BROWN, LAKRESHA KENYATTA, M.A. Are We Disappearing African American
Women through Mass Incarceration? It Depends on the Day. (2018)
Directed by Dr. Shelly Brown-Jeffy. 70 pp.

While much discussion surrounding mass incarceration focuses on African
American men, African American women, too, are incarcerated at higher rates than their
female counterparts – European American women. The number of incarcerated women
dramatically increased during the War on Drugs era. The Bureau of Justice Statistics
(2017) reports that in 2016, the imprisonment rate for African American women (96 per
100,000) was almost twice the rate of imprisonment for European American women (49
per 100,000). This paper examines both legal and extralegal factors that could possibly
influence sentencing decisions made by judges. This study seeks to examine whether the
race of a woman matters in the state of North Carolina when her most recent offense is
drug related. I collected data from the North Carolina Department of Public Safety on
women who were incarcerated in the state of North Carolina on October 12, 2017. I
analyzed data from 320 women whose most recent offense was drug related. I found that
African American women were not disproportionately incarcerated compared to
European American women. In sum, race did not matter for the state of North Carolina,
but other legally relevant factors did.

ARE WE DISAPPEARING AFRICAN AMERICAN WOMEN

THROUGH MASS INCARCERATION?

IT DEPENDS ON THE DAY

by

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A Thesis Submitted to
the Faculty of The Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Master of Arts

Greensboro
2018

Approved by

_____
Committee Chair

For Shaqur McNair,

You are the reason I chose to continue my education in the field of Sociology. Although

not done intentionally, my data was collected on October 12, 2017. Four years prior was

the last full day you were alive. Even in your passing, your legacy still breaths on us.

It is to you, Shaqur, that I dedicate this thesis.

Love, Kresha

This thesis written by LaKresha Kenyatta Brown has been approved by the following committee of the Faculty of the Graduate School at The University of North Carolina at Greensboro.

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Date of Final Oral Examination

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CHAPTER I

INTRODUCTION

The criminal justice system is composed of three primary levels: police, courts, and corrections. Each branch is supposed to dispense impartial justice but, some believe there is little evidence to support that justice is being achieved in this criminal "justice" system (Belknap 2001). Research shows that racial disparities exist at all levels of the criminal justice system. The primary focus of this thesis is to examine the differences in sentencing between African American and European American women who are incarcerated for drug offenses in North Carolina.

Discussions of mass incarceration in prisons typically focus on African American men who are incarcerated at rates significantly higher than European American men. African American women, too, are incarcerated at higher rates than their European counterparts (Collins 2010; Alexander 2010). Although the rate of imprisonment for African American women has been declining since 2000, the rate of imprisonment for European American and Hispanic women has been rising (Sentencing Project 2018). The Bureau of Justice Statistics (2017) report that in 2016, the imprisonment rate for African American women (96 per 100,000) was twice the rate of imprisonment for European American women (49 per 100,000). Specifically, for the state of North Carolina, there is an overrepresentation of African American women in the prison system (Census Data 2017). European American women are equally represented in the general population as

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they are the prison population at 68% (Census Data 2017). African American women, on the other hand, make up 22% of the North Carolina general population of women yet compose 26.5% of the women's prison population in North Carolina (Census Data 2017). North Carolina's disparities could suggest that race is significant, but there are other factors that influence bias and discrimination in the criminal justice system.

In the criminal justice system, leniency is more likely to be shown to women than men (Spohn 2009). Studies have shown that, in regard to sentence length, women are favored over men and oftentimes receive shorter sentences than their male counterparts who commit the same crime (Starr 2012). African American women, though, may not get the leniency benefit that European American women get. African American women tend to be deemed more culpable than European American women for criminal behavior, thus allowing race to prescribe criminality (Alexander 2010). The way in which court officials interpret African American women's offending could, in fact, influence the women's sentencing outcome.

African American women face a social burden that ultimately determines how they are treated by society and the criminal justice system. This social burden is termed 'double marginalization' which occurs when a person simultaneously experiences two forms of discrimination that marginalize or 'other' them. In terms of race and gender, being African American and being female, especially in the criminal justice system, allows for a double portion of discrimination to be distributed to those who 'fit the description'. The double marginalization that African American women face can lead to differential treatment and a lack of impartiality in the criminal justice system.

This thesis seeks to add to the sociological discussion regarding the imprisonment of women and the factors that could potentially influence sentencing outcomes. This research will examine data collected from the North Carolina Department of Public Safety Offender Public Information Search to examine whether there is a racial difference in sentencing among women incarcerated for drug related offenses in North Carolina. The primary research question is: Is there racial disparity in women's sentencing for drug related offenses in the state of North Carolina?

CHAPTER II

LITERATURE REVIEW

We live in a society where race and racism are popular topics of discussion. According to Omi and Winant race is a "pre-eminently sociohistorical concept [that is based on the] specific social relations and the historical context in which they are embedded" (Omi and Winant 1986:15). In the United States, race has been defined by innate characteristics – most notably skin color and other physical attributes (Omi and Winant 1986). The use of these physical indicators has caused racial tensions, dating back to the discovery of the New World by Europeans.

