CHECKLIST FOR GUILTY PLEA APPEALS

1	Did you determine whether the indictment was proper? (*See* pp. 14-15)	
2	Did you determine whether the trial court properly calculated the defendant's prior record level calculation? (*See* pp. 3-8)	
3	Did you determine whether the trial court imposed a proper sentence based on the offense classification and the defendant's prior record level? (*See* pp. 9-10)	
4	Did you use the correct sentencing grid to check the defendant's sentence? (*See* p. 9)	
5	If the trial court imposed an aggravated sentence, did you determine whether the court complied with N.C. Gen. Stat. § 15A-1340.16? (*See* pp. 2-3)	
6	If the trial court imposed an aggravated sentence, did you determine whether any of the aggravating factors were based on evidence that also supported any elements of the offenses? (*See* pp. 2-3)	
7	If the court imposed probation, did you determine whether the probationary sentence was proper? (*See* pp. 20-21)	
8	If the defendant filed a motion to suppress, did you determine whether the defendant reserved the right appeal the denial of the motion? (*See* p. 11)	
9	If the defendant filed a motion to suppress, did you determine whether the defendant gave notice of appeal from the judgment? (*See* p. 11)	
10	Did you determine whether the defendant's guilty plea was knowing, intelligent, and voluntary? (*See* pp. 16-17)	
11	Did you determine whether the State presented a sufficient factual basis for each element of each charge? (*See* pp. 17-19)	
12	Did you determine whether the defendant can get the benefit of the plea bargain? (*See* pp. 19-20)	

COMMON ISSUES IN GUILTY PLEA APPEALS

Appellate Advocacy Foundations
June 20, 2023
David Andrews, Assistant Appellate Defender

Disclaimer: This document is not intended to be an exhaustive list of issues that can be raised in guilty plea appeals. Instead, the purpose of this document is to describe issues that occur with some frequency in such appeals. Please do not rely on this document as a substitute for independent legal research.

CAUTION: Guilty plea appeals often entail risks to client. It is important that you are aware of these risks and that you explain these risks to the client.

If you are assigned to an appeal in which there is an error that, if successfully challenged, could invalidate the guilty plea, you must advise the client of the risks of raising the error on appeal. If the client understands the risks and wants to you to make the argument, be sure to get the client's written permission.

There are at least two risks that guilty plea appeals entail. First, if you make an argument that invalidates all or part of the plea agreement, the plea agreement will no longer be valid. *State v. High*, 271 N.C. App. 771, 777, 845 S.E.2d 150, 155 (2020). Second, if the State re-prosecutes the defendant after the case is remanded, the defendant will not be protected from receiving a higher sentence. *See* N.C. Gen. Stat. § 15A-1335 (the protection against receiving a higher sentence after a successful appeal "shall not apply when a defendant . . . succeeds in having a plea of guilty vacated."). These risks can arise through different arguments, including (but not limited to) arguments about the court's prior record level calculation, the factual basis for the plea, the voluntariness of the plea, or restitution. If you identify an argument, be sure to determine whether it will invalidate the plea agreement or the guilty plea before raising the argument on appeal.

If your client is placed on **probation** or **special probation**, be sure to find out if the client has been released.

Probation and special probation are stayed by operation of N.C. Gen. Stat. § 15A-1451. If for some reason, the client is incarcerated, you should consider filing a petition for writ of supersedeas to enforce the stay and ensure that the client is not incarcerated while the appeal is pending. For more information on this issue, please see section 19 below (on pages 20-21).

Issues that can be raised on direct appeal: There are only a few issues that can be raised on direct appeal in guilty plea cases. See below for a description of those issues.

1. Evidentiary Issues for Aggravated or Mitigated Sentences (N.C. Gen. Stat. § 15A-1444(a1)):

    a. N.C. Gen. Stat. § 15A-1444(a1) specifies that a defendant may appeal as a matter of right the issue of whether his or her sentence is supported by "evidence introduced at the trial and sentencing hearing . . . ." Although this provision specifically refers to "evidence," the Court of Appeals has held that a defendant who stipulates to an aggravating factor for which the prosecutor has provided a factual basis may appeal under this provision. *State v. Graves*, No. COA17-1380, 2018 N.C. App. LEXIS 1174 at *6 (N.C. Ct. App. Dec. 4, 2018) (unpublished). However, you should also raise the argument in a petition for writ of certiorari out of an abundance of caution because *Graves* is unpublished and therefore not binding.
    b. In order to appeal under this provision, the defendant's sentence must be either in the aggravated or mitigated range. A defendant may not rely on this provision to challenge a presumptive range sentence. *State v. Mungo*, 213 N.C. App. 400, 403, 713 S.E.2d 542, 544 (2011).
        i. This is true even if the minimum sentence is at the top of the presumptive range and overlaps with the aggravated range. *State v. Daniels*, 203 N.C. App. 350, 355, 691 S.E.2d 78, 81 (2010).
    c. If the trial court imposed an aggravated sentence, be sure to scrutinize the evidence supporting the aggravating factors:
        i. If the evidence did not support an aggravating factor, the case must be remanded for re-sentencing. *State v. Thompson*, 64 N.C. App. 354, 354, 307 S.E.2d 397, 398 (1993).
        ii. Evidence necessary to prove an element of the offense may not be used to support any aggravating factor. N.C. Gen. Stat. § 15A-1340.16(d). Consequently, if the evidence supporting an aggravating factor also supported the underlying conviction, the aggravating factor is improper and the sentence must be reversed. *State v. Heggs*, 280 N.C. App. 95, 866 S.E.2d 320 (2022).
        iii. A stipulation to an aggravating factor will not prevent the defendant from challenging the aggravating factor on appeal. *State v. Bacon*, 228 N.C. App. 432, 434, 745 S.E.2d 905, 907 (2013).
    d. If the defendant received an aggravated sentence, make sure that (1) the State gave notice of the aggravating factors and (2) the defendant either admitted to any aggravating factors after a plea colloquy or the State proved the aggravating factors beyond a reasonable doubt and a jury returned a verdict finding the aggravating factors. N.C. Gen. Stat. § 15A-1340.16.
        i. It is possible that the Court of Appeals will conclude that arguments involving the lack of notice or defects in plea procedures for aggravating factors are not covered by N.C. Gen. Stat. § 15A-1444(a1). If either issue arises in your case, you should consider raising the issues in both a brief and a petition for writ of certiorari.
    e. If the defendant received an aggravated or mitigated sentence, make sure that the trial court did not reject uncontested evidence of mitigating factors.

i. Even if the defendant received a mitigated sentence, the defendant can still challenge mitigating factors that were supported by the evidence, but were rejected by the trial court. *State v. Mabry*, 217 N.C. App. 465, 471, 720 S.E.2d 697, 702 (2011).

f. **Caution**: If the plea agreement specifies an aggravated range sentence but the evidence does not support one or more aggravating factors or the aggravating factors are otherwise invalid, be sure to advise the client that there is a risk the client will receive a higher sentence on remand if the appeal is successful. If the client still wants to proceed with the appeal, get the client's written permission.

2. Prior Record Level Calculation (N.C. Gen. Stat. § 15A-1444(a2)(1)):

a. Determine whether the defendant or his trial attorney stipulated to the defendant's prior convictions.
   i. The defendant or his trial attorney may stipulate to prior convictions orally or by signing the prior record level worksheet. *State v. Hussey*, 194 N.C. App. 516, 523, 669 S.E.2d 864, 868 (2008). A blank worksheet, which includes a section for stipulating to convictions, is included in the appendix. (A pp 1-2)
   ii. In addition, the defendant or his attorney may stipulate to the classification of the offense. *State v. Arrington*, 371 N.C. 518, 526, 819 S.E.2d 329, 334 (2018). However, when there is "clear record evidence demonstrating the parties' stipulation was an error or mistaken," the trial court "should defer to the record evidence rather than a defendant's stipulation." *State v. Green*, 266 N.C. App. 382, 390, 831 S.E.2d 611, 617 (2019).
   iii. The defense attorney's silence during the sentencing hearing can sometimes amount to a stipulation. *See State v. Wade*, 181 N.C. App. 295, 298, 639 S.E.2d 82, 85 (2007) (holding that the defense attorney stipulated to convictions listed on a worksheet because he had an opportunity to object to the convictions, but used the opportunity to present mitigating factors). However, a stipulation must be "definite and certain." *State v. Hurt*, 361 N.C. 325, 329, 643 S.E.2d 915, 918 (2007). To that end, a notation in the punishment class section of the plea transcript regarding a particular prior record level does not amount to a stipulation in the absence of other indications that the defendant stipulated to his prior record level. *State v. Braswell*, 269 N.C. App. 309, 315, 837 S.E.2d 580, 584 (2020).
   iv. For a discussion of what defendants can and cannot stipulate to, please see this post on the North Carolina Criminal Law Blog.

b. If the defendant did not stipulate to his prior convictions, make sure that the State proved that the convictions existed as required by N.C. Gen. Stat. § 15A-1340.14(f).
   i. An unsigned prior record level worksheet does not satisfy the State's burden of proof. *State v. Riley*, 159 N.C. App. 546, 557, 583 S.E.2d 379, 387 (2003).
   ii. A Division of Criminal Information printout generally satisfies the State's burden of proof. *State v. Safrit*, 154 N.C. App. 727, 730, 572 S.E.2d 863, 866 (2002).
   iii. If the State's evidence indicates that the defendant was convicted of an offense that could be classified different ways, but the evidence does not

indicate which classification is correct, the State has failed to satisfy its burden of proof. *See State v. McNeill*, ___ N.C. App. ___, ___, 821 S.E.2d 862, 864 (2018) (remanding for re-sentencing where the State failed to prove whether the defendant had previously been convicted of the Class 1 misdemeanor version of possession of drug paraphernalia or the Class 3 misdemeanor version).

c. Make sure the trial court properly calculated the defendant's prior record level points:
    i. For an example of an appeal involving several arguments about a trial court's improper prior record level calculation, please see Issue II in the defendant's brief in *State v. Glover*, No. COA18-538.
    ii. Even if the defendant stipulated to the existence of his prior convictions, you can still challenge the trial court's erroneous calculation of the defendant's prior convictions or sentencing points on appeal. *See, e.g., State v. Fair*, 205 N.C. App. 315, 315, 695 S.E.2d 514, 515 (2010) ("Unlike a stipulation to the existence of a prior conviction, which is binding on appeal, the trial court's determination as to whether a conviction may be counted for felony sentencing purposes is reviewable on appeal.").
    iii. It is improper for the court to assess points for convictions that were joined with the conviction that is the subject of the appeal. *State v. West*, 180 N.C. App. 664, 669-70, 638 S.E.2d 508, 512 (2006).
    iv. The trial court may not assess any points for prior Class 2 or Class 3 misdemeanors. N.C. Gen. Stat. § 15A-1340.14(b). *State v. Sanders*, 225 N.C. App. 227, 229, 736 S.E.2d 238, 240 (2013).

d. Make sure that any points the trial court assessed for traffic offenses were proper:
    i. The only misdemeanor traffic offenses that count toward a defendant's prior record level are impaired driving, impaired driving in a commercial vehicle, and misdemeanor death by vehicle. N.C. Gen. Stat. § 15A-1340.14(b)(5). Thus, a conviction for driving while license revoked, which is a Class 1 misdemeanor in some circumstances, does not provide any sentencing points. *Id*.; *State v. Flint*, 199 N.C. App. 709, 728, 682 S.E.2d 443, 454 (2009).
    ii. Although the classification for impaired driving is not defined under N.C. Gen. Stat. § 20-138.1, it is a Class 1 misdemeanor for sentencing purposes. *State v. Armstrong*, 203 N.C. App. 399, 410, 691 S.E.2d 433, 441 (2010).

e. Make sure that any points related to status offenses were proper:
    i. Habitual Felon Charges:
        1. The trial court may not assess any prior record level points for any of the convictions that the State used to establish the defendant's habitual felon status. N.C. Gen. Stat. § 14-7.6; *State v. Miller*, 168 N.C. App. 572, 576, 608 S.E.2d 565, 567 (2005).
        2. An indictment for attaining habitual felon status may be returned before, after, or simultaneously with a substantive felony indictment. *State v. Blakney*, 156 N.C. App. 671, 675, 577 S.E.2d 387, 390 (2003). However, the trial court lacks jurisdiction to sentence a defendant as an habitual felon where the habitual felon indictment is issued before the offense date of the underlying substantive offense. *State v. Flint*, 199 N.C. App. 709, 718, 682 S.E.2d 443, 448 (2009).

