

N.C.P.I.-Crim. 204.20
B1 FELONY, SENTENCE ENHANCEMENT, PRIOR B1 FELONY
CONVICTIONS.
GENERAL CRIMINAL VOLUME
JANUARY 2004
N.C. Gen. Stat. § 15A-1340.16B

204.20 B1 FELONY, SENTENCE ENHANCEMENT, PRIOR B1 FELONY
CONVICTIONS. N.C. Gen. Stat. § 15A-1340.16B.¹

NOTE WELL: Use when (1) the defendant has one or more prior convictions of a Class B1 felony, (2) the offense was committed against a victim who was 13 years of age or younger at the time of the offense, and (3) the court finds no mitigating factors in accordance with N.C. Gen. Stat. § 15A-1340.16(e).² If the sentencing court finds mitigating factors, the court shall sentence the defendant in accordance with N.C. Gen. Stat. § 15A-1340.17, which provides punishment limits for each class of offense and prior record level.³

See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict and judgment.

Having found the defendant guilty of (*name felony*), you must determine whether the defendant shall be sentenced to life imprisonment without parole, which requires the State to prove beyond a reasonable doubt the following three things⁴:

First, that there are no mitigating factors.

NOTE WELL: Although the prosecution bears the burden of persuasion, the defendant first bears the burden of producing evidence of mitigating factors. If the defendant comes forward with any evidence of a mitigating factor he is entitled to instructions to the jury. The defendant is aided in this burden by the principle that the court must consider all evidence, both the state's and defendant's, in the light most favorable to the defendant.

A mitigating factor is a fact or group of facts that do not constitute justification or excuse for a crime or reduce it to a lesser degree of that crime, but may be considered as extenuating or reducing the moral culpability of the crime or making it less deserving of extreme

punishment than life in prison without parole. Our law identifies several possible mitigating factors.

The State bears the burden of proving beyond a reasonable doubt that no mitigating factors exist.

(____) Possible mitigating factors are listed.

NOTE WELL: Submit to the jury the mitigating factors supported by the evidence. N.C. Gen. Stat. § 15A-1340.16(e).

(01) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.

(02) The defendant was a passive participant or played a minor role in the commission of the offense.

(03) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.

(04) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.

(05) The defendant has made substantial or full restitution to the victim.

(06) The victim was more than 16 years of age and was a

voluntary participant in the defendant's conduct or consented to it.

(07) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.

(08) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.

(09) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.

(10) The defendant reasonably believed that the defendant's conduct was legal.

(11) 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.

(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.

(13) The defendant is a minor and has reliable supervision available.

(14) The defendant has been honorably discharged from the

United States armed services.

(15) The defendant has accepted responsibility for the defendant's criminal conduct.

(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.

(17) The defendant supports the defendant's family.

(18) The defendant has a support system in the community.

(19) The defendant has a positive employment history or is gainfully employed.

(20) The defendant has a good treatment prognosis, and a workable treatment plan is available.

(21) Any other mitigating factor reasonably related to the purposes of sentences.

Second, that the victim was 13 years of age or younger at the time of the offense.

And Third, that the defendant has one or more prior convictions of a Class B1 felony. (*Name prior conviction(s)*) is a Class B1 felony. For you to find that the defendant has been previously convicted of a Class B1 felony, the State must prove beyond a reasonable doubt that on (*name date*) the defendant [was convicted of] [pled guilty to] the felony of (*name felony*), that was committed on (*name date*) in violation of the law

N.C.P.I.-Crim. 204.20
B1 FELONY, SENTENCE ENHANCEMENT, PRIOR B1 FELONY
CONVICTIONS.
GENERAL CRIMINAL VOLUME
JANUARY 2004
N.C. Gen. Stat. § 15A-1340.16B

of the [State of North Carolina] [State of (*name other state*)] [United States]. (*Name felony*) is a Class B1 felony.

If you find from the evidence beyond a reasonable doubt that no mitigating factors exist, answering issue one "yes," and you further find beyond a reasonable doubt that the victim was 13 years or younger at the time of the offense and the defendant has a prior conviction of a Class B1 felony, answering issues two and three "yes," then you would answer issue four "yes" requiring the court to sentence the defendant to life imprisonment without parole. If you do not so find or have a reasonable doubt as to one or more of these things; and therefore, have answered issues one, two, or three "no," then you would also answer issue four "no," finding the defendant not subject to a sentence of life imprisonment without parole.

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF _____ SUPERIOR COURT DIVISION
FILE NO.

STATE OF NORTH CAROLINA
vs.

Verdict

Defendant

Issue One

Do you find from the evidence beyond a reasonable doubt that there are no mitigating factors?

Answer: _____

Before you answer issue one, consider each of the following mitigating factors. If you find beyond a reasonable doubt that a mitigating factor does not exist, write "no" in the space after that mitigating factor. If you do not so find write "yes" in the space.

