More Credit Issues

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Categories : Sentencing, Uncategorized

Tagged as : jail credit

Date : April 2, 2009

After Alyson's post from yesterday, I thought it might be a good time to recap some of the other sentence credit issues our courts have addressed over the years. These decisions are grounded in G.S. 15-196.1, which requires credit 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." The statute expressly includes time spent in custody pending "trial, trial de novo, appeal, retrial, or pending parole and probation revocation hearing." Here are some other things the courts have told us count for credit:

* Presentence commitment for study. *State v. Powell*, 11 N.C. App. 194 (1971)

* Hospitalization to determine competency to stand trial. *State v. Lewis*, 18 N.C. App. 681 (1973)

* A federal court interpreted G.S. 15-196.1 to include time spent in confinement in another state awaiting extradition. *Childers v. Laws*, 558 F. Supp. 1284 (W.D.N.C. 1983)

* The active portion of a split sentence. *State v. Farris*, 336 N.C. 553 (1994)

* Time spent in the now-defunct IMPACT boot camp program. *State v. Hearst*, 356 N.C. 132 (2002)

* Time spent at DART-Cherry as a condition of probation. *State v. Lutz*, 177 N.C. App. 140 (2006)

* Time spent imprisoned for contempt under G.S. 15A-1344(e1). *State v. Belcher*, 173 N.C. App. 620 (2005)

* Credit should NOT be awarded for time spent under electronic house arrest. *State v. Jarman*, 140 N.C. App. 198 (2000)

The *Belcher* decision, granting credit for time spent jailed for criminal contempt under G.S. 15A-1344(e1), raises a question for me. In my mind, contempt for probation violations (added to the law in 1994) was intended to serve at least two purposes. First, it allows the judge to order some jail time in response to a violation without having to resort to the nuclear option of revocation. (But a judge could always do *that* by ordering special probation in response to a violation.) Second, it gives the judge some leverage over the probationer with a very short suspended sentence who might not be super-motivated to comply with his or her conditions of probation. Giving credit for contempt time seems incompatible with this second purpose. Taking the rule to its logical conclusion, I wonder: can a judge—knowing that contempt time counts for credit against a suspended sentence—order 30 days for contempt (the maximum allowed under Chapter 5A) for a probationer with only 20 days suspended?

Speaking of credit, I got a request the other day to elaborate on the "good time" rules for DWI sentences. G.S. 148-13(b) specifically authorizes the Secretary of Correction to issue regulations on sentence reductions for impaired driving offenders. The Secretary has done that in the Division of Prisons sentence reduction credit policy (thank you, DOC, for sharing that and letting me post it). As you can see on pages 1 and 2, good time credit—awarded at the rate of one day of credit for each day served in custody without an

infraction—is available to DWI inmates, regardless of their offense date. The rule's reach extends beyond the prisons; under G.S. 148-13(e), jail administrators are required to follow it. The only limit on the rule is G.S. 20-179(p)(2), which says good time credit may not reduce the mandatory minimum period of imprisonment required by law for DWI.