3. If the State used more than three prior felony convictions in the habitual felon indictment, it may not use any of those convictions for prior record level points. *State v. Lee*, 150 N.C. App. 701, 704, 564 S.E.2d 597, 598 (2002). If it is unclear which felonies from the habitual felon charge were used to calculate the defendant's prior record level, and if removing one or more convictions could have changed the prior record level, the case must be remanded for re-sentencing. *State v. Bunting*, 279 N.C. App. 636, 640, 865 S.E.2d 758, 761-62 (2021).
4. If the defendant has multiple convictions that arose before turning 18, the State is only permitted to use one of the convictions to support a judgment for attaining habitual felon status. N.C. Gen. Stat. § 14-7.1.
5. A juvenile adjudication "is not synonymous with the conviction of a crime," *In re Jones*, 11 N.C. App. 437, 438, 181 S.E.2d 162, 162 (1971), and, thus, will not support a judgment for attaining habitual felon status. *See* N.C. Gen. Stat. § 14-7.1 (defining habitual felon as a person who has been "convicted of or pled guilty" to three felony offenses).
6. The trial court is allowed to assess points for convictions from the same calendar week as convictions the State uses to establish the defendant's habitual felon status. *State v. Truesdale*, 123 N.C. App. 639, 642, 473 S.E.2d 670, 672 (1996)
7. The trial court is allowed to sentence the defendant as an habitual felon based on the same prior felony that the State used to convict the defendant of possession of a firearm by a felon. *State v. Glasco*, 160 N.C. App. 150, 160, 585 S.E.2d 257, 264 (2003).

ii. Other Status Offenses:

1. The trial court may not assess points for a prior conviction of impaired driving that serves as the basis for the defendant's habitual impaired driving sentence. *State v. Gentry*, 135 N.C. App. 107, 111-12, 519 S.E.2d 68, 70-71 (1999).
2. It is permissible for a trial court to count prior DWI convictions that served as the basis for habitual impaired driving convictions in addition to the habitual impaired driving convictions when sentencing the defendant for a later offense. *State v. Hyden*, 175 N.C. App. 576, 581, 625 S.E.2d 125, 128 (2006).
3. The State may use felonies such as habitual impaired driving, habitual misdemeanor assault, and speeding to elude arrest as the substantive felony that is elevated under the habitual felon statutes. *State v. Baldwin*, 117 N.C. App. 713 (1995) (habitual impaired driving); *State v. Smith*, 139 N.C. App. 209 (2000) (habitual misdemeanor assault); *State v. Scott*, 167 N.C. App. 783 (2005) (speeding to elude arrest).
4. The trial court may enter judgment on a conviction for possession of a firearm by a felon and assess prior record level points for the conviction that serves as the basis for the defendant's status as a felon. *State v. Goodwin*, 190 N.C. App. 570, 578, 661 S.E.2d 46, 51 (2008).

f. If the defendant has prior out-of-state convictions, make sure that the State proved that the offenses were substantially similar to North Carolina offenses as required by N.C. Gen. Stat. § 15A-1340.14(e).
    i. Although the defendant may stipulate that the conviction was a felony or misdemeanor, *State v. Bohler*, 198 N.C. App. 631, 638, 681 S.E.2d 801, 806 (2009), the defendant may not stipulate that an out-of-state conviction is substantially similar to a North Carolina offense. *State v. Hanton*, 175 N.C. App. 250, 254, 623 S.E.2d 600, 604 (2006).
    ii. Make sure the State identified the relevant out-of-state statutes during the sentencing hearing.
        1. The State cannot wait until the defendant appeals to identify the relevant statutes. *State v. Sanders*, 367 N.C. 716, 719, 766 S.E.2d 331, 333 (2014); *State v. Henderson*, 201 N.C. App. 381, 388, 689 S.E.2d 462, 467 (2009).
        2. If the State presented statutes at the sentencing hearing, make sure the statutes were from the year the defendant was convicted. Statutes from later years are generally not sufficient to satisfy the State's burden of proof. State v. Burgess, 216 N.C. App. 54, 57-58, 715 S.E.2d 867, 870 (2011). However, evidence indicating that a later version of a statute was in effect when the defendant was convicted can satisfy the State's burden of proof. State v. Best, No. COA13-498, slip op. at 12 (N.C. Ct. App. Nov. 5, 2013) (unpublished).
    iii. When determining substantial similarity, the appellate court must "compar[e] the elements of [the] out-of-state and North Carolina offenses." *State v. Sanders*, 367 N.C. 716, 720, 766 S.E.2d 331, 334 (2014).
        1. When an out-of-state offense has elements that are similar to multiple North Carolina offenses, the rule of lenity requires appellate courts to interpret the out-of-state statute in favor of the defendant. *State v. Hanton*, 175 N.C. App. 250, 259, 623 S.E.2d 600, 606 (2006).
        2. However, the wording of the out-of-state provision and the North Carolina provision "do not need to precisely match in order to be deemed to be substantially similar." *State v. Graham*, 863 S.E.2d 752, 756 (N.C. 2021).
g. Make sure that the prior offenses are all from different dates as required by N.C. Gen. Stat. § 15A-1340.14(d).
    i. If the defendant was convicted of more than one offense during one calendar week in superior court, the court can only use the conviction for the offense with the highest point total. If the defendant was convicted of more than one offense in a single session of district court, the court can only use one conviction.
    ii. If the defendant sustained multiple convictions in both district court and superior court on the same day, the court can only use one district court conviction and one superior court conviction for prior record points. *State v. Fuller*, 179 N.C. App. 61, 70-71, 632 S.E.2d 509, 515 (2006).
h. Make sure that any sentencing enhancements relied on by the trial judge actually applied to the defendant:

i. The habitual-felon sentencing enhancement does not convert a lower-level felony for which the defendant was convicted into the higher-level felony for which he was punished. *State v. Vaughn*, 130 N.C. App. 456, 460, 503 S.E.2d 110, 113 (1998).

ii. N.C. Gen. Stat. § 15A-1340.17(f) permits courts to impose longer sentences for Class B1 through E felonies that are reportable convictions under North Carolina's sex offender registry laws. However, a defendant who is convicted of a lower-level felony who happens to be sentenced at a Class B1 through E level due to a habitual felon status enhancement does not qualify for the enhancement under N.C. Gen. Stat. § 15A-1340.17(f). *State v. Essick*, 282 N.C. App. 150, 156, 869 S.E.2d 787, 792 (2022)

i. Make sure that any points that the defendant received for something other than a prior conviction are proper.

i. The court can assess a point under N.C. Gen. Stat. § 15A-1340.14(b)(7) if the defendant committed the offense while on probation, parole, post-release supervision, while in prison, or while on escape from a correctional institution. However, the State must give the defendant notice of its intent to prove the point and then prove the point to a jury unless the defendant admits to it. N.C. Gen. Stat. § 15A-1340.16(a5). The Court of Appeals has upheld the assessment of a point under N.C. Gen. Stat. § 15A-1340.14(b)(7) despite the lack of a plea colloquy. *See State v. Marlow*, 229 N.C. App. 593, 602, 747 S.E.2d 741, 748 (2013) (a colloquy about the point would have been "inappropriate and unnecessary" under the circumstances). By contrast, the Court remanded a case for re-sentencing when the State failed to give notice of its intent to prove the point even though the defendant stipulated to the point. *State v. Crook*, ___ N.C. App. ___, 785 S.E.2d 771 (2016); *State v. Snelling*, 231 N.C. App. 676, 680, 752 S.E.2d 739, 743 (2014).

ii. If the trial court assessed a point because all of the elements of the current offense were included in the defendant's prior offenses, make sure the court's ruling on the point was proper.

1. If the trial court consolidated several offenses for sentencing, the comparison to prior offenses only involves the most serious offense. N.C. Gen. Stat. § 15A-1340.15(b); *State v. Prush*, 185 N.C. App. 472, 479, 648 S.E.2d 556, 560-61 (2007). The same is true even if all of the consolidated offenses were elevated to the same level because of the defendant attained habitual felon status. *State v. Gardner*, 225 N.C. App. 161, 170, 736 S.E.2d 826, 832 (2013).

j. Make sure that the trial court did not assess any points for prior adverse judgments that do not count toward the trial court's prior record level calculation.

i. Prior delinquency adjudications do not qualify for prior record level points. *State v. Tucker*, 154 N.C. App. 653, 659, 573 S.E.2d 197, 201 (2002).

ii. A judgment finding the defendant in criminal contempt does not count toward the defendant's prior record level calculation under the Structured Sentencing Act. *State v. Reaves*, 142 N.C. App. 629, 636, 544 S.E.2d 253, 258 (2001).

iii. A prior conviction that is elevated as part of a sentencing enhancement can only be counted as the original classification for the underlying substantive

offense. *State v. Flint*, 199 N.C. App. 709, 729, 682 S.E.2d 443, 454 (2009).

iv. A prior conviction from district court that the defendant appealed to superior court and that is pending at the time of the sentencing hearing does not qualify for prior record level points. N.C. Gen. Stat. § 15A-1340.11(7)(a).

v. The trial court may count a guilty plea or a guilty verdict for which prayer for judgment was continued toward the defendant's prior record level calculation. *State v. Graham*, 149 N.C. App. 215, 220, 562 S.E.2d 286, 289 (2002).

vi. It is proper for the court to count a guilty plea that the defendant entered as part of a conditional discharge under N.C. Gen. Stat. § 90-96(a) and for which the defendant was still on probation at the time of the sentencing hearing. *State v. Hasty*, 133 N.C. App. 563, 571-72, 516 S.E.2d 428, 433 (1999).

k. If the trial court's calculation was wrong, make sure the defendant was prejudiced:

i. An error in the trial court's prior record level calculation is subject to harmless error review. That is, a defendant is not entitled to re-sentencing unless the error resulted in the trial court sentencing the defendant at a higher prior record level. *See State v. Posner*, 277 N.C. App. 117, 123, 857 S.E.2d 870, 874 (2021) (the trial court's miscalculation "prejudiced Defendant because he should have been given thirteen prior record points and sentenced as a Level IV, instead of a Level V"); *State v. Snelling*, 231 N.C. App. 676, 680, 752 S.E.2d 739, 743 (2014) ("A sentencing error that improperly increases a defendant's PRL level is prejudicial.").

ii. As far back as 2005, the Court of Appeals held that the defendant is not prejudiced by the trial court's improper prior record level calculation if the sentence the defendant received was within the range of the correct prior record level. *See State v. Ledwell*, 171 N.C. App. 314, 321, 614 S.E.2d 562, 567 (2005). However, *Ledwell* does not appear to be binding because it conflicts with Supreme Court precedent and at least one earlier decision of the Court of Appeals. In *State v. Williams*, 355 N.C. 501, 587, 565 S.E.2d 609, 659 (2002), the Supreme Court held that the defendant was prejudiced by the trial court's decision to sentence him at a higher record level "because the trial court could have sentenced defendant to lesser time . . . if the proper prior record level had been calculated." Based on *Williams*, the Court of Appeals held that the trial court's erroneous prior record level calculation "requires remand." *State v. McNeill*, 158 N.C. App. 96, 99, 580 S.E.2d 27, 29 (2003).

iii. If the trial court sentenced the defendant at the wrong prior record level, be prepared to argue that *Ledwell* is not binding and that re-sentencing is required under *Williams* and *McNeill*.

l. **Caution:** If the plea agreement specifies a particular sentence but there are errors in the trial court's calculation of that defendant's prior record level, think carefully about how to proceed with the appeal.

i. If you intend to challenge the trial court's assessment of points for some of the defendant's prior convictions, you should only do so if you also intend to argue that the entire plea agreement is invalid. Otherwise, arguments about the trial court's prior record level calculation are of no use to the client. To that end, be aware that the Court of Appeals recently held in *State v. Green*, 266 N.C. App. 382, 392, 831 S.E.2d 611, 618 (2019), that the defendant

"successfully repudiated" the plea agreement, which specified an "active sentence of 87-117 months bottom mitigated," after successfully challenging the trial court's inclusion of two prior convictions in its prior record calculation.

ii. In addition, if you intend to challenge the trial court's assessment of one or more of the defendant's prior convictions and to argue the plea agreement is invalid in light of the court's improper assessment, be sure to get the client's written permission to do so. If you are successful, there is a risk that the client will receive a higher sentence on remand.

