

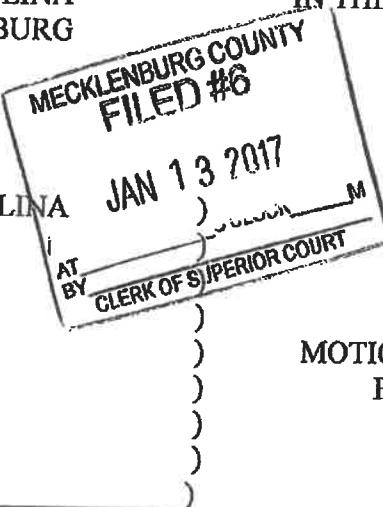
STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA

vs.

MARTINEZ O. BLACK,
Defendant.



04 CRS 61836, 37
04 CRS 239042

ORDER DENYING
MOTION FOR APPROPRIATE RELIEF
FILED 16 DECEMBER 2016

THIS MATTER came on to be heard and was considered in-chambers by the undersigned Resident Superior Court Judge. After reviewing the Motion; the record; and relevant statutory and common law, the Court FINDS and CONCLUDES as follows:

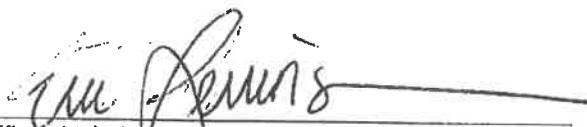
1. The legal arguments regarding the Court's authority to sentence Defendant in the aggravated habitual felon range are not "jurisdictional in nature" and are therefore procedurally barred;
2. The legal arguments regarding the Court's authority to sentence Defendant in the aggravated habitual felon range -- even if not procedurally barred -- are without legal merit and are not correct as a matter of law; and
3. The Ineffective Assistance of Counsel, Due Process, Eighth Amendment and Equal Protection arguments are not only subject to procedural bar but are also without legal merit.

BASED ON THE FOREGOING, THE UNDERSIGNED CONCLUDES:

1. An evidentiary hearing is not necessitated by the 16 December 2016 Motion for Appropriate Relief; and
2. That the 16 December 2016 Motion for Appropriate Relief should be summarily denied.

IT IS HEREBY ORDERED that the Defendant's 16 December 2016 Motion for Appropriate Relief be **DENIED**.

THIS THE 11 day of January 2017.


Hon. Eric L. Levinson
Resident Superior Court Judge

CERTIFICATE OF SERVICE

This is to certify that I have this date served the following parties in interest with a copy of the attached ***Order Regarding Motion for Appropriate Relief*** by hand delivery and/or depositing a copy of same in an official depository under exclusive care and custody of the United States Post Office in Charlotte, North Carolina with adequate postage pre-paid, addressed to the following:

Mr. Martinez O. Black 0032357
527 Commerce Drive
Elizabeth City, NC 27909

Mr. Jay Ashendorf
Office of the District Attorney – Mecklenburg County
700 East Fourth Street
Charlotte, N.C. 28202

Mecklenburg County Clerk of Superior Court – Criminal Division
Mecklenburg County Courthouse
832 East Fourth Street
Charlotte, N.C. 28202

Mr. Bruce Cunningham
225 N. Bennett Street
Southern Pines, NC 28387

This the 11 day of Jany, 2017.


Jane A. Norwood
Superior Court Judicial Assistant
26 Judicial District – Mecklenburg County
832 East Fourth Street, Suite 9600
Charlotte, N.C. 28202

On behalf of:
Hon. Eric Levinson, Resident Superior Court Judge



North Carolina Court of Appeals

DANIEL M. HORNE JR., Clerk

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

Fax: (919) 831-3615
Web: <http://www.nccourts.org>

No. P17-301

STATE OF NORTH CAROLINA,

VS.

**MARTINEZ O. BLACK,
DEFENDANT.**

From Mecklenburg
(04CRS239042 04CRS61836-37)

ORDER

The following order was entered:

The petition filed in this cause on the 5th of May 2017 and designated 'Petition for Writ of Certiorari' is denied.

By order of the Court this the 15th of May 2017.

The above order is therefore certified to the Clerk of the Superior Court, Mecklenburg County.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 15th day of May 2017.

