



Modifying a Sentence upon Revocation of Probation

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When a person's probation is revoked, his or her suspended sentence is generally activated in the same manner in which it was entered by the sentencing judge. But a lot can happen—both good and bad—in the time between sentencing and revocation, and sometimes a change is in order. This post considers the extent of a judge's authority to modify a suspended sentence upon revocation of probation.

Sentence reduction. Under [G.S. 15A-1344\(d\)](#), a judge may, before activating a sentence, reduce it. The reduction must be consistent with subsection G.S. 15A-1344(d1), which limits the court's authority as follows. For a felon, the modified sentence must be within the same range (presumptive, mitigated, or aggravated) of the same grid cell used in determining the original sentence. Thus, a Class H/Level II probationer with a presumptive-range 8–19 month suspended sentence could have that sentence reduced to no less than 6–17 months upon revocation of probation. And if the same defendant had received a 6–17 month presumptive-range sentence in the first place, there would be no room for reduction at all, because that is the bottom of the presumptive range in that cell. For a misdemeanor, the court is likewise limited to the range of durations applicable to the defendant at sentencing. But that is not much of a limitation, because every cell on the misdemeanor grid allows for a sentence as short as 1 day.

It is not clear whether the court may reduce an impaired driving sentence at the point of revocation. G.S. 15A-1344(d) says any reduction must be consistent with subsection (d1), but that subsection uses language exclusive to Structured Sentencing (Article 81B, prior conviction level, etc.), raising some doubt about whether any reduction is allowed at all for a DWI. On the other hand, before 1994, G.S. 15A-1344(d) indicated that any sentence could be reduced upon revocation, suggesting that the Structured Sentencing references were added as conforming changes, and probably not intended to prohibit reductions for DWIs.

Is a sentence reduction permissible when the court imposes a period of confinement in response to violation (CRV)? Arguably not, as G.S. 15A-1344(d) empowers the court to reduce a sentence only "before activating a sentence." Albeit in a pre-Justice Reinvestment case, the court of appeals interpreted that subsection to mean the court is empowered to reduce a sentence "only when the prison sentence is activated and the probation is revoked." *State v. Mills*, 86 N.C. App. 479 (1987). To the extent that CRV is viewed as an alternative to activation, it would seem that no reduction is allowed at that point. The issue has yet to come before the appellate courts.

Consecutive and concurrent sentences. If a probationer is subject to multiple suspended sentences, the judge revoking probation decides whether activated sentences will run concurrently or consecutively. As described in [this prior post](#), that is so regardless of whether the judgments suspending sentence specified that the sentences would run a particular way in the event of revocation. See *State v. Hanner*, 188 N.C. App. 137 (2008); *State v. Paige*, 90 N.C. App. 142 (1988). By default, activated sentences run *concurrently* upon revocation, G.S. 15A-1344(d), and my understanding is that the prison system will run them that way if the revocation order is silent on the issue, even if the original judgments suspending sentence called for consecutive sentences upon revocation. The bottom line is that the revoking judge has a choice, and it would be error for that judge to assume the revoked sentences were required to be activated as entered by the original sentencing judge. *State v. Partridge*, 110 N.C. App. 786, 788 ("It is apparent from a reading of the transcript . . . that [the trial judge] felt that he did not have the authority to [order concurrent sentences]. Therefore, defendant is entitled to a new revocation of probation hearing.").

Consolidation. An activated sentence may not be consolidated for judgment with another conviction obtained at a different time—including the new conviction that may have prompted revocation. Structured Sentencing provides that consolidation is allowed only for offenders “convicted of more than one offense at the same time,” [G.S. 15A-1340.15\(b\)](#) (felonies), or “same session of court,” [G.S. 15A-1340.22\(b\)](#) (misdemeanors).

Other issues. In addition to the sentence-length modifications described above, some other matters may arise for the first time upon revocation of probation. For example, a recommendation for work release during the activated sentence should not be made until probation is revoked. [G.S. 148-33.1\(j\)](#). The court may also make a recommendation about whether any restitution ordered should be made a condition of the defendant’s eventual post-release supervision, [G.S. 148-57.1](#), and, if so, whether it ought to be paid out of the defendant’s work release earnings, [G.S. 15A-1340.36\(c\)](#).