

## PRAYER FOR JUDGMENT CONTINUED

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### I. Introduction

**A. Generally.** After a defendant has been found guilty or entered a guilty plea, the court may (1) pronounce judgment and place it into immediate execution; (2) pronounce judgment and suspend or stay its execution; or (3) enter a prayer for judgment continued (PJC). *State v. Griffin*, 246 N.C. 680 (1957); see G.S. 15A-101(4a).

### B. Common uses

- 1. No further sentencing to occur.** Sometimes a PJC is entered with the idea that no further sentencing will occur. See, e.g., *State v. Lea*, 156 N.C. App. 178 (2003) (defendant found guilty of multiple crimes, sentenced entered on some, PJC on others).
- 2. Until the state prays for judgment.** Other times a PJC is set to continue from term to term for a specified period, with the idea that the state may pray for judgment at any time within the specified period. Typically the state prays for judgment if the defendant commits another crime or engages in other misconduct. See e.g., *State v. Thompson*, 267 N.C. 653 (1966) (PJC entered for three years, state prayed for judgment when the defendant engaged in misconduct in prison).
- 3. Defendant flees.** A PJC is employed when a defendant flees during trial and is tried in absentia. Since the defendant may not be sentenced in his or her absence, a PJC is entered to continue sentencing until the defendant is apprehended. See, e.g., *State v. Bass*, 303 N.C. 267 (1981).
- 4. Additional information needed for sentencing.** A PJC is used to delay sentencing when the judge wants additional information about the defendant that is not available when guilt is determined or admitted (e.g., a pre-sentencing report).

### II. Procedural issues

**A. When a PJC is really a judgment.** A PJC is converted into a judgment if it includes conditions that amount to punishment. *Griffin*, 246 N.C. 680; *State v. Brown*, 110 N.C. App. 658 (1993). If a PJC is deemed to be a judgment, no further punishment may be imposed for that crime. *Brown*, 110 N.C. App. 658.

- 1. Permissible conditions.** The following terms do not convert a PJC into a judgment.
  - a. Costs.** G.S. 15A-101(4a); *Brown*, 110 N.C. App. 658.
  - b. Requirements to obey the law.** *Brown*, 110 N.C. App. 658.
- 2. Impermissible conditions.** The following terms or conditions constitute punishment and convert a PJC into a judgment.
  - a. Fine.** *Griffin*, 246 N.C. 680; *Brown*, 110 N.C. App. 658.
  - b. Imprisonment.** *Griffin*, 246 N.C. 680; *Brown*, 110 N.C. App. 658.
  - c. Restitution**
  - d. Continue psychiatric treatment.** *Brown*, 110 N.C. App. 658 (condition went beyond an obligation to obey the law).
  - e. Abide by a curfew.** *State v. Popp*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (May 19, 2009).
  - f. Complete high school.** *Id.*
  - g. Enroll in an institution of higher learning or join the armed forces.** *Id.*
  - h. Cooperate with random drug testing.** *Id.*
  - i. Perform community service.** *Id.*
  - j. Remain employed.** *Id.*
  - k. Write a letter of apology.** *Id.*

- B. Defendant's consent.** The defendant's consent is not required if the PJC includes no conditions. *Griffin*, 246 N.C. 680 However, the defendant's consent is required for a PJC with conditions.
- C. Duration.** A PJC may last for a reasonable time. *State v. Degree*, 110 N.C. App. 638 (1993).
1. **Reasonable time.** Reasonableness depends on the reason for the delay, whether the defendant consented to the delay, and actual prejudice to the defendant resulting from the delay. *Id*; *Lea*, 156 N.C. App. 178 (five-year duration not unreasonable).
  2. **PJC for an unreasonable time.** If a PJC extends for an unreasonable period, the court is deprived of jurisdiction to later enter judgment. *Degree*, 110 N.C. App. 638.
- D. Definite or indefinite period.** A PJC may be for a definite period (e.g., 30 days) or an indefinite period. *Id*.
1. **Judgment entered outside of a definite period.** If a PJC is ordered for a definite period but the judgment is not entered until after that period ends, the PJC is valid, provided that it did not continue for an unreasonable period and the defendant was not prejudiced. *State v. Absher*, 335 N.C. 155 (1993) (PJC entered on 5/18/89 for 30 days but sentence not entered until 10/27/89); *Degree*, 110 N.C. App. 638 (PJC entered until 6/3/91 but sentence not entered until 7/16/91).
- E. Sample language.** There is no form language for entering a PJC. Sample language for imposing a PJC for a definite period, with no conditions is as follows: It is Ordered that Prayer for Judgment be continued, with the express consent of the defendant in open court, from term to term and session to session of the [insert county name] County Superior Court for a maximum term of [enter period of time e.g., 3 years] from this date unless the Prosecutor for the State in his/her discretion prays judgment in the next [insert period of time e.g., 3 years].
- F. When a PJC is prohibited**
1. **Impaired driving.** A PJC may not be entered for any impaired driving offense sentenced under G.S. 20-179 because sentences under that provision are mandatory. *In re Tucker*, 348 N.C. 677 (1998); *In Re Greene*, 297 N.C. 305 (1979).
  2. **Speeding.** A PJC may not be entered on a charge of speeding in excess of 25 miles per hour over the posted speed limit. G.S. 20-141(p).
  3. **Passing Stopped School Bus.** A defendant may not receive a PJC for a violation of G.S. 20-217(a). See G.S. 20-217(e).
- G. Entering judgment.** Judgment may be entered by the judge who entered the PJC or by another judge. *State v. Sauls*, 291 N.C. 253 (1976); *Degree*, 110 N.C. App. 638.
- H. Effect of a PJC**
1. **Appeal.** A defendant may not appeal a PJC. *State v. Pledger*, 257 N.C. 634 (1962); *State v. Perry*, 316 N.C. 87 (1986).
  2. **Chapter 20.** For purposes of Chapter 20 of the Motor Vehicle Laws, a third or subsequent PJC for a North Carolina offense within any five-year period constitutes a "conviction." G.S. 20-4.01(4a)(a)(4).
  3. **Rule 609.** When a PJC is entered after a defendant freely, understandingly, and voluntarily pleads guilty, the PJC counts as a conviction for purposes of Evidence Rule 609. *State v. Sidberry*, 337 N.C. 779 (1994). However, at least one case has held that a PJC is not a conviction for purposes of the rule when it is entered after a finding of guilt at trial. *State v. Lynch*, 337 N.C. 415 (1994).
  4. **Sentencing.** Under the Fair Sentencing Act, a PJC does not count as a prior conviction. *State v. Southern*, 314 N.C. 110 (1985). However, under the Structured Sentencing Act, a PJC counts for prior record level. *State v. Hatcher*, 136 N.C. App. 524 (2000); *State v. Graham*, 149 N.C. App. 215 (2002).

- 5. Collateral consequences.** Whether a PJC counts as a conviction or other disqualifying event for purposes of collateral consequences, such as licensing or benefit eligibility, depends on the statute governing that consequence and the definition of conviction or other disqualifying event therein.
- I. Prayer for judgment and vindictiveness.** Occasionally, when a defendant is found guilty of multiple crimes, the judge will sentence on some of the crimes and enter a PJC for others. At least one case has held that a defendant's due process rights protecting against judicial and prosecutorial vindictiveness were not violated when the state prayed for judgment after the defendant successfully appealed a conviction for which sentence was entered. *State v. Trusell*, 170 N.C. App. 33 (2005).