Daniel M. Horne Jr.
Clerk, North Carolina Court of Appeals

Copy to:

Mr. Daniel P. O'Brien, Special Deputy Attorney General, For State of North Carolina
Mr. Bruce T. Cunningham, Jr., Attorney at Law, For Black, Martinez O.
Mr. Joseph L. Hyde, Assistant Attorney General
Hon. Elisa Chinn-Gary, Clerk of Superior Court

Supreme Court of North Carolina

STATE OF NORTH CAROLINA

v

MARTINEZ ORLANDO BLACK

From Mecklenburg
(04CRS239042 04CRS618-36-37)
From N.C. Court of Appeals
(08-1180 P10-844)

ORDER

Upon consideration of the petition filed by Defendant on the 18th of September 2017 in this matter for a writ of certiorari to review the order of the Superior Court, Mecklenburg County, the following order was entered and is hereby certified to the Superior Court of that County:

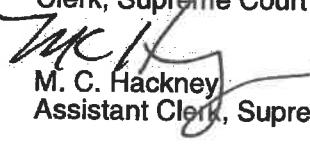
"Denied by order of the Court in conference, this the 1st of November 2017."

Jackson, J. recused

s/ Morgan, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of November 2017.



Christie Speir Cameron Roeder
Clerk, Supreme Court of North Carolina

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals
Ms. Amy Kunstling Irene, Special Deputy Attorney General, For State of North Carolina - (By Email)
Mr. Martinez Orlando Black, For Black, Martinez Orlando
Mr. Bruce T. Cunningham, Jr., Attorney at Law, For Black, Martinez Orlando - (By Email)
Mr. Joseph L. Hyde, Assistant Attorney General, For State of North Carolina - (By Email)
Mr. R. Andrew Murray, District Attorney
Hon. Elisa Chinn-Gary, Clerk
West Publishing - (By Email)
Lexis-Nexis - (By Email)

MECKLENBURG

County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

MARTINEZ ORLANDO BLACK

Offense

POSSESSION FIREARM BY FELON

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

1. The Defendant:
 a. induced others to participate in the commission of the offense.
 b. occupied a position of leadership or dominance of other participants in the commission of the offense.

2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

2a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.

3. The offense was committed for the purpose of:
 a. avoiding or preventing a lawful arrest. b. effecting an escape from custody.

4. The defendant was:
 a. hired to commit the offense. b. paid to commit the offense.

5. The offense was committed to:
 a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 b. hinder the lawful exercise of a governmental function or the enforcement of laws.

6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, social worker (effective 12/1/05), justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

7. The offense was especially heinous, atrocious or cruel.

8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.

10. The defendant:
 a. was armed with a deadly weapon at the time of the crime. b. used a deadly weapon at the time of the crime.

11. The victim was:
 a. very young. b. very old. c. mentally infirm. d. physically infirm. e. handicapped.

12. The defendant committed the offense while on pretrial release on another charge.

13. The defendant involved a person under the age of 16 in the commission of the crime.

14. The offense involved:
 a. an attempted taking of property of great monetary value. b. the actual taking of property of great monetary value.
 c. damage causing great monetary loss. d. an unusually large quantity of contraband.

15. The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.

16. The offense involved the sale or delivery of a controlled substance to a minor.

16a. The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.

16b. The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings. (effective 1/15/08)

17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

18. The defendant does not support the defendant's family.

18a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D, or E felony if committed by an adult. The Court finds this aggravating factor beyond a reasonable doubt.

19. The victim of this offense suffered serious injury that is permanent and debilitating.

20. Additional written findings of factors in aggravation:

The Court accepts the defendant's admission to the aggravating factor(s) noted above and finds the supporting evidence to be beyond a reasonable doubt.

The jury finds these aggravating factors beyond a reasonable doubt.

There are no findings of any aggravating factors.

MITIGATING FACTORS

APPEAL

1. The defendant committed the offense under:
 a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.

2. The defendant:
 a. was a passive participant in the commission of the offense.
 b. played a minor role in the commission of the offense.

3. The defendant was suffering from a:
 a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.

4. The defendant's:
 a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.

5. The defendant has made:
 a. substantial restitution to the victim.
 b. full restitution to the victim.

6. The victim was more than 16 years of age and:
 a. was a voluntary participant in the defendant's conduct.
 b. consented to the defendant's conduct.

7. The defendant:
 a. aided in the apprehension of another felon.
 b. testified truthfully on behalf of the State in another prosecution of a felony.

8. a. The defendant acted under strong provocation.
 b. The relationship between the defendant and the victim was otherwise extenuating.

9. The defendant:
 a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 b. exercised caution to avoid serious bodily harm or fear to other persons.

10. The defendant reasonably believed that the defendant's conduct was legal.

11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 a. at an early stage of the criminal process.
 b. prior to arrest.

12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.

