

## CHECKLIST FOR PROBATION REVOCATION APPEALS

1	Did you determine whether the indictment was proper? (See pp. 5-7)	
2	Did you determine whether the trial court had subject matter jurisdiction to revoke probation? (See pp. 5-11)	
3	Did you determine whether the defendant was represented by counsel during the original trial or plea hearing? (See pp. 10-11)	
4	Did you determine whether the defendant was represented by counsel during the revocation hearing? (See pp. 10)	
5	If the client's probationary term was extended, did you determine whether the extension was proper? (See pp. 7-9)	
6	Did you determine whether the State gave the defendant notice of the conduct that violated the conditions of probation? (See pp. 13-14)	
7	Did you determine whether the trial court revoked probation for a proper reason? (See pp. 17-18)	
8	Did you determine whether the sentence the trial court activated was proper? (See pp. 22-24)	
9	If the defendant received a split sentence, did you determine whether the active portion of the split sentence was proper and whether the split sentence was stayed pending appeal? (See pp. 24-25)	

# COMMON ISSUES IN PROBATION REVOCATION APPEALS

North Carolina Appellate Advocacy Foundations  
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**Disclaimer:** This document is not intended to be an exhaustive list of issues that can be raised in probation revocation 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 on possible issues.

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**General Advice:** Although probation revocation appeals involve short transcripts and a limited number of issues, they can be very complicated. Below are recommendations for handling some of the complications that arise in probation revocation appeals.

1. For an in-depth discussion of probation cases, be sure to review the [Administration of Justice Bulletin on probation violations](#), which was published by the UNC School of Government. Another helpful resource is Jamie Markham's book, [Probation Violations in North Carolina](#), published by the UNC School of Government.
2. Get a complete copy of the court file for your appeal:
  - a. If the case involved multiple file numbers, be sure to get the court file for each file number.
  - b. Be sure to get all of the documents for each individual file – not just those documents that are directly related to the revocation hearing.
  - c. If the case was transferred from another county, be sure to get copies of the files from both counties.
3. Create a timeline of the trial court proceedings:
  - a. You should create a numbered list of events in chronological order from the date of offense to the notice of appeal. This list will help you identify which statutes apply to your case and determine whether the trial court had jurisdiction to revoke the defendant's probation.
4. Consider getting transcripts of proceedings that occurred before the revocation hearing:
  - a. Some issues in probation revocation appeals require an understanding of proceedings that occurred prior to the revocation hearing. If you believe you need a transcript for a hearing that is not reflected in the order of appellate entries, you should file a motion and proposed order for production of transcript. As part of the motion, you would explain that the additional transcript will facilitate appellate review and enable

you to discharge your duty as the defendant's appellate counsel.

5. Determine which statutes apply to your case:
  - a. In recent years, the General Assembly has significantly modified the conditions that can result in revocation and the provisions that involve tolling. Once you have created a timeline for your case, be sure to determine which provisions apply to the appeal.

**The Right to Appeal:** Be sure to identify the type of order the defendant is appealing. Not every order involving probation can be appealed.

6. Under N.C. Gen. Stat. § 15A-1347, only certain types of orders involving probation can be appealed. Those orders include:
  - a. An order that finds the defendant in violation of probation and that activates the defendant's sentence.
  - b. An order that finds the defendant in violation of probation and that imposes special probation.
    - i. Special probation is a split sentence involving periods of imprisonment as defined in N.C. Gen. Stat. § 15A-1344(e). A blank probation order is included in the appendix. (App. 7-10). The section for special probation is at the top of third page of the form. (App. 9).
  - c. An order imposing a terminal period of Confinement in Response to Violation (CRV). The attached order contains a section that a court can use to impose CRV. (App. 10). Although the Court of Appeals has not yet conclusively held that such an order may be appealed, it has suggested that there might be a right to appeal such an order. *State v. Romero*, 228 N.C. App. 348, 351 n.1, 745 S.E.2d 364, 366 n.1 (2013).
    - i. In *State v. Wood*, No. COA13-1258, 2014 N.C. App. Lexis 519, \*3-4 (May 20, 2014) (unpublished) and *State v. Lancaster*, No. COA14-1018, 2015 N.C. App. Lexis 142, \*2-3 (Mar. 15, 2015) (unpublished), the Court also conducted *Anders* review without expressing an opinion about whether there is a right to appeal a terminal CRV.
  - d. If you file a brief in a probation appeal, be sure to specify in the Statement of the Grounds for Appellate Review that the defendant appeals pursuant to N.C. Gen. Stat. §§ 7A-27 and 15A-1347.
  - e. If a defendant appeals a judgment revoking probation but is released on bail during the appeal, "probation supervision will continue under the same conditions until the expiration of the period of probation or disposition of the appeal, whichever comes first." N.C. Gen. Stat. § 15A-1347(c).

7. There is no right to appeal the following types of orders:

- a. An order modifying probation that does not result in special probation. *State v. Edgerson*, 164 N.C. App. 712, 714, 596 S.E.2d 351, 353 (2004).
- b. An order imposing a non-terminal period of Confinement in Response to Violation (CRV). *State v. Romero*, 228 N.C. App. 348, 351-52, 745 S.E.2d 364, 367 (2013).
  - i. In *State v. Robinson*, No. COA13-415, 2013 N.C. App. Lexis 1288 (Dec. 3, 2013) (unpublished), the Court of Appeals appeared to hold that a non-terminal CRV in which probation was terminated at the conclusion of the CRV was not appealable (at least from district court to superior court).
  - ii. You may seek appellate review of a non-terminal CRV by filing a petition for writ of certiorari. See *State v. McCurry*, No. COA15-271, 2015 N.C. App. LEXIS 1004, \*6-8 (Dec. 15, 2015) (unpublished) (reviewing merits of issues at violation hearing resulting in 90-day CRV after Court of Appeals allowed defendant's petition for writ of certiorari in No. COAP14-482).
- c. An order revoking probation based on the defendant's voluntary decision to serve his sentence. *State v. Ikard*, 117 N.C. App. 460, 461, 450 S.E.2d 927, 928 (1994)
- d. If you are appointed to a case involving an order that cannot be appealed, review the court file and transcript for error. If something egregious happened, consider filing a petition for writ of certiorari or an application for writ of habeas corpus in the Court of Appeals. If the court file and transcript do not reveal any significant errors, write a letter to the judge explaining that you have determined that further review in the Court of Appeals is not appropriate. Be sure to send a copy of the letter to the clerk, prosecutor, trial attorney, and defendant.

8. Revocation orders in district court:

- a. If a district court revokes the defendant's probation, the defendant can only appeal to superior court. *State v. Hooper*, 358 N.C. 122, 126, 591 S.E.2d 514, 517 (2004). If the defendant appeals to the Court of Appeals, the appeal will be dismissed for lack of jurisdiction. *Id.* at 127, 591 S.E.2d at 518.
- b. If a defendant waives a revocation hearing in district court, the finding of a violation of probation, activation of sentence, or imposition of special probation may not be appealed to superior court. N.C. Gen. Stat. § 15A-1347(b).
  - i. If the defendant gives notice of appeal after waiving a revocation hearing in district court, the superior court will not have jurisdiction to hear the appeal. *State v. Flanagan*, 279 N.C. App. 228, 229, 863 S.E.2d 812, 813 (2021).

9. Mootness:

- a. If it is likely that your client will be released from prison before the client's appeal ends, you need to consider whether the appeal will be moot. "A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical

- effect on the existing controversy.” *Roberts v. Madison Cty. Realtors Ass’n*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996) (quoting Moot Case, Black’s Law Dictionary (6th ed. 1990)). If your client is released from prison before the Court of Appeals issues its decision in the appeal, the case will satisfy this definition of “moot.”
- b. However, there are exceptions to mootness. Under well-settled precedent, a case is not moot if the lower court decision entails adverse collateral legal consequences. *In re Hatley*, 291 N.C. 693, 694, 231 S.E.2d 633, 634 (1977). One adverse collateral consequence of an order finding the defendant in willful violation of the conditions of probation is that it can be used to impose a higher, aggravated sentence in a future prosecution. See N.C. Gen. Stat. § 15A-1340.16(d)(12a). In *State v. Black*, 197 N.C. App. 373, 377, 677 S.E.2d 199, 202 (2009), the Court of Appeals held that the aggravating factor under N.C. Gen. Stat. § 15A-1340.16(d)(12a) qualified as an adverse collateral consequence of an order finding the defendant in violation of probation and, thus, that the defendant’s appeal was not moot even though he had completed his sentence before the appeal ended.
  - c. If you have an appeal where the trial court found that the defendant violated multiple conditions of probation, but you only challenge one of the findings (such as absconding), the collateral consequences exception will not apply because there will still be some findings of willful violations even if your appeal is successful. *State v. Posey*, 255 N.C. App. 132, 133, 804 S.E.2d 580, 581-82 (2017) (over a dissent, the Court dismissed the defendant’s appeal as moot because although the trial court erred by revoking defendant’s probation for absconding, the trial court’s written order also found that defendant violated his curfew).
  - d. Two other exception worth considering are the “capable of repetition yet evading review” and public interest exceptions. Under the capable of repetition yet evading review exception, an appellate court will consider an otherwise moot argument if (1) the duration of the challenged ruling is too short to be fully litigated on appeal and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again. *Boney Publishers, Inc. v. Burlington City Council*, 151 N.C. App. 651, 654, 566 S.E.2d 701, 703-04 (2002) (citation omitted). Probation revocation appeals meet the first criterion. Additionally, you could potentially argue that the defendant could encounter a similar problem in a future prosecution. See *State v. Corkum*, 224 N.C. App. 129, 132, 735 S.E.2d 420, 423 (2012) (reviewing a jail credit argument because it was “not unreasonable to think defendant may encounter this same issue in the future should he face additional convictions”). A case is also not moot under the public interest exception “when the question involved is a matter of public interest. In such cases the courts have a duty to make a determination.” *Matthews v. N.C. Dep’t of Transp.*, 35 N.C. App. 768, 770, 242 S.E.2d 653, 654 (1978). You could potentially argue that our court system has a significant interest in preventing unwarranted revocations and, therefore, the Court of Appeals should address the merits of an otherwise moot argument about the order revoking probation in your case. See, e.g., *State v. Johnson*, 246 N.C. App. 139, 144, 783 S.E.2d 21, 25 (2016) (observing that the Justice Reinvestment Act “limited a trial court’s authority to revoke probation” only involving absconding or the commission of a new offense).

- e. There do not appear to be any prior decisions of the North Carolina Court of Appeals or Supreme Court of North Carolina that discuss federal criminal procedure. However, an order revoking probation entered in North Carolina superior court could potentially entail adverse collateral consequences in federal court. *See, e.g., United States v. Wheeler*, 330 F.3d 407, 413 (6th Cir. 2003) (holding that the federal district court properly considered a revocation order entered in Tennessee state court “in calculating the criminal history points applicable to Defendant’s prior sentence for his 1995 Conviction, correctly resulting in the assessment of three points under U.S.S.G. § 4A1.1(a)”).
  - i. Under 18 U.S.C. Appx. § 4A1.2(k), a sentence imposed in state court as part of a judgment revoking probation counts for federal sentencing if it results in the defendant’s overall sentence exceeding one year and one month and results in the defendant being incarcerated during fifteen-year period under 18 USCS Appx § 4A1.2(e).

10. *Anders* review.

- a. In *State v. Bailey*, 881 S.E.2d 746 (2022), the Court of Appeals held that a defendant in an appeal of an order revoking probation does not have the right to seek review under *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967). *Bailey* contradicts a long series of decisions granting *Anders* review in probation revocation appeals. The defendant is currently seeking review of the decision in the Supreme Court of North Carolina.
- b. If you are assigned to a probation revocation appeal and determine that there is no meritorious issue that you can pursue, please consider filing a brief and asking for *Anders* review based on the arguments and authorities presented in the [brief](#) and [petition for discretionary review](#) filed in *Bailey*.

**Subject Matter Jurisdiction:** Be sure to determine whether the trial court had jurisdiction over the defendant’s case when it revoked probation or imposed special probation.