The byproduct of embracing racial-difference ideologies is the formation of a dominant group and a minority group. A dominant group is not defined as the numerical majority in a society, but as a group with power, privileges, and social status (Wirth 1941). In the United States, Caucasian/Anglo-Saxon/European Americans are the racially dominant group. Blalock (1981) defines minorities as those racial, ethnic, or possibly other social groupings that are in a subordinate position, regardless of their numerical size. In the United States, any person of color that is not considered Caucasian/Anglo-Saxon/European American is automatically considered as part of the racial minority group.

Omi and Winant (1986:16) suggest that racial categories can be "formed, transformed, destroyed, and re-formed". Racial formation is defined by the importance of

racial categories as determined by the social, economic, and political forces that shape racial meaning (Omi and Winant 1986). How the term *race* is defined by a society is how race will be carried out. The United States has allowed for racial difference ideologies to remain center stage, thus formulating racism.

Racism is "the subordination of any person or group because of skin color or other distinctive physical characteristics. Racism, like sexism, is reflected in both individual and institutional acts, decisions, habits, procedures, and policies that neglect, overlook, exploit, subjugate, or maintain the subordination of the individual or the group" (Chaney 2015:313). Omi and Winant (2015:3) describe race and racism in the United States as being "shaped by a centuries long conflict between European American domination and resistance by people of color". In other words, the United States has allowed *race and racism* to be a normative barrier, separating those who are European American from those who are people of color. Racial categories have produced boundaries between people based simply on the color of their skin. Racism, which has proven to be a plague to American society, has bled into our systems, institutions, and personal ideologies.

Different Forms of Racism

With the foundation of American society, the power dynamic associated with the difference in races has produced different forms of racism. Systemic racism, which serves as the umbrella overshadowing all other forms of racism, suggests that the United States was founded as a racist society, and that racism is thus embedded in all social institutions,

structures, and social relations within our society, including the criminal justice system. Racism occurs on different levels, both aggregate and individual. Specifically, for African Americans, racially exclusive measures are embedded in structures, institutions, and mindsets of individuals who have been greatly influenced by the rhetoric spoken against African Americans. Because normative standards are defined by the dominant group, American history, culture, and institutions are seen from the lens of European American person(s), making their social fabric superior over that of anyone who is not European American (Omi and Winant 1986). This system of hierarchy and inequity, advances the power, privilege, and influence of European American people at the expense of African American, Latino, Asian, Pacific Islander, Native American, and other racially oppressed people.

Macro-Level of Racism – Structural (Institutional) Racism

Structural racism occurs when a system of social structures routinely advantages European Americans while it adversely disadvantages people of color. Also known as institutional racism, this form of racism refers to the "specific policies and/or procedures of institutions (e.g. law enforcement agencies, government, business, schools, churches, etc.) which consistently result in unequal treatment for particular groups" (Chaney 2015:313). Institutional racism occurs when social institutions either deliberately or indirectly discriminate against certain groups of people to limit their rights (Chaney 2015). Institutional discrimination reflects the cultural assumptions of the dominant group, making their norms and perceptions ones that other cultures should conform to (Chaney 2015). The institution of the criminal justice system openly labels people of

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color as 'criminal' (Alexander 2010), thus promoting unequal treatment through the utilization of the criminal justice system.

Institutional racism produces a relationship between race and predisposition of crime. In other words, when law enforcement agencies treat minority groups differently than European Americans, a hyper-criminalization of minority groups can occur within the institution. Hyper-criminalization is defined as the process by which an individual's everyday behaviors are seen as deviant, threatening or criminal at an excessive rate (Rios 2006). Through hyper-criminalization, people of color, specifically African Americans, are disadvantaged and a system of social control is promoted. Racial stereotyping and rhetoric can permeate both structures and institutions, thus affecting subjective decision-making processes at all levels of an organization (Alexander 2010) specifically, during the sentencing process and incarceration of African American women.

Micro-Levels of Racism – Overt Racism and Subtle Racism

Overt racism is the racism that is easy to spot. Overt racism is when a person openly displays how they feel about people who are not of the same race as them; this behavior is often is discriminatory. A practical example of overt racism is when a European American woman clutches her purse tighter as an African American man stands next to her (this happens because of subconscious prejudices and how she views her level of safety around the African American man).

Subtle racism, on the other hand, is an ambiguous form of racial discrimination that is not easy to spot and can be very dangerous. A practical example of subtle racism is

when a European American man shakes hands with an African American man, yet immediately following goes and washes his hands because he feels 'unclean'. If he had shaken hands with a European American man, he would not have felt the need to perform the same action.

Racist ideologies that are present in everyday life can bleed into the different branches of the criminal justice system. Specifically, in the court system, racism can attach itself to the sentencing process.

Disparity in Sentencing – More Than Just Race

From the time Africans first appeared in America, different levels of punishment were assessed to African American and European Americans. For African Americans, penalty was the answer. African Americans were sentenced and punished more punitively for acts that similarly situated European Americans were not (Spohn 2009). The way that European Americans were seen by officials in the criminal justice system was much different than the way that African Americans were viewed.