3. Sentence Disposition (N.C. Gen. Stat. § 15A-1444(a2)(2)):

a. Make sure that the type of sentence that the defendant received was proper based on the felony classification and the defendant's prior record level.

i. There are three types of sentence dispositions: (1) community, (2) intermediate, and (3) active. N.C. Gen. Stat. §§ 15A-1340.11, 15A-1340.17(c)(1).

1. A defendant sentenced to community punishment may not be given an active sentence or special probation. N.C. Gen. Stat. § 15A-1340.11(2). However, community punishment may involve supervised or unsupervised probation. N.C. Gen. Stat. § 15A-1341(b).
2. A defendant sentenced to community punishment for the Class A1 misdemeanor of stalking must be placed on supervised probation. N.C. Gen. Stat. §§ 14-277.3A.
3. A defendant convicted of assault or affray, and who inflicts serious injury upon another person or who uses a deadly weapon on a person with whom the person has a personal relationship and in the presence of a minor must be placed on supervised probation if the court imposes community punishment. N.C. Gen. Stat. § 14-33(d).
4. A defendant sentenced to intermediate punishment must be placed on supervised probation. N.C. Gen. Stat. § 15A-1340.11(6). Intermediate punishment may include special probation. *Id*.

ii. A defendant convicted of a Class I felony with a prior record level I, II, or III cannot receive an active sentence. N.C. Gen. Stat. § 15A-1340.17.

iii. Special probation (otherwise known as a split sentence) is only available for defendants who are subject to intermediate punishment. N.C. Gen. Stat. § 15A-1351(a). According to the sentencing grid under N.C. Gen. Stat. § 15A-1340.17, the following defendants are not eligible for intermediate punishment and, therefore, cannot receive split sentences:

1. A defendant convicted of a Class I felony with a prior record level I.
2. A defendant convicted of a Class H felony with a prior record level VI.
3. A defendant convicted of a Class G felony with a prior record level V or VI.
4. A defendant convicted of a Class F felony with a prior record level IV, V, or VI.
5. A defendant convicted of a Class E felony with a prior record level III,

IV, V, or VI.

6. A defendant convicted of a Class A-D felony.

4. Sentence Calculation (N.C. Gen. Stat. § 15A-1444(a2)(3)):

a. Make sure that the sentence reflects the correct part of the sentencing grid for the offense class and prior record level for the defendant.
b. Over the past several years, the General Assembly has repeatedly changed the laws that govern criminal sentences. Be sure to apply the correct sentencing grid for each of your appeals. Sentencing grids are available on the Judicial Branch website.
c. A defendant convicted of attaining habitual felon status must be sentenced four classes higher than the substantive offense and no higher than a Class C felony level. N.C. Gen. Stat. § 14-7.6.
d. If the defendant pled guilty to conspiracy, attempt, or solicitation, make sure the trial court sentenced the defendant in accordance with N.C. Gen. Stat. §§ 14-2.4 (conspiracy), 14-2.5 (attempt), and 14-2.6 (solicitation). These inchoate crimes are generally, but not always, punished at a lower offense class.
e. If the defendant pled guilty based on a theory of acting in concert or aiding or abetting, the defendant is generally punished at the same level as a defendant who personally committed an offense. *State v. Williams*, 299 N.C. 652, 655-56, 263 S.E.2d 774, 777 (1980).
f. A defendant who pleads guilty to accessory before the fact is generally sentenced at the same level as a principal. N.C. Gen. Stat. § 14-5.2. A defendant who pleads guilty to accessory after the fact is generally sentenced two classes lower than the felony unless a different classification is specified by statute. N.C. Gen. Stat. § 14-7.
g. If the defendant pled guilty to trafficking, the sentence is specifically defined under N.C. Gen. Stat. § 90-95(h).
    i. There is no prior record level calculation for trafficking offenses.
    ii. The sentence for conspiracy to engage in trafficking is the same as trafficking. N.C. Gen. Stat. § 90-95(i).
    iii. The class for a conspiracy or attempt to commit a trafficking or non-trafficking drug offense is the same as the underlying drug offense that the defendant conspired or attempted to commit. N.C. Gen. Stat. § 90-98.
    iv. Although conspiracy to traffic is subject to the mandatory sentence for trafficking, attempted trafficking, though the same class as a completed trafficking crime, is subject to sentencing under the Structured Sentencing Act. *State v. Clark*, 137 N.C. App. 90, 97, 527 S.E.2d 319, 323 (2000).
h. If the defendant pled guilty to multiple misdemeanors, the court may not impose consecutive sentences that exceed twice the maximum sentence for the most serious misdemeanor. N.C. Gen. Stat. § 15A-1322(a).
i. **Caution:** If the plea agreement specifies a particular sentence but there are errors in the trial court's calculation of that sentence, think carefully about how to proceed with the appeal.
    i. As described in section 2(k) above, a successful challenge to the trial court's calculation could place the client at risk of receiving a higher sentence on remand.

5. Denial of a Properly Preserved Motion to Suppress (N.C. Gen. Stat. § 15A-1444(e)):

   a. Make sure that before pleading guilty, the defendant preserved the right to appeal the denial of the motion to suppress. Under N.C. Gen. Stat. § 15A-979(b), the defendant must give notice of his intent to appeal the suppression order to the prosecutor and the court before pleading guilty. *State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979). The most common way to comply with *Reynolds* is to include in the written transcript of plea a statement that the defendant reserves the right to appeal the denial of the suppression motion. A sample written plea agreement preserving the right to appeal the denial of a suppression motion is attached to this handout. (A p 3) However, the Court of Appeals has also held that a suppression motion that included a statement reserving the "right to appeal if this motion is denied and there is a subsequent plea of guilty" was sufficient to preserve the right to appeal the denial of a suppression argument when the suppression hearing preceded the plea hearing by only one day. *State v. Hernandez*, 170 N.C. App. 299, 303, 612 S.E.2d 420, 423 (2005).
      i. A stipulation in the record on appeal that the defendant gave proper notice of his intent to appeal the denial of a suppression motion is not sufficient to comply with *Tew* and *Reynolds*. *State v. Brown*, 142 N.C. App. 491, 493, 543 S.E.2d 192, 193 (2001).
      ii. For many years, there was some confusion about whether the Court of Appeals could review an unpreserved suppression motion through a writ of certiorari. *See, e.g., State v. Harris*, 243 N.C. App. 137, 141, 776 S.E.2d 554, 556 (2015) (holding that the Court of Appeals did not have authority to issue a writ of certiorari because the defendant failed to give notice of intent to appeal the suppression ruling). However, in *State v. Killette*, 381 N.C. 686, 873 S.E.2d 317 (2022), the Supreme Court overturned *Harris* and related cases, holding that the Court of Appeals has authority to grant certiorari review even where the defendant did not give notice of intent to appeal the denial of a motion to suppress.
   b. Make sure that after pleading guilty, the defendant gave notice of appeal from the judgment. If the defendant preserved the suppression issue, but failed to give notice of appeal from the judgment, the appeal will be dismissed. *State v. Miller*, 205 N.C. App. 724, 725, 696 S.E.2d 542, 543 (2010).
      i. If the defendant failed to give notice of appeal from the judgment or the notice of appeal is defective, you can file a petition for writ of certiorari on the ground that the right to prosecute the appeal was lost by failure to take timely action. *State v. Sutton*, 232 N.C. App. 667, 672, 754 S.E.2d 464, 467 (2014).
   c. Please note that the type of motion that can be appealed in this context is not just a motion to suppress evidence based on constitutional violations. If the defendant pled guilty, he may also appeal the denial a motion to suppress that is based on violations of the N.C. Rules of Evidence. *State v. Tate*, 300 N.C. 180, 184, 265 S.E.2d 223, 226 (1980); *State v. King*, 214 N.C. App. 114, 119, 713 S.E.2d 772, 776 (2011).

6. Denial of a Motion to Withdraw Guilty Plea (N.C. Gen. Stat. § 15A-1444(e)):

    a. If the defendant made the motion to withdraw prior to sentencing, the appellate court must apply the "fair and just reason" standard. *State v. Handy*, 326 N.C. 532, 391 S.E.2d 159 (1990). If the defendant made the motion after sentencing, the appellate court must apply the "manifest injustice" standard. *Id*.
    b. The defendant has the right to appeal a motion to withdraw made either before or after sentencing. *State v. Dickens*, 299 N.C. 76, 79, 261 S.E.2d 183, 185 (1980); *State v. Zubiena*, 251 N.C. App. 477, 796 S.E.2d 40 (2016); *State v. Salvetti*, 202 N.C. App. 18, 25, 687 S.E.2d 698, 703 (2010).
    c. Additional information on withdrawal motions may be found on the North Carolina Criminal Law Blog.
    d. Defendants generally have a difficult time prevailing in appeals involving withdrawal motions. However, there are three cases in which the defendants won. All of these cases involved pre-sentencing withdrawal motions:
        i. *State v. Handy*, 326 N.C. 532, 391 S.E.2d 159 (1990): The defendant moved to withdraw his guilty plea to first-degree murder less than twenty-four hours after he pled guilty. In vacating the guilty plea, the Supreme Court noted that the State had made "no argument that it would be substantially prejudiced by" allowing the defendant to withdraw the plea. *Id*. at 542, 391 S.E.2d at 164.
        ii. *State v. Deal*, 99 N.C. App. 456, 393 S.E.2d 317 (1990): The Court of Appeals vacated the defendant's guilty plea to armed robbery because the defendant had "low intellectual abilities" and was "laboring under a basic misunderstanding of the guilty plea process" when he pled guilty. *Id*. at 464, 393 S.E.2d at 321.
        iii. *State v. Suites*, 109 N.C. App. 373, 427 S.E.2d 318 (1993): The Court of Appeals vacated the defendant's guilty plea to accessory before the fact to second-degree murder because the principal was acquitted of second-degree murder and, under North Carolina precedent, the acquittal of the principal required the acquittal of any individual charged or convicted as an accessory.
    e. If the plea agreement calls for a specific sentence, but the trial judge imposes a different sentence, the defendant has a statutory right under N.C. Gen. Stat. § 15A-1024 to withdraw the guilty plea at the time the sentence is imposed.
        i. The State is generally held to a "greater degree of responsibility" for ambiguities in plea agreements. *State v. Blackwell*, 135 N.C. App. 729, 731, 522 S.E.2d 313, 315 (1999) (*quoting United States v. Harvey*, 791 F.2d 294, 300 (4th Cir. 1986)). In addition, "defendant should not be forced to anticipate loopholes that the State might create in its own promises." *Id*.
        ii. The Court of Appeals has held that "*any* change by the trial court in the sentence that was agreed upon by the defendant and the State requires the trial court judge to give the defendant an opportunity to withdraw his guilty plea." *State v. Marsh*, 265 N.C. App. 652, 655, 829 S.E.2d 245, 247 (2019).
        iii. If the trial court failed to inform the defendant of the right to withdraw the guilty plea under N.C. Gen. Stat. § 15A-1024, the proper remedy is to remand the case to the Trial Division for the defendant to withdraw the guilty plea. *State v. Wentz*, 284 N.C. App. 736, 742, 876 S.E.2d 814, 819 (2022).

7. Sex offender registration and satellite-based monitoring (N.C. Gen. Stat. § 7A-27(b)):

    a. If the trial court imposed an order requiring the defendant to register as a sex offender or submit to satellite-based monitoring, you can challenge the order on direct appeal even though the defendant pled guilty. *See State v. Pell*, 211 N.C. App. 376, 377, 712 S.E.2d 189, 190 (2011) (holding that, under N.C. Gen. Stat. § 7A-27, the defendant had a right to appeal an order requiring him to register as a sex offender)
    b. If you challenge such an order, make sure the defendant gave written notice of appeal as required in civil cases by Appellate Rule 3. *State v. Brooks*, 204 N.C. App. 193, 195, 693 S.E.2d 204, 206 (2010). If the defendant did not give written notice of appeal, you will need to raise the argument in a petition for writ of certiorari.
    c. For information on sex offender registration and satellite-based monitoring, be sure to review the flow chart prepared by Jamie Markham.
    d. For information on hearings under *Grady v. North Carolina*, 191 L. Ed. 2d 459 (2015), please review the packet prepared by Andy DeSimone and Jim Grant under "Sex Offender Registration and Monitoring."