11. Make sure the original charging document was sufficient to confer subject matter jurisdiction onto the trial court.

- a. Be sure to review the original charging document and determine whether it is proper:
  - i. If the defendant was convicted on an indictment, make sure that the indictment contains all of the essential elements of the original charge. If the defendant pled on an information, make sure that both the defendant and his attorney signed the information as required by N.C. Gen. Stat. §§ 15A-642(c) and 15A-644(b).
  - ii. Two good resources for reviewing indictment case law 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. **Caution:** If you are assigned to a probation revocation appeal in which there is a defect in the original charging document and the court imposed probation after the defendant pled guilty to the offense in the charging document, be sure to explain the risks of making a jurisdictional challenge as part of the appeal. If the client understands the risks and wants you to make the argument, be sure to get the client's written permission. The risks that the client faces include the following:
- i. If you win the argument, any concessions that the State offered the defendant as part of a plea agreement will no longer be valid. *State v. Rico*, 218 N.C. App. 109, 720 S.E.2d 801 (2012), *rev'd per curiam*, 366 N.C. 327, 734 S.E.2d 571 (2012).
  - ii. If the State re-prosecutes the defendant, he will not be protected from receiving a higher sentence if he committed the offense after December 1, 2013. N.C. Gen. Stat. § 15A-1335 (2013). If the defendant committed the offense before December 1, 2013 and is subject to an earlier version of N.C. Gen. Stat. § 15A-1335, there is still a risk that he will not be protected from receiving a higher sentence because a court might conclude that the statute should not apply to a defendant who successfully attacks a plea agreement that he himself negotiated.
  - iii. If you successfully challenge the original judgment through an application for writ of habeas corpus, the defendant should be entitled to jail credit under N.C. Gen. Stat. § 15-196.1 if the State successfully re-prosecutes him later. This is true even if the State prosecutes the defendant for a different charge arising from the incident that led to his original conviction. The statute was amended in 2015 to state that the defendant is entitled to credit toward the “charge that culminated in the sentence or the incident from which the charge arose.” N.C. Gen. Stat. § 15-196.1. As explained in the [Criminal Law Blog](#), the amended language “will clearly require the court to credit confinement on an earlier charge for the same behavior that eventually results in a conviction on a different charge . . .”.
  - iv. Any relief from a defective charging document will not occur immediately. If you file an application for writ of habeas corpus, the Court of Appeals might remand the case for a hearing or order briefing on the merits.
- c. According to *State v. Pennell*, 367 N.C. 466, 471, 758 S.E.2d 383, 387 (2014), a defendant may not challenge a defective indictment on direct appeal from an order revoking probation. Such an argument is an impermissible collateral attack on the original judgment imposing probation. After *Pennell*, there are two ways to challenge a defective charging document on appeal:
- i. Present the argument to the Court of Appeals through a motion for appropriate relief. *Pennell*, 367 N.C. at 472, 758 S.E.2d at 387; *State v. Smith*, No. COA13-742, 2014 N.C. App. LEXIS 874, \*4-5 (Aug. 5, 2014) (unpublished).
  - ii. Present the argument to the Court of Appeals through an application for writ of habeas corpus under N.C. Gen. Stat. §§ 17-1 *et. seq.* *Pennell*, 367 N.C. at 472, 758 S.E.2d at 387.

12. Make sure the trial court had jurisdiction to revoke probation:

- a. Be sure to determine when the probationary term began.
  - i. In general, a period of probation “commences on the day it is imposed[.]” N.C. Gen. Stat. § 15A-1346(a).
  - ii. If the defendant is already serving a period of imprisonment or the court imposes probation at the same time it imposes a period of imprisonment, the period of probation runs concurrently with any period of imprisonment unless the court states that it should begin at the end of the period of imprisonment. N.C. Gen. Stat. § 15A-1346(b). *State v. Harwood*, 243 N.C. App. 425, 428-30, 777 S.E.2d 116, 119 (2015).
- b. Be sure to determine whether the original term of probation was proper.
  - i. A defendant sentenced to community punishment for a felony can be placed on probation for not less than 12 nor more than 30 months. N.C. Gen. Stat. § 15A-1343.2(d)(3). A defendant sentenced to intermediate punishment for a felony can be placed on probation for not less than 18 nor more than 36 months. N.C. Gen. Stat. § 15A-1343.2(d)(4).
  - ii. Be sure to check the sentencing grid in N.C. Gen. Stat. § 15A-1340.17 to determine whether community punishment or intermediate punishment is allowed for the class of offense and the defendant’s prior record level. If the court imposes a probationary sentence that exceeds 30 months as part of a judgment imposing community punishment, the Court of Appeals might consider the mistake to be a clerical error. *See State v. Hauser*, 271 N.C. App. 496, 504, 844 S.E.2d 319, 326 (2020).
  - iii. If the trial court determines at sentencing that a longer period of probation is necessary, the court may impose a longer period. N.C. Gen. Stat. § 15A-1343.2(d). However, that period may not exceed five years. *Id.* The court is not required to provide any rationale to impose a longer term. *State v. Wilkerson*, 223 N.C. App. 195, 200, 733 S.E.2d 181, 184 (2012). Instead, all the court needs to do is make a finding that a longer term is needed. *Id.*
  - iv. The trial court cannot run multiple periods of probation consecutively. Instead, a period of probation must run concurrently with any other period of probation. N.C. Gen. Stat. § 15A-1346(a). *State v. Canady*, 153 N.C. App. 455, 460, 570 S.E.2d 262, 266 (2002).
- c. Be sure to determine whether the trial court extended the probationary term. Three different statutes permit the court to extend probation:
  - i. Under N.C. Gen. Stat. §§ 15A-1342(a) and 15A-1343.2(d), the court can extend probation (1) for up to three years, (2) with the consent of the defendant, (3) to complete a program of restitution or medical or psychiatric treatment ordered as a condition of probation, (4) if the extension is ordered in the last six months of the original period of probation. If the sentencing court imposed a five-year probationary period, an extension under this provision could result in an eight-year probationary period. An extension under N.C. Gen. Stat. § 15A-1343.2(d) does not apply to impaired driving or defendants



- sentenced as violent habitual felons. N.C. Gen. Stat. § 15A-1343.2(a).
- ii. Under N.C. Gen. Stat. § 15A-1344(d), the court can extend probation multiple times “after notice and a hearing and for good cause shown.” *See State v. Craig*, No. COA16-1027, 2017 N.C. App. Lexis 287, \*17-20 (Apr. 18, 2017) (unpublished) (trial court erred by extending defendant’s probation under § 15A-1344(d) where defendant was not given notice of hearing, no hearing was held, and the defendant was not represented by counsel); *State v. Lawrence*, No. COA08-1231, 2009 N.C. App. Lexis 760 (June 16, 2009) (unpublished) (trial court lacked subject matter jurisdiction to revoke defendant’s probation where defendant did not receive notice and hearing prior to the earlier extension of his probation). However, an extension under this provision cannot increase the period of probation beyond the statutory maximum of five years.
  - iii. To determine which kind of extension the court imposed, be sure to review the modification order, which usually appears in form AOC-CR-609. A copy of the form is included in the appendix. (App. 7-10) There is a section at the top of the second page that includes check boxes specifying the type of extension the court imposed. If you get a transcript of the hearing in which probation is extension, the transcript will likely reveal what type of extension was used.
  - iv. Note that it would be improper for a court to extend a period of probation to five years under N.C. Gen. Stat. § 15A-1344(d) and then extend probation from five to eight years under either N.C. Gen. Stat. §§ 15A-1342(a) or 15A-1343.2(d). Extensions under N.C. Gen. Stat. §§ 15A-1342(a) or 15A-1343.2(d) can only occur in the last six months of the original period of probation. Once the court has issued an extension under N.C. Gen. Stat. § 15A-1344(d), it cannot use N.C. Gen. Stat. §§ 15A-1342(a) or 15A-1343.2(d) to extend the period of probation further. Further discussion of extensions of probation can be found on the [North Carolina Criminal Law Blog](#).
  - v. In *State v. Guinn*, 281 N.C. App. 446, 868 S.E.2d 672 (2022), the Court of Appeals vacated a revocation order because an earlier extension was entered after an improper waiver of counsel. There was a dissent in *Guinn*, but the State did not pursue an appeal in the Supreme Court of North Carolina.
- d. Be sure to determine whether there are grounds to make a jurisdictional challenge:
- i. If the trial court revoked the defendant’s probation after the original period of probation expired, the defendant may raise a jurisdictional argument on appeal. *State v. Hendricks*, 277 N.C. App. 304, 307, 858 S.E.2d 384, 386 (2021); *State v. Reinhardt*, 183 N.C. App. 291, 644 S.E.2d 26 (2007).
  - ii. Jurisdiction may only be established by documents that were presented to the trial court. *State v. Peele*, 246 N.C. App. 159, 163-64, 783 S.E.2d 28, 32-33 (2016) (declining to allow State to amend the record to include documents that would confer jurisdiction upon the trial court).
  - iii. The State must file the violation report *before* the defendant’s probation expires. N.C. Gen. Stat. § 15A-1344(f). *See Peele*, 246 N.C. App. at 163-64, 783 S.E.2d at 32-33. The best evidence that the report was timely-filed is a file stamp. *State v. Moore*, 148 N.C. App. 568, 570, 559 S.E.2d 565, 566

- (2002). If there is no other evidence that the motion was filed in a timely manner, the lack of a file stamp is “fatal” to the court’s jurisdiction to revoke probation. *State v. High*, 230 N.C. App. 330, 336-37, 750 S.E.2d 9, 11 (2013). A sample violation report with a file stamp is included in the appendix. (App. 5-6). In *High*, the Court of Appeals held that a handwritten date and signature of the clerk did not establish that the violation report was filed in a timely manner. *High*, 230 N.C. App. at 336-37, 750 S.E.2d at 11.
- iv. If the trial court revoked the defendant’s probation *after* purporting to extend the period of probation following the expiration of probation, the defendant may raise a jurisdictional argument on appeal. *State v. Satanek*, 190 N.C. App. 653, 656, 660 S.E.2d 623, 625 (2008); *State v. Surratt*, 177 N.C. App. 551, 629 S.E.2d 341 (2006).
  - v. If the trial court revoked probation during the period of probation, but after improperly extending probation, the defendant may raise a jurisdictional argument on appeal. *State v. Peed*, 257 N.C. App. 842, 844, 810 S.E.2d 777, 779-81 (2018) (substance abuse treatment not a permissible ground for special purpose extension of probation); *State v. Gorman*, 221 N.C. App. 330, 334, 727 S.E.2d 731, 734-35 (2012). See *State v. Lawrence*, COA08-1231, 2009 N.C. App. LEXIS 760 (June 16, 2009) (unpublished) (trial court lacked jurisdiction to revoke probation where prior order extending probation was without notice and hearing). However, if the defendant failed to make the jurisdictional argument either when the court extended the period of probation or when it revoked the defendant’s probation, the Court of Appeals might consider the argument waived. See, e.g., *State v. Rush*, 158 N.C. App. 738, 742, 582 S.E.2d 37, 39 (2003) (stating that the defendant’s argument that the trial court improperly extended probation was waived because the defendant “did not raise this issue in the revocation hearing”).
  - vi. Under N.C. Gen. Stat. § 15A-1344(f), a court can extend, modify, or revoke probation *after* the expiration of the probationary period if (1) a violation report was filed before the expiration of the probationary term; (2) the court finds the defendant violated a condition of probation prior to the expiration of the probationary term; and (3) “the court finds for good cause shown and stated that the probation should be extended, modified, or revoked.”
    1. In *State v. Morgan*, 372 N.C. 609, 616, 831 S.E.2d 254, 259 (2019), the Supreme Court held that the “specific finding” described in N.C. Gen. Stat. § 15A-1344(f)(3) “must actually be made by the trial court” and that the finding “cannot simply be inferred from the record.”
    2. In a follow-up case, the Supreme Court granted trial courts significant leeway to determine whether good cause exists to revoke probation after the period of probation has expired. *State v. Geter*, 382 N.C. 484, 881 S.E.2d 209 (2022). Courts may consider a “variety of circumstances,” but the “chief consideration” is whether “substantial justice” would be advanced or offended by the post-expiration revocation. *Id.* at 494, 881 S.E.2d at 216. In *Geter*, the Supreme Court upheld the trial court’s revocation of probation based on the commission of a new offense after the State’s evidence was suppressed

in the criminal case and the State later sought to use the same evidence at the probation revocation hearing. However, in *State v. Lytle*, 883 S.E.2d 655 (2023), the defendant’s probation expired “700 days prior to the revocation hearing” and the trial court failed to make any good cause finding under N.C. Gen. Stat. § 15A-1344(f). Further, the Court reversed the revocation order because “[t]he record on appeal provides no persuasive evidence that the trial court made reasonable attempts to hold the probation revocation hearing prior to the expiration of defendant’s probation.” *Id.* at 657. Note, however, that *Lytle* is inconsistent with *Geter* because *Lytle* relies on language about the State making “reasonable efforts” to hold the violation hearing earlier, which the Court in *Geter* rejected.