Gunnar Myrdal, a Swedish economist in the 1940s, examined the differential treatment of blacks and whites in the southern court systems by documenting racial discrimination in court processing and sentencing (Myrdal 1944; Spohn 2009). Myrdal (1944) noted structural characteristics in the judicial process that do not accommodate poor and uneducated groups. For example, research has shown that black defendants were "handled informally and with a lack of dignity" (Spohn 2009:170; Myrdal 1944). Myrdal (1944) noted that grand juries routinely refused to indict whites for crimes against

blacks, and if they were indicted, they would receive the mildest punishments (Spohn 2009). African Americans, on the other hand, were treated very harshly, even if only suspected of committing a crime against a European American person (Myrdal 1944; Spohn 2009). Recent studies have revealed that discriminatory treatment of criminal defendants may be restricted primarily to African American males while preferential treatment may be reserved for European American females (Spohn 2009). Scholars continue to suggest that racial disparities arise from discriminatory treatment of African Americans and Latinos by law enforcers, such as police officers, prosecutors, judges, and probation officers (Spohn 2013). The treatment of African Americans by the criminal justice system has historically been different than the treatment of European Americans and continues to occur today.

This differential treatment has manifested itself in altered outcomes for African American defendants. More than 60% of the people in prison today are people of color (Sentencing Project 2018). Black men are six times as likely to be incarcerated as European American men (Sentencing Project 2018). For African American women, the rate of imprisonment (96 per 100,000) is double that of European American women (49 per 100,000). In sum, African Americans and Latinos are treated differently than their European American counterparts (Spohn 2013).

Equality may be impossible in the sentencing process, but the sentencing process should not necessarily reinforce discrimination (Ulmer and Johnson 2004). The criminal sentencing process should be fair, wise, and unbiased. In an ideal legal system,

sentencing would be prescribed only on the basis of the facts and circumstances of the case (Spohn 2009). The reality of the sentencing process is much different.

Criminal justice experts have identified that both legal and extralegal factors help explain inequalities seen during the sentencing process of criminal proceedings. Legal factors, also known as the jurisprudential factors, are the factors that determine how a case should be decided based on rules and logic (Black 1993). Legal factors consider the type of crime committed, seriousness of the offense, and prior criminal record. Legal factors are considered more legitimate reasons for disparities in sentencing because they are based on the individual's criminal behavior (Spohn 2009).

Extralegal factors are the characteristics of the defendant that are not associated with the crime (Black 1993). The definition of 'extralegal factor' suggests that the consequences for violating a law should be the same for every person regardless of their gender, race, socioeconomic class, or geographical location. In the United States, however, gender, race, socioeconomic class, and geographical location are often considered during the sentencing process. Donald Black (1993) mentions in *Sociological Justice* that the extralegal structure of a case is a better predictor of sentencing outcomes than the legal structure; the extralegal factors can very easily, if allowed, outweigh the legal factors when determining an appropriate sentence. Yet, extralegal factors are not considered legitimate factors to base sentencing decisions on because they relate to group membership rather than criminal behavior (Spohn 2009). While legal factors are the baseline ingredients considered during the sentencing process, extralegal factors can

greatly influence how a defendant is viewed by court officials. Race is an extralegal factor that is often considered in the criminal justice process.

Race and Gender

Race is a potent determinant in sentencing (Spohn 2009; Zatz 1987). Race has historically weighed in on who is/who is not allowed to speak, participate, and be taken seriously in criminal proceedings, which shows great lack in impartiality. African Americans tend to battle a general presumption of guilt, based simply on the color of their skin and how America has defined race (Gross 2015). Communities of color have been disenfranchised and are subject to more aggressive law enforcement encounters (Ritchie 2012). This more aggressive law enforcement starts in the community and continues through judicial proceedings. African Americans experience much harsher punishments as a result of being defined "so-called violent perpetrators" who commit illegal acts (Ritchie 2012:7).

According to Stephanie Bush-Baskette's (1998) scholarly article *The War on Drugs as a War Against Black Women*, African American female's presence in the criminal justice system is seldom studied compared to African American men's presence. The experiences of African American females are often ignored or marginalized, which has become problematic with regard to the intersection of race and gender throughout the criminal justice process (Bush-Baskette 1998). Academic scholar Michael Tonry (1995), for example, recognized in *Malign neglect* that drug policies greatly impacted African American females, yet chose to focus his attention on African American males.

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The general profile of the incarcerated female has seen very little change over the past 40 years. Glick and Neto (1977) conducted a study that profiled the typical female prisoner as a woman who was (a) Black (50%+), (b) unmarried (80%), (c) the mother of at least one child (75%), and (d) most likely a welfare recipient prior to incarceration (50%+). In the 1980s, a national study was conducted of the federal and state correctional facilities. This national study concluded that incarcerated females tended to be members of a minority group, young, poor, unskilled, and unmarried (Bush-Baskette 1998). In 1990, the American Correctional Association conducted a study and found that incarcerated females were mostly from minority groups (57%), mothers (80%), and on welfare prior to their incarceration (60%) (Bush-Baskette 1998:187). A recent study conducted by the Sentencing Project in 2017, reported that women in state prisons are most likely to be incarcerated for violent offenses (37%), property offenses (28%) and drug offenses (24%); Men are most likely to be incarcerated for violent offenses (54%), than property offenses (19%) and drug offenses (15%). Research indicates that there are gender differences in different types of incarcerations. Not only does gender influence the type of crime and sentencing one receives, but race does as well.

