

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 375

Short Title: Increase Sentence/Ethnic Animosity.

(Public)

Sponsors: Senators Simpson; and Kincaid.

Referred to: Judiciary I.

March 9, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE INCREASED SENTENCES FOR CRIMES COMMITTED
3 WITH ETHNIC ANIMOSITY.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 15A-1340.4(a) reads as rewritten:

6 "§ 15A-1340.4. Presumptive punishment for felony other than Class A or Class B
7 felony; prior felony convictions; consideration of aggravating and
8 mitigating factors; written findings.

9 (a) If the sentencing judge imposes a prison term on a person convicted of a
10 felony other than a Class A or Class B felony, he may suspend the sentence and place
11 the convicted felon on probation as provided by Article 82 of this Chapter. If the
12 convicted felon is under 21 years of age at the time of conviction and the sentencing
13 judge elects to impose an active prison term, the judge must either sentence the felon as
14 a committed youthful offender in accordance with Article 3B of Chapter 148 of the
15 General Statutes and subject to the limit on the prison term provided by G.S. 148-49.14,
16 or make a 'no benefit' finding as provided by G.S. 148-49.14 and impose a regular
17 prison term. If the judge imposes a prison term, whether or not the term is suspended,
18 and whether or not he sentences the convicted felon as a committed youthful offender,
19 he must impose the presumptive term provided in this section unless, after consideration
20 of aggravating or mitigating factors, or both, he decides to impose a longer or shorter
21 term, or unless he imposes a prison term pursuant to any plea arrangement as to
22 sentence under Article 58 of this Chapter, or unless when two or more convictions are
23 consolidated for judgment he imposes a prison term (i) that does not exceed the total of
24 the presumptive terms for each felony so consolidated, (ii) that does not exceed the

1 maximum term for the most serious felony so consolidated, and (iii) that is not shorter
2 than the presumptive term for the most serious felony so consolidated. In imposing a
3 prison term, the judge, under the procedures provided in G.S. 15A-1334(b), may
4 consider any aggravating and mitigating factors that he finds are proved by the
5 preponderance of the evidence, and that are reasonably related to the purposes of
6 sentencing, whether or not such aggravating or mitigating factors are set forth herein,
7 but unless he imposes the term pursuant to a plea arrangement as to sentence under
8 Article 58 of this Chapter, or unless when two or more convictions are consolidated for
9 judgment he imposes a prison term (i) that does not exceed the total of the presumptive
10 terms for each felony so consolidated, (ii) that does not exceed the maximum term for
11 the most serious felony so consolidated, and (iii) that is not shorter than the presumptive
12 term for the most serious felony so consolidated, he must consider each of the following
13 aggravating and mitigating factors:

14 (1) Aggravating factors:

- 15 a. The defendant induced others to participate in the commission
16 of the offense or occupied a position of leadership or
17 dominance of other participants.
- 18 b. The offense was committed for the purpose of avoiding or
19 preventing a lawful arrest or effecting an escape from custody.
- 20 c. The defendant was hired or paid to commit the offense.
- 21 d. The offense was committed to disrupt or hinder the lawful
22 exercise of any governmental function or the enforcement of
23 laws.
- 24 e. The offense was committed against a present or former: law
25 enforcement officer, employee of the Department of Correction,
26 jailer, fireman, emergency medical technician, ambulance
27 attendant, justice or judge, clerk or assistant or deputy clerk of
28 court, magistrate, prosecutor, juror, or witness against the
29 defendant, while engaged in the performance of his official
30 duties or because of the exercise of his official duties.
- 31 f. The offense was especially heinous, atrocious, or cruel.
- 32 g. The defendant knowingly created a great risk of death to more
33 than one person by means of a weapon or device which would
34 normally be hazardous to the lives of more than one person.
- 35 h. The defendant held public office at the time of the offense and
36 the offense related to the conduct of the office.
- 37 i. The defendant was armed with or used a deadly weapon at the
38 time of the crime.
- 39 j. The victim was very young, or very old, or mentally or
40 physically infirm.
- 41 k. The defendant committed the offense while on pretrial release
42 on another felony charge.
- 43 l. The defendant involved a person under the age of 16 in the
44 commission of the crime.