3. Be aware that the remedy for the lack of a good cause finding depends on the record in each case. When the record contains sufficient evidence for the trial court to determine whether there was good cause to revoke probation after the defendant’s probation expired, the appellate court will remand the case for the trial court to rule on the question of good cause. *Morgan*, 372 N.C. at 618, 831 S.E.2d at 260. However, if the record does not indicate why the violation hearing was not held until after probation expired, the order revoking probation will be vacated. *State v. Sasek*, 271 N.C. App. 568, 576, 844 S.E.2d 328, 335 (2020).

13. Make sure the defendant’s probation was revoked in the proper judicial district:

- a. If the defendant’s probation originated in another judicial district, there must be some record or evidence that the defendant’s probation was modified in the new judicial district or that the defendant resided in or violated probation in the new judicial district as required by N.C. Gen. Stat. § 15A-1344(a). *State v. Ward*, 278 N.C. App. 128, 136, 862 S.E.2d 20, 26 (2021); *State v. Mauck*, 204 N.C. App. 583, 585, 694 S.E.2d 481, 483 (2010).

**The Right to Counsel:** Be sure to determine whether the defendant was represented by counsel at the revocation hearing and at the hearing in which the court imposed probation.

14. Make sure the defendant was represented by counsel at his original trial, plea hearing, or earlier hearing that resulted in an extension of probation:

- a. The court cannot revoke probation if the defendant was not represented by an attorney when the original judgment was entered and the record does not show that the trial court complied with N.C. Gen. Stat. § 15A-1242. *State v. Neeley*, 307 N.C. 247, 250, 297 S.E.2d 389, 392 (1982).
  - i. Be sure to review to the original judgment to determine whether the defendant had an attorney. A blank judgment form is included in the appendix. (App. 1-4). The section addressing whether the defendant was represented by counsel

is at the top of the first page.

- ii. If the judgment indicates that the defendant was not represented by counsel, consider acquiring a transcript of the proceedings to determine whether the trial court engaged in a proper colloquy with the defendant before allowing him to represent himself.

- b. A signed and certified waiver of counsel form is proof that the defendant's waiver of counsel was proper. *State v. Warren*, 82 N.C. App. 84, 89, 345 S.E.2d 437, 441 (1986). However, if the transcript of the earlier proceeding shows that the trial court failed to comply with N.C. Gen. Stat. § 15A-1242, the written waiver form will not bar relief. *State v. Wells*, 78 N.C. App. 769, 773, 338 S.E.2d 573, 575 (1986).

15. If the defendant waived his right to counsel at the revocation hearing, make sure the trial court conducted a proper colloquy under N.C. Gen. Stat. § 15A-1242.

- a. An indigent defendant has the right to counsel at a probation revocation hearing under N.C. Gen. Stat. § 15A-1345(e). *See State v. Moore*, No. COA16-422, 2016 N.C. App. Lexis 1199, \*7-10 (Dec. 6, 2016) (unpublished) (reversing revocation order and concluding that defendant did not forfeit right to counsel at probation violation hearing).
- b. The trial court's failure to conduct a proper colloquy at a probation hearing is reversible error. *State v. Evans*, 153 N.C. App. 313, 316, 569 S.E.2d 673, 675 (2002).

**Capacity to Proceed:** Be sure to determine whether the defendant had the capacity to proceed at the revocation hearing.

16. If there is some indication that the defendant lacked the capacity to proceed at the revocation hearing, the defendant can raise the issue of capacity on appeal. *State v. Martin*, No. COA15-566, 2016 N.C. App. LEXIS 156, \*4-12 (Feb. 16, 2016) (unpublished); *State v. Jones*, No. COA04-1185, 2005 N.C. App. LEXIS 2425, \*3-4 (Nov. 15, 2005) (unpublished).

- a. N.C. Gen. Stat. § 15A-1001(a) sets forth the general standard of capacity to proceed. Under the statute, a defendant lacks capacity to proceed if, by reason of mental illness or defect, he or she is unable to understand the nature and object of the proceedings, comprehend his or her situation in reference to the proceedings, or assist in the defense in a rational or reasonable manner.

**The Decision to Revoke Probation:** Be sure to determine whether the procedures the trial court employed to revoke the defendant's probation were proper.

17. Be aware that while probation revocation hearings are generally informal, defendants still have important rights at such hearings:

- a. A defendant must receive “full due process” before a court can revoke probation. *State v. Hunter*, 315 N.C. 371, 377, 338 S.E.2d 99, 104 (1986). The right to due process at probation revocation hearings includes: (a) written notice of the alleged violations, (b) disclosure of the evidence of the violations, (c) an opportunity to be heard and present evidence, (d) the right to confront and cross-examine adverse witnesses (unless the judge specifically finds good cause for not allowing confrontation); (e) a neutral and detached judge; and (f) a written statement by the judge of the evidence and reasons for revoking probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 786, 36 L. Ed. 2d 656, 664 (1973). A defendant’s due process rights at a probation revocation hearing are codified in N.C. Gen. Stat. § 15A-1345(e). *State v. Moore*, 370 N.C. 338, 345, 807 S.E.2d 550, 556 (2017) (Ervin, J., concurring).
  - b. In *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967), our Supreme Court held that probation violation proceedings are informal because “probation or suspension of sentence is an act of grace and not of right.” But this assertion is no longer accurate. In *Gagnon*, the Supreme Court stated that it was “clear after *Morrissey v. Brewer*, 408 U.S. 471 (1972), that a probationer can no longer be denied due process, in reliance on the dictum in *Escoe v. Zerbst*, 295 U.S. 490, 492 (1935), that probation is an ‘act of grace.’” *Gagnon*, 411 U.S. at 782 n.4, 154 S.E.2d at n.4. The idea that probation is a “grace” has been further eroded by the Justice Reinvestment Act, which limits the authority of trial judges to revoke probation to three conditions specified in N.C. Gen. Stat. § 15A-1344(a). *State v. Moore*, 370 N.C. 338, 343, 807 S.E.2d 550, 554 (2017).
18. “Formal rules of evidence do not apply” in probation revocation hearings. N.C.G.S. § 15A-1345(e) (2013). *See also* N.C. R. Evid. 1101(b)(3) (Rules of Evidence, other than those concerning privileges, do not apply in proceedings for “sentencing, or granting or revoking probation”).
- a. Hearsay can also serve as the basis of the court’s decision to revoke probation. *State v. Murchison*, 367 N.C. 461, 465, 758 S.E.2d 356, 359 (2014). However, it was proper for the court to rely on hearsay in *Murchison* because the hearsay statements were made by the defendant’s mother and were supported by a computer printout from the Administrative Office of the Courts. *Id.* If the trial court relied on less reliable hearsay to revoke the defendant’s probation, consider distinguishing *Murchison* and arguing that the revocation was improper.
19. If the defendant admitted to willfully violating the conditions of probation, the State does not need to present evidence to support the violations. *State v. Brown*, 279 N.C. App. 630, 634, 865 S.E.2d 753, 756 (2021).
- a. Even if the defendant admits to violating the conditions of probation, the opinion in *Brown* suggests that the defendant can still contest the sufficiency of the allegations in the violation report. *See Brown*, 279 N.C. App. at 634, 865 S.E.2d at 757.

- b. In addition, the court is not required to personally examine the defendant regarding the voluntariness of his admission. *State v. Sellers*, 185 N.C. App. 726, 728-29, 649 S.E.2d 656, 657 (2007).

20. Make sure the defendant received notice of the conditions of probation:

- a. Under N.C. Gen. Stat. § 15A-1343(c), the defendant “must be given a written statement explicitly setting forth the conditions on which he is being released.” “Oral notice to defendant of his conditions of probation is not a satisfactory substitute for the written statement required by statute.” *State v. Lambert*, 146 N.C. App. 360, 369, 553 S.E.2d 71, 78 (2001).
- b. If the trial court modifies the conditions of probation, the defendant must receive written notice of the modifications. N.C. Gen. Stat. § 15A-1343(c). “[T]he provision requiring written notice of any modifications made in the terms of probation is mandatory.” *State v. Suggs*, 92 N.C. App. 112, 113, 373 S.E.2d 687, 688 (1988). *But see State v. Ellis*, No. COA16-1220, 2017 N.C. App. Lexis 579, \*5-6 (July 18, 2017) (unpublished) (upholding modification of conditions of probation made outside of defendant’s presence on the ground that modification was a clerical correction of the special condition of probation announced at sentencing).
- c. If the defendant did not assert at or before the revocation hearing that he had no notice of the conditions of probation, the Court of Appeals might consider the argument waived. *See State v. Cooper*, 304 N.C. 180, 183-84, 282 S.E.2d 436, 439 (1981) (holding that a defendant who challenges conditions of probation must do so “no later than the hearing at which his probation is revoked”); *but see State v. Williams*, No. COA10-1343, 2011 N.C. App. LEXIS 1322, \*5 (June 7, 2011) (unpublished) (holding that the State’s failure to give notice in violation of the statutory mandate in N.C. Gen. Stat. § 15A-1343(c) is preserved without objection). In addition, the Court of Appeals will likely reject an argument that the defendant did not receive notice of the original conditions of probation because the AOC judgment form for judgments imposing probation contains the regular conditions of probation. *See State v. Solomon*, No. COA11-513, 2011 N.C. App. LEXIS 2357, \*5 (Nov. 15, 2011) (unpublished) (rejecting argument that the defendant did not receive notice of the original conditions of probation because “the judgment contains all of the terms and conditions of probation in writing, and defendant does not claim she did not receive the written judgment”).

21. Make sure the defendant received notice of the conduct that violated the terms of probation:

- a. The State must give the defendant notice of the revocation hearing and a copy of the violation report. N.C. Gen. Stat. § 15A-1345(e). A defendant’s statutory right to due process requires the State to give the defendant “notice of the hearing and its purpose, including a statement of the violations alleged.” N.C. Gen. Stat. § 15A-1345(e). Our Supreme Court interpreted this provision as requiring the State to provide the

- defendant with “a statement of the actions that [the] defendant has allegedly taken that constitute a violation of a condition of probation.” *State v. Moore*, 370 N.C. 338, 345, 807 S.E.2d 550, 555 (2017). The Court explained that N.C. Gen. Stat. § 15A-1345(e) “does not require a statement of the underlying conditions that were violated.” *Moore*, 370 N.C. at 341, 807 S.E.2d at 552. Further discussion of the notice requirement and the Supreme Court’s decision in *Moore* can be found on the [North Carolina Criminal Law Blog](#).
- b. In an earlier case, the Court of Appeals said an order for arrest that is served on the defendant and that states the defendant failed to comply with the conditions of probation is sufficient to satisfy the notice requirement. *State v. Gamble*, 50 N.C. App. 658, 659-60, 274 S.E.2d 874, 875 (1981). *Gamble* relied on *State v. Baines*, 40 N.C. App. 545, 551, 253 S.E.2d 300, 304 (1979), which held that a defendant is only entitled to a statement that the defendant “has willfully failed, without lawful excuse, to abide by the conditions of probation or suspended sentence.” The holdings in *Gamble* and *Baines* conflict the Supreme Court’s decision in *Moore*, which holds the State must give the defendant a “statement of the actions that [the] defendant has allegedly taken that constitute a violation of a condition of probation.” *Moore*, 370 N.C. at 345, 807 S.E.2d at 555. Therefore, it appears *Gamble* and *Baines* are no longer good law.
  - c. “Without prior and proper statutory notice and a statement of violations provided to Defendant, the trial court lack[s] jurisdiction” to revoke a defendant’s probation. *State v. McCaster*, 257 N.C. App. 824, 828, 811 S.E.2d 211, 214 (2018). In addition, a defendant does not waive his right to prior statutory notice by voluntarily appearing before the court and participating in his revocation hearing. *Id.* at 826-27, 811 S.E.2d at 213-15 (trial court lacked jurisdiction to revoke defendant’s probation where trial court did not inform defendant that the purpose of the hearing was to revoke probation or provide defendant with any notice of the alleged violations).
22. Be sure to compare the allegations in the violation report to the evidence at the probation violation hearing.
- a. “Just as with the notice provided by criminal indictments,” the purpose of the notice provided in violation reports is to allow the defendant to prepare a defense. *State v. Moore*, 370 N.C. 338, 341, 807 S.E.2d 550, 555 (2017). Revocation of a defendant’s probation is therefore improper when based, even in part, on violations involving conduct for which the defendant has not received notice. *State v. Walton*, No. COA17-1359, 2018 N.C. App. Lexis 847 (Sep. 4, 2018) (unpublished); *State v. Cunningham*, 63 N.C. App. 470, 475, 305 S.E.2d 193, 196-97 (1983); *cf. State v. Hubbard*, 198 N.C. App. 154, 157-59, 678 S.E.2d 390, 393-94 (2009) (concluding the defendant received sufficient notice under N.C. Gen. Stat. § 15A-1345(e) where the evidence at the violation hearing established the “same facts” alleged in the violation report).
  - b. Because the State is required to give the defendant notice of the conduct that violated