13. The defendant is a minor and has reliable supervision available.

14. The defendant has been honorably discharged from the United States Armed Services.

15. The defendant has accepted responsibility for the defendant's criminal conduct.

16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.

17. The defendant supports the defendant's family.

18. The defendant has a support system in the community.

19. The defendant has a positive employment history or is gainfully employed.

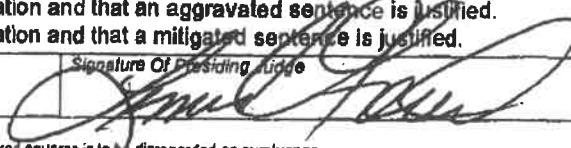
20. The defendant has a good treatment prognosis and a workable treatment plan is available.

21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION

1. The Court finds that:
 the State provided the defendant with appropriate notice of the aggravating factor(s) in this case.
 the defendant waived any notice requirements as to the aggravating factor(s) in this case.
2. The Court finds that the State included in its criminal pleading the statement required by G.S. 15A-924(a)(7), if necessary.
3. The Court, having considered the evidence and arguments presented at the trial and sentencing hearing, and based on the admission(s) and findings of aggravating and mitigating factors as noted above, finds that
 the factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
 the factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
02/04/2008	LINWOOD O. FOUST	

STATE OF NORTH CAROLINA

App. 7

-12-

File No.

04CRS61836

51

MECKLENBURG

County

CHARLOTTE

Seat of Court

NOTE: [This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-342 for DWI offense(s).]

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

Name Of Defendant

MARTINEZ ORLANDO BLACK

Race

B

Sex

M

DOB

10/24/1975

JUDGMENT AND COMMITMENT

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State

JAY ASHENDORF

 Def. Found
Not Indigent Def. Waived
Attorney

Attorney For Defendant

HAROLD BENDER

 Appointed RetainedThe defendant pled guilty to: was found guilty by a jury of: pled no contest to:

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.
04CRS61836	51	POSSESSION OF FIREARM BY FELON	07/24/2004	14-415.1	F	G	C
04CRS61837	51	HABITUAL FELON	07/24/2004	14-7.1	F	C	

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

The Court:

PRIOR RECORD LEVEL: I III V
 II IV VI

1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 7. Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.

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

1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a class A felony. (c) for an adjudication as a violent habitual felon. G.S. 14-7.12. (d) for drug trafficking offenses.

2. makes the aggravating and mitigating factors Determination as set forth on the attached AOC-CR-605.

3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).

5. adjudges the defendant to be an habitual felon to be sentenced as a Class C felon pursuant to Article 2A of G.S. Chapter 14.

6. finds enhanced punishment pursuant to: G.S. 90-95(e)(3) (drugs). G.S. 14-3(c) (hate crime). G.S. 50B-4.1 (domestic violence). Other: _____ This finding is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

7. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.

8. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

9. finds that the defendant used, displayed, or attempted to use or display a firearm at the time of the felony and, pursuant to G.S. 15A-1340.16A, has increased the minimum term of imprisonment to which the defendant would otherwise be sentenced by sixty (60) months. This finding is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

10. finds the defendant is classified as a recidivist. G.S. 14-208.6.

11. finds this is an aggravated offense. G.S. 14-208.6.

12. finds that a motor vehicle commercial motor vehicle was used in the commission of the offense and this conviction shall be reported to DMV.

13. finds this is an offense involving assault or communicating a threat, and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.

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:	for a maximum term of:	in the custody of:
130 months	165 months	
<input type="checkbox"/> Class A Felony: <input type="checkbox"/> Life Imprisonment Without Parole	<input type="checkbox"/> Death (see attached Death Warrant and Certificates)	<input checked="" type="checkbox"/> N.C. DOC.
<input type="checkbox"/> Class B1 Felony: Life Imprisonment Without Parole		<input type="checkbox"/> Sheriff pursuant to G.S. 15A-1352(b).
<input type="checkbox"/> Violent Habitual Felon: Life Imprisonment Without Parole		<input type="checkbox"/> Other _____

The defendant shall be given credit for 1,231 days spent in confinement prior to the date of this Judgment as a result of this charge(s).

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

File Number	Offense	County	Court	Date
04CRS239042	51	MECKLENBURG	CHARLOTTE	02/04/2008

(check all that apply)

 1. The defendant shall pay the costs. 2. The defendant shall pay a fine of \$ _____.

The Court recommends:

 3. Assignment to a substance abuse treatment unit. G.S. 15A-1351(h) (applies only to offenses committed before December 1, 2003). 4. Psychiatric and/or psychological counseling. 5. Work Release. 6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the items and amounts set out below.