In 2016, European Americans made up 30.2% of the state and federal prison population; African Americans represented 33.4%; Hispanics represented 23.3%; those labeled as Other represented 13.2% (Bureau of Justice Statistics 2017). Although the rate of imprisonment for African Americans is decreasing, there is still a disproportionate amount of African Americans confined and subject to a prison environment. If fair, wise,

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and unbiased treatment was being pursued during the sentencing process of each offender, race would not influence who is seen as a more reliable defendant.

While gender and race, are extralegal factors that are considered during sentencing, legal factors, too, are worthy to be discussed as well. Federal sentencing guidelines, as a legal factor, help to determine a sentence based upon the offenders' legitimate criminal history.

Federal Sentencing Guidelines

Sentencing guidelines are the legal guidelines and factors that are used to help formulate a uniform policy for defendants (Spohn 2009). In other words, sentencing guidelines are the parameters that judges are supposed to adhere to when prescribing sentencing for defendants. Federal sentencing guidelines were developed as a result of the Sentencing Reform Act of 1984 which sought the development of guidelines that would further the basic purposes of criminal punishment: deterrence, incapacitation, rehabilitation, retribution, and restitution (USSG Ch.1, Pt.A, intro. comment.). The Act therefore delegated the United States Sentencing Commission (USSC) as "a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years", to create these guidelines, which were enacted on November 1, 1987. The USSC's principal purpose is to "establish sentencing policies and practices that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes" (USSG Ch.1, Pt.A, intro. comment.).

The initial guidelines allowed many loopholes to surface, which was problematic (USSG Ch.1, Pt.A, intro. comment.). One of the issues that surfaced was permitting courts departure from a guideline-specified sentence for atypical cases (USSG Ch.1, Pt.A, intro. comment.). Departure from a guideline-specific sentence would simply mean prescribing a sentence that is not in the guideline range for that particular crime. The guideline manual states that when the courts find "an aggravating or mitigating circumstance … not adequately taken into consideration by the Sentencing Commission, a formulating of the guidelines should result in a sentence different from that described" (18 U.S.C. § 3553(b)). An aggravating factor would enhance the sentence, while a mitigating factor would allow for a more lenient sentence to be prescribed.

Another issue that arose was the development of sentencing ranges which were adopted from the pre-guideline sentencing system. The pre-guideline sentencing system was the way the sentencing process was conducted prior to the development of sentencing guidelines. Sentencing ranges, the range of time that someone was sentenced for a crime, had to be updated to help eliminate the wide disparity that had previously occurred prior to the development of the guidelines (USSG Ch.1, Pt.A, intro. comment.). The commission then established a Sentencing Table to help alleviate the issue of wide disparity in sentencing.

The Sentencing Table contains 43 offense levels, which forms the vertical axis of the Sentencing Table. The offense levels are a ranking of various offenses based on the severity of the crime. The offense levels are broken into four different Zones, Zones A, B, C, and D. The zones help to clearly define the possible length of sentence someone

should receive based on the level of seriousness for the crime and the prior record history. Zone A includes offense levels 1-8, Zone B includes offense levels 9-11, Zone C includes offense levels 12-13, Zone D includes offense levels 14-43. According to the 2016 U.S. Sentencing Guideline Manual, each zone has a specific sanction associated with it and a certain number of months that can be prescribed. An offense level that falls into Zone A could be prescribed as few as zero months of imprisonment as a minimum sentence, while an offense level that falls into Zone D could be prescribed a sentence of life imprisonment. If a federal offense is categorized in Zone A, the defendant could very well receive an intermediate sanction (e.g. community confinement, home detention, intermittent confinement, etc.) as their form of punishment.

The Sentencing Table also incorporates a criminal history category, which forms the horizontal axis of the table. The criminal history axis indicates the number of prior convictions that someone has on their criminal record and it ranges from Level I (being the least amount of prior records) to Level VI (being the most prior records). Where the offense level and criminal history category intersect is the guideline range in months of imprisonment. The length of sentence prescribed within the guideline table is the same for each offense level in the preceding and succeeding levels (USSG Ch.1, Pt.A, intro. comment.). It is not until moving from one zone of offenses to another zone that the length of the sentence would change. Simply put, if the offense levels are within the same zone, the sentence range will stay the same. Overlapping the ranges seeks to discourage unnecessary litigation and works to increase sentence proportionately (USSG Ch.1, Pt.A,

intro. comment.). In other words, the table works to avoid unnecessary legal arguments that could arise if a prosecutor were to decide to change the offense level.