- 1 m. The offense involved an attempted or actual taking of property
2 of great monetary value or damage causing great monetary loss,
3 or the offense involved an unusually large quantity of
4 contraband.
- 5 n. The defendant took advantage of a position of trust or
6 confidence to commit the offense.
- 7 o. The defendant has a prior conviction or convictions for criminal
8 offenses punishable by more than 60 days' confinement. Such
9 convictions include those occurring in North Carolina courts
10 and courts of other states, the District of Columbia, and the
11 United States, provided that any crime for which the defendant
12 was convicted in a jurisdiction other than North Carolina would
13 have been a crime if committed in this State. Such prior
14 convictions do not include any crime that is joinable, under G.S.
15 Chapter 15A, with the crime or crimes for which the defendant
16 is currently being sentenced.
- 17 p. The offense involved the sale or delivery of a controlled
18 substance to a minor.
- 19 q. The offense for which the defendant stands convicted was
20 committed against a victim because of the victim's race, color,
21 religion, nationality, or country of origin.

22 Evidence necessary to prove an element of the offense may not be used to prove any
23 factor in aggravation, and the same item of evidence may not be used to prove more
24 than one factor in aggravation.

25 The judge may not consider as an aggravating factor the fact that the defendant
26 exercised his right to a jury trial.

27 (2) Mitigating factors:

- 28 a. The defendant has no record of criminal convictions or a record
29 consisting solely of misdemeanors punishable by not more than
30 60 days' imprisonment.
- 31 b. The defendant committed the offense under duress, coercion,
32 threat, or compulsion which was insufficient to constitute a
33 defense but significantly reduced his culpability.
- 34 c. The defendant was a passive participant or played a minor role
35 in the commission of the offense.
- 36 d. The defendant was suffering from a mental or physical
37 condition that was insufficient to constitute a defense but
38 significantly reduced his culpability for the offense.
- 39 e. The defendant's immaturity or his limited mental capacity at the
40 time of commission of the offense significantly reduced his
41 culpability for the offense.
- 42 f. The defendant has made substantial or full restitution to the
43 victim.

- 1 g. The victim was more than 16 years of age and was a voluntary
2 participant in the defendant's conduct or consented to it.
- 3 h. The defendant aided in the apprehension of another felon or
4 testified truthfully on behalf of the prosecution in another
5 prosecution of a felony.
- 6 i. The defendant acted under strong provocation, or the
7 relationship between the defendant and the victim was
8 otherwise extenuating.
- 9 j. The defendant could not reasonably foresee that his conduct
10 would cause or threaten serious bodily harm or fear, or the
11 defendant exercised caution to avoid such consequences.
- 12 k. The defendant reasonably believed that his conduct was legal.
- 13 l. Prior to arrest or at an early stage of the criminal process, the
14 defendant voluntarily acknowledged wrongdoing in connection
15 with the offense to a law enforcement officer.
- 16 m. The defendant has been a person of good character or has had a
17 good reputation in the community in which he lives.
- 18 n. The defendant is a minor and has reliable supervision available.
- 19 o. The defendant has been honorably discharged from the United
20 States armed services."

21 Sec. 2. G.S. 14-3 reads as rewritten:

22 **"§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in**
23 **secrecy and ~~malice~~malice, or with deceit and intent to ~~defraud~~defraud,**
24 **or with ethnic animosity.**

25 (a) Except as provided in subsections (b) and (c) ~~subsection (b)~~, every person who
26 shall be convicted of any misdemeanor for which no specific punishment is prescribed
27 by statute shall be punishable by fine, by imprisonment for a term not exceeding two
28 years, or by both, in the discretion of the court.

29 (b) If a misdemeanor offense as to which no specific punishment is prescribed
30 be infamous, done in secrecy and malice, or with deceit and intent to defraud, the
31 offender shall, except where the offense is a conspiracy to commit a misdemeanor, be
32 guilty of a Class H felony.

33 (c) If any misdemeanor offense is committed because of the victim's race, color,
34 religion, nationality, or country of origin, the offender shall be guilty of a Class H
35 felony."

36 Sec. 3. This act shall become effective October 1, 1989, and shall apply to
37 offenses occurring on or after that date.