- probation, the State may not rely on evidence of conduct not described in the violation report to revoke the defendant’s probation. *See State v. Melton*, 258 N.C. App. 134, 137, 811 S.E.2d 678, 681 (2018) (explaining trial court’s finding of a violation is limited to the dates and conduct alleged in the violation report).
- c. In two decisions from 2013, the Court of Appeals held that the State was required to give the defendant notice of the condition of probation that he violated. *State v. Kornegay*, 228 N.C. App. 320, 745 S.E.2d 880 (2013); *State v. Tindall*, 227 N.C. App. 183, 742 S.E.2d 272 (2013). However, the Supreme Court overruled *Kornegay* and *Tindall* in *State v. Moore*, 370 N.C. 338, 807 S.E.2d 550 (2017). According to *Moore*, the violation report must contain “a statement of the actions defendant allegedly took that constituted a violation of a condition of probation—that is, a statement of what defendant allegedly did that violated a probation condition.” *Id.* at 344, 807 S.E.2d at 554-55.
  - d. Although *Moore* does not require the State to allege the specific condition of probation that the defendant violated, if it chooses to do so, then it is arguably bound by that decision at the probation violation hearing.
    - i. In criminal cases, the State is often not required to allege certain facts in the indictment – such as the specific felony the defendant intended to commit with a burglary charge or the specific sex act in a sex offense case. However, when the State takes the extra step in the indictment and chooses the specific felony or the specific sex act, it is “bound to prove that theory” at trial. *State v. Fletcher*, 370 N.C. 313, 333, 807 S.E.2d 528, 542 (2017). That is, the State is then “bound by its allegations, even as other litigants are bound by theirs.” *State v. Loudner*, 77 N.C. App. 453, 454, 335 S.E.2d 78, 79 (1985).
    - ii. Under a notice argument based on cases like *Fletcher* and *Loudner*, the trial court may not revoke probation when the only notice State gave the defendant was that he violated a non-revocable condition of probation. For example, this potential argument would arise where the violation report alleges a non-revocable violation, such as possessing a controlled substance, but the court revokes probation on the ground that possession a controlled substance involved the revocable condition of committing a new crime.

23. Determine whether the trial court violated the defendant’s right to confrontation:

- a. At a revocation hearing, the defendant “may confront and cross-examine adverse witnesses unless the court finds good cause for not allowing confrontation.” N.C. Gen. Stat. § 15A-1345(e). A discussion of the defendant’s right to confrontation at a probation violation hearing can be found on the [North Carolina Criminal Law Blog](#).
- b. Issue Preservation:
  - i. The defendant must object on confrontation grounds in order to “trigger the trial court’s obligation under section 15A-1345(e) to either permit cross-examination . . . or find good cause for disallowing confrontation.” *State v. Thorne*, 279 N.C. App. 655, 661, 865 S.E.2d 768, 772 (2021). The Supreme



Court also reached a similar conclusion in *State v. Jones*, 382 N.C. 267, 275, 876 S.E.2d 407, 412 (2022). As part of its analysis, the Court also held that a confrontation argument could not be preserved as part of the violation of a statutory mandate because N.C. Gen. Stat. § 15A-1345(e) “cannot be said to contain a statutory mandate.” *Id.*

- ii. If the defendant did not preserve a confrontation argument, consider raising the issue under plain error or ineffective assistance of counsel claim. There do not appear to be any published opinions applying plain error in a probation revocation appeal. However, under Rule 10(a)(4), plain error is available for evidentiary errors in criminal appeals. With respect to the effective assistance of counsel, a defendant at a probation revocation hearing has a statutory right to counsel that is “akin to the right enjoyed in a criminal trial.” *State v. Scott*, 187 N.C. App. 775, 777, 653 S.E.2d 908, 909 (2007). For a discussion of ineffective assistance of counsel claims in cases involving a statutory right to counsel, see *State v. Spinks*, 277 N.C. App. 554, 860 S.E.2d 306 (2021).
- iii. When the *Jones* case was in the Court of Appeals, that Court held in part that the defendant failed to preserve a confrontation argument because he did not issue a subpoena for the police officer whose out-of-court statements served as the basis for the revocation order. *State v. Jones*, 269 N.C. App. 440, 445, 838 S.E.2d 686, 690 (2019). This part of the Court’s reasoning did not appear in the Supreme Court’s opinion for the case. The Court of Appeals also held that this part of the Court’s reasoning did not apply where the defendant had no knowledge of the identity of the State’s witness, a paid informant. *State v. Hemingway*, 278 N.C. App. 538, 551, 863 S.E.2d 279, 287 (2021).
- iv. Further, the reasoning of the Court of Appeals in *Jones* arguably constitutes burden-shifting. The State bears the burden of proving that the defendant violated the conditions of probation. *State v. Seagraves*, 266 N.C. 112, 145 S.E.2d 327 (1965). Requiring the defendant to issue a subpoena for the purpose of questioning a State’s witness would shift the burden of presenting witnesses from the State to the defendant. With respect to the Sixth Amendment right to confrontation, the United States Supreme Court has rejected similar reasoning, holding that confrontation “imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses into court.” *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 324, 174 L. Ed. 2d 314, 330 (2009). Additionally, the reasoning employed by the Court of Appeals in *Jones* was based on *State v. Terry*, 149 N.C. App. 434, 438, 562 S.E.2d 537, 540 (2002). However, in *Terry*, the defendant lost because she failed to subpoena a witness who would have testified as part of her own affirmative defense. In other words, *Terry* does not stand for the proposition that a defendant is required to subpoena the State’s witnesses in order to preserve a confrontation argument for appeal.

24. Make sure the court revoked probation for a proper reason:

- a. The decision to revoke probation is governed by N.C. Gen. Stat. § 15A-1344. In 2011, the General Assembly amended N.C. Gen. Stat. § 15A-1344 to limit the circumstances in which a court can revoke probation. Session Law 2011-192. The amendment applies to “probation violations” occurring on or after December 1, 2011. *Id.* According to the amendment, the trial court can only revoke probation in the following three circumstances:
  - i. The defendant committed a criminal offense.
  - ii. The defendant violated the absconding condition as defined by N.C. Gen. Stat. § 15A-1343(b)(3a).
  - iii. The defendant previously received two CRV periods.
- b. What happens when the trial court’s oral pronouncement contains different findings than the written judgment revoking the defendant’s probation? The Court of Appeals has answered this question differently on many occasions:
  - i. The following cases are examples of when the trial court’s oral pronouncement controlled: *State v. Trent*, 254 N.C. App. 809, 821, 803 S.E.2d 224, 232-33 (2017) (remanding for correction of clerical error where the trial court’s written findings differed from the court’s oral findings); *State v. Jones*, 225 N.C. App. 181, 185-87, 736 S.E.2d 634, 637-638 (2013) (remanding for correction of a clerical error contained in the written judgment so that the judgment would contain the finding stated in open court); *State v. Odum*, No. COA11-610, 2011 N.C. App. LEXIS 2654, \*5-6 (Dec. 20, 2011) (unpublished) (remanding for correction of “clerical error” stating variance in oral pronouncement and written findings “was a mistake in recording the trial court’s oral findings”); *State v. Green*, No. COA11-109, 2011 N.C. App. LEXIS 2303, \*14 (Nov. 1, 2011) (unpublished) (finding clerical error where written judgment included violation that was dismissed during violation hearing); *State v. Thompson*, No. COA12-1193, 2013 N.C. App. LEXIS 244, \*3 fn.1 (March 19, 2013) (unpublished) (clerical error in written judgment); *State v. Osborne*, No. COA06-191, 2007 N.C. App. LEXIS 571, \*7-8 (March 20, 2007) (unpublished) (remanding to correct “clerical mistakes in the recording of the trial court’s judgment” revoking probation).
  - ii. The following cases are examples of when the trial court’s written order controlled over the trial court’s oral pronouncement: *State v. Hancock*, 248 N.C. App. 744, 748-49, 789 S.E.2d 522, 525 (2016); *State v. Bailey*, No. COA16-356, 2016 N.C. App. Lexis 1084, \*3-5 (Nov. 1, 2016) (unpublished).

25. If the trial court revoked probation based on the defendant’s commission of a new criminal offense, make sure the court followed the proper procedure:

- a. The court cannot revoke probation based solely on a conviction for a Class 3 misdemeanor. N.C. Gen. Stat. § 15A-1344(d).
  - i. Effective December 1, 2013, the following three offenses were changed from Class 1 misdemeanors to Class 3 misdemeanors and, thus, cannot support an

order revoking probation. Session Law 2013-360.

1. Driving while license revoked (except revocation for impaired driving, which remains a Class 1 misdemeanor). N.C. Gen. Stat. § 20-28.
  2. Conversion by bailee. N.C. Gen. Stat. § 14-168.1.
  3. Operation of a motor vehicle without insurance. N.C. Gen. Stat. § 20-313(a).
- ii. Possession of marijuana drug paraphernalia is also a Class 3 misdemeanor. N.C. Gen. Stat. § 90-113.22A.
- b. The court cannot revoke probation based solely on the existence of a pending criminal charge. *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960). Rather, the court can revoke probation if the State presents evidence that the defendant committed a new crime and the court makes independent findings based on the evidence of new crime. *State v. Monroe*, 83 N.C. App. 143, 146, 349 S.E.2d 315, 317 (1986). If the only evidence is that the defendant was arrested for committing a new crime, the order revoking probation must be reversed. *See State v. Graham*, 282 N.C. App. 158, 160, 869 S.E.2d 776, 778 (2022) (reversing revocation order because the State presented “no evidence beyond the fact that defendant was arrested that tended to establish he committed a crime”).
  - c. If the new criminal charge stemmed from a warrantless probation search, determine whether the underlying search was proper.
    - i. Since 2009, all probationers are subject to a regular condition of probation allowing warrantless searches of their person, vehicle, and premises by a probation officer. Since 2009, a warrantless probation search must be “for purposes *directly related* to the probation supervision.” N.C. Gen. Stat. §15A-1343(b)(13).
    - ii. In *State v. Powell*, 253 N.C. App. 590, 601-06, 800 S.E.2d 745, 752-54 (2017), the Court of Appeals held that the trial court erred by denying the defendant’s motion to suppress evidence of firearm because warrantless search violated N.C. Gen. Stat. § 15A-1343(b)(13) because the warrantless search was not “directly related” to the defendant’s probation. The Court of Appeals’ decision in *Powell* is discussed in more detail on the [North Carolina Criminal Law Blog](#).
26. If the trial court revoked probation based on absconding, make sure the evidence showed that the defendant violated that condition:
- a. “Absconding” is defined as “willfully avoiding supervision or...willfully making the defendant’s whereabouts unknown to the supervising probation officer.” N.C. Gen. Stat. § 15A-1343(b)(3a). Absconding is one of the most commonly-discussed topics on the [Criminal Law Blog](#). If you believe absconding is an issue in your case, be sure to search for “absconding” on the Criminal Law Blog. Absconding does not occur when the defendant violates other regular conditions of probation such as leaving the jurisdiction or failing to notify the State of a change in address. *State v. Williams*, 243

- N.C. App. 198, 205, 776 S.E.2d 741, 746 (2015): *State v. Nolen*, 228 N.C. App. 203, 205-206, 743 S.E.2d 729, 731 (2013). Instead, absconding occurs through “persistent avoidance of supervision and a continual effort to make [the defendant’s] whereabouts unknown.” *State v. Newsome*, 264 N.C. App. 659, 665, 828 S.E.2d 495, 500 (2019).
- b. Absconding can be proven by showing that the defendant committed a series of non-revocable violations, including that the defendant “willfully (1) failed to report to the office as directed by his supervising officer, (2) failed to return his supervising officer's telephone calls, (3) failed to provide a certifiable address, and (4) generally failed to make himself available for supervision as directed by his officer.” *State v. Crompton*, 380 N.C. 220, 226, 868 S.E.2d 48, 52 (2022).
  - c. Absconding can be proven with evidence that the defendant committed a series of non-revocable violations. *State v. Crompton*, 380 N.C. 220, 226, 868 S.E.2d 48, 52 (2022). Specifically, the State can show that the defendant absconded by failed to report to his probation officer, failed to return his probation officer’s phone calls, failed to provide a certifiable address, and “generally failed to make himself available for supervision as directed by his officer.” *Id.*
  - d. Examples of cases where the defendant absconded include the following:
    - i. *State v. Newsome*, 264 N.C. App. 659, 828 S.E.2d 495 (2019): The defendant’s probation officer was unable to locate the defendant during a two-month period “after numerous attempts to contact [him] at the last known address” and where defendant admitted at the violation hearing that he knew he had to report to probation office within 72 hours of release from jail and failed to do so.
    - ii. *State v. Trent*, 254 N.C. App. 809, 817-21, 803 S.E.2d 224, 228-32 (2017): The defendant admitted that, over the course of two weeks, he made no attempt to contact his probation offer, was not home for two home visits, and failed to notify his probation officer that he would be out of town over an eight-day period.
    - iii. *State v. Johnson*, 246 N.C. App. 132, 136-38, 782 S.E.2d 549, 553-54 (2016): The defendant moved from Nash County to McDowell County without notifying probation officer and did not contact probation officer for several months.
  - e. Examples of cases where the defendant’s conduct did not satisfy the definition of absconding:
    - i. *State v. Krider*, 258 N.C. App. 111, 810 S.E.2d 828, *modified and aff’d by*, 371 N.C. 466, 818 S.E.2d 102 (2018): The defendant was not present at his reported address when his probation officer visited the residence on one date, the probation officer was advised by an unidentified woman that defendant did not live at the address, and the probation officer did not subsequently try to contact defendant or verify the unidentified woman’s claim.
    - ii. *State v. Melton*, 258 N.C. App. 134, 811 S.E.2d 678 (2018): The defendant

failed to attend scheduled meetings, and the defendant's probation officer was unable to reach the defendant after two days of attempts and leaving messages with defendant's relatives.