Fines	Court Costs	Restitution*	Attorney's Fees	Total Amount Due
\$	\$	\$	\$	\$ 0.00

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

The Court further recommends:

The Court does not recommend:

 1. Restitution as a condition of post release supervision or work release. 2. Work release.**AWARD OF FEE TO COUNSEL FOR DEFENDANT** A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.**ORDER OF COMMITMENT/APPEAL 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 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
02/04/2008

Name Of Presiding Judge (Type Or Print)

LINWOOD O. FOUST

Signature Of Presiding Judge

Date Appeal Dismissed

Date Withdrawal Of Appeal Filed

Date Appellate Opinion Certified

ORDER OF COMMITMENT AFTER APPEALIt 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	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk Of Superior Court	

CERTIFICATION

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

Appeal Entries (AOC-CR-350)
 Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
 Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)
 Victim Notification Tracking Form
 Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)

Date 02/04/2008	Signature <i>Timothy M. Jettner</i>	SEAL
Date Certified Copies Delivered To Sheriff	<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

MECKLENBURG

County

CHARLOTTE

-198-

Seat of Court

NOTE: [This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-342 for OWI offense(s).]

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

Name Of Defendant

MARTINEZ ORLANDO BLACK

Race

B

Sex

M

DOB

10/24/1975

JUDGMENT AND COMMITMENT

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State

JAY ASHENDORF

 Def. Found
Not Indigent Def. Waived
AttorneyAttorney For Defendant
HAROLD BENDER Appointed RetainedThe defendant pled guilty to: was found guilty by a jury of: pled no contest to:

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.
04CR5239042	51	VOLUNTARY MANSLAUGHTER	07/24/2004	14-18	F	D	C
04CR561837	51	HABITUAL FELON	07/24/2004	14-7.1	F	C	

FEB 10 2004

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

CERMAM, NC

PRIOR I III VRECORD LEVEL: II IV VI

1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 6. Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.

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

1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a class A felony. (c) for an adjudication as a violent habitual felon. G.S. 14-7.12. (d) for drug trafficking offenses.

2. makes the aggravating and mitigating factors determination as set forth on the attached AOC-CR-605.

3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).

5. adjudges the defendant to be an habitual felon to be sentenced as a Class C felon pursuant to Article 2A of G.S. Chapter 14.

6. finds enhanced punishment pursuant to: G.S. 90-95(e)(3) (drugs). G.S. 14-3(c) (hate crime). G.S. 50B-4.1 (domestic violence). Other: _____ This finding is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

7. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.

8. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

9. finds that the defendant used, displayed, or attempted to use or display a firearm at the time of the felony and, pursuant to G.S. 15A-1340.16A, has increased the minimum term of imprisonment to which the defendant would otherwise be sentenced by sixty (60) months. This finding is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

10. finds the defendant is classified as a recidivist. G.S. 14-208.6.

11. finds this is an aggravated offense. G.S. 14-208.6.

12. finds that a motor vehicle commercial motor vehicle was used in the commission of the offense and this conviction shall be reported to DMV.

13. finds this is an offense involving assault or communicating a threat, and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.

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: 130 months	for a maximum term of: 165 months	in the custody of:
<input type="checkbox"/> Class A Felony: <input type="checkbox"/> Life Imprisonment Without Parole.	<input type="checkbox"/> Death (see attached Death Warrant and Certificates)	<input checked="" type="checkbox"/> N.C. DOC.
<input type="checkbox"/> Class B1 Felony: Life Imprisonment Without Parole		<input type="checkbox"/> Sheriff pursuant to G.S. 15A-1352(b).
<input type="checkbox"/> Violent Habitual Felon: Life Imprisonment Without Parole		<input type="checkbox"/> Other _____

The defendant shall be given credit for 1,231 days spent in confinement prior to the date of this Judgment as a result of this charge(s).

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

File Number	Offense	County	Court	Date

(check all that apply)

 1. The defendant shall pay the costs.- 2. The defendant shall pay a fine of \$ _____.**The Court recommends:** 3. Assignment to a substance abuse treatment unit, G.S. 15A-1351(h) (applies only to offenses committed before December 1, 2003). 4. Psychiatric and/or psychological counselling. 5. Work Release. 6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the items and amounts set out below.