8. Denial of a motion for appropriate relief (N.C. Gen. Stat. § 15A-1422):

    a. A defendant has the right to appeal motions for appropriate relief that are filed in conjunction with guilty pleas. N.C. Gen. Stat. § 15A-1422; *State v. Kittrell*, No. COA08-988, slip op. at 5 (N.C. Ct. App. Jun. 2, 2009) (unpublished). However, the defendant must give notice of appeal not only from the final judgment, but also from the denial of the motion for appropriate relief in order to get merits review on the issues raised in the motion for appropriate relief. *State v. Hagans*, 188 N.C. App. 799, 805-06, 656 S.E.2d 704, 708-09 (2008).

9. Jury trial on some charges, guilty plea to other charges:

    a. The Court of Appeals appears to reach inconsistent results when the defendant goes to trial on some charges, but pleads guilty to other charges. *See State v. Young*, 120 N.C. App. 456, 459, 462 S.E.2d 683, 685 (1995) (reviewing an argument about the substantive offense, but holding that the defendant had no right to appeal a conviction for attaining habitual felon status because he pled guilty to the charge); *but see State v. Glover*, 156 N.C. App. 139, 575 S.E.2d 835 (2003) (reviewing the plea colloquy for one of the defendant's convictions as well as other issues the defendant had the right to appeal); *State v. Bailey*, 157 N.C. App. 80, 577 S.E.2d 683 (2003) (same). Even though the case law is mixed on this point, you can still raise defects in the plea hearing in a petition for writ of certiorari in addition to a brief. *See* #23 on p. 20.

Guilty plea appeals involving DWI convictions: Almost all the arguments above involving sentencing do not apply to DWI cases. See below for a discussion of these issues in DWI cases.

10. If you are assigned to a guilty plea appeal involving a DWI conviction, be aware that many of the provisions of N.C. Gen. Stat. § 15A-1444 do not apply to DWI cases.

a. A defendant who pled guilty to DWI and received an aggravated sentence cannot challenge the evidence supporting the sentence under N.C. Gen. Stat. § 15A-1444(a1) because DWI is a misdemeanor and N.C. Gen. Stat. § 15A-1444(a1) only applies to felonies. *State v. Shaw*, 236 N.C. App. 453, 454, 763 S.E.2d 161, 162 (2014).
b. A defendant who pled guilty to DWI cannot challenge the trial court's prior record level calculation, sentence disposition, or sentence duration under N.C. Gen. Stat. § 15A-1444(a2) because the statute only applies to defendants sentenced under Structured Sentencing. *State v. Shaw*, 236 N.C. App. at 454, 763 S.E.2d at 162. Defendants convicted of DWI are sentenced under a different statutory scheme under Chapter 20 of the North Carolina General Statutes. *See id.*; N.C. Gen. Stat. § 20-179.
c. If the State failed to give notice of an aggravating factor or the trial court improperly imposed an aggravated sentence, erroneously calculated the defendant's prior record level, or issued a sentence that was too long, you should raise the arguments in a petition for writ of certiorari. If you file a petition for writ of certiorari, be sure to assert that the Court of Appeals has the authority to issue a writ of certiorari to review the argument under N.C. Gen. Stat. § 15A-1444(e) and *State v. Ledbetter*, 371 N.C. 192, 197, 814 S.E.2d 39, 42 (2018).

Issues that <u>cannot</u> be raised on direct appeal: In general, a defendant who pled guilty cannot raise issues that are not listed in N.C. Gen. Stat. § 15A-1444(a1), (a2), and (e).

11. The following issues are examples of arguments that cannot be raised on direct appeal from a guilty plea.

    a. Whether the defendant's sentence violates double jeopardy. *State v. Rinehart*, 195 N.C. App. 774, 776, 673 S.E.2d 769, 771 (2009).
    b. Whether the defendant's sentence constitutes cruel and unusual punishment. *State v. Jamerson*, 161 N.C. App. 527, 529, 588 S.E.2d 545, 547 (2003).
    c. Whether the trial court improperly granted the State's motion to continue. *State v. Moore*, 156 N.C. App. 693, 695, 577 S.E.2d 354, 355 (2003).
    d. Whether the trial court improperly denied the defendant's motion to dismiss the criminal charge. *State v. Demaio*, 216 N.C. App. 558, 565, 716 S.E.2d 863, 868 (2011); *State v. Smith*, 193 N.C. App. 739, 743, 668 S.E.2d 612, 614 (2008).
    e. Whether the trial court imposed an improper condition of probation. *State v. Sale*, 232 N.C. App. 662, 665, 754 S.E.2d 474, 477 (2014).
    f. Whether the trial court erroneously ordered the defendant to forfeit property. *State v. Royster*, 239 N.C. App. 196, 199, 768 S.E.2d 196, 198 (2015).

12. Although a defendant who pleads guilty may not raise the issues described above on direct appeal, the Court of Appeals has "broad discretion" to review those issues through a writ of certiorari. *State v. Ledbetter*, 371 N.C. 192, 197, 814 S.E.2d 39, 42 (2018). Therefore, if the issue is preserved and has merit, consider raising the issue in both a brief and petition for writ of certiorari.

a. **Caution:** Some of the arguments described above, such as violations of the protection against double jeopardy or the prohibition against cruel and unusual punishment, could undo the guilty plea if the arguments are successful. If that is the case, be sure to inform the client of the risks of undoing the guilty plea and get the client's written permission if the client still wants you to make the arguments.

Issues that have traditionally been raised through a writ of certiorari: Prior to *Ledbetter*, there were several issues that defendants who pled guilty could raise through a petition for writ of certiorari. See below for examples of these arguments.

13. Subject Matter Jurisdiction:

a. Be sure to review the original charging document and determine whether it is proper:
   i. If the defendant pled guilty based on an indictment, make sure the indictment contained all of the essential elements of the original charge. If the defendant pled guilty on an information, make sure both the defendant and the attorney signed the information as required by N.C. Gen. Stat. §§ 15A-642(c) and 15A-644(b). A copy of an information is attached to this handout. (A pp 4-5)
   ii. Make sure that the client pled guilty to the offense described in the indictment or to any lesser-included offenses. In *State v. Moore*, No. COA04-1107, slip op. (N.C. Ct. App. May 3, 2005) (unpublished), the defendant was originally charged with statutory rape, but pled guilty to indecent liberties. The Court of Appeals vacated the defendant's guilty plea because the indictment did not support his conviction for indecent liberties, which was not a lesser-included offense of rape.
   iii. Two good resources on indictments are: (1) The Criminal Indictment: Fatal Defect, Fatal Variance, and Amendment by Jessica Smith at the UNC School of Government and (2) 2017 Update to Arrest Warrant and Indictment Forms prepared by Jeffrey B. Welty at the UNC School of Government.
b. There are different ways to present jurisdictional arguments in guilty plea appeals:
   i. If you make a jurisdictional argument in conjunction with one or more of the arguments listed in N.C. Gen. Stat. § 15A-1444(a1), (a2), and (e), you can present all of the arguments in a brief. *See State v. Absher*, 329 N.C. 264, 265 n.1, 404 S.E.2d 848, 849 n.1 (1991) (stating that a jurisdictional challenge "may be made in the appellate division only if and when the case is properly pending before the appellate division"); *State v. Jamerson*, 161 N.C. App. 527, 529, 588 S.E.2d 545, 547 (2003).
   ii. If the only issue that you raise is a jurisdictional argument, you should consider including the argument in a brief and petition for writ of certiorari.
      1. As grounds for review in the brief, you can cite *State v. Frink*, 177 N.C. App. 144, 147, 627 S.E.2d 472, 474 (2006); and *State v. Brooks*, No. COA07-940, slip op. at 3 (N.C. Ct. App. May 20, 2008) (unpublished).
      2. As grounds for review in the petition for writ of certiorari, you can cite N.C. Gen. Stat. § 15A-1444(e); *State v. Ledbetter*, 371 N.C. 192, 197,

814 S.E.2d 39, 42 (2018).

3. Be aware that the Court of Appeals dismissed the guilty plea appeal in *State v. Hostetler*, No. COA16-680, slip op. at 4 (N.C. Ct. App. Mar. 7, 2017) (unpublished), because the only issue raised in the appeal involved a defective indictment. However, the indictment was challenged only in a brief. By contrast, the Court reversed the guilty plea in *State v. Culbertson*, 255 N.C. App. 635, 805 S.E.2d 511 (2017) based on a defective indictment that was challenged both in a brief and a petition for writ of certiorari.

iii. You could also consider raising the issue in an application for writ of habeas corpus. Although this would be an unconventional method of raising a jurisdictional defect, the Supreme Court expressed approval of this approach in *State v. Pennell*, 367 N.C. 466, 472, 758 S.E.2d 383, 387 (2014). If you pursue this option, you can file the application for writ of habeas corpus with "any one of the justices or judges of the appellate division." N.C. Gen. Stat. § 17-6. When a judge has evidence that a person is being illegally restrained, it is the "duty" of the judge to issue a writ of habeas corpus.

14. Knowing, voluntary, and intelligent plea:

a. Be sure to review the trial court's plea colloquy with the defendant. N.C. Gen. Stat. § 15A-1022(a) provides a list of things the trial court must discuss with the defendant before it can accept a guilty plea. If the trial court did not ask the defendant about <u>any</u> of the points listed in N.C. Gen. Stat. § 15A-1022(a), the guilty plea must be vacated. *State v. Glover*, 156 N.C. App. 139, 575 S.E.2d 835 (2003); *State v. Harris*, 14 N.C. App. 268, 270, 188 S.E.2d 1, 3 (1972); *State v. Vanderburg*, 13 N.C. App. 248, 249, 184 S.E.2d 915, 916 (1971).

b. If the trial court omitted some of the warnings from N.C. Gen. Stat. § 15A-1022(a), it will likely be difficult to show that the plea was involuntary. *See State v. Richardson*, 61 N.C. App. 284, 289, 300 S.E.2d 826, 829 (1983) (holding that the trial court's failure to inform the defendant of the mandatory minimum sentence could not have reasonably affected the defendant's decision to plead guilty). Still, be sure to review the information the trial court provided regarding the sentence. The trial court must inform the defendant of the maximum possible sentence, which is "that which could be imposed if the defendant were in the highest criminal history category and the offense were aggravated." *State v. Lucas*, 353 N.C. 568, 596, 548 S.E.2d 712, 730 (2001), *overruled on other grounds by State v. Allen*, 359 N.C. 425, 615 S.E.2d 256 (2005). The defendant's guilty plea was vacated in *State v. Reynolds*, 218 N.C. App. 433, 437, 721 S.E.2d 333, 336 (2012), where the trial court informed the defendant that he could face a maximum sentence of 168 months, but then sentenced him to a maximum sentence of 171 months. By contrast, the defendant's guilty plea was upheld in *State v. Bullocks*, 258 N.C. App. 72, 811 S.E.2d 713 (2018), even though the trial court misinformed the defendant about the maximum sentence for one of his charges because the defendant was properly informed about the maximum and minimum sentences for other, more serious charges that were consolidated with the other charge and the defendant received the sentence he agreed to as part of a plea

agreement.

c. Be sure to focus on deficiencies that would violate the Fourteenth Amendment Due Process Clause. In order to satisfy the Due Process Clause, the trial court must inform the defendant about (1) the privilege against self-incrimination; (2) the right to trial by jury; and (3) the right to confront one's accusers. *Boykin v. Alabama*, 395 U.S. 238, 242, 23 L. Ed. 2d 274, 279 (1969); *see also State v. Sinclair*, 301 N.C. 193, 197, 270 S.E.2d 418, 421 (1980) (observing that a guilty plea "involves the waiver of various fundamental rights such as the privilege against self-incrimination, the right of confrontation and the right to trial by jury").

d. Even if the judge conducts a proper colloquy, you should consider raising a voluntariness claim if there is evidence of coercion in your case. In *State v. Benfield*, 264 N.C. 75, 77, 140 S.E.2d 706, 708 (1965), the court reversed a guilty plea despite the defendant's statement that his guilty plea was freely made where the trial judge advised the defendant the jury would probably return a guilty verdict and that the judge was inclined to give the defendant a long sentence based on a guilty verdict. Similarly, in *State v. Pait*, 81 N.C. App. 286, 288, 343 S.E.2d 573, 575 (1986), the trial judge conducted a thorough colloquy with the defendant. However, the court vacated the defendant's guilty plea because the trial judge was "visibly agitated" when the defendant entered a not guilty plea, directed the defense attorney to enter an "honest plea," and the defendant feared the judge would be hard on him if he did not plead guilty. *Id*.