- iii. *State v. Johnson*, 246 N.C. App. 139, 783 S.E.2d 21 (2016): The defendant told his probation officer he would not attend an office visit the following day and the failed to report for the visit.
- iv. *State v. Williams*, 243 N.C. App. 198, 776 S.E.2d 741 (2015): Despite lack of valid North Carolina address, repeated travel to New Jersey, and multiple missed appointments, the Court of Appeals concluded the defendant was not absconding where the defendant's whereabouts were generally known based on phone conversations with his probation officer. The Court deemed the absconding violation as "simply a re-alleging" of technical violations for change of address, leaving the jurisdiction, and failing to report.

27. Make sure the evidence was sufficient to establish that the defendant violated the conditions of probation:

- a. The State bears the burden of proving that the defendant violated the conditions of probation. *State v. Seagraves*, 266 N.C. 112, 145 S.E.2d 327 (1965). "There must be substantial evidence of sufficient probative force to generate in the minds of reasonable men the conclusion that defendant has in fact breached the condition in question. In the absence of such proof, the defendant is entitled to his discharge as a matter of right and not of discretion." *State v. Millner*, 240 N.C. 602, 605, 83 S.E.2d 546, 547-48 (1954). More recent decisions use a different formulation for evaluating the evidence presented at probation violation hearings. *See State v. Pettiford*, 282 N.C. App. 202, 205, 869 S.E.2d 772, 775 (2022) (holding that it is the role of the appellate court "to determine if evidence existed so as to reasonably satisfy the trial court judge that a violation of probation occurred").
- b. Be sure to determine whether the defendant's failure to comply with the condition of probation was willful or without lawful excuse.
  - i. "Willful" is defined as "the wrongful doing of an act without justification or excuse, or the commission of an act purposely and deliberately in violation of law." *State v. Arnold*, 264 N.C. 348, 349, 141 S.E.2d 473, 474 (1965).
  - ii. In the past, a lack of willfulness was a defense to violating probation. *State v. Sellars*, 61 N.C. App. 558, 561, 301 S.E.2d 105, 106 (1983); *State v. Floyd*, 213 N.C. App. 611, 612-15, 714 S.E.2d 447, 449-50 (2011).
- c. The order revoking probation must be supported by "competent evidence." *State v. Sherrod*, 191 N.C. App. 776, 777, 663 S.E.2d 470, 472 (2008). *See State v. Millner*, 240 N.C. 602, 605, 83 S.E.2d 546, 548 (1954); *State v. Rogers*, No. COA16-1087, 2017 N.C. App. Lexis 446, \*2-4 (Jun. 6, 2017) (unpublished) (trial court erred by revoking defendant's probation where the record contained no competent evidence defendant previously served two periods of confinement in response to violations).
  - i. In 1967, our Supreme Court held that a verified violation report is competent evidence to revoke a defendant's probation. *State v. Duncan*, 270 N.C. 241,

246, 154 S.E.2d 53, 58 (1967). *Duncan* is the basis for a line of cases supporting this assertion from *State v. Gamble*, 50 N.C. App. 658, 274 S.E.2d 874 (1981) through *State v. Hancock*, 248 N.C. App. 744, 789 S.E.2d 522 (2016). However, *Duncan* predated *Gagnon v. Scarpelli*, 411 U.S. 778, 786, 36 L. Ed. 2d 656, 664 (1973), and the enactment of N.C. Gen. Stat. § 15A-1345. Under *Gagnon* and N.C. Gen. Stat. § 15A-1345, the trial court may not revoke the defendant's probation unless the State presents evidence that the defendant violated the conditions of probation. *Gagnon* and N.C. Gen. Stat. § 15A-1345 also grant the defendant the right to confront and cross-examine adverse witnesses. Because a verified violation report alone could not satisfy these due process requirements, *Duncan* is no longer controlling. Therefore, if the State relies on *Duncan* to assert that the revocation order should be upheld, you should argue that the State cannot rely solely on a verified violation report to establish the alleged violation.

- d. Be sure to compare the specific violations that the trial court found with the evidence presented at the revocation hearing. If the court revoked probation based on a violation in a report from a specific date, but the evidence does not support that violation, you should argue that the court revoked probation based on insufficient evidence. A sample revocation order is included in the appendix. (App. 11-12). In the "Findings" section on the second page of the order, the court is required to specify the violations that support its order. (App. 12).
  - e. If the trial court checked the box stating that "each violation is, in and of itself, a sufficient basis to revoke probation," and you have a case where the court found both revocable and non-revocable violations, you should challenging the revocation order as an abuse of discretion. The box appears under number 4 in the "Findings" section of the attached revocation order. (App. 12). The Court of Appeals sometimes characterizes the trial court's decision to check this box as a "clerical error." *State v. Newsome*, 264 N.C. App. 659, 828 S.E.2d 495 (2019). However, please see Issue I in [this brief](#) for an example of how the argument could be presented.
28. Make sure the trial court did not revoke probation for a violation that was litigated at an earlier hearing:
- a. In *State v. Schimmelpfenning*, No. COA15-1315, 2016 N.C. App. LEXIS 886, \*6-10 (Sep. 6, 2016) (unpublished), the Court of Appeals held that the trial court cannot revoke probation for a new criminal conviction if the same conviction or pending charge was the basis of a previous modification. The Court relied on an earlier case, *State v. Bridges*, 189 N.C. App. 524, 526-27, 658 S.E.2d 527, 528 (2008), which suggested that trial courts lack jurisdiction to respond to violations that were adjudicated at prior hearings).
  - b. Be aware that the Court of Appeals considered this problem under theories of collateral estoppel and *res judicata* in *State v. Jacobs*, No. COA11-679, 2012 N.C. App. LEXIS 363 (Mar. 20, 2012) (unpublished). However, a claim of collateral estoppel or *res judicata* is waived if it is not raised in trial court. *In re D.R.S.*, 181

N.C. App. 136, 140, 638 S.E.2d 626, 628 (2007). The Court of Appeals has also held that theories like collateral estoppel (which are based on double jeopardy) do not apply at probation revocation hearings. *State v. Powell*, No. COA16-499, 2016 N.C. App. Lexis 1143, \*3-4 (Nov. 15, 2016) (unpublished). For additional information about this issue, please see this post on the [North Carolina Criminal Law Blog](#).

29. Make sure the trial court exercised discretion before revoking the defendant's probation:

- a. It is error for the trial court to revoke probation on the ground that it has no discretion in determining whether to revoke, modify, or extend probation after finding a revocable violation. *State v. Bailey*, No. COA16-356, 2016 N.C. App. LEXIS 1084, \*3-4 (Nov. 1, 2016) (unpublished) (noting that failure to exercise discretion at probation violation hearing is error); *State v. Everette*, No. COA12-1500, 2013 N.C. App. LEXIS 973, \*13-14 (Sep. 17, 2013) (unpublished).
- b. An error in the findings may be deemed harmless if the revocation order was supported by at least one proper finding that the defendant violated a revocable condition of probation. *State v. Hancock*, 248 N.C. App. 744, 748, 789 S.E.2d 522, 525 (2016) (“A trial court’s ruling must be upheld if it is correct upon any theory of law[,] and thus it should not be set aside merely because the court gives a wrong or insufficient reason for [it].”). However, if the trial court failed to check the box on the judgment specifying that “each violation in and of itself” would be a sufficient reason for revocation, the Court of Appeals may remand the case to superior court to determine whether the court would have revoked probation if it had not found that each violation was sufficient to revoke probation. *State v. Sitosky*, 238 N.C. App. 558, 565, 767 S.E.2d 623, 627–28 (2014).

**Activating the Defendant's Sentence:** Be sure to determine whether the trial court's decisions regarding the defendant's sentence were proper.

30. Make sure any decisions about reducing the defendant's sentence were proper:

- a. Courts generally prohibit a defendant from challenging the sentence that the trial court imposed in the original judgment placing the defendant on probation. Such a challenge is normally considered an impermissible collateral attack. *State v. Holmes*, 361 N.C. 410, 413, 646 S.E.2d 353, 355 (2007). Appellate courts reason that if the defendant wanted to challenge the original judgment, he should have done so through a direct appeal from the original judgment itself. *Id.*
- b. Nevertheless, there are some sentencing arguments that can be made on appeal from the order revoking probation. For example, under N.C. Gen. Stat. § 15A-1344(d1), the trial court may reduce the defendant's sentence when it revokes probation. If the sentence the court initially imposed was too high, you should consider arguing that the court's failure to reduce the sentence at the end of a revocation hearing was an abuse of discretion. *But see State v. Leonard*, No. COA14-182, 2015 N.C. App.

LEXIS 53, \*4-5 (Feb. 3, 2015) (unpublished) (holding that a challenge to the original sentence constituted an impermissible collateral attack).

- c. If the trial court believed that it did not have authority to reduce the sentence, the defendant “is entitled to a new revocation of probation hearing.” *State v. Partridge*, 110 N.C. App. 786, 788, 431 S.E.2d 550, 551-52 (1993); *see also State v. Holmes*, No. COA18-1023, 2019 N.C. App. Lexis 287, \*5-6 (March 26, 2019) (unpublished).

31. Make sure any decisions about the structure of the defendant’s sentence were proper:

- a. If the trial court re-structured the defendant’s sentences to run consecutively without the defendant present, the case must be remanded for resentencing. *State v. Hanner*, 188 N.C. App. 137, 142, 654 S.E.2d 820, 823 (2008).
- b. If the transcript indicates that the trial court decided to run the defendant’s sentences consecutively because the defendant contested the allegations in the violation report, you should consider arguing that the trial court improperly punished the defendant for exercising his right to a revocation hearing. *See, e.g., State v. Cannon*, 326 N.C. 37, 39, 387 S.E.2d 450, 451 (1990) (holding that the trial court cannot impose a higher sentence based on the defendant’s demand for a jury trial).

32. Make sure the trial court gave the defendant sufficient credit for time served:

- a. Be sure to determine from the court file how much credit the defendant was due for time served in jail and compare that to the credit the judge gave the defendant in the judgment revoking probation.
- b. Under N.C. Gen. Stat. § 15-196.1, the defendant is entitled to credit for time served in jail before the revocation hearing or as part of special probation. *State v. Farris*, 336 N.C. 552, 556, 444 S.E.2d 182, 184-85 (1994).
- c. In 2016, the legislature amended the CRV jail credit rules for defendants subject to multiple sentences. The legislature amended N.C. Gen. Stat. § 15-196.2, effective for offenses committed on or after December 1, 2016, to state that upon revocation of two or more consecutive sentences as a result of a probation violation, credit for time served on concurrent CRVs may be credited to one sentence only. Session Law 2016-77, § 5. The new jail credit provision is explained in more detail on the [North Carolina Criminal Law Blog](#).
- d. Be aware that if the defendant did not ask the trial court to give him credit for time served, the Court of Appeals will not review the defendant’s jail credit for the first time on appeal. *State v. Cloer*, 197 N.C. App. 716, 722, 678 S.E.2d 399, 403 (2009). If the defense attorney did not ask the trial court to give the defendant jail credit, you should consider raising the issue under Appellate Rule 2. As an alternative, you should consider asking the trial attorney to ask the judge to give the defendant the correct amount of jail credit. This might require you to assemble the relevant



documents from the court file and draft a letter outlining the number of days that should be credited to the client.

**Special Probation / Split Sentences:** Be sure to determine whether the trial court sentenced the defendant to proper periods of active time and probation.

