

STATE OF NORTH CAROLINA  
COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.

STATE OF NORTH CAROLINA, )  
)  
)  
v. )  
)  
)  
)  
)  
Defendant. )

**MOTION FOR  
APPROPRIATE RELIEF**

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NOW COMES the Defendant, with the consent of the State, who respectfully moves this Court, pursuant to N. C. Gen. Stat. § 15A-1415(b)(8), for appropriate relief to vacate his current sentence and to resentence Defendant as a Prior Record Level IV. Defendant's prior conviction for common law robbery in ] County File No. was classified incorrectly as a Class D felony rather than a Class G felony. As a result, he was sentenced as a level V when he should have been a level IV. In support of this Motion, the Defendant shows the Court the following:

FACTS

1. On 7 February 2011, Defendant was indicted by a grand jury for Sale of a Schedule VI substance in with an offense date of 27 January 2011. (Exhibit 1 - Indictment)
2. On 24 May 2011, Defendant entered a guilty plea to sale of marijuana in and PWISD cocaine in . The plea agreement specified that he would receive a consolidated sentence of 12 to 15 months and the sentence would be suspended. (Exhibit 2 - Transcript of Plea)
3. Defendant was sentenced to 12 to 15 months as a prior record level V with 14

prior record points, which was the bottom of the presumptive range as a level V. The sentence was suspended and Defendant was placed on 30 months of supervised probation. (Exhibit 3 – Judgment Suspending Sentence)

4. Defendant's prior record level was determined using a prior conviction in

. It is listed with a conviction date of 3/8/1995 and is listed twice as both common law robbery and robbery with a dangerous weapon. (Exhibit 4 – Prior Record Level Worksheet)

5. Defendant was convicted of common law robbery, which is a Class G felony, in , rather than robbery with a dangerous weapon. (Exhibit 5 – ACIS printout)

6. Defendant would have 12 prior record points, making him a Prior Record Level IV, by correctly assigning 4 points to the common law robbery conviction in rather than 6 points for the conviction for robbery with a dangerous weapon.

7. A violation report was filed and Defendant's sentence of 12 to 15 months was activated on 6 January 2014 before the Honorable (Exhibit 6 – Violation Report, Exhibit 7 – Judgment and Commitment upon Revocation)

8. A sentence of 12 to 15 months is in the aggravated range for a Class H felony, prior record level IV for the Structured Sentencing Act applicable to offenses on or after December 1, 2009.

9. Defendant is presently incarcerated in the North Carolina Department of Public Safety Division of Adult Correction at Correctional Institution and is indigent. (Exhibit 8 – DPS Offender Public Information)

#### ARGUMENT

**DEFENDANT IS ENTLITED TO A RESENTENCING BECAUSE HIS PRIOR RECORD LEVEL WAS DETERMINED WITH A CONVICTION THAT WAS INCORRECTLY CLASSIFIED AS A CLASS D FELONY RATHER THAN A CLASS G FELONY.**

Common law robbery is a class G felony that is assigned four points toward a Defendant's prior record level. N.C. Gen. Stat. §§ 14-87.1, 15A-1340.14(b) (2009).

On 8 March 1995, Defendant pled guilty to common law robbery in Exhibit 5. On his prior record level worksheet, the conviction was incorrectly listed as robbery with a dangerous weapon, which is a Class D felony, and it was assigned six (6) prior record points. Had the conviction been correctly listed and counted as common law robbery, which is a Class G felony that is assigned four (4) points, Defendant would have had twelve (12) prior record points making him a level IV. N.C. Gen. Stat. § 15A-1340.14(c) (2009). His current sentence of 12 to 15 months is in the aggravated range for a Class H felony as a prior record level IV for offenses on or after December 1, 2009. N.C. Gen. Stat. § 15A-1340.17 (2009). Defendant's plea specified that he would be sentenced in the presumptive range and there were no findings of any aggravating factors. Accordingly, Defendant is entitled to be resentenced in the presumptive range as a prior record level IV.

#### CONCLUSION

The Defendant was sentenced in error by assigning six points to a prior conviction that should have only been assigned four points. This error prejudiced Defendant because his sentence is in the aggravated range as a Prior Record Level IV. Accordingly, Defendant's sentence should be vacated and the court should resentence him in the presumptive range as a Prior Record Level IV.

PRAYER FOR RELIEF

WHEREFORE, the Defendant prays the Court for the following relief:

1. That this Court vacate Defendant's sentence and sign the proposed attached Consent Order Regarding Resentencing;
2. For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 3rd day of April, 2014.

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Attorney for Defendant

EXHIBITS

1. Indictment –
2. Transcript of Plea
3. Judgment Suspending Sentence
4. Prior Record Level Worksheet
5. ACIS printout
6. Violation Report
7. Judgment and Commitment upon Revocation
8. Department of Public Safety Offender Public Information