15. Factual basis for the guilty plea:

a. Be sure the State presented a sufficient factual basis for <u>each</u> element of <u>each</u> charge. "[G]uilty pleas must be substantiated in fact as prescribed by" N.C. Gen. Stat. § 15A-1022(c). *State v. Agnew*, 361 N.C. 333, 335, 643 S.E.2d 581, 583 (2007). "If the evidence contained in the record does not support defendant's guilty plea, then the judgment based thereon must be vacated." *State v. Brooks*, 105 N.C. App. 413, 417, 413 S.E.2d 312, 314 (1992).

    i. Some opinions state that elements can be inferred from the State's factual basis. *See, e.g., State v. Alston*, 268 N.C. App. 208, 210, 836 S.E.2d 319, 320 (2019) (holding that the elements that the defendant was under the influence while driving and that a child sustained serious injury "could reasonably be inferred"). Nevertheless, the factual basis must cover "each element of the offense." *State v. Heatwole*, 333 N.C. 156, 161, 423 S.E.2d 735, 738 (1992).

b. If the defendant was convicted of multiple charges, including charges arising out of a single event or transaction, be sure to determine whether the factual basis supported each conviction. *See State v. Robinson*, 381 N.C. 207, 217, 872 S.E.2d 28, 35 (2022) (vacating judgments entered on guilty pleas to multiple assaults because the factual basis provided at the plea hearing did not indicate that there was "a distinct interruption in the assaults"); *State v. Flint*, 199 N.C. App. 709, 726, 682 S.E.2d 443, 453 (2009) (vacating guilty plea where the factual basis only supported 47 of the defendant's 68 felony charges).

c. Issue Preservation:

    i. The lack of a sufficient factual basis is preserved for appellate review even if

the defendant stipulated to or did not object to the State's factual basis.

ii. On occasion, the Court of Appeals has held that the defendant's factual basis arguments were not preserved because they stipulated to the factual basis. *See State v. Canady*, 153 N.C. App. 455, 570 S.E.2d 262 (2002); and *State v. Kimble*, 141 N.C. App. 144, 539 S.E.2d 342 (2000). However, the Supreme Court of North Carolina recently held that while defendants who plead guilty stipulate to the factual basis, "this stipulation cannot and does not relieve the trial court of its subsequent duty to conduct an 'independent judicial determination that a sufficient factual basis exists' to support the legal requirements of the charged offenses." *State v. Robinson*, 381 N.C. 207, 217, 872 S.E.2d 28, 35 (2022).

iii. Some opinions, like, *State v. Canady*, 153 N.C. App. 455, 570 S.E.2d 262 (2002), purport to apply plain error to factual basis arguments. But plain error only applies to evidentiary errors and erroneous jury instructions. It does not apply to factual basis arguments.

iv. An insufficient factual basis is also argument preserved under N.C. Gen. Stat. § 15A-1446, which includes errors in the "entry of the plea" in a list of errors that do not require any objection.

v. Factual basis arguments are also arguably preserved under the statutory mandate rule described in *State v. Ashe*, 314 N.C. 28, 331 S.E.2d 652 (1985). N.C. Gen. Stat. § 15A-1022 states that a judge "may not accept" a guilty plea "without first determining that there is a factual basis for the plea." Under *Ashe*, the violation of that mandate is preserved without objection.

d. Be sure to consider the following factors in assessing the sufficiency of the factual basis for a guilty plea:

i. The defendant's admission of guilt: "[W]hether or not defendant admits to the crime is not part of the information the trial court should consider under the factual basis prong." *State v. Chandler*, 376 N.C. 361, 368, 851 S.E.2d 874, 879 (2020).

ii. Transcript of Plea: A transcript of plea on its own does not provide a factual basis for a guilty plea. *State v. Sinclair*, 301 N.C. 193, 199, 270 S.E.2d 418, 421 (1980).

iii. Stipulation: In *State v. Agnew*, 361 N.C. 333, 337, 643 S.E.2d 581, 584 (2007), the Supreme Court held that a stipulation to a factual basis could not support a guilty plea because it "gave the trial court no additional substantive information about the case . . . ." *Id*.

iv. Indictment: The indictment in *Agnew* was also not sufficient to support the factual basis because it "simply stated the charge and did not provide any further factual description of defendant's particular alleged conduct." *Id*. In *State v. Flint*, 199 N.C. App. 709, 728, 682 S.E.2d 443, 454 (2009), the Court of Appeals rejected an argument that indictments supported the factual basis for a guilty plea because it was "not clear if they were, in fact, before the trial court during defendant's plea."

v. Other evidence, such as statements of the victim or victims or evidence admitted during a trial on other charges, cannot form the factual basis for the defendant's guilty plea if the evidence is admitted ***after*** the court accepts the

defendant's guilty plea. *State v. Lewis*, No. COA12-1056, 2013 N.C. App. LEXIS 362 (Apr. 16, 2013) (unpublished).

e. The State might argue that the defendant is not prejudiced by the lack of a sufficient factual basis.
    i. It does not make much sense to subject factual basis arguments to a prejudice analysis. Either the factual basis is sufficient or it is not. Further, the remedy for an insufficient factual basis is to vacate the guilty plea and judgment. *State v. Weathers*, 339 N.C. 441, 453, 451 S.E.2d 266, 273 (1994). Indeed, in each of the cases in which the Supreme Court of North Carolina considered a factual basis argument – *Agnew*, *Sinclair*, *Weathers*, and *Robinson*, it has never engaged a discussion of prejudice from the trial court's erroneous acceptance of an insufficient factual basis.
    ii. For a additional arguments about why factual basis arguments should not be subject to discussion of prejudice, please review the petition for discretionary review in State v. Graves, No. 33P19.

16. Benefit of the bargain:

a. Plea agreements are governed by contract principles. *State v. Wentz*, 284 N.C. App. 736, 739, 876 S.E.2d 814, 816 (2022).
    i. "Once the prosecution makes a promise in exchange for a guilty plea, the right to due process and basic contract principles require strict adherence." *State v. Rodriguez*, 111 N.C. App. 141, 145, 431 S.E.2d 788, 790 (1993). Strict adherence requires holding the State to a "greater degree of responsibility than the defendant . . . for imprecisions or ambiguities in plea agreements." *State v. Blackwell*, 135 N.C. App. 729, 731, 522 S.E.2d 313, 315 (1999).
    ii. Additionally, N.C. Gen. Stat. § 15A-1024 states that if, at the time of sentencing, "the judge for any reason determines to impose a sentence other than provided for in a plea arrangement between the parties, the judge must inform the defendant of that fact and inform the defendant that he may withdraw his plea." "Where a court fails to inform a defendant of [his] right to withdraw a guilty plea pursuant to N.C. Gen. Stat. § 15A-1024, the sentence must be vacated, and the case remanded for re-sentencing." *State v. Carriker*, 180 N.C. App. 470, 471, 637 S.E.2d 557, 558 (2006).

b. If the defendant cannot get the benefit of the plea agreement, he may challenge the plea agreement through a petition for writ of certiorari.
    i. The Court of Appeals will likely vacate the plea agreement if portions of the agreement were unenforceable and the defendant was not aware the agreement was not binding. *See, e.g., State v. Demaio*, 216 N.C. App. 558, 565, 716 S.E.2d 863, 868 (2011) (agreement reserving right to appeal denial of motion to dismiss and motion to limit expert testimony improper); *State v. Smith*, 193 N.C. App. 739, 743, 668 S.E.2d 612, 614 (2008) (defendant could not challenge denial of motion to dismiss habitual felon indictment in guilty plea appeal); *State v. Jones*, 161 N.C. App. 60, 62, 588 S.E.2d 5, 8 (2003) (defendant could not appeal habeas corpus motion after pleading guilty), *rev'd in part on other grounds*, 358 N.C. 473, 598 S.E.2d 125 (2004).

c. If the defendant pled guilty with the understanding that he might not be able to raise some claims on appeal, the plea agreement will likely be considered valid:
    i. In *State v. Ross*, 369 N.C. 393, 794 S.E. 2d 289 (2016), the Supreme Court held that the plea agreement was valid because the defendant understood that he might not be able to seek review of pretrial motions he had filed. Similarly, in *State v. Tinney*, 229 N.C. App. 616, 622, 748 S.E.2d 730, 735 (2013), the Court of Appeals held that the plea agreement was not invalid because the defendant had "ample notice" that a provision in the agreement purporting to preserve the right to appeal a transfer order was unenforceable.

17. Right to counsel:

a. If the trial court allowed the defendant to waive his right to an attorney at the plea hearing without conducting a proper colloquy, be sure to determine whether the trial court complied with N.C. Gen. Stat. § 15A-1242. If the court failed to comply with the statute, the defendant can challenge the waiver of counsel in a petition for writ of certiorari. *See State v. Allen*, No. COA14-152, slip op. (N.C. Ct. App. Oct. 7, 2014) (unpublished).
b. If the defendant was not represented by an attorney during a sentencing hearing that occurred after the defendant pled guilty, the defendant can raise the lack of counsel in a petition for writ of certiorari. *State v. Rouse*, 234 N.C. App. 92, 95, 757 S.E.2d 690, 692 (2014).

18. Competency:

a. If there was a question about the defendant's competency to plead guilty, be sure to determine whether the trial court followed the proper procedures under N.C. Gen. Stat. § 15A-1001, *et. seq*. According to *State v. O'Neal*, 116 N.C. App. 390, 395, 448 S.E.2d 306, 310 (1994), the question of the defendant's competency to plead guilty can be raised in a petition for writ of certiorari.

Other issues: There are many other arguments that might warrant review by writ of certiorari. See below for a list of possible issues.

19. Probation:

a. If the trial court imposed probation, be sure that the sentence was stayed as required by N.C. Gen. Stat. § 15A-1451. If probation was not stayed, you should consider filing a petition for writ of supersedeas early in the appeal to enforce the stay.
b. Be sure to review the limitations on probationary sentences:
    i. A defendant sentenced to community punishment for a felony cannot be placed on probation for not less than 12 nor more than 30 months. N.C. Gen. Stat. § 15A-1343.2(d)(3).
    ii. A defendant sentenced to intermediate punishment for a felony cannot be placed on probation for not less than 18 nor more than 36 months. N.C. Gen.

Stat. § 15A-1343.2(d)(4).

iii. If the court finds that a longer term of probation is necessary, it may impose a longer period up to five years of probation. N.C. Gen. Stat. § 15A-1342(a). A sample judgment imposing probation is included in the appendix. (A pp 7-10)

c. If the probationary sentence is too long, you should challenge the sentence as part of the guilty plea appeal. If you do not challenge the probationary sentence as part of the defendant's appeal from his guilty plea, the defendant might be barred from challenging the sentence at a later time. *See State v. Rush*, 158 N.C. App. 738, 740, 582 S.E.2d 37, 39 (2003) (rejecting argument about an improper probationary sentence because the defendant failed to file a petition for writ of certiorari when the sentence was imposed).

d. If there are other issues that you can raise on direct appeal, such as an erroneous prior record level calculation, add the argument about the probationary sentence to the brief. *See State v. Branch*, 194 N.C. App. 173, 178, 669 S.E.2d 18, 21 (2008) (reviewing the denial of a motion to suppress and an improper probationary term as part of a direct appeal in a guilty plea case). If there are no other issues that can be raised on direct appeal, you can challenge the probationary sentence in a petition for writ of certiorari.

e. If the trial court imposed special probation, which includes a period of confinement as part of a split sentence, be sure to review the terms of special probation:

i. A split sentence imposed as part of special probation cannot be more than one fourth of the maximum sentence imposed for the offense. N.C. Gen. Stat. §§ 15A-1344(e); 15A-1351(a).

ii. Special probation is automatically stayed if the defendant gives notice of appeal. N.C. Gen. Stat. 15A-1451. If you determine from the court file that the defendant received a term of special probation that was not stayed, you should consider filing a petition for writ of supersedeas early in the appeal to enforce the stay. *State v. Stover*, 200 N.C. App. 506, 510, 685 S.E.2d 127, 131 (2009).

iii. Be aware that on remand, the trial court may impose conditions of release as part of an appeal bond under N.C. Gen. Stat. § 15A-536. Even though confinement as part of special probation is stayed when a defendant gives notice of appeal, trial courts are permitted to impose a bond and set conditions of release as part of their authority to oversee defendants with probationary sentences. *State v. Howell*, 166 N.C. App. 751, 603 S.E.2d 901 (2004). Further, confinement as part of an appeal bond lasts as long as the appeal, which is often longer than the period or periods of special probation. If you have a client who has appealed and who is incarcerated as part of special probation, you should explain that you can file a petition for writ of supersedeas, but that the client may end up incarcerated for a period longer than the period of special probation.

