



MINNESOTA JUDICIAL TRAINING UPDATE



CONSECUTIVE SENTENCING A COMMON JUDICIAL MISTAKE

QUESTION: When the Court orders a stayed sentence to run “consecutive” to all other sentences” what does that actually mean? What is it that actually runs consecutive.....

- a) The amount of imposed or stayed jail; or,
- b) The period of probation; or,
- c) Both (jail and probation).

ANSWER: When the court orders a stayed sentence to run consecutive to all other sentences **ONLY** the imposed or stayed jail is consecutive – **NOT** probation. The period of probation is **ALWAYS** concurrent unless the court separately orders probation to be “stacked” or run “consecutive” or clearly states the total number of years that defendant will be on probation. *Pageau v. State*, ___ N.W.2d ___, (Minn.App Sept. 10, 2012).

RULE OF THUMB: Although the term "sentence" is not expressly defined by case-law or statute, for purposes of the above rule the term “sentence” and “probation” are clearly separate and distinct from each other. Think of the term “sentence” as only referring to the amount of imposed or stayed jail. Think of “probation” as being a condition of the sentence – not the sentence itself.

BELOW ARE 4 CONSECUTIVE SENTENCING PRINCIPALS EVERY JUDGE SHOULD KNOW

1. STACKING PROBATION – YOU CAN ONLY VIOLATE ONE PROBATION AT A TIME

- a. **Question:** if an offender is proved to have violated a probationary term during the first of two stacked probationary periods, can that violation be a basis to revoke both of the associated stayed sentences, even though the second probationary period has not commenced?
- b. **Answer: NO** – Probation revocation proceedings may only be initiated based on an alleged probation violation that occurred "during the term of the stay". Minn. Stat. § 609.14, subd 1(b); *Pageau v. State*, ___ N.W.2d ___, (Minn.App Sept. 10, 2012).

2. JAIL CREDIT GENERAL RULE (“Solely In Connection With” Rule)

If defendant receives a consecutive sentence, defendant is entitled to receive jail credit only for time served SOLELY in connection with the charged offense. Credit is NOT given for time served in connection with an unrelated offense. The Court MUST state the number of days that defendant is entitled to receive as jail credit. Minn. R. Crim. P. 27.03, sub. 4(B); *State v. Clarkin*, 817 N.W.2d 678 (Minn. 2012);

3. A CONSECUTIVE SENTENCE IS ALWAYS LAST IN TIME

A sentence may be ordered to run consecutive only to other sentences that have already been imposed or jail terms already served (known or unknown):

For example (unknown prior sentence): The Court orders a current robbery sentence to run consecutive to an already imposed sentence out of Ramsey County. The Court is not aware that defendant is also serving a different sentence in Duluth. The Court’s current robbery sentence is still consecutive to the Duluth sentence even though no one knew about it and the Court did not specifically reference it. Otherwise, a defendant could manipulate the consecutive sentence by not disclosing his other sentences. See *State v. Jennings*, 448 N.W.2d 374 (Minn.App.1989).

4. PRESUMPTIONS – SENTENCE VS. PROBATION

- a. **Sentences:** There is a statutory presumption that all sentences are concurrent unless the Court specifies a consecutive sentence. M.S. 609.15;
- b. **Probation:** There is also a presumption that all probationary periods are concurrent unless the Court specifies that the probationary periods are to be consecutive or “stacked”. *Pageau v. State*, ___ N.W.2d ___, (Minn.App Sept. 10, 2012).