Fines	Court Costs	Restitution*	Attorney's Fees	Total Amount Due
\$	\$	\$	\$	\$ 0.00

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

The Court further recommends:

DEFENDANT IS SERVING A FEDERAL SENTENCE

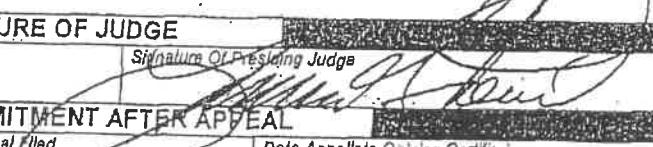
The Court does not recommend:

 1. Restitution as a condition of post release supervision or work release. 2. Work release.**AWARD OF FEE TO COUNSEL FOR DEFENDANT** A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.**ORDER OF COMMITMENT/APPEAL 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 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
02/04/2008	LINWOOD O. FOUST	

ORDER OF COMMITMENT AFTER APPEAL

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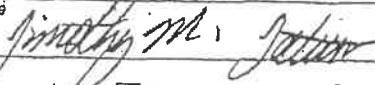
It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority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

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

CERTIFICATION

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

Appeal Entries (AOC-CR-350)
 Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
 Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)
 Victim Notification Tracking Form
 Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)

Date	Signature	SEAL
02/04/2008		
Date Certified Copies Delivered To Sheriff	<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	

Material opposite unmarked squares is to be disregarded as surplusage.

NO. COA08-1180

NORTH CAROLINA COURT OF APPEALS

Filed: 7 July 2009

STATE OF NORTH CAROLINA,

v.

MARTINEZ ORLANDO BLACK,
Defendant.

Mecklenburg County
Nos. 04CRS239042
04CRS61836
04CRS61837

Appeal by defendant from judgments entered on or about 4 February 2008 by Judge Linwood O. Foust in Mecklenburg County Superior Court. Heard in the Court of Appeals 12 March 2009.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Leonard G. Green, for the State.

Michael E. Casterline, for defendant-appellant.

STROUD, Judge.

Defendant was convicted of voluntary manslaughter and possession of a firearm by a felon. He was sentenced as an habitual felon on both convictions and given a sentence in the aggravated range. Defendant contends the trial court erred by (1) allowing a witness to testify while referring to a transcript of a police interview conducted the day the crime occurred; (2) sentencing defendant as an habitual felon; and (3) sentencing defendant in the aggravated range. For the following reasons, we find no error.

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I. Background

On 24 July 2004 defendant shot Reginald Reid in the abdomen and the shoulder at close range. Reid died from the gunshot wounds.

On 11 October 2004, the Mecklenburg County Grand Jury indicted defendant for (1) possession of a firearm by a felon, case number 04CRS61836; (2) for having attained the status of habitual felon, case number 04CRS061837; and (3) murder, case number 04CRS239042. A superseding indictment was issued on 25 June 2007 to add possession of cocaine with intent to distribute ("PWISD") to the murder charge in case 04CRS239042.

Defendant was tried before a jury from 14 January to 4 February 2008. The PWISD charge was dismissed for insufficient evidence before the case was submitted to the jury. The jury found defendant guilty of possession of a firearm by a felon, voluntary manslaughter and of being an habitual felon. In case 04CRS239042 the trial court sentenced defendant on the verdict of voluntary manslaughter as an habitual felon in the aggravated range of 130 to 165 months imprisonment. In case 04CRS61836 the trial court sentenced defendant on the verdict of possession of a firearm by a felon as an habitual felon in the aggravated range of 130 to 165 months imprisonment, to run consecutively from his sentence in case 04CRS239042. Defendant appeals.

II. Present Recollection Refreshed

Defendant contends the trial court erred in admitting the testimony of Eduardo McConico, a witness for the State. Defendant

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relies on *State v. Smith*, 291 N.C. 505, 231 S.E.2d 663 (1977), to contend that the trial court erred because McConico was allowed to testify after he saw a written transcript and heard an audio recording of a police interview conducted the day the crime occurred.

More specifically, defendant argues that McConino's testimony was inadmissible because the transcript qualified neither as past recollection recorded pursuant to Rule 803(5)¹ nor as present recollection refreshed. Defendant argues McConico merely parroted the information in the interview transcript because the trial court's discussion of the rules of evidence "along with the court's direct questions to the witness to establish a foundation, conceivably put the witness under extreme pressure to testify consistently with the prior recorded recollection for fear of committing perjury." Defendant further argues that the admission of McConico's testimony was prejudicial, thereby entitling him to a new trial.

A. Standard of Review

Defendant contends that this issue should be reviewed *de novo*. However, the case defendant relies on, *Smith*, plainly states that

¹ A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly [is not excluded by the hearsay rule, even though the declarant is available as a witness].