20. Transfer from juvenile court to superior court:

a. A juvenile may not challenge a transfer order on direct appeal if the juvenile pled guilty in superior court. *State v. Evans*, 184 N.C. App. 736, 739, 646 S.E.2d 859, 861 (2007). However, the juvenile may nevertheless challenge the transfer order through a

petition for writ of certiorari. N.C. Gen. Stat. § 15A-1444(e); *State v. Ledbetter*, 371 N.C. 192, 197, 814 S.E.2d 39, 42 (2018).

b. The superior court is limited to reviewing the district court's transfer decision for abuse of discretion. *In re E.S.*, 191 N.C. App. 568, 573, 663 S.E.2d 475, 478 (2008). This means that the superior court may not re-weigh the evidence or decide which factors are more important. *Id*. Instead, a superior court's ruling on the question of transfer is subject to reversal if the superior court failed to properly apply the abuse of discretion standard of review. *Id.*

21. Restitution:

a. When you review the restitution order, make sure that the State presented some evidence to support the order.
    i. An unsworn statement of the prosecutor, such as a restitution worksheet, is not evidence and "cannot support the amount of restitution recommended." *State v. Buchanan*, 108 N.C. App. 338, 341, 423 S.E.2d 819, 821 (1992).
    ii. In *State v. Hillard*, 258 N.C. App. 94, 97, 811 S.E.2d 702, 704-05 (2018), the Court of Appeals held that "written victim impact statements, together with the oral victim impact statements, expense worksheet, and accompanying documentation," constituted "sufficient competent evidence" to support a restitution order. Other unpublished opinions suggest that a victim impact statement may be sufficient to support a restitution order. *See State v. Durham*, No. COA09-78, slip. op. (N.C. Ct. App. Jul. 7, 2009); *State v. Coleman*, No. COA08-136, slip op. (N.C. Ct. App. Dec. 15, 2008); *State v. McGill*, No. COA05-1071, slip op. (N.C. Ct. App. Jun. 6, 2006).

b. An improper restitution order in a guilty plea case may be challenged in a petition for writ of certiorari. *State v. Griffin*, No. COA17-195, slip op. at 3 (N.C. Ct. App. Aug. 15, 2017) (unpublished).

c. Issue preservation:
    i. The Court of Appeals has "consistently held that pursuant to N.C. Gen. Stat. § 15A-1446(d)(18) (2007) a defendant's failure to specifically object to the trial court's entry of an award of restitution does not preclude appellate review." *State v. Mauer*, 202 N.C. App. 546, 551, 688 S.E.2d 774, 777 (2010). Similarly, the defendant's silence regarding the restitution worksheet does not constitute invited error. State v. Hooper, 382 N.C. 612, 626 n.4, 879 S.E.2d 549, 558 n.4 (2022) (stating that "a finding of invited error must hinge upon a party's affirmative request for a specific action upon the part of the trial court rather than a mere failure to lodge an objection to an action that the trial court actually took").
    ii. Be aware that the new version of the AOC form for written transcripts of plea includes a box in the plea agreement section for defendants to stipulate to restitution. (A p 12) If the box is checked, a court might conclude that the State is relieved of its burden of proving the restitution amount.

d. **Caution:** If the box for the restitution amount is checked, there is also some risk that a successful challenge to the restitution order will undo the plea agreement. However, the Court of Appeals recently held that a stipulation to restitution as part of the plea

agreement "is not an express agreement to pay that particular restitution as a condition of the plea agreement." *State v. Murphy*, 261 N.C. App. 78, 80, 819 S.E.2d 604, 609 (2018).

22. Court costs and attorney's fees:

    a. Be sure to determine whether the trial court properly calculated court costs and attorney's fees. A schedule for court costs can be found on the Judicial Branch website. There is an appointment fee of $60 when an attorney is appointed to represent an indigent defendant. N.C. Gen. Stat. § 7A-455.1. According to the IDS fee schedule, the rate for Class B1 through D felonies is $85 per hour. The rate for all other offenses is $75 per hour.
    b. Be sure to determine whether the trial court gave the defendant notice and an opportunity to be heard regarding attorney's fees. "Absent a colloquy directly with the defendant on this issue, the requirements of notice and opportunity to be heard will be satisfied only if there is other evidence in the record demonstrating that the defendant received notice, was aware of the opportunity to be heard on the issue, and chose not to be heard." *State v. Friend*, 257 N.C. App. 516, 523, 809 S.E.2d 902, 907 (2018).

How to raise arguments in a petition for writ of certiorari: There are a few different ways to seek certiorari review in a guilty plea appeal.

23. If you have an appeal with one or more arguments that cannot be raised on direct appeal, consider these strategies:
    a. If one or more issues can be raised on direct appeal, but others cannot, include all of the arguments in a brief. In addition, file a petition for writ of certiorari with the issues that cannot be raised on direct appeal. Be sure to cite *State v. Ledbetter*, 371 N.C. 192, 814 S.E.2d 39 (2018) as authority for the right to seek certiorari review.
    b. If none of the issues that you identify can be raised on direct appeal, you should consider including all the issues in both a brief and a petition for writ of certiorari. This strategy was followed in *State v. Joe*, No. COA15-878, slip op. (N.C. Ct. App. May 10, 2016) (unpublished), and resulted in the defendant's guilty plea being vacated based on the lack of a sufficient factual basis.
    c. You could also file an *Anders* brief as part of the direct appeal and then a petition for writ of certiorari for any meritorious issues that cannot be raised on direct appeal.

Strategies for avoiding dismissal: There are two common situations in which the State will move to dismiss guilty plea appeals. See below for possible responses.

24. *Anders* Briefs:

    a. If you file an *Anders* brief in a case in which the defendant pled guilty and stipulated to his prior record level, the State might move to dismiss the appeal. The State will

likely rely on *State v. Hamby*, 129 N.C. App. 366, 499 S.E.2d 195 (1998). You should consider the following strategies:

i. When you prepare the record on appeal, consider including a proposed issue on appeal requesting that the Court of Appeals review the case for prejudicial error under *Anders v. California*, 386 U.S. 738, 18 L.Ed.2d 493 (1967).

ii. File a response to the motion to dismiss. As part of the response, be sure to cite the proposed issue on appeal and assert that the Court of Appeals is required under the *Anders* decision and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), to review the defendant's appeal for prejudicial error. You should also point out that the Court of Appeals rejected similar motions to dismiss in the several unpublished opinions, including *State v. Morrison*, No. COA16-942, slip op. (N.C. Ct. App. Mar. 7, 2017); *State v. Taylor*, No. COA11-1535, slip op. (N.C. Ct. App. Aug. 21, 2012); and *State v. Clemons*, No. COA11-1034, slip op. (N.C. Ct. App. May 15, 2012). Finally, you should assert that even in *Hamby*, the Court of Appeals recognized that it was required to "examine any issue that defendant could have possibly raised." *Hamby*, 129 N.C. App. at 369, 499 S.E.2d at 197.

25. Withdrawal of Guilty Plea:

a. If you file a brief arguing that the trial court improperly denied the defendant's post-sentencing motion to withdraw his guilty plea, the State might file a motion to dismiss on the ground that the defendant has no right to appeal. The logic of the State's argument is that a post-sentencing motion to withdraw is a motion for appropriate relief for which there is no right to appeal.

b. You should file a response asserting that the Supreme Court and the Court of Appeals have held that a defendant has the right to appeal a post-sentencing motion to withdraw. *See State v. Handy*, 326 N.C. 532, 535, 391 S.E.2d 159, 160 (1990) ("Defendant may appeal as of right since the trial judge denied his motion to withdraw his plea of guilty."); *State v. Dickens*, 299 N.C. 76, 79, 261 S.E.2d 183, 185 (1980) (holding that the defendant was entitled to appeal under N.C. Gen. Stat. § 15A-1444(e) after the trial court denied his post-sentencing motion to withdraw his guilty plea); *State v. Zubiena*, 251 N.C. App. 477, 482, 796 S.E.2d 40, 45 (2016) (same); *State v. Salvetti*, 202 N.C. App. 18, 25, 687 S.E.2d 698, 703 (2010) (same).

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS

Name And Address Of Defendant

Social Security No. | *SID No.*

Race | *Sex* | *DOB*

WORKSHEET PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING

(STRUCTURED SENTENCING)

(For Offenses Committed On Or After Dec. 1, 2009)

G.S. 15A-1340.14, 15A-1340.21

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE	FACTORS	POINTS
	Prior Felony Class A Conviction	X10	
	Prior Felony Class B1 Conviction	X 9	
	Prior Felony Class B2 or C or D Conviction	X 6	
	Prior Felony Class E or F or G Conviction	X 4	
	Prior Felony Class H or I Conviction	X 2	
	Prior Class A1 or 1 Misdemeanor Conviction *(see note on reverse)*	X 1	
		SUBTOTAL ▶	

Defendant's Current Charge(s):

If all the elements of the present offense are included in any prior offense whether or not the prior offenses were used in determining prior record level.	+ 1	
If the offense was committed while the offender was: ☐ on supervised or unsupervised probation, parole, or post-release supervision; ☐ serving a sentence of imprisonment; or ☐ on escape from a correctional institution. *County* / *File No.* / *State (if other than NC)*	+ 1	
	TOTAL ▶	

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

NOTE: *If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.*

No. Of Prior Convictions	Level
0	I
1 - 4	II
5+	III

PRIOR CONVICTION LEVEL ▶ ☐

☐ The Court has determined the number of prior convictions to be _____ and the level to be as shown above.

☐ In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCI-CCH.

FELONY

NOTE: *If sentencing for a felony, locate the prior record level which corresponds to the total points determined in Section I above.*

Points	Level
0 - 1	I
2 - 5	II
6 - 9	III
10 - 13	IV
14 - 17	V
18+	VI

PRIOR RECORD LEVEL ▶ ☐

☐ The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.

☐ In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCI-CCH.

☐ In finding a prior record level point under G.S. 15A-1340.14(b)(7), the Court has relied on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

☐ The Court finds that all of the elements of the present offense are included in a prior offense.

☐ For each out-of-state conviction listed in Section V on the reverse, the Court finds by a preponderance of the evidence that the offense is substantially similar to a North Carolina offense and that the North Carolina classification assigned to this offense in Section V is correct.

☐ The Court finds that the State and the defendant have stipulated in open court to the prior convictions, points and record level.

Date | *Name Of Presiding Judge (Type Or Print)* | *Signature Of Presiding Judge*

III. STIPULATION

The prosecutor and defense counsel, or the defendant, if not represented by counsel, stipulate to the information set out in Sections I and V of this form, and agree with the defendant's prior record level or prior conviction level as set out in Section II based on the information herein.

Date	*Signature Of Prosecutor*	*Date*	*Signature Of Defense Counsel Or Defendant*

IV. DNA CERTIFICATION (For Offenses Committed On Or After Feb. 1, 2011)

A review of the case record (the form required by G.S. 15A-266.3A(c)) and the records of the State Bureau of Investigation (the DCI-CCH rap sheet) indicates that *(check one):*

☐ 1. The defendant is **NOT** required to provide a DNA sample for this conviction because (i) the offense is not covered by G.S. 15A-266.4 or (ii) a sample of the defendant's DNA has previously been obtained and the defendant's DNA record is currently stored in the State DNA database.

☐ 2. The defendant **IS** required to provide a DNA sample for this conviction because (i) the offense is covered by G.S. 15A-266.4 and (ii) a sample of the defendant's DNA has not previously been obtained and the defendant's DNA record has not previously been stored in the State DNA Database, or if previously obtained and stored, the defendant's DNA sample and record have been expunged.

Date	*Name Of Prosecutor (Type Or Print)*	*Signature Of Prosecutor*

V. PRIOR CONVICTION

NOTE: *Federal law precludes making computer printout of DCI-CCH (rap sheet) part of permanent public court record.*

NOTE: *The only misdemeanor offenses under Chapter 20 that are assigned points for determining prior record level for felony sentencing are misdemeanor death by vehicle [G.S. 20-141.4(a2)] and, for sentencing for felony offenses committed on or after December 1, 1997, impaired driving [G.S. 20-138.1] and commercial impaired driving [G.S. 20-138.2]. First Degree Rape and First Degree Sexual Offense convictions prior to October 1, 1994, are Class B1 convictions.*

Source Code	Offenses	File No.	Date Of Conviction	County *(Name of State if not NC)*	Class

☐ See AOC-CR-600 Continuation for additional prior convictions.

