552 (1994). "[A] defendant who has served, pursuant to special probation, an active sentence, is entitled to credit for that time on any sentence imposed upon revocation of probation." *Id.* at 256. The Court of Appeals interpreted G.S. 15-196.1, which states that a defendant shall receive credit for any time served "as a result of the charge that culminated in the sentence." Time served in satisfaction of the active portion of a split sentence falls in that broad category.

Tom and his colleagues in the east are not the only ones who are unclear with regard to this issue. N.C. Prisoner Legal Services (NCPLS) attorney Tucker Charns reports that prisoner complaints reach NCPLS from all over the state, describing facts similar to those provided by Tom. In fact, this is one of the most common errors NCPLS attorneys encounter—they've saved inmates (and the taxpayers) over 35,000 days of surplus jail time in the past 18 months alone.

Here's why people may be confused. Another provision, G.S. 15A-1351(a), addresses jail credit in the context of split sentences, and states that a judge who is imposing a split sentence has the discretion to award jail credit to either the suspended portion or the active portion of the split. "In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation." G.S. 15A-1351(a). This statute applies at the time the judge is sentencing the defendant to the split, and lays out two ways the judge may award credit for those days the defendant spent in pre-trial confinement. G.S. 15A-1351(a) does not apply to Tom's situation: "By its plain language, this part of the statute simply has no application to sentencing upon revocation of probation. Instead, section 15-196.1 . . . must control." *Farris*, 336 N.C. 552, 555-56.

Incidentally Tom, another member of the public defender community argued this matter before the NC Supreme Court after the Attorney General’s petition for discretionary review was allowed in *Farris*. Julie Lewis of the Mecklenburg office represented the defendant-appellee, with the result that the NC Supreme Court “approve[d] the careful reasoning of the Court of Appeals.” *Id.* at 556. Ms. Lewis was kind enough to impart this wisdom: “The whole state needs to get a copy of *Farris*, and quick!”