

Consecutive Terms of Commitment for a Delinquent Juvenile

Can a district court judge impose a consecutive term of commitment upon a delinquent juvenile who is already committed to a youth development center (YDC)? Until yesterday, when I had to research this question for a client, I assumed that consecutive terms of confinement applied only to adult criminal sentences under [G.S. 15A-1354](#) but not to juvenile dispositions. Juveniles who are long term committed to juvenile facilities generally are placed there indefinitely and must work towards release by completing appropriate treatment and services designed to correct their behavior. Typically, there is no predetermined end date to the commitment (like a criminal sentence) which is why I assumed that juveniles could not receive consecutive terms. I was surprised to learn that my assumption was wrong when I found what appears to be the only NC appellate decision on the issue. See *Matter of Thompson*, 74 N.C. App. 329, 330 (1985). Although *Thompson* holds that a court may impose a consecutive commitment term, there are a couple reasons why courts may choose not to do so in a delinquency case.

Juvenile commitments are not criminal sentences.

In *Thompson*, the juvenile was subject to a two-year commitment to training school when he assaulted an employee of the training school and damaged school property. The court adjudicated him delinquent and ordered a new indefinite term of commitment to run consecutively to the juvenile's current term. Relying on common law applicable to criminal sentencing, the court held that trial courts have the inherent authority to impose consecutive terms of confinement unless expressly prohibited by statute. *Thompson*, 74 N.C. App. at 330; see also *State in Interest of J.L.A.*, 643 A.2d 538, 544 (N.J. 1994) (recognizing the same). The *Thompson* court also found that imposing consecutive commitment terms is not contrary to the philosophy of juvenile court. *Id.*

In the thirty years since *Thompson* was decided, however, NC appellate courts have repeatedly distinguished juvenile dispositions from criminal sentences and are more reluctant to apply criminal laws to juveniles absent express authority to do so. See, e.g., *In re D.L.H.*, 364 N.C. 214 (2010) (a juvenile may not receive credit for time served under G.S. 15-196.1 absent a similar provision in the Juvenile Code); *State v. Tucker*, 154 N.C. App. 653, 658 (2002) (provisions of the Structured Sentencing Act are inapplicable to juveniles because commitment to training school is not equivalent to the imprisonment of adults).

This reluctance comes from the recognition that there is a fundamental difference between the commitment of a juvenile to a YDC and the imprisonment of an adult offender. A sentence of imprisonment is designed to impose a punishment for a particular offense, whereas the goal of a juvenile disposition is to rehabilitate a delinquent juvenile by developing an individualized plan that meets the juvenile's needs. [G.S. 7B-2500](#); see also *Tucker*, 154 N.C. App. at 658 (“the objectives of confinement under the Juvenile Code significantly differ from those for imprisonment under our criminal statutes.”). Commitment of a juvenile to the Division of Adult Correction and Juvenile Justice (the Division) is simply one of many different dispositional alternatives a court may impose,

if authorized in a particular case, as part of the juvenile's rehabilitative plan. It is not intended to be a punishment for a particular offense.

In contrast to the rigid nature of criminal sentences, juvenile dispositions provide courts with "flexibility in meeting the child's special needs." *In re Carter*, 125 N.C. App. 140, 142 (1997). The vast majority of juvenile commitments are indefinite to allow sufficient time for the juvenile's rehabilitation. See [G.S. 7B-2513](#). Every commitment must be for a minimum of six months, but juveniles essentially remain committed until the Division determines they have been rehabilitated and are ready for release. In limited cases, a court may impose a definite commitment of up to two years if a juvenile is at least 14, has two prior felony adjudications, and has been previously committed to the Division. [G.S. 7B-2513\(b\)](#). Commitment terms may also be extended indefinitely to allow for further rehabilitation up to a maximum of the juvenile's 18th birthday, or up to ages 19 or 21 for more serious offenses. [G.S. 7B-2513](#) and [G.S. 7B-2515](#).

Because commitments are indefinite, an extension of a juvenile's current commitment term may be an appropriate response to continued delinquent behavior, as an alternative to a consecutive commitment. See, e.g., *In re Christopher V.*, 540 A.2d 700, 703 (Conn. 1988) (finding no authority for the trial court to impose consecutive commitments, the court held that extending an existing commitment term is the statutorily authorized response to subsequent delinquent behavior). A court could also terminate the initial commitment and order a new one, particularly if the new adjudication would authorize a longer maximum commitment. Both options accomplish the goals of holding the juvenile accountable and extending the time period for necessary rehabilitation without treating the commitment like a sentence.

The Juvenile Code lacks guidance on consecutive commitment terms.

Some state courts have found the absence of an express statutory provision authorizing consecutive juvenile commitments as a deliberate choice by the legislature not to authorize such a sanction in delinquency matters. See, e.g., *S.G.W. v. People*, 752 P.2d 86, 88 (Colo. 1988); *In re Christopher V.*, 540 A.2d 700, 703 (Conn. 1988); *In re W.H.*, 57 P.3d 1 (Kansas 2002). Other courts have held that the authority to order consecutive commitments is consistent with the flexibility of juvenile dispositions to address a juvenile's specific needs, despite the lack of statutory guidance on the issue. See, e.g., *A.N.J. v. State*, 554 So. 2d 531, 532 (Fla. Dist. Ct. App. 1989); *State in Interest of J.L.A.*, 643 A.2d 538, 544 (N.J. 1994); *In re Caldwell*, 666 N.E.2d 1367, 1371 (Ohio 1996).

However, there are other unanswered questions regarding the procedure applicable to such commitments. For example, determining when the consecutive term will begin may be difficult when the initial term is indefinite. One possibility is to view the consecutive term as beginning when the initial six month minimum term expires. See, e.g., *In re Caldwell*, 666 N.E.2d 1367 (Ohio 1996) (where a juvenile received three, consecutive indefinite commitment terms for a minimum of six months each, the juvenile was required to serve at least 18 months before being eligible for

release).

Also, at the time of commitment, the court must inform the juvenile of the maximum time period the juvenile can remain committed before the Division must provide him or her with notification of its intent to extend the commitment. See [G.S. 7B-2513\(a\)](#). It's unclear whether the juvenile must receive this notification twice with respect to each commitment or if the notification would only apply to the consecutive term.

The Code also requires that every juvenile complete a mandatory 90-day period of post-release supervision or aftercare at the end of a juvenile's commitment term. [G.S. 7B-2514](#). This requirement is superfluous for juveniles who are subject to consecutive commitments and have no real chance for release at the conclusion of the initial commitment. *But see A.N.J. v. State*, 554 So. 2d 531, 532 (Fla. Dist. Ct. App. 1989) (rejecting an argument that "consecutive commitments could result in a kind of Catch 22 situation where a child has successfully completed one rehabilitation program and is thereafter required to go through the same program a second time"). Although not addressed by statute, the Division may have an internal policy for addressing whether a juvenile must actually complete a period of PRS on the initial term before beginning the consecutive term of commitment.

These are just some of the questions that come to mind regarding consecutive juvenile commitments but I'm sure there are others. It would seem that such confusion could be avoided by using the options specifically provided for in the Code to respond to delinquent behavior.