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a ruling on a witness' use of a memory aid to refresh his recollection is in the sound discretion of the trial judge and will not be disturbed absent an abuse of that discretion. 291 N.C. at 518, 231 S.E.2d at 672. "An abuse of discretion results only where a decision is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision." *Clark v. Sanger Clinic*, 175 N.C. App. 76, 84, 623 S.E.2d 293, 299 (2005) (citation, quotation marks, and ellipses omitted).

B. Analysis

Because the transcript itself was not admitted into evidence, defendant's argument that the transcript did not qualify as a past recollection recorded pursuant to Rule 803(5) is irrelevant to the appeal *sub judice*. See *State v. Gibson*, 333 N.C. 29, 50, 424 S.E.2d 95, 107 (1992) (no analysis of Rule 803(5) claim when the document used to refresh the memory of the witness was not itself proffered as evidence), overruled on other grounds by *State v. Lynch*, 334 N.C. 402, 410, 432 S.E.2d 349, 353 (1993); see also *Kor Xiong v. Marks*, ___ N.C. App. ___, ___, 668 S.E.2d 594, 597-98 (2008) (issue not considered on appeal when there was no ruling by the trial court). Therefore, the only issue for our consideration is "whether the witness ha[d] an independent recollection of the event and [was] merely using the memorandum to refresh details or whether the witness [was] using the memorandum as a testimonial crutch for something beyond his recall." *State v. York*, 347 N.C. 79, 89, 489 S.E.2d 380, 386 (1997).

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Defendant correctly identifies *Smith* as outlining the circumstances in which a trial court may allow a witness to use a previously recorded writing or other memory aid when testifying. 291 N.C. at 517-18, 231 S.E.2d at 671-72. However, we do not agree that applying *Smith* *sub judice* entitles defendant to a new trial. In *Smith*, the defendants argued "that the testimony should have been stricken because the transcript did not 'refresh' [the witness'] memory but merely provided a script for her to recite at trial." *Id.* at 517, 231 S.E.2d at 671. *Smith* generally agreed with the defendants' statement of the law, but not with the defendants' application of the law to the facts of that case. *Id.* at 517-18, 231 S.E.2d at 671-72.

Smith first distinguished an aid to refresh recollection from a writing or recording which a party seeks to admit into evidence as past recollection recorded, noting that "looser standards [are] involved with present recollection refreshed" than with past recollection recorded. *Id.* at 517, 231 S.E.2d at 671. *Smith* further stated that "the stimulation of an actual present recollection is not strictly bounded by fixed rules [as is the admission of a past recollection recorded] but, rather, is approached on a case-by-case basis looking to the peculiar facts and circumstances present." *Id.* at 516, 231 S.E.2d at 671.

According to *Smith*, when a witness uses a memory aid that is not itself admitted into evidence,

the memorandum [or other memory aid] must actually "refresh" the memory of the witness and his subsequent testimony must indeed be from his own recollection. Where the

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testimony of the witness purports to be from his refreshed memory but is clearly a mere recitation of the refreshing memorandum, such testimony is not admissible as present recollection refreshed and should be excluded by the trial judge. [However, w]here there is doubt as to whether the witness purporting to have a refreshed recollection is indeed testifying from his own recollection, the use of such testimony is dependent upon the credibility of the witness and is a question for the jury.

291 N.C. at 518, 231 S.E.2d at 671-72 (citations omitted; emphasis in original retained). *York*, a later case which applied *Smith*, added that when a witness first

testifie[s] from memory, and in particular detail, about the events surrounding the interview with the defendant[,] . . . [occasionally] refer[s] to . . . his notes . . . [,] answer[s some questions] independently of his notes [and] ha[s] extensive independent recall about the events surrounding the interview and the interview itself[, i]t is . . . evident from the full circumstances that th[e] witness [has] used his notes . . . in order to specifically recall for the jury what occurred during his interview with [the] defendant.

347 N.C. at 89, 489 S.E.2d at 386; see also *Gibson*, 333 N.C. at 50-51, 424 S.E.2d at 107 (no error when witness answers some questions independently of his notes and other questions after referring to his notes).

In applying the law to the facts of the case, *Smith* observed:

The evidence on this point is contradictory. At one point the witness, when questioned as to the origin of her testimony, stated that it was "[o]f my own memory." At another point she said, "some is to my memory, and some isn't." Such statements raise questions as to the validity of her testimony.

