

Dispositions in Criminal Contempt

2014 CHILD SUPPORT ENFORCEMENT: REPRESENTING RESPONDENTS

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1. Statutory punishment for criminal contempt (G.S. 5A-12)

(a) A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three, except that:

(1) A person who commits a contempt described in G.S. 5A-11(8) [refusal to testify or produce other information after being granted immunity] is subject to censure, imprisonment not to exceed 6 months, fine not to exceed five hundred dollars (\$500.00), or any combination of the three;

(2) A person who has not been arrested who fails to comply with a nontestimonial identification order, issued pursuant to Article 14 of Chapter 15A of the General Statutes is subject to censure, imprisonment not to exceed 90 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three; and

(3) A person who commits criminal contempt by failing to comply with an order to pay child support is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three. However, a sentence of imprisonment up to 120 days may be imposed for a single act of criminal contempt resulting from the failure to pay child support, provided the sentence is suspended upon conditions reasonably related to the contemnor's payment of child support.

...

(c) The judicial official who finds a person in contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt if warranted by the conduct of the contemnor and the ends of justice.

2. Consecutive sentences for contempt

There is no express authorization for or prohibition against imposition of consecutive sentences for multiple instances of contempt. There have been North Carolina cases involving "boxcar" contempt sentences, but they were resolved on other grounds, eliminating the need to address the stacking. *State v. James*, 159 N.C. App. 229 (2003) (unpublished) (three consecutive 30-day terms ordered in

response to a volley of obscenities lobbed at the judge); *Disciplinary Hearing Commission v. Frazier*, 354 N.C. 555 (2001) (sixteen consecutive 30-day sentences for unauthorized practice of law).

A possible argument against consecutive sentences for contempt would make the following points.

- Contempt is not a felony, so it is treated as a misdemeanor under G.S. 14-1.
- Contempt is unclassified and generally punishable by a maximum punishment of 30 days or less, and so it is like a Class 3 misdemeanor under G.S. 14-3(a)(2).
- Under the Structured Sentencing rules for misdemeanors, consecutive sentences may not be imposed if all convictions are for Class 3 misdemeanors. G.S. 15A-1340.22.

If not binding as a technical matter, the argument may have some appeal as a matter of proportionality.

3. Probation for contempt

A sentence for criminal contempt may be suspended with conditions and the defendant placed on probation. *Bishop v. Bishop*, 90 N.C. App. 499 (1988); G.S. 5A-12(a)(3).

It is unclear to what extent probation for contempt incorporates the rules for probation in ordinary criminal cases, set out in Article 82 of G.S. Chapter 15A. There is some argument that under G.S. 15A-1341(a), Article 82 applies only to defendants sentenced under Structured Sentencing or for impaired driving. On the other hand, in the absence of any other statutory provision, Article 82 is a suitable gap filler for understanding the contours of contempt probation. In fact, the court of appeals has occasionally cited to portions of Article 82 when evaluating probation imposed for contempt. For example, in *State v. Key*, 182 N.C. App. 624 (2007), the court noted the requirement in G.S. 15A-1343(b1)(10) that probation conditions be reasonably related to the defendant's rehabilitation.

Knowing the extent to which Article 82 applies would inform the answers to many questions about contempt probation, including the following.

- May the court order supervision by a probation officer?
- If so, does the \$40 per month supervision fee apply?
- Do the standard rules on the permissible length of the probation period apply?
- Do the regular conditions of probation set out in G.S. 15A-1343(b) apply? Those conditions include, among others:
 - Commit no criminal offense.
 - Remain within the jurisdiction of the court.
 - Possess no firearm, explosive device or other deadly weapon.
 - Warrantless searches by probation officers and law enforcement officers.
 - Drug screening upon request.
- May the court impose other special conditions of probation used in ordinary criminal cases, such as electronic house arrest or satellite-based monitoring? If so, must the person be ordered pay the standard fees for the equipment (\$90 initially, plus \$4.37 per day. G.S. 15A-1343(c2))?

- Do the procedural requirements of ordinary probation violation hearings, including the strict requirements for timely filing of a violation report, apply?
- Do the recently enacted limits on a judge's authority to revoke a person's probation (generally referred to as Justice Reinvestment) apply?

Regardless of whether the statutes on revocation procedure apply to contempt probation proceedings, the constitutional principles that inform those statutes apply. As a matter of due process, before a person's probation may be revoked he or she is entitled to notice and a hearing. At the hearing, evidence against the probationer must be disclosed and he or she must be given an opportunity to speak and present relevant information. *Morrissey v. Brewer*, 408 U.S. 471 (1972). When monetary violations are at issue, a person is generally entitled to an opportunity to show a good faith inability to pay. *Bearden v. Georgia*, 461 U.S. 660 (1983).

4. Future consequences of contempt punishment

A contempt conviction does not count for points as a prior conviction under Structured Sentencing. *State v. Reaves*, 142 N.C. App. 629 (2001).

By the same rationale, a defendant who commits a new crime while on probation for contempt is arguably not eligible for the additional sentencing point possible under G.S. 15A-1340.14(b)(7) for crimes committed while on probation. Likewise, a person found in violation of contempt probation may not, when being sentenced for a future offense, be eligible for the aggravating factor possible under G.S. 15A-1340.16(d)(12a) for findings of violation within the previous 10 years.