If in one or more of the following spaces you write "yes," then you would write "no" in the space after issue one. If in all of the following spaces you write "no," then you would write "yes" in the space after issue one.

NOTE WELL: Modify verdict sheet and submit to the jury only the mitigating factors supported by the evidence. N.C. Gen. Stat. § 15A-1340.16(e).

(01) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.

Answer: _____

(02) The defendant was a passive participant or played a minor role in the commission of the offense.

Answer: _____

(03) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.

Answer: _____

(04) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense

significantly reduced the defendant's culpability for the offense.

Answer: _____

(05) The defendant has made substantial or full restitution to the victim.

Answer: _____

(06) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.

Answer: _____

(07) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.

Answer: _____

(08) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.

Answer: _____

(09) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.

Answer: _____

(10) The defendant reasonably believed that the defendant's conduct was legal.

Answer: _____

(11) 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.

Answer: _____

(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.

Answer: _____

(13) The defendant is a minor and has reliable supervision available.

Answer: _____

(14) The defendant has been honorably discharged from the united States armed services.

Answer: _____

(15) The defendant has accepted responsibility for the defendant's criminal conduct.

Answer: _____

(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.

Answer: _____

(17) The defendant supports the defendant's family.

Answer: _____

(18) *The defendant has a support system in the community.*

Answer: _____

(19) *The defendant has a positive employment history or is gainfully employed.*

Answer: _____

(20) *The defendant has a good treatment prognosis, and a workable treatment plan is available.*

Answer: _____

(21) *Any other mitigating factor reasonably related to the purposes of sentences.*

Answer: _____

IF YOU ANSWERED ISSUE ONE "NO," THEN YOU WOULD SKIP ISSUES TWO AND THREE AND ANSWER ISSUE FOUR "NO," FINDING THE DEFENDANT NOT SUBJECT TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE. IF YOU ANSWERED ISSUE ONE "YES," THEN PROCEED TO ANSWER ISSUE TWO.

Issue Two

Do you find from the evidence beyond a reasonable doubt that the victim was 13 years of age or younger at the time of the offense?

Answer: ___ Yes or ___ No

N.C.P.I.-Crim. 204.20
B1 FELONY, SENTENCE ENHANCEMENT, PRIOR B1 FELONY
CONVICTIONS.
GENERAL CRIMINAL VOLUME
JANUARY 2004
N.C. Gen. Stat. § 15A-1340.16B

IF YOU ANSWERED ISSUE TWO "NO," THEN SKIP ISSUE THREE AND ANSWER ISSUE FOUR "NO," FINDING THE DEFENDANT NOT SUBJECT TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE. IF YOU ANSWERED ISSUE TWO "YES," THEN PROCEED TO ANSWER ISSUE THREE.

Issue Three

Do you find from the evidence beyond a reasonable doubt that the defendant has one or more prior convictions of a Class B1 felony?

Answer: ___ Yes or ___ No

IF YOU ANSWER ISSUE THREE "NO," THEN YOU WOULD ANSWER ISSUE FOUR "NO," FINDING THE DEFENDANT NOT SUBJECT TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE. IF YOU ANSWERED ISSUE THREE "YES," AND HAVE ANSWERED ISSUES ONE AND TWO "YES" THEN YOU WOULD ANSWER ISSUE FOUR "YES," FINDING THE DEFENDANT SUBJECT TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE.

Issue Four

We, the jury, unanimously find the defendant subject to a sentence of life imprisonment without parole.

Answer: ___ Yes or ___ No

This the ___ day of _____, _____.

Foreperson

N.C.P.I.-Crim. 204.20
B1 FELONY, SENTENCE ENHANCEMENT, PRIOR B1 FELONY
CONVICTIONS.
GENERAL CRIMINAL VOLUME
JANUARY 2004
N.C. Gen. Stat. § 15A-1340.16B

1. N.C. Gen. Stat. § 15A-1340.16B provides that, notwithstanding the sentencing provisions of N.C. Gen. Stat. § 15A-1340.17, a defendant convicted of a class B1 felony shall be sentenced to life imprisonment without parole if: (1) the offense was committed against a victim who was 13 years of age or younger at the time of the offense; (2) the defendant has one or more prior convictions of a Class B1 felony; and (3) the court finds that there are no mitigating factors in accordance with N.C. Gen. Stat. § 15A-1340.16(e).

2. N.C. Gen. Stat. § 15A-1340.16B(f).

3. N.C. Gen. Stat. § 15A-1340.16B(b).

4. U.S. Constitution requires that any fact, other than fact of prior conviction, that increases punishment for an offense beyond statutory maximum for that offense must be submitted to the jury and proved and found by them beyond a reasonable doubt. *Apprendi v. United States*, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed. 435 (2000).