

No Appeal of Confinement in Response to Violation

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Categories : [Procedure](#), [Sentencing](#), [Uncategorized](#)

Tagged as : [appeal](#), [confinement in response to violation](#), [CRV](#), [justice reinvestment](#), [probation](#), [romero](#)

Date : July 16, 2013

There are frequently asked questions, and then there are *very* frequently asked questions. Regarding Justice Reinvestment, there has been no more frequently asked question than this: Can you appeal a CRV? We learned this morning that you cannot. The court of appeals held in [State v. Romero](#) that there is no right to appeal from a period of confinement in response to violation imposed under [G.S. 15A-1344\(d2\)](#).

Mr. Romero was a felony probationer who committed technical violations of probation in 2012. In response, the court ordered a 90-day CRV. The defendant appealed, but the State filed a [motion to dismiss the appeal](#) on the grounds that there is no statutory right to appeal a CRV.

The court of appeals agreed. The court noted that [G.S. 15A-1347](#) allows a probationer to appeal only when the court “activates a sentence or imposes special probation.” Because CRV is neither of those things, and because a defendant’s right to appeal is purely a creation of state statute, the court concluded that there is no right to appeal a CRV. The court rejected the defendant’s argument that imposition of a CRV is a final judgment of a superior court, generally appealable under [G.S. 7A-27\(b\)](#).

In a footnote, the court declined to express any opinion about whether a different rule would apply to a so-called terminal CRV—that is, one that uses up the defendant’s entire remaining suspended sentence. Slip op. at 6 n. 1. Mr. Romero had additional time left to serve on his 6–8 and 18–22 month felony sentences, and so the court didn’t need to consider whether his 90-day CRV was a “de facto revocation” for purposes of G.S. 15A-1347.

Romero involved an appeal from superior court to the appellate division, but the same rationale would seem to preclude de novo appeals from district to superior court. The same statute (G.S. 15A-1347) governs, and it likewise allows appeals from district to superior court only when the district court judge “activates a sentence or imposes special probation.” On the other hand, given the typical length of suspended sentences for misdemeanors, district court CRVs are much more apt to be terminal CRVs, and thus may constitute the type of “de facto revocation” on which the court of appeals expressly reserved judgment in *Romero*.

Notwithstanding *Romero*, I continue to think that other avenues of review may be possible for some errors related to CRV. I discussed those briefly in [this prior post](#) (FAQ number 14), and on pages 72–73 of the *Justice Reinvestment Act* [book](#).