Figure 1 displays the Federal Sentencing Guideline Table, as of November 1, 2016, and is shown below:

SENTENCING TABLE
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
Zone A						
1	0–6	0–6	0–6	0–6	0–6	0–6
2	0–6	0–6	0–6	0–6	0–6	1–7
3	0–6	0–6	0–6	0–6	2–8	3–9
4	0–6	0–6	0–6	2–8	4–10	6–12
5	0–6	0–6	1–7	4–10	6–12	9–15
6	0–6	1–7	2–8	6–12	9–15	12–18
7	0–6	2–8	4–10	8–14	12–18	15–21
8	0–6	4–10	6–12	10–16	15–21	18–24
Zone B						
9	4–10	6–12	8–14	12–18	18–24	21–27
10	6–12	8–14	10–16	15–21	21–27	24–30
11	8–14	10–16	12–18	18–24	24–30	27–33
Zone C						
12	10–16	12–18	15–21	21–27	27–33	30–37
13	12–18	15–21	18–24	24–30	30–37	33–41
Zone D						
14	15–21	18–24	21–27	27–33	33–41	37–46
15	18–24	21–27	24–30	30–37	37–46	41–51
16	21–27	24–30	27–33	33–41	41–51	46–57
17	24–30	27–33	30–37	37–46	46–57	51–63
18	27–33	30–37	33–41	41–51	51–63	57–71
19	30–37	33–41	37–46	46–57	57–71	63–78
20	33–41	37–46	41–51	51–63	63–78	70–87
21	37–46	41–51	46–57	57–71	70–87	77–96
22	41–51	46–57	51–63	63–78	77–96	84–105
23	46–57	51–63	57–71	70–87	84–105	92–115
24	51–63	57–71	63–78	77–96	92–115	100–125
25	57–71	63–78	70–87	84–105	100–125	110–137
26	63–78	70–87	78–97	92–115	110–137	120–150
27	70–87	78–97	87–108	100–125	120–150	130–162
28	78–97	87–108	97–121	110–137	130–162	140–175
29	87–108	97–121	108–135	121–151	140–175	151–188
30	97–121	108–135	121–151	135–168	151–188	168–210
31	108–135	121–151	135–168	151–188	168–210	188–235
32	121–151	135–168	151–188	168–210	188–235	210–262
33	135–168	151–188	168–210	188–235	210–262	235–293
34	151–188	168–210	188–235	210–262	235–293	262–327
35	168–210	188–235	210–262	235–293	262–327	292–365
36	188–235	210–262	235–293	262–327	292–365	324–405
37	210–262	235–293	262–327	292–365	324–405	360–life
38	235–293	262–327	292–365	324–405	360–life	360–life
39	262–327	292–365	324–405	360–life	360–life	360–life
40	292–365	324–405	360–life	360–life	360–life	360–life
41	324–405	360–life	360–life	360–life	360–life	360–life
42	360–life	360–life	360–life	360–life	360–life	360–life
43	life	life	life	life	life	life

November 1, 2016

Figure 1. Federal Sentencing Guideline Table

The U.S. Sentencing Guideline Manual provides the legal factors that would allow for departure from the presumptive guideline range, the standard range defined by the Sentencing Guideline Table. These factors would either aggravate (allow for a more severe sentence than the typical range) or mitigate (allow for a less severe sentence than the typical range) the months of imprisonment that a person may receive.

Aggravating factors warrant an "upward departure". Upward departure is a departure that "effects a sentence greater than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise greater than the guideline sentence" (USSG §2D1.1, p.s.). In other words, the sentence imposed will be greater than the presumptive range if aggravating factors are considered during sentence. For example, if a defendant was an organizer, leader, manager or supervisor in any criminal activity, the offense level would increase (USSG §2D1.1; USSG §3B1.1). An enhancement should also be applied if a weapon is present, serious bodily injury (including fatality) occurs, and/or the intent to commit another felony takes place (USSG §2D1.1, p.s.).

Specifically, for drug offenses, an upward departure may be warranted in the case of unusually high purity of a controlled substance. The purity of a controlled substance, (particularly in the case of heroin) may be relevant during the sentencing process because it could define the defendant's role or position in the chain of distribution (USSG §2D1.1, p.s.). Controlled substances are oftentimes diluted and combined with other substances as they are passed down the chain of distribution (USSG §2D1.1, p.s.). A defendant possessing unusually pure narcotics could indicate his/her prominent role in the criminal enterprise and even their proximity to the source of the drugs (USSG §2D1.1, p.s.).

Mitigating factors warrant a "downward departure." Downward departure is a departure that "effects a sentence less than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise less than the guideline sentence" (USSG §2D1.1, p.s.). In other words, a sentence would be more lenient than the presumptive range if mitigating factors are taken into account during sentencing. For example, if the defendant was a minimal or minor participant in an offense, the offense level would decrease (USSG §2D1.1, p.s.; USSG §3B1.2, p.s.). The guidelines also permit the court to impose a more lenient sentence on those defendants who plead guilty and accept responsibility for their misconduct (downward departure).

Specifically, for drug offenses, a downward departure may be warranted if the defendant provides substantial assistance to the investigation or prosecution of another person (USSG §2D1.1, p.s.). A downward departure may also be warranted in the case of a reverse sting (an operation where a government agent sells or negotiates to sell a controlled substance to a defendant) where the agent set a substantially low price for a controlled substance, thereby leading the defendant to purchase a significantly greater quantity because of the low price (USSG §2D1.1, p.s.).