33. Make sure the active portion of the split sentence is proper:

- a. Special probation, commonly referred to as a “split sentence,” allows a judge to impose a mix of imprisonment and probation when sentencing a defendant to intermediate punishment. Split sentence confinement occurs *within* the period of probation. N.C. Gen. Stat. § 15A-1351(a).
- b. The active portion of the split sentence counts against the total length of the probation period. N.C. Gen. Stat. § 15A-1351(a). The combined length of the split sentence and probation cannot exceed sixty months except as provided in N.C. Gen. Stat. § 15A-1342(a).
- c. The total of all periods of special probation confinement (split sentence) “may not exceed one-fourth the maximum sentence of imprisonment imposed for the offense[.]” N.C. Gen. Stat. § 15A-1351(a).
- d. A detailed discussion on special probation can be found on the [North Carolina Criminal Law Blog](#).

34. Make sure the defendant received the proper jail credit:

- a. In imposing a split sentence, the judge may credit any time spent as a result of the charge “to either the suspended sentence or to the imprisonment required for special probation.” N.C. Gen. Stat. § 15A-1351(a).
- b. Upon revocation of probation, a defendant is entitled to receive credit for any active time served as part of a split sentence. *State v. Farris*, 336 N.C. 552, 555-56, 444 S.E.2d 182, 184-85 (1994).

35. Determine whether the split sentence was stayed when the defendant gave notice of appeal:

- a. “When a defendant has given notice of appeal . . . special probation is stayed.” N.C. Gen. Stat. § 15A-1451(a)(4).
- b. 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).
  - i. 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.

STATE OF NORTH CAROLINA

County Seat of Court

NOTE: [Use AOC-CR-310 for DWI offense(s)]

File No.

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

JUDGMENT SUSPENDING SENTENCE - FELONY
PUNISHMENT: COMMUNITY INTERMEDIATE
(STRUCTURED SENTENCING)
(For Offenses Committed On Or After Dec. 1, 2016)

G.S. 15A-1341, -1342, - 1343, -1343.2, -1346

Name Of Defendant
Race Sex Date Of Birth
Attorney For State Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Appointed Retained Cr Rptr Initials

The defendant was found guilty/responsible, pursuant to plea (pursuant to Alford) (of no contest) trial by judge trial by jury, of

Table with columns: 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 determination of this issue by the
trier of fact 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 III V II IV 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 (check only one) a habitual felon to be sentenced four classes higher than the principal felony (no higher than Class C).
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 misdemeanor), Other: This finding is based on the determination of this issue by the trier of fact 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-603D, 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) involve the (check all that apply) physical or mental sexual abuse of a minor.
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, 2017, only) finds that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2) and that the defendant was a criminal gang leader or organizer as defined in G.S. 14-50.16A(3). This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or on the defendant's admission.
12. finds the above-designated offense(s) involved (check one) (offenses committed Dec. 1, 2016 - Nov. 30, 2017) criminal street gang activity (offenses committed on or after Dec. 1, 2017) criminal gang activity. G.S. 14-50.25.
13. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) the defendant refused to consent. the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.
14. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
15. 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. DACJJ.

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-603D, 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.

Table with columns: 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 if placed on supervised probation above, pursuant to a schedule determined by the probation officer. set out by the court as follows:

Table with columns: 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.

## 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. (5) Submit to the taking of digitized photographs, including photographs of the defendant's face, scars, marks, and tattoos, to be included in the defendant's records. If the defendant is on supervised probation, the defendant shall also: (6) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer. (7) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (8) 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. (9) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (10) 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 purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful. (11) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (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 such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used. (13) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction and Juvenile Justice for the actual costs of drug or alcohol screening and testing. (14) Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court.

15. 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-603D, Page Two, Side Two.

## SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1)

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

- 16. 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.
- 17. Successfully pass the General Education Development Test (G.E.D.) during the first \_\_\_\_\_ months of the period of probation.
- 18. Complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-708 is
  - not due because it is assessed in a case adjudicated during the same term of court.
  - to be paid  pursuant to the schedule set out under Monetary Conditions on the reverse.  within \_\_\_\_\_ days of this Judgment and before beginning service.
- 19. 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.
- 20. 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 \_\_\_\_\_.
- 21. Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of \_\_\_\_\_  days,  months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
- 22. Other: \_\_\_\_\_
- 23. Comply with the Special Conditions Of Probation which are set forth on AOC-CR-603D, Page Two.

## ORDER OF COMMITMENT/APEAL 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)
- 6. Judicial Findings As To Required DNA Sample (AOC-CR-319)
- 2. Judgment Suspending Sentence (AOC-CR-603D, Page Two) (additional conditions of probation)
- 7. Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-615, Side Two)
- 3. Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
- 8. Convicted Sex Offender Permanent No Contact Order (AOC-CR-620)
- 4. Extraordinary Mitigation Findings (AOC-CR-606)
- 9. Additional File No.(s) And Offense(s) (AOC-CR-626)
- 5. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)
- 10. Other: \_\_\_\_\_

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

Material opposite unmarked squares is to be disregarded as surplusage.

STATE VERSUS

File No.

Name Of Defendant

NOTE: Use this page with AOC-CR-603D, "Judgment Suspending Sentence - Felony"; AOC-CR-604D, "Judgment Suspending Sentence - Misdemeanor"; AOC-CR-619D, "Conditional Discharge Under G.S. 90-96(a)"; AOC-CR-621D, "Conditional Discharge Under G.S. 14-50.29"; AOC-CR-627D, "Conditional Discharge Under G.S. 90-96(a1)"; AOC-CR-628D, "Conditional Discharge Under G.S. 14-204(b)"; AOC-CR-632D, "Conditional Discharge Under G.S. 15A-1341(a4)"; or AOC-CR-633D, "Conditional Discharge Under G.S. 15A-1341(a5)"; for offenses committed on or after Dec. 1, 2016.

COMMUNITY AND INTERMEDIATE PROBATION CONDITIONS - G.S. 15A-1343(a1)

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 conditions of probation, which may be imposed for any community or intermediate punishment.

- 1. Submit to house arrest with electronic monitoring, remain at the defendant's residence for a period of \_\_\_ days, \_\_\_ months, abide by all rules, regulations, and directions of the probation officer regarding such monitoring, and pay the fees prescribed in G.S. 15A-1343(c) as provided under Monetary Conditions. The defendant may leave the residence for the following purpose(s) and as otherwise permitted by the probation officer: \_\_\_ employment \_\_\_ counseling \_\_\_ a course of study \_\_\_ vocational training. Other:
2. Complete \_\_\_ hours of community service during the first \_\_\_ days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-708 is \_\_\_ not due because it is assessed in a case adjudicated during the same term of court. \_\_\_ to be paid \_\_\_ pursuant to the schedule set out under Monetary Conditions in the "Judgment Suspending Sentence." \_\_\_ within \_\_\_ days of this Judgment and before beginning service. Other:
3. Submit to the following period(s) of confinement in the custody of the \_\_\_ Sheriff of this County. \_\_\_ (other local confinement facility). \_\_\_ and pay jail fees. The defendant shall report in a sober condition to serve the term(s) indicated below. NOTE: Periods of confinement imposed here must be for two-day or three-day consecutive periods, only, for no more than six days in a single month, and in no more than three separate months during the period of probation. To impose special probation under G.S. 15A-1351, see INTERMEDIATE PUNISHMENTS, below.

Table with 3 columns: Date, Hour, AM/PM, for, 2/3 days. Multiple rows for specifying confinement periods.

- 4. Obtain a substance abuse assessment, monitoring, or treatment as follows:
5. Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of \_\_\_ days, \_\_\_ months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
6. Participate in an educational or vocational skills development program as follows:
7. Submit to satellite-based monitoring, if required on the attached AOC-CR-615, Side Two.

INTERMEDIATE PUNISHMENTS

In addition to complying with the regular and any special, community, or intermediate conditions of probation set forth in the "Judgment Suspending Sentence" or herein for the above case(s), the defendant shall also comply with the following intermediate punishment(s) under 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 and Juvenile Justice 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. DACJJ. \_\_\_ Sheriff of this County. \_\_\_ Other:
(NOTE: Noncontinuous periods of special probation may not be served in DACJJ. Also, special probation imposed in misdemeanor sentences on or after Oct. 1, 2014, may not be served in DACJJ.)
B. The defendant shall report in a sober condition to begin serving his/her term on: \_\_\_ and shall remain in custody until: \_\_\_
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 term ordered.
D. This term 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. 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:

INTERMEDIATE CONDITIONS OF PROBATIONS - G.S. 15A-1343(b4)

If subject to intermediate punishment, the defendant shall, in addition to the terms and conditions imposed above, comply with the following intermediate conditions of probation. (1) If required by the defendant's probation officer, perform community service under the supervision of the Section of Community Corrections, and pay the fee required by G.S. 143B-708, but no fee shall be due if the Court imposed community service as a special condition of probation and assessed the fee in this judgment or any judgment for an offense adjudicated in the same term of court. (2) Not use, possess, or control alcohol. (3) Remain within the defendant's county of residence unless granted written permission to leave by the court or the defendant's probation officer. (4) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments by abiding by the rules, regulations, and direction of each program.

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.

App. 5

State of North Carolina

> File No. County of Hearing

FILED No. County of Origin 12053457

RUTHERFORD County RUTHERFORD CON - 5 Seat 8056 Court District X Superior In the General Court of Justice

STATE VERSUS RUTHERFORD COUNTY, C.S.C.

MCCURRY BY VIOLATION REPORT

DOGWOOD LN APT FOREST CITY NC

AKA: O.

WHITE MALE DOB: 11/ /1967 G.S. 15A-1345

ADMINISTRATIVE REVIEW

The violations listed on this Violation Report were reviewed with DAVIS, LAMONDA M. Chief Probation Officer on 01/01/0001

OATH AND SIGNATURE OF OFFICER

I have read the Violation Report, and state that the contents are true to my own knowledge except those which are stated upon information and belief, and as to them I believe that they are true.

Signature Name (Type or Print) Title Date Terrence Lempert PPOIT 9/5/2013

SWORN AND SUBSCRIBED TO Signature of Person Authorized to Administer Oaths. on 9/5/13 Date Deputy CSC/Assist CSC Superior Court Clerk Magistrate Notary Public Date Commission Expires

SIGNATURE OF PROBATIONER

I have received a copy of this Violation Report and understand its contents and that I must appear in Court as directed by my Probation/Parole Officer.

Signature of Probationer Date 9/5/2013

HEARING NOTICE

WHEREFORE, the above signed requests that a hearing on the charge(s) contained in this report be conducted pursuant to G.S. 15A-1345(e) on the date and at the time and place set forth below, that the notice of this hearing be given in any manner provided by law, and that after such hearing the Court take the action which it considers proper under G.S. 15A-1344(d) and/or 15A-1344(e1).

Hearing Date: 11/04/2013 Time: 09:00 AM/PM Place: Superior Court 002

# App. 6

The probation officer, being duly sworn, states that the defendant was placed on probation pursuant to the following Judgment Suspending Sentence

Date of Judgment	Court	County of Origin	File No.	Offense	Counts
11/07/2012	DIST	RUTHERFORD	12053457	POSSESS SCHEDULE II	001
			12053457	POSSESS SCHEDULE IV	001
			12053458	SELL CONTROL SUBSTANCE	002
			12053458	PWISD COUNTERFEIT CS	001
			12053459	POSSESS SCHEDULE II	001

Length of Sentence Min: 0YR 6MO 0DY Max: 0YR 17MO 0DY  
Length of Term of Probation: 0 YRS. 24 MOS. 0 DYS.  
Sentencing Judge: POWELL, LAURA A

\*\*\*THE DEFENDANT HAS PREVIOUSLY SERVED 0 PERIODS OF CONFINEMENT IN RESPONSE TO VIOLATIONS. \*\*\*

\*\*\*THE DEFENDANT HAS THE FOLLOWING 2 OR 3 DAY PERIODS OF CONFINEMENT. \*\*\*\*

Of the conditions of probation imposed in that judgment, the defendant has willfully violated:

1. Condition of Probation "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..." in that  
OFFENDER ADMITTED TO USING METH/AMPHETAMINE 08/25/2013 AFTER LYING TO PROBATION OFFICER FOR NEARLY 2 HOURS REFUSING TO SUMMIT URINE SAMPLE.
2. "Report as directed by the Court, Commission or the supervising officer to the officer at reasonable times and places..." in that  
OFFENDER WAS RELEASED FROM JAIL ON BOND FOR PROBATION VIOLATION 08/14/2013. SUPERVISION PROBATION OFFICER MADE CONTACT WITH OFFENDER OUTSIDE THE RUTHERFORD JAIL 08/16/2013 AND INFORMED OFFENDER TO REPORT TO PROBATION OFFICE FOR OFFICE APPOINTMENT FIRST THING MONDAY MORNING 08/19/2013 AT 0800. OFFENDER AGAIN FAILED TO REPORT TO PROBATION OFFICE GIVING NO NOTICE OF ABSENCE.