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291 N.C. at 517, 231 S.E.2d at 671. Accordingly, *Smith* determined that the witness' reference to a previous transcript was not a clear recitation from the refreshing memorandum but *merely raised doubt* that the witness was testifying from her own recollection. *Id.* at 518, 231 S.E.2d at 671-72. *Smith* concluded that the testimony was admissible within the discretion of the trial judge and overruled the defendants' assignment of error. *Id.* at 518, 231 S.E.2d at 672.

In the case *sub judice*, McConico testified to some of the events of the night in question before being shown the transcript of his police interview. When McConico was shown the transcript, he was equivocal about whether or not he remembered making the statements found therein. The trial court then allowed him to listen to the entire audio recording of his statements outside the presence of the jury. After hearing the tape, McConico admitted that the tape "refreshed [his] memory as to certain aspects of the case[.]" McConico then testified in detail to the events of the night in question, apparently without further reference to the interview transcript.

We conclude that this is not a case where the witness' testimony was "clearly a mere recitation of the refreshing memorandum." *Smith*, 291 N.C. at 518, 231 S.E.2d at 671 (emphasis in original). Rather, there was "doubt as to whether the witness purporting to have a refreshed recollection [was] indeed testifying from his own recollection." *Id.* The trial court carefully considered the evidence and did not make an arbitrary or

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unreasonable decision. Accordingly, this assignment of error is overruled.

III. Habitual Felon Conviction

Defendant contends that the trial court violated the Double Jeopardy Clause of the United States Constitution by sentencing him as an habitual felon because the same prior felony served as the basis for his conviction for possession of a firearm by a felon and as the basis for the habitual felon conviction. Defendant cites no authority in support of this argument, acknowledging that this Court has already rejected a similar argument and that he raises the issue here only "for preservation purposes for possible future review in the Supreme Court of North Carolina or in federal court." Accordingly, this assignment of error is considered abandoned.

N.C.R. App. P. 28(b)(6).

IV. Aggravated Sentence

Defendant contends that the trial court erred by sentencing him in the aggravated range. Defendant first contends that a juvenile adjudication may not be used to aggravate a sentence because a juvenile adjudication is not determined by a jury, thereby violating *Blakely v. Washington*, a case holding that aggravating factors must be found by a jury. 542 U.S. 296, 159 L. Ed. 2d 403 (2004). However, defendant did not raise this constitutional issue before the trial court; therefore, he may not raise it on appeal. *State v. Jaynes*, 342 N.C. 249, 263, 464 S.E.2d 448, 457 (1995), cert. denied, 518 U.S. 1024, 135 L. Ed. 2d 1080 (1996).

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Defendant next contends that the trial court abused its discretion by giving undue weight to the aggravating factor of his juvenile adjudication of first degree rape and first degree burglary as opposed to the mitigating factor that Reid was over 16 years of age and a voluntary participant in defendant's conduct. We disagree.

The weight to be given to aggravating and mitigating factors is within the sound discretion of the trial judge and will not be disturbed on appeal absent abuse of that discretion. *State v. Love*, 177 N.C. App. 614, 626, 630 S.E.2d 234, 242-43, *disc. review denied*, 360 N.C. 580, 636 S.E.2d 192-93 (2006). "An abuse of discretion results only where a decision is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision." *Clark*, 175 N.C. App. at 84, 623 S.E.2d at 299 (citation, quotation marks, and ellipses omitted).

Defendant's juvenile offenses were very serious crimes and the length of defendant's criminal record shows that his juvenile adjudication had little if any effect of turning him away from serious criminal activity later in life. We perceive no abuse of discretion in the trial judge giving greater weight to the aggravating factor and sentencing defendant in the aggravated range. Accordingly, this assignment of error is overruled.

V. Conclusion

The trial court did not err when it allowed Eduardo McConico to refresh his memory from the written transcript of his interview

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with police. The trial court did not err when it sentenced defendant as an habitual felon in the aggravated range.

No Error.

Judges JACKSON and STEPHENS concur.

§ 14-7.6. Sentencing of habitual felons. App. 21

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced at a felony class level that is four classes higher than the principal felony for which the person was convicted; but under no circumstances shall an habitual felon be sentenced at a level higher than a Class C felony. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section. (1967, c. 1241, s. 6; 1981, c. 179, s. 13; 1993, c. 538, s. 9; 1994, Ex. Sess., c. 22, ss. 15, 16; c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 16; 2011-192, s. 3(d).)

