

### 35.6 Trial Judges' Authority to Correct, Modify, or Amend Judgments

- A. Changes to Judgment Made During Same Session of Court
  - B. Changes to Judgment Made After Expiration of Court Session
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When errors in a judgment are discovered after the sentence has been pronounced, a party or the judge, sua sponte, may seek to correct them. Whether or not the trial judge may correct the error or modify, amend, or vacate the judgment depends on several variables, discussed below.

#### A. Changes to Judgment Made During Same Session of Court

**Generally.** A trial judge has the discretion to modify, amend, or set aside his or her judgment during the same session of court. *State v. Mead*, 184 N.C. App. 306 (2007), *aff'd*, 362 N.C. 218 (2008); *see also State v. Sammartino*, 120 N.C. App. 597, 600 (1995) (trial judge had authority to modify judgments to increase defendants' sentences because the original judgments and modified judgments were entered during the week of court assigned to the trial judge and "there had been no adjournment *sine die*"). This is true even if notice of appeal has been given. *State v. Davis*, 58 N.C. App. 330 (1982); *In re Tuttle*, 36 N.C. App. 222 (1978). Since during this time period the judgment is said to be in fieri, i.e., incomplete, not final, the judge is free to correct clerical or legal errors. *See State v. Garris*, 191 N.C. App. 276 (2008).

**Definition of "session."** A "session of court" in superior court has been defined "as the time during which a court sits for business and refers to a typical one-week assignment of court." *State v. Sammartino*, 120 N.C. App. 597, 599 (1995).

A district court session typically lasts one day. *See* Michael Crowell, [Out-of-Term, Out-of-Session, Out-of-County](#) (July 2015), NORTH CAROLINA SUPERIOR COURT JUDGES' BENCHMARK; *see also* Alyson Grine, [District Court is in Session . . . But for How Long?](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 20, 2009) (discussing multiday sessions in district court).

A session of court may be extended by the trial judge if a trial is not completed by the close of that session of court. For further discussion of the extension of a session of court to complete a trial and to enter orders after session, see 1 NORTH CAROLINA DEFENDER MANUAL § 10.8D, Extending Session to Complete Trial (Jan. 2020).

## B. Changes to Judgment Made After Expiration of Court Session

**Clerical errors.** A trial judge may correct a clerical mistake regardless of whether the session of court has expired in order to make the record “speak the truth.” *See, e.g., State v. Dixon*, 139 N.C. App. 332 (2000); *State v. Davis*, 123 N.C. App. 240 (1996). “Clerical error” has been defined as “[a]n error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination.” *State v. Jarman*, 140 N.C. App. 198, 202 (2000) (quoting BLACK’S LAW DICTIONARY 563 (7th ed. 1999), but not adopting the dictionary’s definition). Examples of harmless clerical errors include mistakenly stating in the judgment that the prison term was imposed pursuant to plea agreement, erroneously stating the conviction of the wrong crime, and the inadvertent checking of a box finding an aggravating factor on a judgment form. *Id.* Although a judge is authorized to make the record correspond to the actual facts, he or she “cannot, under the guise of an amendment of its records, correct a judicial error [discussed below] or incorporate anything in the minutes except a recital of what actually occurred.” *State v. Cannon*, 244 N.C. 399, 404 (1956).

If notice of appeal has been given, the trial judge may continue to correct clerical errors until the time that the record on appeal is filed in the appellate court. Once the record on appeal has been filed, the trial judge may only amend or correct its judgment if so directed by the appellate court. *Dixon*, 139 N.C. App. 332.

**Non-clerical errors.** A judge’s authority to modify a judgment to correct a non-clerical, or “judicial error,” is limited. These types of legal errors involve mistakes in “judicial reasoning or determination” and are more than just harmless clerical errors. *See State v. Jarman*, 140 N.C. App. 198, 202 (2000). After the session has concluded, a trial judge may only make changes to his or her judgment and sentence if:

- a proper motion for appropriate relief (MAR) is made within ten days by the defendant pursuant to G.S. 15A-1414;
- a proper MAR is made within ten days by the State pursuant to G.S. 15A-1416;
- after ten days, a proper MAR is made by the defendant pursuant to G.S. 15A-1415;
- the trial judge, on his or her own motion, grants relief *to the defendant* pursuant to G.S. 15A-1420(d); or
- a defendant’s application for habeas corpus is granted. *See supra* § 35.4, State Habeas Corpus.

Once notice of appeal has been given and the fourteen-day period for taking an appeal has expired, the trial court is divested of jurisdiction and cannot thereafter correct non-clerical errors. *See State v. Lebeau*, \_\_\_ N.C. App. \_\_\_, 843 S.E.2d 317, 319–20 (2020) (holding that under the plain language of G.S. 15A-1448(a), a trial judge is not divested of jurisdiction solely by virtue of the entry of notice of appeal; jurisdiction remains in the trial court “until notice of appeal has been given and 14 days have passed”); *State v. Davis*, 123 N.C. App. 240 (1996) (finding that trial judge had no jurisdiction to amend his original order arresting judgment or to amend the judgment to correct a judicial error while the case was on appeal); *see also* G.S. 15A-1453 (addressing the ancillary actions that a trial

court may take while an appeal is pending). This is true except in cases where a MAR has been filed within ten days under G.S. 15A-1414 or G.S. 15A-1416 since the judge may act on these types of motions whether or not notice of appeal has been given. *See* G.S. 15A-1414(c); G.S. 15A-1448(a)(2).

**Illegal sentences.** Although the general rule is that after a session of court has concluded a trial judge may not make modifications or changes to a judgment other than to correct clerical errors (absent authority conferred by the post-conviction MAR statutes or by way of a petition for habeas corpus), it appears that unless a defendant has given notice of appeal, a judge always has the inherent authority to correct a judicial error when the error resulted in an illegal sentence. *See, e.g., State v. Branch*, 134 N.C. App. 637 (1999) (trial judge, after notification by the Department of Correction that defendant’s sentence was illegal as a matter of law, had the authority to correct an illegal judgment thereby increasing the length of defendant’s imprisonment even though the session of court had ended and no MAR had been filed to correct the sentence).; *State v. Bonds*, 45 N.C. App. 62, 64 (1980) (stating that North Carolina courts “have always had the authority” after a session expires to vacate judgments that are invalid as a matter of law “pursuant to petition for writ of habeas corpus and, more recently, by way of post conviction proceedings”).

**Additional resources.** For further discussion of clerical and judicial errors and of a trial judge’s authority to modify a judgment to correct those errors, see Jessica Smith, [\*Correcting Errors Sua Sponte After Entry of Judgment\*](#) (Feb. 2012), NORTH CAROLINA SUPERIOR COURT JUDGES’ BENCHBOOK (includes an analytical flowchart distinguishing between the types of errors).