Part H of the 2016 U.S. Sentencing Guideline Manual specifically addresses the extralegal factors that are relevant during sentencing, termed "Specific Offender Characteristics". The Act directs the Commission to do four things: (1) ensure that the guidelines and policy statements "are entirely neutral" when regarding these five characteristics: race, sex, national origin, creed, and socioeconomic status; (2) consider whether eleven specific offender characteristics, "among others", have any relevance to

the nature, extent, place of service, or other aspects of an appropriate sentence, and to take them into account in the guidelines and policy statements only to the extent that they do have relevance; (3) ensure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the "general inappropriateness" of considering five of those characteristics: education, vocational skills, employment record, family ties and responsibilities, and community ties; and (4) directs the sentencing court, in determining the particular sentence to be imposed, to consider, among other factors, "the history and characteristics of the defendant" (USSG Ch.5, Pt.H, intro. comment.). The 2016 U.S. Sentencing Guideline Manual suggest that these Special Offender Characteristics are not to give reason for a sentence outside of the applicable guideline range, but rather to help determine which type of sentence (e.g. probation or imprisonment) is appropriate (USSG Ch.5, Pt.H, intro. comment.).

The guidelines will, as noted in the guideline manual, apply to more than 90% of all felony and Class A misdemeanor cases in the federal court system (USSG Ch.1, Pt.A, concl. comment.). Mentioned in the guideline manual was a disclosure, though, stating that offenses that occur infrequently are not considered in the guidelines, thus their exclusion will be addressed as the Commission refines the guidelines over time (USSG Ch.1, Pt.A, concl. comment.). It is important to recognize that there are limitations in the federal guidelines. Thus, limitations are expected to exist in any guideline that may try to mimic/mirror the federal one. After the development of federally mandated guidelines, the state of North Carolina developed its own set of sentencing guidelines, which we can expect to have limitations of its own.

North Carolina Sentencing Guidelines

  The state of North Carolina began to develop and implement sentencing guidelines in the 1980s (NC Sentencing and Policy Advisory Commission 2011). By the late 1980's, the North Carolina criminal justice system was in a state of crisis. The crisis occurred as a result of prison overcrowding, which became an overwhelming problem for the NC justice system. The overcrowding led to the enactment of the Fair Sentencing Act of 1981 by the North Carolina General Assembly, purposed to shift from an indeterminate to a determinate sentencing system (NC Sentencing and Policy Advisory Commission 2011). With this enactment, the average amount of time served decreased, which enraged judges. The judges reacted in frustration by imposing longer sentences outside of the presumptive range (the range that sentencing guidelines suggested should be given), which undermined the underlying purpose of determinate sentencing laws: certainty and consistency of sentences (NC Sentencing and Policy Advisory Commission 2011). By 1986, 46 percent of felony sentences were above the presumptive level (NC Sentencing and Policy Advisory Commission 2011).

  To handle the issues of prison overcrowding and unfair sentencing that judges prescribed, the North Carolina General Assembly was told to develop a proposal for a Sentencing Commission. The Commission would, among other duties, examine the correctional system and were mandated to: (1) classify offenses based on severity; (2) recommend sentencing structures for judges; (3) recommend a comprehensive community corrections plan; and, (4) develop a correctional population simulation model to project the impact of its recommendations (NC Sentencing and Policy Advisory Commission

2011). The proposal was adopted and became part of the Special Committee on Prison's mandate. In July of 1990, as recommended by the Special Committee on Prisons, the North Carolina Sentencing and Policy Advisory Commission was created by the General Assembly. Thus, in 1996, the Sentencing Commission of North Carolina was made the permanent body for the purposes of monitoring the criminal justice system and reporting to the general assembly (NC Sentencing and Policy Advisory Commission 2011).

As a part of the Commission, North Carolina adopted their own model of a sentencing guideline table, titled the Felony Punishment Chart, which is similar to but also different from the federal Sentencing Table. Serving the same purpose as the federal Sentencing Table, the North Carolina Felony Punishment Chart helps determine an appropriate sentence for defendants based on the class level of their offense and their prior record. The vertical axis of the North Carolina Felony Punishment Chart lists the offense classes, ranging alphabetically from Levels A to I, Level A being the most serious crimes and Level I, being the least serious crimes. This chart also incorporates prior record levels, which forms the horizontal axis of the chart. The prior record level ranks from Roman Numeral I, having zero to one prior record offenses, to Roman Numeral VI, having eighteen or more prior record offenses. Where the two axes intersect is the guideline range shown in months. The range represents the potential minimum sentence a person could be prescribed. Figure 2 displays the North Carolina Felony Punishment Chart and it is shown below:

FELONY PUNISHMENT CHART
PRIOR RECORD LEVEL

OFFENSE CLASS		I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts		DISPOSITION
	A	**Death or Life Without Parole** Defendant Under 18 at Time of Offense: Life With or Without Parole							
	B1	A	A	A	A	A Life Without Parole	A Life Without Parole		Aggravated Range
		240 - 300	276 - 345	317 -397	365 - 456				PRESUMPTIVE RANGE
		192 - 240	221 - 276	254 - 317	292 - 365	336 - 420	386 - 483		Mitigated Range
		144 - 192	166 - 221	190 - 254	219 - 292	252 - 336	290 - 386		
	B2	A	A	A	A	A	A		
		157 - 196	180 - 225	207 - 258	238 - 297	273 - 342	314 - 393		
		125 - 157	144 - 180	165 - 207	190 - 238	219 - 273	251 - 314		
		94 - 125	108 - 144	124 - 165	143 - 190	164 - 219	189 - 251		
	C	A	A	A	A	A	A		
		73 – 92	83 - 104	96 - 120	110 - 138	127 - 159	146 - 182		
		58 - 73	67 - 83	77 - 96	88 - 110	101 - 127	117 - 146		
		44 - 58	50 - 67	58 - 77	66 - 88	76 - 101	87 - 117		
	D	A	A	A	A	A	A		
		64 - 80	73 - 92	84 - 105	97 - 121	111 - 139	128 - 160		
		51 - 64	59 - 73	67 - 84	78 - 97	89 - 111	103 - 128		
		38 - 51	44 - 59	51 - 67	58 - 78	67 - 89	77 - 103		
	E	I/A	I/A	A	A	A	A		
		25 - 31	29 - 36	33 - 41	38 - 48	44 - 55	50 - 63		
		20 - 25	23 - 29	26 - 33	30 - 38	35 - 44	40 - 50		
		15 - 20	17 - 23	20 - 26	23 - 30	26 - 35	30 - 40		
	F	I/A	I/A	I/A	A	A	A		
		16 - 20	19 - 23	21 - 27	25 - 31	28 - 36	33 - 41		
		13 - 16	15 - 19	17 - 21	20 - 25	23 - 28	26 - 33		
		10 - 13	11 - 15	13 - 17	15 - 20	17 - 23	20 - 26		
	G	I/A	I/A	I/A	I/A	A	A		
		13 - 16	14 - 18	17 - 21	19 - 24	22 - 27	25 - 31		
		10 - 13	12 - 14	13 - 17	15 - 19	17 - 22	20 - 25		
		8 - 10	9 - 12	10 - 13	11 - 15	13 - 17	15 - 20		
	H	C/I/A	I/A	I/A	I/A	I/A	A		
		6 - 8	8 - 10	10 - 12	11 - 14	15 - 19	20 - 25		
		5 - 6	6 - 8	8 - 10	9 - 11	12 - 15	16 - 20		
		4 - 5	4 - 6	6 - 8	7 - 9	9 - 12	12 - 16		
	I	C	C/I	I	I/A	I/A	I/A		
		6 - 8	6 - 8	6 - 8	8 - 10	9 - 11	10 - 12		
		4 - 6	4 - 6	5 - 6	6 - 8	7 - 9	8 - 10		
		3 - 4	3 - 4	4 - 5	4 - 6	5 - 7	6 - 8		

A – Active Punishment   I – Intermediate Punishment   C – Community Punishment
Numbers shown are in months and represent the range of minimum sentences

Revised: 09-09-13

Figure 2. North Carolina Felony Punishment Chart

Unlike the Federal Sentencing Table, North Carolina clearly provides a presumptive range, mitigated range, and aggravated range for an offense level. The members who developed this grid felt a need to allow for additional flexibility to be built into the guidelines, thus allowing for aggravating and mitigating ranges. According to the North Carolina Sentencing and Policy Advisory Commission, "the aggravated sentence range would extend 25% above the longest possible minimum sentence in the presumptive range while the mitigated sentence range would extend 25% below the shortest possible minimum sentence in the presumptive range" (NC Sentencing and Policy Advisory Commission 2011:16).

While both the federal and the North Carolina sentencing guideline share the same considerations of legal factors (i.e. offense level, prior record level, etc.), the consideration of extralegal factors leaves a grey area of uncertainty for both sets of guidelines. There are some immeasurable extralegal factors that can influence a judges' decision making. Race, ethnicity, origin, creed, and sexuality are examples of offender characteristics that should remain neutral during sentencing. According to Spohn (2009:IX) "offenders convicted of similar crimes may be sentenced differently, offenders convicted of different crimes may get the same sentence, and the prescribed sentence may depend on the offender's race, ethnicity, gender, or social class". Taking these extralegal factors into consideration during sentencing, but more specifically race as the main extralegal factor, opens the door for a discussion about racial discrimination and racial disparity, and how they differ.

Racial Disparity vs. Racial Discrimination

African American women have traditionally been overrepresented in the U.S. prison population compared to their white counterparts (Alexander 2010: Collins 2010; Spohn 2009). *The Imprisonment of African American Women* by Catherine Fisher Collins (2010) shows that in 2006, white women, who represented 69% of the US female population, only composed 12% of the state and federal prison population. African American women, who represented 13% of the US female population, made up 51% of the state and federal prison population. The overrepresentation that is seemingly present for African American women in prison could be explained by both discrimination and disparity, but I think that it is important to note the distinct difference between the two terms.

Discrimination is a performance; it is a physical action that goes beyond the mental act of distinguishing between, or evaluating, two different things (Matthew 2017). All discrimination involves the physical act of differential treatment (Matthew 2017). Racial discrimination occurs when someone is treated differently because of their real or perhaps perceived racial identity (Matthew 2017). Racial discrimination takes place when racial identity explains why people are being treated differently.