STATE OF NORTH CAROLINA

File No. Co. Of Hearing

County Seat Of Court

NOTE: Use this form for all court-ordered modifications of probation, including changes in conditions, confinement in response to violation under G.S. 15A-1344(d2) or contempt under G.S. 5A-11, and all findings/orders resulting from violation hearings when probation is not revoked completely.

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

ORDER ON VIOLATION OF PROBATION OR ON MOTION TO MODIFY (For All Modifications On Or After Dec. 1, 2011)

Name Of Defendant
Race Sex Date Of Birth
Defendant's Drivers License No. State
Attorney For State Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Appointed Retained Crt Rptr Initials

G.S. 15A-1344, -1345

The defendant was placed on probation pursuant to the following Judgment Suspending Sentence:

Date Of Judgment Suspending Sentence Name Of County And File No. (County Of Original Conviction)

This matter is before the Court upon:

- 1. review under G.S. 15A-1342(b) or (d). After reasonable notice to the defendant, the Court finds does not find that termination of probation is warranted by the defendant's conduct and the ends of justice.
2. motion to modify the defendant's probation without charge of violation. Upon notice and hearing consent of the State and the defendant (see signatures on Side Two if modification entered in chambers), the Court finds does not find that good cause has been shown to modify the original Judgment Suspending Sentence.
3. allegation of violation of the conditions of the defendant's probation.

Upon due notice of the alleged violation(s) or waiver of such notice, a hearing was held before the Court. After considering the record in the above-captioned case, the evidence presented, and any statements of the State and the defendant, the Court finds that the defendant admitted or that the Court is reasonably satisfied in the exercise of its discretion that: (check all that apply)

- 1. the defendant violated the condition(s) of probation set forth in a. Paragraph(s) in the Violation Report or Notice of Hearing dated b. Paragraph(s) in the Violation Report or Notice of Hearing dated c. the attached sheet. Such violation(s) was willful and without valid excuse and occurred at a time prior to the expiration or termination of the period of the probation.
2. the defendant violated the condition(s) of probation set forth in a. Paragraph(s) in the Violation Report or Notice of Hearing dated b. Paragraph(s) in the Violation Report or Notice of Hearing dated c. the attached sheet, but said violation(s) was not willful is validly excused.
3. the defendant has not violated any of the conditions of the defendant's probation except those found above, if any.
4. the defendant is guilty of contempt beyond a reasonable doubt.

ORDER

It is ORDERED that:

- 1. the original Judgment is modified as set forth below and, except as specifically so modified, shall remain in full force and effect.
2. the original Judgment is not modified, but remains in full force and effect.
3. the defendant's limited driving privilege is REVOKED; the defendant shall surrender all copies of that privilege to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles.
4. the defendant's probation is terminated. NOTE: When this option is checked, the "Restitution Update Worksheet, Notice And Findings (Revocation Or Termination Of Probation)," AOC-CR-612, must be completed in every case in which the defendant was ordered, as a condition of probation, to pay restitution in an amount in excess of \$250 to a Victims' Rights Act victim.
5. all charges of probation violation in this case, which are not specifically found above, are dismissed.
6. the disposition of this matter is continued until
7. the defendant for willful contempt:
a. be imprisoned for days in the custody of the sheriff. as provided in AOC-CR-609, Page Two, attached.
b. pay a fine of \$ c. Other:
8. (offenses committed on or after October 31, 1998) the defendant's drivers license is revoked, whether the defendant is present or not. G.S. 143B-708 (NOTE: Select this option whenever the Court finds a willful violation of a community service condition of probation. If this option is selected, complete AOC-CR-317, Side One, and notify DMV.)

MODIFIED MONETARY CONDITIONS

The "Monetary Conditions" in the Judgment Suspending Sentence are modified to read as follows: The defendant shall pay to the Clerk of Superior Court the "Modified 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:

Table with 8 columns: Balance/Obligation Due\*, Arrearage/Probation Fee, Atty's Fee This Proceeding, Comm Serv Fee, EHA Fee, SBM Fee, Appt Fee/Misc, Modified Amount Due

\*Equals "Total Amount Due" as shown on original Judgment, less all payments made to date.

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

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

## OTHER MODIFICATIONS OF PROBATION

1. The defendant's term of probation is extended for a period of \_\_\_\_\_
- a. for good cause shown, pursuant to G.S. 15A-1344(d). **(NOTE: The total of the original period of probation plus all extensions under G.S. 15A-1344(d) may not exceed five years.)**
- b. with the defendant's consent, pursuant to G.S. 15A-1342(a) or G.S. 15A-1343.2(d). **(NOTE: The extension must be for the purpose of allowing the defendant to complete a program of restitution or continue medical or psychiatric treatment ordered as a condition of probation. The extension may be ordered only during the last six months of the original, unextended period of probation and may not exceed three years beyond the original period of probation.)**
2. The defendant's assignment to intensive supervision is terminated and the defendant is continued on supervised probation.
3. The defendant is transferred to  unsupervised  supervised probation.
4. The defendant is allowed until \_\_\_\_\_ to comply with the following condition(s): \_\_\_\_\_
5. The special conditions of probation identified below, as numbered and set out in the Judgment Suspending Sentence, are modified as follows: *(State number of each condition to be modified and set out modification.)*
6. The defendant shall also comply with the following additional special conditions of probation which the Court finds are related to the defendant's rehabilitation:
- complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days after entry of this Order, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-708 is  *(for offenses committed on or after December 1, 2009)* not assessed because it was assessed in the original Judgment or in a case adjudicated during the same term of court.
- to be paid  pursuant to the schedule set out under Modified Monetary Conditions on Side One  within \_\_\_\_\_ days of this Order and before beginning service.
- (for offenses committed on or after December 1, 2012)* Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of \_\_\_\_\_  days,  months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
- Other: *(set out conditions)*
7. *(not valid for impaired driving probation)* The Court previously
- a. withheld delegated authority under G.S. 15A-1343.2(e) or (f) but grants it by this Order.
- b. did not withhold delegated authority under G.S. 15A-1343.2(e) or (f) but now finds that it is NOT appropriate to delegate such authority to the Section of Community Corrections.
8. The sentence of intermediate punishment is modified, (or) pursuant to G.S. 15A-1344(a), the previous sentence of community punishment is modified, as follows: comply with the conditions of intermediate punishment set forth on the attached AOC-CR-609, Page Two, Side One.
9. *(not valid for impaired driving probation)* The sentence is modified as follows: comply with the additional community and intermediate probation conditions set forth on the attached AOC-CR-609, Page Two, Side Two.
10. As a result of the willful violation of probation, the defendant shall be incarcerated for the period of confinement in response to violation imposed on the attached AOC-CR-609, Page Two, Side Two. G.S. 15A-1344(d2). **(NOTE: For violations occurring on or after Dec. 1, 2011, only.)**
11. The defendant shall register as a sex offender and enroll in satellite-based monitoring if required on the attached AOC-CR-615, Side Two. G.S. 15A-1344(e2). **(NOTE: Order only if extending probation and defendant was not previously ordered to register/enroll as a condition of probation.)**

## ORDER OF COMMITMENT/APPEAL ENTRIES

- It is ORDERED that the Clerk deliver **two** certified copies of this Order 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.
- The defendant gives notice of appeal from the Judgment of the District Court to the Superior Court.
- NOTE: For probation violations occurring on or after Dec. 1, 2013, G.S. 15A-1347(b) provides: "If a defendant waives a revocation hearing [in district court], the finding of a violation of probation, activation of sentence, or imposition of special probation may not be appealed to the superior court."**
- The current pretrial release order is modified as follows: \_\_\_\_\_
- The defendant gives notice of appeal from the Judgment of the Superior 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
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## CERTIFICATION

- I certify that this Order with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.
- Order On Violation Of Probation Or On Motion To Modify (AOC-CR-609, Page Two)  Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-615, Side Two)
- Restitution Update Worksheet, Notice And Findings (Revocation Or Termination Of Probation) (AOC-CR-612)  Other: \_\_\_\_\_

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
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SEAL

**(NOTE: Defendant signs the following statement in all cases of supervised probation unless probation is terminated or not modified. A witness should sign at the same time as the defendant. For in-chambers consent modifications, defendant and prosecutor must sign prior to entry of the Order.)**

I have received a copy of this Order (check one)  before its entry,  after a hearing, and I agree to the modification(s) of my probation set out in it. I understand that no person who supervises me or for whom I work while performing community service is liable to me for any loss or damage which I may sustain unless my injury is caused by that person's gross negligence or intentional wrongdoing. I understand that my probation may be extended pursuant to G.S. 15A-1344(d), 15A-1342(a), or 15A-1343.2(d).

Date	Signature Of Defendant	Signature Of Prosecutor	Signature Of Witness
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**NOTE TO CLERK:** Send certified copies to the Clerk of Superior Court of county of original conviction, if different.

Name Of Defendant \_\_\_\_\_

**INTERMEDIATE PUNISHMENTS - CONTEMPT**

**NOTE:** Use this page in conjunction with **AOC-CR-609**, "Order On Violation Of Probation Or On Motion To Modify"; and **AOC-CR-622**, "Disposition/Modification Of Deferred Prosecution Or Conditional Discharge."

In addition to complying with the regular and any special, community, or intermediate conditions of probation set forth in the "Judgment Suspending Sentence" or herein for the above case(s), the defendant shall also comply with the following intermediate punishment(s) under G.S. 15A-1340.11(6):

**1. Special Probation - G.S. 15A-1344(e)**       **Contempt - G.S. 15A-1344(e1) and 5A-11(a)**

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: \_\_\_\_\_

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

Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	and shall remain in custody until:	Day	Date	<input type="checkbox"/> AM <input type="checkbox"/> PM
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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)** *(for offenses committed before Dec. 1, 2011, only)*

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)** *(for offenses committed before Dec. 1, 2011, only)*

Be assigned to house arrest and electronic monitoring and remain at the defendant's residence for a period of \_\_\_\_\_  days,     months,    abide by all rules, regulations and directions of the probation officer regarding such monitoring, and pay the fees prescribed in G.S. 15A-1343(c2) as provided under Modified Monetary Conditions. The defendant may leave the residence for the following purpose(s) and as otherwise permitted by the defendant's probation officer:     employment     counseling     a course of study     vocational training.

Other:

**4. Intensive Supervision - G.S. 15A-1340.11(5); 15A-1343(b1)(3b); 143B-704(c)** *(for offenses committed before Dec. 1, 2011, only)*

Submit to intensive supervision 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 for such supervision by the Section of Community Corrections.

Other:

**5. Day Reporting Center - G.S. 15A-1340.11(3); 15A-1343(b1)(10); 15A-1340.11(6)** *(for offenses committed before Dec. 1, 2011, only)*

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:

**INTERMEDIATE CONDITIONS OF PROBATION - G.S. 15A-1343(b4)**

**NOTE:** *These conditions apply only to persons on intermediate punishment for offenses committed on or after December 1, 2009.*

If subject to intermediate punishment, the defendant shall, in addition to the terms and conditions imposed above, comply with the following intermediate conditions of probation:  
 (1) If required by the defendant's probation officer, perform community service under the supervision of the Section of Community Corrections, and pay the fee required by G.S. 143B-708, but no fee shall be due if the Court imposed community service as a special condition of probation and assessed the fee in this judgment or any judgment for an offense adjudicated in the same term of court. (2) Not use, possess, or control alcohol. (3) Remain within the defendant's county of residence unless granted written permission to leave by the court or the defendant's probation officer. (4) Participate in any evaluation, counseling, treatment, or education program as directed by the probation officer, keeping all appointments and abiding by the rules, regulations, and direction of each program.

