

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 493
HOUSE BILL 513

AN ACT TO CREATE THE MISDEMEANOR OFFENSE OF ETHNIC INTIMIDATION AND TO ADD ETHNIC ANIMOSITY AS AN AGGRAVATING FACTOR TO BE CONSIDERED IN FELONY SENTENCES.

The General Assembly of North Carolina enacts:

Section 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-401.14. Ethnic intimidation.

If a person shall, because of race, color, religion, nationality, or country of origin, assault another person, or damage or deface the property of another person, or threaten to do any such act, he shall be guilty of a misdemeanor punishable by imprisonment up to two years, or a fine, or both."

Sec. 2. G.S. 15A-1340.4(a) reads as rewritten:

"(a) If the sentencing judge imposes a prison term on a person convicted of a felony other than a Class A or Class B felony, he may suspend the sentence and place the convicted felon on probation as provided by Article 82 of this Chapter. If the convicted felon is under 21 years of age at the time of conviction and the sentencing judge elects to impose an active prison term, the judge must either sentence the felon as a committed youthful offender in accordance with Article 3B of Chapter 148 of the General Statutes and subject to the limit on the prison term provided by G.S. 148-49.14, or make a 'no benefit' finding as provided by G.S. 148-49.14 and impose a regular prison term. If the judge imposes a prison term, whether or not the term is suspended, and whether or not he sentences the convicted felon as a committed youthful offender, he must impose the presumptive term provided in this section unless, after consideration of aggravating or mitigating factors, or both, he decides to impose a longer or shorter term, or unless he imposes a prison term pursuant to any plea arrangement as to sentence under Article 58 of this Chapter, or unless when two or more convictions are consolidated for judgment he imposes a prison term (i) that does not exceed the total of the presumptive terms for each felony so consolidated, (ii) that does not exceed the maximum term for the most serious felony so consolidated, and (iii) that is not shorter than the presumptive term for the most serious felony so consolidated. In imposing a prison term, the judge, under the procedures provided in G.S. 15A-1334(b), may consider any aggravating and mitigating factors that he finds are proved by the preponderance of the evidence, and that are reasonably related to the purposes of sentencing, whether or not such aggravating or mitigating factors are set forth herein, but unless he imposes the term pursuant to a plea arrangement as to sentence under

Article 58 of this Chapter, or unless when two or more convictions are consolidated for judgment he imposes a prison term (i) that does not exceed the total of the presumptive terms for each felony so consolidated, (ii) that does not exceed the maximum term for the most serious felony so consolidated, and (iii) that is not shorter than the presumptive term for the most serious felony so consolidated, he must consider each of the following aggravating and mitigating factors:

(1) Aggravating factors:

- a. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- b. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- c. The defendant was hired or paid to commit the offense.
- d. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- e. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, 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 his official duties or because of the exercise of his official duties.
- f. The offense was especially heinous, atrocious, or cruel.
- g. 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.
- h. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- i. The defendant was armed with or used a deadly weapon at the time of the crime.
- j. The victim was very young, or very old, or mentally or physically infirm.
- k. The defendant committed the offense while on pretrial release on another felony charge.
- l. The defendant involved a person under the age of 16 in the commission of the crime.
- m. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- n. The defendant took advantage of a position of trust or confidence to commit the offense.

- o. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days' confinement. Such convictions include those occurring in North Carolina courts and courts of other states, the District of Columbia, and the United States, provided that any crime for which the defendant was convicted in a jurisdiction other than North Carolina would have been a crime if committed in this State. Such prior convictions do not include any crime that is joinable, under G.S. Chapter 15A, with the crime or crimes for which the defendant is currently being sentenced.
- p. The offense involved the sale or delivery of a controlled substance to a minor.
- q. The offense was committed because of the race, color, religion, nationality, or country of origin of another person.

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

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

(2) Mitigating factors:

- a. The defendant has no record of criminal convictions or a record consisting solely of misdemeanors punishable by not more than 60 days' imprisonment.
- b. The defendant committed the offense under duress, coercion, threat, or compulsion which was insufficient to constitute a defense but significantly reduced his culpability.
- c. The defendant was a passive participant or played a minor role in the commission of the offense.
- d. The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- e. The defendant's immaturity or his limited mental capacity at the time of commission of the offense significantly reduced his culpability for the offense.
- f. The defendant has made substantial or full restitution to the victim.
- g. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
- h. The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
- i. The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.

- j. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
- k. The defendant reasonably believed that his conduct was legal.
- l. Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- m. The defendant has been a person of good character or has had a good reputation in the community in which he lives.
- n. The defendant is a minor and has reliable supervision available.
- o. The defendant has been honorably discharged from the United States armed services."

Sec. 3. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives