

## Consecutive Sentences for Criminal Contempt

The following post was written by my colleague Jamie Markham and published on the North Carolina Criminal Blog on August 11, 2016.

One of the [first posts](#) I wrote on this blog was about the punishment for criminal contempt. The post included a discussion about whether sentences for contempt could be run consecutively—something our appellate courts hadn't yet ruled on at the time. In [State v. Burrow](#), the court of appeals approved a trial court's orders sentencing a defendant to six consecutive 30-day terms of imprisonment for contempt.

*Burrow* involved a defendant tried and convicted for attempted felony breaking or entering. He was also convicted of being a habitual felon, raising the punishment class for the attempted breaking or entering from Class I to Class E. The jury found an aggravating factor. The judge found that it outweighed the lone mitigating factor and sentenced the defendant from the top of the aggravated range for Prior Record Level VI: 63–88 months.

In addition to the felony sentence, the court entered six orders finding the defendant guilty of direct criminal contempt. The appellate opinion in *Burrow* doesn't give much detail about what happened, but the trial court orders themselves, available as part of the [appellate record](#), do.

**The Court finds beyond a reasonable doubt that during this session of Court and during the defendant's trial on Tuesday, 12 May 2015, in Surry County, in the absence of the jury and just before receiving the verdict in the second phase of the defendant's jury trial, when the Court was instructing the defendant's wife, Ms. Amber Childress, not to move about the courtroom when the Court was addressing the jury with its final instructions, the defendant interrupted Court proceedings by using the word "fucking" on at least three occasions. The Court stopped the defendant's jury trial to conduct this contempt proceeding. While conducting this contempt proceeding, the defendant used the word "fucking" on at least two additional occasions and the word "fuck" on at least two additional occasions.**

The defendant did not challenge the substance of the contempt orders on appeal (indeed, the judgments imposing the contempt indicate that he pled guilty to it). He did not complain, for example, that his multiple uses of profanity were all part of a single contempt. *Cf.* *United States v. Murphy*, 326 F.3d 501 (4th Cir. 2003) (holding, under federal law, that the defendant's outburst in which he called the judge a "stinky mother fucker," a "mother fucker," and gave the judge the

finger was one contempt offense, not three). He did, however, argue that the trial court erred by ordering six 30-day sentences to run consecutively. The orders are indeed set up to one run at the expiration of the next, with the first contempt sentence beginning at the expiration of the defendant's felony term.

The defendant's argument started with the premise that contempt is a crime. It doesn't meet any of the definitions of a felony in [G.S. 14-1](#), so, under that same statute, it must be a misdemeanor. If it's a misdemeanor, the argument continues, it's an unclassified one, and that means its offense class is determined by reference to [G.S. 14-3](#). That law says that an unclassified misdemeanor with a maximum punishment of 30 days or less is Class 3. And finally, if it's a Class 3 misdemeanor, under [G.S. 15A-1340.22\(a\)](#), consecutive sentences may not be imposed.

The court of appeals disagreed, essentially rejecting the argument at step one. As a matter of North Carolina case law, contempt is not a misdemeanor. It is, rather, *sui generis* (of its own kind or class)—“essentially criminal or quasi-criminal,” *Blue Jeans Corp. of Am. v. Amalgamated Clothing Workers*, 275 N.C. 503 (1969), but neither felony nor misdemeanor. That being the case, the limit on consecutive sentences for Class 3 misdemeanors does not apply. With no other limitation set out in Chapter 5A or elsewhere, consecutive sentences are permitted.

*Burrow* brings clarity to a question that comes up pretty often—although when I am asked, it's usually about criminal contempt for multiple failures to pay child support, not for using profanity in court. I have a few other thoughts related to the case, one technical and two substantive.

First, on the technical side, I noticed that the judgments for the contempt are entered on Structured Sentencing misdemeanor judgment forms. There's a touch of irony there, considering that the court of appeals opinion turned on contempt *not* being a misdemeanor. I don't think the use of that form makes any difference as a substantive matter (between the judgment forms and the related court orders, all of the necessary findings are in place). I did, however, want to take an opportunity to point out that [AOC-CR-390](#) is designed specifically with this sort of contempt in mind.

Substantively, I can imagine that some may feel a tension between *Burrow* and cases like *Blue Jeans Corp.* and *State v. Reaves*, 142 N.C. App. 629 (2001). The *Burrow* court cited those cases in support of its conclusion that contempt is not a misdemeanor, and that the consecutive sentence limitations for misdemeanors therefore don't apply. But those earlier cases arguably stand for the proposition that contempt is something *less* than a misdemeanor, with *Blue Jeans Corp.* holding that the possible punishment for contempt is short enough for it to be a “petty offense” with no jury trial right, and *Reaves* concluding that contempt convictions don't count for prior record points under Structured Sentencing. In *Burrow*, by contrast, contempt's non-misdemeanor status clearly wound up working to the defendant's disadvantage.

Finally, note that contempt sentences stacked to form a total sentence in excess of 180 days could trigger a defendant's Sixth Amendment right to a jury trial. In general we do not aggregate

sentences for otherwise petty offenses when evaluating that right. See *Lewis v. United States*, 518 U.S. 322 (1996). But the Supreme Court has identified a special rule for certain contempt proceedings. See *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974) (holding a defendant was entitled to a jury trial when multiple counts of contempt were adjudicated together at the conclusion of a trial, resulting in consecutive sentences totaling more than 6 months). See *generally* Julie Ramseur Lewis & John Rubin, [N.C. Defender Manual](#), Vol. 2, Trial (2d ed. 2012), at § 24.1.B. The aggregate sentence in *Burrow* did not exceed 180 days, but anything more could have raised a constitutional issue.