*** Effective for Offenses Committed on or after 12/1/95 ***

FELONY PUNISHMENT CHART
PRIOR RECORD LEVEL

OFFENSE CLASS	I	II	III	IV	V	VI	DISPOSITION
	0 Pts	1-4 Pts	5-8 Pts	9-14 Pts	15-18 Pts	19+ Pts	
A	Death or Life Without Parole						
B1	A 240 - 300 192 - 240 144 - 192	A 288 - 360 230 - 288 173 - 230	A 336 - 420 269 - 336 202 - 269	A 384 - 480 307 - 384 230 - 307	A <i>Life Without Parole</i> 346 - 433 260 - 346	A <i>Life Without Parole</i> 384 - 480 288 - 384	DISPOSITION <i>Aggravated Range</i>
B2	A 157 - 196 125 - 157 94 - 125	A 189 - 237 151 - 189 114 - 151	A 220 - 276 176 - 220 132 - 176	A 251 - 313 201 - 251 151 - 201	A 282 - 353 225 - 282 169 - 225	A 313 - 392 251 - 313 188 - 251	PRESUMPTIVE RANGE <i>Mitigated Range</i>
C	A 73 - 92 58 - 73 44 - 58	A 100 - 125 80 - 100 60 - 80	A 116 - 145 93 - 116 70 - 93	A 133 - 167 107 - 133 80 - 107	A 151 - 188 121 - 151 90 - 121	A 168 - 210 135 - 168 101 - 135	
D	A 64 - 80 51 - 64 38 - 51	A 77 - 95 61 - 77 46 - 61	A 103 - 129 82 - 103 61 - 82	A 117 - 146 94 - 117 71 - 94	A 133 - 167 107 - 133 80 - 107	A 146 - 183 117 - 146 88 - 117	
E	I/A 25 - 31 20 - 25 15 - 20	I/A 29 - 36 23 - 29 17 - 23	I/A 34 - 42 27 - 34 20 - 27	A 46 - 58 37 - 46 28 - 37	A 53 - 66 42 - 53 32 - 42	A 59 - 74 47 - 59 35 - 47	
F	I/A 16 - 20 13 - 16 10 - 13	I/A 19 - 24 15 - 19 11 - 15	I/A 21 - 26 17 - 21 13 - 17	A 25 - 31 20 - 25 15 - 20	A 34 - 42 27 - 34 20 - 27	A 39 - 49 31 - 39 23 - 31	
G	I/A 13 - 16 10 - 13 8 - 10	I/A 15 - 19 12 - 15 9 - 12	I/A 16 - 20 13 - 16 10 - 13	I/A 20 - 25 16 - 20 12 - 16	A 21 - 26 17 - 21 13 - 17	A 29 - 36 23 - 29 17 - 23	
H	C/I/A 6 - 8 5 - 6 4 - 5	I/A 8 - 10 6 - 8 4 - 6	I/A 10 - 12 8 - 10 6 - 8	I/A 11 - 14 9 - 11 7 - 9	I/A 15 - 19 12 - 15 9 - 12	A 20 - 25 16 - 20 12 - 16	
I	C 6 - 8 4 - 6 3 - 4	C/I 6 - 8 4 - 6 3 - 4	I 6 - 8 5 - 6 4 - 5	I/A 8 - 10 6 - 8 4 - 6	I/A 9 - 11 7 - 9 5 - 7	I/A 10 - 12 8 - 10 6 - 8	

A - Active Punishment

I - Intermediate Punishment

C - Community Punishment

Numbers shown are in months and represent the range of minimum sentences

App. 23
MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

*** Effective for Offenses Committed on or after 12/1/95 ***

FELONY PUNISHMENT CHART
PRIOR RECORD LEVEL

	I	II	III	IV	V	VI
	0 Pts	1-4 Pts	5-8 Pts	9-12 Pts	13-18 Pts	19+ Pts
A						
B1						
B2						
C	A 73 - 92	A 100 - 125	A 116 - 145	A 133 - 167	A 151 - 188	A 168 - 210
	58 - 73	60 - 80	70 - 93	80 - 107	90 - 121	101 - 135
D						
E						
F						
G	I/A 13 - 1	I/A 15 - 19	I/A 16 - 20	I/A 20 - 25	A 21 - 26	A 29 - 36
	10 - 13	12 - 15	13 - 16	16 - 20	17 - 21	23 - 30
H						
I						

DISPOSITION

Aggravated Range

Presumptive Range

Mitigated Range

Enhancement due to Aggravating Factor

Enhancement due to increase in Prior Record level.

Habitual Felon Enhancement

Maximum sentence for basic crime

A - Active Punishment

I - Intermediate Punishment

C - Community Punishment

Numbers shown are in months and represent the range of minimum sentences

Revised: 08-04-95

App. 25
MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	