Source Code: **1 - DCI** **2 - NCIC** **3 - AOC/Local** **4 - AOC/Statewide** **5 - ID Bureau** **6 - Other**

Date Prepared: _____

Prepared By: _____

STATE VERSUS

File No. 06 CRS 3406

Name Of Defendant Deborah Dunlap Hatley

15. *(If applicable)* The prosecutor, your lawyer, and you have informed me that the following contains all the terms and conditions of your plea.

The defendant expressly retains the right to appeal the court's previous denial of her motion to suppress in this cause and her plea of guilty is conditioned upon her right to appeal that decision pursuant to GS 15A-979(b)

Prosecutor's Initials: _____ Defense Counsel's Initials: _____ Defendant's Initials: _____

PLEAS

✓	Plea*	File Number	Count No.(s)	Offense(s)	Date Of Offense	G.S. No.	F/M	CL	‡Pun. CL.	Maximum Punishment
	G	06CRS3406	1	Driving While Impaired	3/5/06	20-138.1	M			24 mont

*G = Guilty
NC = No Contest

TOTAL MAXIMUM PUNISHMENT 24 months

MANDATORY MINIMUM FINES & SENTENCES *(if any)*

NOTE TO CLERK: If this column is checked this is an added offense or reduced charge.

‡**NOTE:** *Enter punishment class if different from underlying felony class (punishment class represents a status or enhancement).*

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS

Name And Address Of Defendant

Race	*Sex*	*Date Of Birth*

INFORMATION

G.S. 15A-644

Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CL.
I.			
II.			
III.			

I. I, the undersigned prosecutor, upon information and belief allege that on or about the date(s) of offense shown above and in the county indicated above, the defendant named above unlawfully, willfully and feloniously did

II. I, the undersigned prosecutor, upon information and belief allege that on or about the date(s) of offense shown above and in the county indicated above, the defendant named above unlawfully, willfully and feloniously did

(Over)

III. I, the undersigned prosecutor, upon information and belief allege that on or about the date(s) of offense shown above and in the county indicated above, the defendant named above unlawfully, willfully and feloniously did

	Signature Of Prosecutor

WAIVER

I, the undersigned defendant, waive the finding and return of a Bill of Indictment into Court and agree that the case may be tried upon the above information.

Date	*Signature Of Defendant*	*Signature Of Attorney For Defendant*

STATE OF NORTH CAROLINA

File No.

_____County _____ Seat of Court

NOTE: *[This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s) that are consolidated for judgment with any felony offense(s). Use AOC-CR-310 for DWI offense(s).]*

In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS

Name Of Defendant

Race | Sex | Date Of Birth

JUDGMENT SUSPENDING SENTENCE - FELONY

PUNISHMENT: ☐ COMMUNITY ☐ INTERMEDIATE
(STRUCTURED SENTENCING)
(For Offenses Committed Before Dec. 1, 2009)
G.S. 15A-1341, -1342, - 1343, -1343.2, -1346

Attorney For State | ☐ Def. Found Not Indigent ☐ Def. Waived Attorney | Attorney For Defendant | ☐ Appointed ☐ Retained | Crt Rptr Initials

The defendant ☐ pled guilty (☐ pursuant to *Alford*) to ☐ was found guilty by the Court of ☐ was found guilty by a jury of ☐ pled no contest to

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

***NOTE:** *Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).*

The Court ☐ 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be _____. Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.
☐ 2. makes no prior record level finding because none is required.

PRIOR RECORD LEVEL: ☐ I ☐ II ☐ III ☐ IV ☐ V ☐ VI

The Court (**NOTE:** *Block 1 or 2 MUST be checked.*):

☐ 1. makes no written findings because the prison term imposed is within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).
☐ 2. makes the Determination of aggravating and mitigating factors on the attached AOC-CR-605.
☐ 3. makes the Findings of Extraordinary Mitigation set forth on the attached AOC-CR-606.
☐ 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
☐ 5. adjudges the defendant to be a habitual felon to be sentenced as a Class C felon.
☐ 6. finds enhancement pursuant to: ☐ G.S. 90-95(e)(3) (drugs), ☐ G.S. 14-3(c) (hate crime), ☐ G.S. 50B-4.1 (domestic violence), ☐ G.S. 14-50.22 (gang). ☐ Other: _____. This finding is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission.
☐ 7. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603A, Page Two, Side Two, and makes the additional findings and orders on the attached AOC-CR-615, Side Two.
☐ 8. finds the above-captioned offense(s) involved the *(check all that apply)* ☐ physical or mental ☐ sexual abuse of a minor. ☐ *(if No. 7 not found)* and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603A, Page Two, Side Two.
☐ 9. finds that a ☐ motor vehicle ☐ commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
☐ 10. finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
☐ 11. *(offenses committed on or after Dec. 1, 2008, only)* finds the above-designated offense(s) involved criminal street gang activity. G.S. 14-50.25.
☐ 12. finds that the defendant refused to consent to conditional discharge under G.S. 90-96(a).
☐ 13. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
☐ 14. *(for judgments entered on or after Dec. 1, 2013, only)* finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be imprisoned

for a minimum term of _____ months | for a maximum term of _____ months in the custody of the N.C. DAC.

☐ This sentence shall run at the expiration of sentence imposed in file number _____.

The defendant shall be given credit for _____ days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the ☐ sentence imposed above. ☐ imprisonment required for special probation set forth on AOC-CR-603A, Page Two.

SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on ☐ supervised ☐ unsupervised probation for _____ months.

☐ 1. The Court finds that a ☐ longer ☐ shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).
☐ 2. The Court finds that it is NOT appropriate to delegate to the Section of Community Corrections the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment.
☐ 3. This period of probation shall begin ☐ when the defendant is released from incarceration ☐ at the expiration of the sentence in the case below.

File No.	Offense	County	Court	Date

☐ 4. The defendant shall comply with the conditions set forth in file number _____.
☐ 5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)

MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee, pursuant to a schedule ☐ determined by the probation officer. ☐ set out by the court as follows: _____

Costs	Fine	Restitution*	Attorney's Fees	Comm Serv Fee	EHA Fee	SBM Fee	Appt Fee/Misc	Total Amount Due
$	$	$	$	$	$	$	$	$

*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

☐ The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618. ☐ Other: _____.

☐ Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.

Material opposite unmarked squares is to be disregarded as surplusage.
(Over)

REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)

NOTE: *Any probationary judgment may be extended pursuant to G.S. 15A-1342.* The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device, or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) Satisfy child support and family obligations, as required by the Court.
If the defendant is on supervised probation, the defendant shall also: (5) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (6) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (7) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (8) At a time to be designated by the probation officer, visit with the probation officer a facility maintained by the Section of Prisons.

☐ 9. The Court finds that the defendant is responsible for acts of domestic violence and therefore makes the additional findings and orders on the attached AOC-CR-603A, Page Two, Side Two.

SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1), 143B-704(c)

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:

☐ 10. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of _____ or until relicensed by the Division of Motor Vehicles, whichever is later.

☐ 11. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, and of the defendant's vehicle and premises while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:
☐ stolen goods ☐ controlled substances ☐ contraband ☐ child pornography ☐ _____.

☐ 12. Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any illegal drugs or controlled substances; and not knowingly be present at or frequent any place where illegal drugs or controlled substances are sold, kept, or used.

☐ 13. Supply a breath, urine, and/or blood specimen for analysis of the possible presence of a prohibited drug or alcohol, when instructed by the defendant's probation officer.

☐ 14. Successfully pass the General Education Development Test (G.E.D.) during the first _____ months of the period of probation.

☐ 15. Complete _____ hours of community or reparation service during the first _____ days of the period of probation, as directed by the judicial services coordinator and pay the fee prescribed by G.S. 143B-708. ☐ pursuant to the schedule set out under Monetary Conditions on the reverse. ☐ within _____ days of this Judgment and before beginning service.

☐ 16. Report for initial evaluation by _____, participate in all further evaluation, counseling, treatment, or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.

☐ 17. Not assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with _____. "Contact" includes any defendant-initiated contact, direct or indirect, by any means, including, but not limited to, telephone, personal contact, e-mail, pager, gift-giving, telefacsimile machine or through any other person, except _____.

☐ 18. Other:

☐ 19. Comply with the Special Conditions Of Probation which are set forth on AOC-CR-603A, Page Two.

ORDER OF COMMITMENT/APPEAL ENTRIES

☐ 1. It is ORDERED that the Clerk deliver **two** certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

☐ 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date	*Name Of Presiding Judge (type or print)*	*Signature Of Presiding Judge*

CERTIFICATION

I certify that this Judgment and the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

☐ 1. Appellate Entries (AOC-CR-350)
☐ 2. Judgment Suspending Sentence (AOC-CR-603C, Page Two) (additional conditions of probation)
☐ 3. Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
☐ 4. Extraordinary Mitigation Findings (AOC-CR-606)
☐ 5. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)
☐ 6. Judicial Findings As To Required DNA Sample (AOC-CR-319)
☐ 7. Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-615, Side Two)
☐ 8. Additional File No.(s) And Offense(s) (AOC-CR-626)
☐ 9. Other: _____.

Date	*Date Certified Copies Delivered To Sheriff*	*Signature Of Clerk*	☐ *Deputy CSC* ☐ *Asst. CSC* ☐ *Clerk Of Superior Court*	**SEAL**

Material opposite unmarked squares is to be disregarded as surplusage.

STATE VERSUS | File No.

Name Of Defendant

INTERMEDIATE PUNISHMENTS

NOTE: Use this page with **AOC-CR-310A**, "Impaired Driving - Judgment Suspending Sentence"; **AOC-CR-603A**, "Judgment Suspending Sentence - Felony"; **AOC-CR-604A**, "Judgment Suspending Sentence - Misdemeanor"; **AOC-CR-619A**, "Conditional Discharge Under G.S. 90-96(a)"; **AOC-CR-621A**, "Conditional Discharge Under G.S. 14-50.29"; **AOC-CR-627A**, "Conditional Discharge Under G.S. 90-96(a1)"; **AOC-CR-632A**, "Conditional Discharge Under G.S. 15A-1341(a4)"; or **AOC-CR-633A**, "Conditional Discharge Under G.S. 15A-1341(a5)"; **for offenses committed before Dec. 1, 2009**.

In addition to complying with the regular and any special conditions of probation set forth in the "Judgment Suspending Sentence" entered in the above case(s), the defendant shall also comply with the following special conditions of probation and conditions of special probation, which are defined as intermediate punishments by G.S. 15A-1340.11(6).

☐ **1. Special Probation - G.S. 15A-1351**

For the defendant's active sentence as a condition of special probation, the defendant shall comply with these additional regular conditions of probation: (1) Obey the rules and regulations of the Division of Adult Correction governing the conduct of inmates while imprisoned. (2) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

☐ A. Serve an active term of _____ ☐ days ☐ months ☐ hours in the custody of the ☐ N.C. DAC. ☐ Sheriff of this County. ☐ Other: _____.

(**NOTE:** *Noncontinuous periods of special probation may not be served in DAC. Also, special probation imposed in misdemeanor sentences on or after Oct. 1, 2014, and in sentences under G.S. 20-179 on or after Jan. 1, 2015, may not be served in DAC.*)

☐ B. The defendant shall report in a sober condition to begin serving his/her term on:

Day	*Date*	*Hour* ☐ AM ☐ PM

and shall remain in custody until:

Day	*Date*	*Hour* ☐ AM ☐ PM

☐ C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next _____ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active sentence ordered.

☐ D. This sentence shall be served at the direction of the probation officer within _____ ☐ days ☐ months of this judgment.

☐ E. Pay jail fees. ☐ F. Work release is recommended. ☐ G. Substance abuse treatment is recommended.

☐ H. Other:

☐ **2. Residential Program - G.S. 15A-1340.11(8); 15A-1343(b1)(2)**

Attend or reside in _____ *(name program)* residential program for a period of _____ ☐ days, ☐ months, and abide by all rules and after care regulations of that program.

Other:

☐ **3. House Arrest With Electronic Monitoring - G.S. 15A-1340.11(4a); 15A-1343(b1)(3c)**

Be assigned to house arrest with electronic monitoring for a period of _____ ☐ days, ☐ months, and submit to electronic monitoring and abide by all rules, regulations, and directions of the probation officer, regarding electronic monitoring, and pay the fees prescribed under G.S. 15A-1343(c2) pursuant to the schedule set out under Monetary Conditions.