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

# App. 10

## COMMUNITY AND INTERMEDIATE PROBATION CONDITIONS - G.S.15A-1343(a1)

**NOTE:** The conditions in this section may not be imposed for offenses committed before Dec. 1, 2011, or for defendants placed on probation for a sentence under G.S. 20-179. In addition to complying with the regular and any special conditions of probation set forth in the "Judgment Suspending Sentence" entered in the case(s) listed on the reverse, the defendant shall also comply with the following conditions of probation, which may be imposed for any community or intermediate punishment:

- 1. Submit to house arrest with electronic monitoring, remain at the defendant's residence for a period of \_\_\_\_\_  days,  months, abide by all rules, regulations, and directions of the probation officer regarding such monitoring, and pay the fees prescribed in G.S. 15A-1343(c2) as provided under Modified Monetary Conditions. The defendant may leave the residence for the following purpose(s) and as otherwise permitted by the probation officer:  employment  counseling  a course of study  vocational training.  
Other: \_\_\_\_\_
  
  - 2. Complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days after entry of this Order, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-708 is  
 not due because it is assessed in a case adjudicated during the same term of court.  
 to be paid  pursuant to the schedule set out under Monetary Conditions in the "Judgment Suspending Sentence."  within \_\_\_\_\_ days of this Judgment and before beginning service.  
Other: \_\_\_\_\_
  
  - 3. Submit to the following period(s) of confinement in the custody of the  Sheriff of this County.  \_\_\_\_\_ (other local confinement facility).  and pay jail fees. The defendant shall report in a sober condition to serve the term(s) indicated below.  
**NOTE:** Periods of confinement imposed here must be for two-day or three-day consecutive periods, only, for no more than six days in a single month, and in no more than three separate months during the period of probation. To impose special probation under G.S. 15A-1344(e), see INTERMEDIATE PUNISHMENTS, on the reverse.
- |      |      |  |     |  |      |      |  |     |  |      |      |  |     |  |
|------|------|--|-----|--|------|------|--|-----|--|------|------|--|-----|--|
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| Date | Hour | <input type="checkbox"/> AM<br><input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days<br><input type="checkbox"/> 3 days | Date | Hour | <input type="checkbox"/> AM<br><input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days<br><input type="checkbox"/> 3 days | Date | Hour | <input type="checkbox"/> AM<br><input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days<br><input type="checkbox"/> 3 days |
- 4. Obtain a substance abuse assessment, monitoring, or treatment as follows: \_\_\_\_\_
  - 5. (for offenses committed on or after December 1, 2012) Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of \_\_\_\_\_  days,  months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
  - 6. Participate in an educational or vocational skills development program as follows: \_\_\_\_\_
  - 7. Submit to satellite-based monitoring, if required on the attached AOC-CR-615, Side Two.

## CONFINEMENT IN RESPONSE TO VIOLATION (CRV) - G.S. 15A-1344(d2)

**NOTE:** Confinement under this section may be imposed only upon finding of violation of probation when the violation(s) occurred on or after December 1, 2011. Any period of confinement imposed under this section shall run concurrently with any period(s) of confinement imposed in other cases in response to the same violation. Confinement under Nos. 1.a., 1.b., or 1.d. may NOT be ordered if the defendant has previously received two periods of confinement under G.S. 15A-1344(d2). Confinement under this section may not be ordered at all for defendants on probation pursuant to deferred prosecution or conditional discharge.

In accord with the Court's Other Modification Of Probation No. 10 on AOC-CR-609, Page One, Side Two, the Court ORDERS:

1. The defendant shall be confined for:

**NOTE TO COURT:** If imposing confinement for felony probation and more than 90 days remain on the defendant's maximum imposed sentence, select No. a. If 90 days or fewer remain on the maximum imposed sentence for a felony, No. d. must be selected, imposing the entire remainder of the sentence. If imposing confinement for a defendant on probation for a non-Structured Sentencing misdemeanor or a defendant placed on probation before Dec. 1, 2015, for a Structured Sentencing (SSA) misdemeanor, the duration of confinement is within the court's discretion (up to 90 days or the remainder of the suspended sentence, whichever is less): select No. b. if imposing confinement for less than the remainder of the sentence; select No. d. if the confinement is equal to the remaining sentence. If imposing confinement for a defendant placed on probation on or after Dec. 1, 2015, for an SSA misdemeanor select No. c.

- a. 90 days, for felony probation.
- b. \_\_\_\_\_ days, for misdemeanor probation (impose only for non-SSA misdemeanor or if placed on probation before Dec. 1, 2015, for SSA misdemeanor).
- c. the period(s) specified in Community And Intermediate Probation Conditions No. 3, above (impose only if placed on probation for SSA misdemeanor on or after Dec. 1, 2015).
- d. (balance of remaining sentence) \_\_\_\_\_ days, the period remaining to be served of the defendant's suspended sentence. Upon completion of this period of incarceration, defendant's probation is terminated.

**NOTE:** AOC-CR-612 must be completed in EVERY CASE in which the defendant was ordered in the original Judgment Suspending Sentence, as a condition of probation, to pay restitution in an amount in excess of \$250 to a Victims' Rights Act (VRA) victim. For a restitution award previously docketed for a VRA victim, the clerk may not begin the accrual of interest or issue a writ of execution until AOC-CR-612 is complete and probation terminates on the date specified in No. d.

2. The period of confinement imposed above shall be served in the custody of the:

N.C. DAC.  Sheriff of \_\_\_\_\_ County.  Misdemeanant Confinement Program.  Other: \_\_\_\_\_

**NOTE:** A felony CRV for a probation violation occurring before Oct. 1, 2014, and all non-felony CRVs (regardless of violation date) must be served with the custodian named in the Judgment Suspending Sentence. A felony CRV for a violation occurring on or after Oct. 1, 2014, must be served in DAC.

- 3. The defendant shall be given credit for \_\_\_\_\_ days confined as a result of the violation and prior to the date of this Order. Any credit found here and not applied by No. 4 to the confinement imposed in No. 1 shall be applied to the remainder of defendant's sentence, if activated.
- 4. Of the credit found in No. 3, \_\_\_\_\_ days shall be applied to the period of confinement imposed in No. 1.  
**NOTE:** A felony CRV imposed for a probation violation occurring on or after Oct. 1, 2014, may not be reduced by credit for time already served in the case.
- 5. Other: \_\_\_\_\_

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
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Material opposite unmarked squares is to be disregarded as surplusage.

## STATE OF NORTH CAROLINA

File No.  
Co. Of Hearing

\_\_\_\_\_ County \_\_\_\_\_ Seat Of Court

In The General Court Of Justice  
 District     Superior Court Division

NOTE: Use this form only for complete revocation of probation. For confinement in response to violation under G.S. 15A-1344(d2), use AOC-CR-609. Enter a separate revocation judgment for each sentence activated, but one revocation judgment is sufficient where the original sentence was imposed on offenses consolidated for judgment.

### STATE VERSUS

### JUDGMENT AND COMMITMENT UPON REVOCATION OF PROBATION - FELONY (STRUCTURED SENTENCING) (For Revocation Hearings On Or After Dec. 1, 2011)

Name Of Defendant

Race \_\_\_\_\_ Sex \_\_\_\_\_ Date Of Birth \_\_\_\_\_

Attorney For State

Def. Found Not Indigent     Def. Waived Attorney

Attorney For Defendant At Revocation Hearing

G.S. 15A-1344, 15A-1345  
 Appointed     Retained    Crt Rptr Initials

The defendant was placed on probation pursuant to the following Judgment Suspending Sentence:

Date Of Judgment Suspending Sentence \_\_\_\_\_ Name Of Original Sentencing Judge \_\_\_\_\_ Name Of County Of Origin \_\_\_\_\_

County of Origin File No.(s)	Off. No.	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).

In the original Judgment Suspending Sentence, the Court determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be \_\_\_\_\_, as disclosed by the record.

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

In the original Judgment Suspending Sentence, the Court found that this was an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and that the defendant had a personal relationship as defined by G.S.50B-1(b) with the victim.

In the original Judgment Suspending Sentence, the Court sentenced the defendant:

- 1. from the presumptive range of minimum durations.
- 2. from the minimum durations based upon the Findings of Aggravating and Mitigating Factors.
- 3. based upon a finding of Extraordinary Mitigation.
- 4. based upon a finding of substantial assistance pursuant to G.S. 90-95(h)(5).
- 5. based upon 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: \_\_\_\_\_

### CONCLUSION AND ORDER

Based upon the Findings of Fact set out on the reverse side, the Court concludes that the defendant has violated a valid condition of probation upon which the execution of the active sentence was suspended, and that continuation, modification or special probation or criminal contempt is not appropriate, and the Court ORDERS that the defendant's probation be revoked, that the suspended sentence be activated, 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.  
 Other: \_\_\_\_\_

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).

- The sentence activated this date shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
- The sentence activated this date shall begin at the expiration of the sentence imposed in the case referenced below:

File No.	Offense	County	Court	Date

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

# App. 12

**The Court further Orders:** (check all that apply)

1. The Clerk of Superior Court, under G.S. 7A-304(d), shall immediately disburse any undisbursed monies paid by the defendant under the Judgment Suspending Sentence, as provided in that Judgment. In addition, the defendant shall pay to the Clerk the "Total Amount Due" below.

Costs Balance	Fine Balance	Restitution Balance*	Prior Atty Fees This Case	Atty Fees This Proceeding	Appt Fee/Misc	Total Amount Due
\$	\$	\$	\$	\$	\$	\$

\*See attached "Restitution Update Worksheet, Notice and Findings (Revocation Or Termination Of Probation)," AOC-CR-612, which is incorporated by reference.  
**NOTE:** AOC-CR-612 must be completed whenever Recommendation No. 4 below is checked. Even if Recommendation No. 4 is not checked, AOC-CR-612 must be completed in EVERY CASE in which the defendant was ordered in the original Judgment Suspending Sentence, as a condition of probation, to pay restitution in an amount in excess of \$250 to a Victims' Rights Act victim.

2. The Court finds just cause to waive costs, as ordered on the attached  AOC-CR-618.  Other: \_\_\_\_\_
3. Any allegation of a violation stated in the Violation Report, Notice or otherwise which is not set forth in Finding No. 3 below is dismissed.
4. Other: \_\_\_\_\_

**The Court recommends:**

1. Substance abuse treatment.  2. Psychiatric and/or psychological counseling.  3. Work release  should  should not be granted.
4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.  but the Court **does not recommend** restitution be paid  as a condition of post-release supervision.  from work release earnings.
5. Other: \_\_\_\_\_

## FINDINGS

After considering the record contained in the files numbered above, together with the evidence presented by the parties and the statements made on behalf of the State and the defendant, the Court finds:

- The defendant is charged with having violated specified conditions of the defendant's probation as alleged in the:
  - a. Violation Report(s) on file herein, which is incorporated by reference.
  - b. Notice of Hearing on Violation Of Unsupervised Probation on file herein, which is incorporated by reference.
- Upon due notice or waiver of notice (check a. or b.)
  - a. a hearing was held before the Court and, by the evidence presented, the Court is reasonably satisfied in its discretion that the defendant violated each of the conditions of the defendant's probation as set forth below.
  - b. the defendant waived a violation hearing and admitted that he/she violated each of the conditions of his/her probation as set forth below.
- The condition(s) violated and the facts of each violation are as set forth (check all that apply)
  - a. in Paragraph(s) \_\_\_\_\_ of the Violation Report or Notice dated \_\_\_\_\_.
  - b. in Paragraph(s) \_\_\_\_\_ of the Violation Report or Notice dated \_\_\_\_\_.
  - c. on the attached sheet \_\_\_\_\_.
- Each of the conditions violated as set forth above is valid; the defendant violated each condition willfully and without valid excuse; and each violation occurred at a time prior to the expiration or termination of the period of the defendant's probation.
  - Each violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence.
- (NOTE TO COURT: This finding is required when revoking probation for violations occurring on or after December 1, 2011.)**  
 The Court may revoke defendant's probation (check all that apply):
  - a. for the willful violation of the condition(s) that he/she not commit any criminal offense, G.S. 15A-1343(b)(1), or abscond from supervision, G.S. 15A-1343(b)(3a), as set out above.
  - b. because the defendant twice previously has been confined in response to violation under G.S. 15A-1344(d2).

## ORDER OF COMMITMENT/APEAL ENTRIES

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.

The defendant gives notice of appeal from the judgment of the Court to the  Superior Court.  appellate division. Appeal entries and any conditions of post-conviction release are set forth on AOC-CR-350.

**NOTE:** For probation violations occurring on or after Dec. 1, 2013, G.S. 15A-1347(b) provides, "If a defendant waives a revocation hearing [in district court], the finding of a violation of probation, activation of sentence, or imposition of special probation may not be appealed to the superior court."

## SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
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## ORDER OF COMMITMENT AFTER APEAL

Date Remanded To District Court	Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified
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It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency **two** certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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## CERTIFICATION

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

- Appellate Entries (AOC-CR-350)     Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)
- Restitution Update Worksheet, Notice And Findings (Revocation Or Termination Of Probation) (AOC-CR-612)
- Additional File No.(s) And Offense(s) (AOC-CR-626)     Other: \_\_\_\_\_

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC
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**SEAL**

**NOTE TO CLERK:** Send certified copies to the Clerk of Superior Court of county of origin, if different, and to DAC, Attn: Combined Records, Courier Box 53-71-00, or mail to DAC, Attn: Combined Records, 4226 Mail Service Center, Raleigh, NC 27699-4226.