Other:

☐ **4. Intensive Supervision Program - G.S. 15A-1340.11(5); 15A-1343(b1)(3b); 143B-704(c)**

Submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-704(c), for a period of _____ months *(6 to 9 months recommended by the Section of Community Corrections)*, and comply with the rules adopted by that program.

Other:

☐ **5. Day Reporting Center - G.S. 15A-1340.11(3); 15A-1343(b1)(10); 15A-1340.11(6)**

Report as directed by the probation officer to the Day Reporting Center for a period of _____ ☐ days, ☐ months, and abide by all rules and regulations of that program.

Other:

☐ **6. Drug Treatment Court - G.S. 15A-1340.11(3a); 15A-1340.11(6)**

Comply with the rules adopted for the program as provided for in Article 62 of Chapter 7A of the General Statutes and report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs.

Other:

Material opposite unmarked squares is to be disregarded as surplusage.

(Over)

MANDATORY SPECIAL CONDITIONS FOR SEX OFFENDERS AND PERSONS CONVICTED OF OFFENSES INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF A MINOR - G.S. 15A-1343(b2)

NOTE: *The following are not defined as intermediate punishments under G.S. 15A-1340.11(6).*
NOTE: *Select **only one** of the three sets of conditions below.*

☐ **1. Special Conditions For Reportable Convictions - G.S. 15A-1343(b2)**

NOTE: *Impose only for a reportable conviction under G.S. 14-208.6.*
The defendant has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4) and must
a. Register as a sex offender and enroll in satellite-based monitoring if required on the attached AOC-CR-615, Side Two.
b. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
c. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
☐ d. *(if the Court finds physical, mental, or sexual abuse of a minor)* Not reside in a household with
☐ (1) *(for sexual abuse)* any minor child.
☐ (2) *(for physical or mental abuse)* any minor child ☐ other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household)*: _____.
e. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: ☐ child pornography
☐ _____.
f. Other:

☐ **2. Special Conditions For Offenses Involving The Sexual Abuse Of A Minor - G.S. 15A-1343(b2)**

NOTE: *Impose if offense involved sexual abuse of a minor but is **not** a reportable conviction.*
The defendant has been convicted of an offense involving the sexual abuse of a minor and must
a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
c. Not reside in a household with any minor child. (G.S. 15A-1343(b2)(4))
d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: ☐ child pornography
☐ _____.
e. Other:

☐ **3. Special Conditions For Offenses Involving The Physical Or Mental Abuse Of A Minor - G.S. 15A-1343(b2)**

NOTE: *Impose if offense involved physical or mental abuse of a minor but is **not** a reportable conviction and did **not** involve sexual abuse.*
The defendant has been convicted of an offense involving the physical or mental abuse of a minor and must
a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
c. Not reside in a household with
☐ (1) any minor child.
☐ (2) any minor child other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household)*:
_____.
d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: ☐ child pornography
☐ _____.
e. Other:

ADDITIONAL CONDITIONS FOR DOMESTIC VIOLENCE

☐ 1. Pursuant to its finding that the defendant is responsible for acts of domestic violence, the Court further finds that:
☐ a. there is an abuser treatment program, approved by the Domestic Violence Commission, reasonably available to the defendant, who shall:
☐ (1) *(for supervised probation)* attend and complete *(check one)* ☐ *(program name)* _____
☐ a program to be identified by the probation officer, and abide by the program's rules. The probation officer shall send a copy of this judgment to the program, which shall notify the officer if the defendant fails to participate or is discharged for violating any of its rules.
☐ (2) *(for unsupervised probation)* attend and complete *(check one)* ☐ *(program name)* _____
☐ a program chosen by the defendant, who shall notify the program and the district attorney of that choice within ten (10) days of the entry of this judgment, and abide by the program's rules. The district attorney shall send a copy of this judgment to the program, which shall notify the district attorney if the defendant fails to participate or is discharged for failure to comply with the program or its rules.
☐ b. there is no approved abuser treatment program reasonably available. ☐ c. it would not be in the best interests of justice to order the defendant to complete an abuser treatment program because _____.
☐ 2. As additional Special Conditions of Probation, the defendant shall:
☐ a. not come within _____ feet of _____ at any time.
☐ b. comply fully with any G.S. Chapter 50B Domestic Violence Protective Order in effect.

The above conditions are incorporated in the "Judgment Suspending Sentence" in the above case(s) and made a part thereof.

Date	*Name Of Presiding Judge (type or print)*	*Signature Of Presiding Judge*

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS		
Name Of Defendant		
DOB	*Age*	*Highest Level Of Education Completed*

TRANSCRIPT OF PLEA

G.S. 15A-1022, 15A-1022.1

NOTE: *Use this section **ONLY** when the Court is rejecting the plea arrangement.*

☐ The plea arrangement set forth within this transcript is hereby rejected and the clerk shall place this form in the case file. *(Applies to plea arrangements disclosed on or after December 1, 2009.)*

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

The undersigned judge, having addressed the defendant personally in open court, finds that the defendant (1) was duly sworn or affirmed, (2) entered a plea of ☐ guilty ☐ guilty pursuant to *Alford* decision ☐ no contest, and (3) offered the following answers to the questions set out below:

	Answers
1. Are you able to hear and understand me?	(1) _____
2. Do you understand that you have the right to remain silent and that any statement you make may be used against you?	(2) _____
3. At what grade level can you read and write?	(3) _____
4. (a). Are you now under the influence of alcohol, drugs, narcotics, medicines, pills, or any other substances?	(4a) _____
(b). When was the last time you used or consumed any such substance?	(4b) _____
5. Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand every element of each charge?	(5) _____
6. (a). Have you and your lawyer discussed the possible defenses, if any, to the charges?	(6a) _____
(b). Are you satisfied with your lawyer's legal services?	(6b) _____
7. (a). Do you understand that you have the right to plead not guilty and be tried by a jury?	(7a) _____
(b). Do you understand that at such trial you have the right to confront and to cross examine witnesses against you?	(7b) _____
(c). Do you understand that at a jury trial you have the right to have a jury determine the existence of any aggravating factors that may apply to your case *(and, if applicable, additional sentencing points not related to prior convictions)* beyond a reasonable doubt?	(7c) _____
(d). Do you understand that by your plea(s) you give up these and other valuable constitutional rights to a jury trial *(and, if applicable, rights related to sentencing)*?	(7d) _____
8. Do you understand that, if you are not a citizen of the United States of America, your plea(s) of guilty or no contest may result in your deportation from this country, your exclusion from admission to this country, or the denial of your naturalization under federal law?	(8) _____
☐ 9. Do you understand that upon conviction of a felony you may forfeit any State licensing privileges you have in the event that you refuse probation or that your probation is revoked?	(9) _____
10. Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal?	(10) _____
11. Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved?	(11) _____

(Over)

12. Do you understand that you are pleading ☐ guilty ☐ no contest to the charges shown below? (12) _____
(Describe charges, total maximum punishments, and applicable mandatory minimums for those charges.)

PLEAS

✓	Plea*	File Number	Count No.(s)	Offense(s)	Date Of Offense	G.S. No.	F/M	CL.	‡Pun. CL.	Maximum Punishment

☐ See attached AOC-CR-300A, for additional charges.

*G = Guilty GA = *Alford* plea
NC = No Contest

TOTAL MAXIMUM PUNISHMENT

MANDATORY MINIMUM FINES & SENTENCES *(if any)*

✓ **NOTE TO CLERK:** If this column is checked this is an added offense or reduced charge.

‡ **NOTE:** *Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).*

13. Do you now personally plead ☐ guilty ☐ no contest to the charges I just described? (13) _____

14. ☐ (a) Are you in fact guilty? (14a) _____
☐ (b) *(no contest plea)* Do you understand that, upon your plea of no contest, you will be treated as being guilty whether or not you admit that you are in fact guilty? (14b) _____
☐ (c) *(*Alford *guilty plea)*
(1) Do you now consider it to be in your best interest to plead guilty to the charges I just described? (14c1) _____
(2) Do you understand that, upon your "*Alford* guilty plea," you will be treated as being guilty whether or not you admit that you are in fact guilty? (14c2) _____

☐ 15. *(Use if aggravating factors are listed below)* Have you admitted the existence of the aggravating factors shown below, have you agreed that there is evidence to support these factors beyond a reasonable doubt, have you agreed that the Court may accept your admission to these factors, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these aggravating factors ☐ agree that the State has provided you with appropriate notice about these aggravating factors? *(If so, review the aggravating factors with the defendant.)* (15) _____

☐ 16. *(Use if sentencing points are listed below)* Have you admitted the existence of the sentencing points not related to prior convictions shown below, have you agreed that there is evidence to support these points beyond a reasonable doubt, have you agreed that the Court may accept your admission to these points, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these sentencing points ☐ agree that the State has provided you with appropriate notice about these sentencing points? *(If so, review the sentencing points with the defendant.)* (16) _____

17. Do you understand that you also have the right during a sentencing hearing to prove to the Court the existence of any mitigating factors that may apply to your case? (17) _____

18. Do you understand that the courts have approved the practice of plea arrangements and you can discuss your plea arrangement with me without fearing my disapproval? (18) _____

STATE VERSUS	File No.
Name Of Defendant	

19. Have you agreed to plead ☐ guilty ☐ no contest as part of a plea arrangement? *(If so, review the terms of the plea arrangement as listed in No. 20 below with the defendant.)* (19) _____
20. The prosecutor, your lawyer and you have informed the Court that these are all the terms and conditions of your plea:

PLEA ARRANGEMENT

☐ The State dismisses the charge(s) set out on Page Two, Side Two, of this transcript.

☐ The defendant stipulates to restitution to the party(ies) in the amounts set out on "Restitution Worksheet, Notice And Order (Initial Sentencing)" (AOC-CR-611).

21. Is the plea arrangement as set forth within this transcript and as I have just described it to you correct as being your full plea arrangement? (21) _____
22. Do you now personally accept this arrangement? (22) _____
23. *(Other than the plea arrangement between you and the prosecutor)* has anyone promised you anything or threatened you in any way to cause you to enter this plea against your wishes? (23) _____
24. Do you enter this plea of your own free will, fully understanding what you are doing? (24) _____
25. Do you agree that there are facts to support your plea ☐ and admission to aggravating factors ☐ and sentencing points not related to prior convictions, and do you consent to the Court hearing a summary of the evidence? (25) _____
26. Do you have any questions about what has just been said to you or about anything else connected to your case? (26) _____

ACKNOWLEDGEMENT BY DEFENDANT

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. No one has told me to give false answers in order to have the Court accept my plea in this case. The terms and conditions of the plea as stated within this transcript, if any, are accurate.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Date
Date	Signature	Signature Of Defendant
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court		Name Of Defendant (Type Or Print)

CERTIFICATION BY LAWYER FOR DEFENDANT

I hereby certify that the terms and conditions stated within this transcript, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charges to which the defendant is pleading, and the aggravating and mitigating factors and prior record points for sentencing, if any.

Date	Name Of Lawyer For Defendant (Type Or Print)	Signature Of Lawyer For Defendant

CERTIFICATION BY PROSECUTOR

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated within this transcript, if any, are the terms and conditions agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charges in this case.

Date	Name Of Prosecutor (Type Or Print)	Signature Of Prosecutor

PLEA ADJUDICATION

Upon consideration of the record proper, evidence or factual presentation offered, answers of the defendant, statements of the lawyer for the defendant, and statements of the prosecutor, the undersigned finds that:

1. There is a factual basis for the entry of the plea *(and for the admission as to aggravating factors and/or sentencing points)*;
2. The defendant is satisfied with his/her lawyer's legal services;
3. The defendant is competent to stand trial;
4. ☐ The State has provided the defendant with appropriate notice as to the aggravating factors and/or points; ☐ The defendant has waived notice as to the aggravating factors and/or points; and
5. The plea *(and admission)* is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea *(and admission)* is hereby accepted by the Court and is ordered recorded.

Date	*Name Of Presiding Judge (Type Or Print)*	*Signature Of Presiding Judge*

SUPERIOR COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT

File No.	Count No.(s)	Offense(s)

DISTRICT COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT

File No.	Count No.(s)	Offense(s)

CERTIFICATION BY PROSECUTOR

The undersigned prosecutor enters a dismissal to the above charges pursuant to a plea arrangement shown on this Transcript Of Plea.

Date	*Name Of Prosecutor (Type Or Print)*	*Signature Of Prosecutor*