Racial disparity is observed when "the proportion of a racial/ethnic group within the control of the system (i.e. criminal justice system) is greater than the proportion of such groups in the general population" (Schrantz and McElroy 2000:1). Racial discrimination could produce racial disparity. Discrimination, as defined by legal scholar Kimberle Crenshaw (1989:150) occurs when "a wrongful deed proceeds from the identification of a

specific class or category". A discriminator, the person performing the discriminatory act, will treat people within the race or sex category similarly (Crenshaw 1989).With discrimination, "the discriminator intentionally identifies this category, or a process is adopted which somehow disadvantages all members of this category" (Crenshaw 1989:150). Often, a discriminatory act can occur simply based on phenotypic features.

Explanations for Racial Disparity in Sentencing

Author Cassia Spohn (2009) lists four possible explanations for racial disparity in sentencing in her book *How Do Judges Decide?* Sentencing disparity could exist because Blacks and Hispanics commit more serious crimes (as the use of weapon to commit the crime) and have more serious prior criminal records than whites (Spohn 2009). Using a weapon can escalate the level of seriousness prescribed to the crime committed. This escalation would occur per the federal guidelines regarding sentencing. These guidelines define the use a weapon during the act of a crime as 'more serious', thus it would be handled in that way, too.

Differences in racial disparities could also result from economic discrimination. Defendants with fewer financial resources are less likely to have private attorneys or to be released before trial (Spohn 2009). These defendants are also more likely to be unemployed (fewer financial resources). Sentencing severity can be related to the aforementioned factors because defendants who can afford a "private attorney and/or are released before trial are more likely to receive more lenient sentences than those represented by public defenders" (Spohn 2009:173). Lastly, employed defendants may be sentenced less harshly

than unemployed defendants (Spohn 2009) because of the social bonds that a defendant has with the community. Economic discrimination amounts to indirect racial discrimination (Spohn 2009) through the intersection of social class and race. Minorities are more likely to be poor and unemployed, thus indirectly perpetuating racially discriminatory acts.

Racial disparities could reflect racial discrimination on the part of the judges. Judges could, in fact, take race or ethnicity into account when determining the sentence a defendant receives. Spohn mentions how judges could take "offenders convicted of similar crimes and with similar criminal histories" and "impose harsher sentences on members of racial minorities than whites" (Spohn 2009:174).

Racial disparities in sentencing could be dependent on the nature of the crime that is committed. Racial minorities who commit certain crimes (e.g., forgery) may not be treated any different than whites, but those who commit other crimes (e.g., sexual assault) are sentenced harsher than their white counterparts (Spohn 2009). The determination in sentencing seems to be dependent on whether the crime was labeled violent or not. This type of discrimination is called "contextual discrimination" (Walker, Spohn, and Delone 2000:18). The issue of drug offenses has historically been an offense where racial lines are very evident. Certain drugs are more likely to be used by certain racial groups, but the more punishable drugs are typically drugs that minorities groups use, sell, and distribute.

Prevalence of Drug Crimes and Mass Incarceration

Research shows that drug crimes have greatly contributed to the expansion of the state prison population, more so for blacks than whites (Spohn 2009). The War on Drugs

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initiative, introduced by Richard Nixon in 1968, was set in place to tackle the drug

epidemic, as defined by politicians, that was spreading throughout America. This

initiative disrupted and destroyed lower-class black communities because of the greater

visibility of drug operations that police could more easily target in these neighborhoods.

Many scholars suggest that the War on Drugs was really a war on the lower-class drug

dealers, who belonged to poor and minority occupied communities (Spohn 2009;

Alexander 2010; Bush-Baskette 1998) because of the hypervigilance of police officers in

these lower-class neighborhoods; middle-to-upper class areas did not experience the same

surveillance. These "war on drugs" initiatives increased the size and presence of federal

drug control agencies, specifically redoubling efforts "against the sale, distribution, and

consumption of illicit drugs in the United States" (Moore and Elkavich 2008:782).

When the drug war was declared, drug crime was declining, not rising (Alexander

2010). The decrease in drug crime did not stop the persistent measures that were taken by

officials to criminalize drug offenses. During the war on drugs, prison admissions for

African Americans skyrocketed, "ultimately reaching a level in 2000 of more than

twenty-six times the level in 1983" (Alexander 2010:98). Whites, too, have been

admitted to prison for drug offenses at increased rates, but not as dramatically as blacks.

In 2000, the level of whites incarcerated was eight times the level in 1983 (Alexander

2010:98).

In the mid-1990s, Chesney-Lind (1995) discovered an increasing relationship

between drug offenses and the incarceration of women. Between 1980 and 1986, there

was an increase in the number of women incarcerated for the *possession* of drugs and a

decrease in the number of women incarcerated for drug *trafficking* (Chesney-Lind 1995; Bush-Baskette 1998). The Chesney-Lind study is one of many that support the idea that the War on Drugs has been a major factor in the increase of incarceration of females.

With the drug war initiative, the Drug Enforcement Administration (DEA) produced a categorical chart which distinctly classified drugs, substances, and certain chemicals used to make drugs into a hierarchy of potential abuse. This drug scheduling system categorizes drugs based on how addictive they are and how harmful the side effects are. The drug schedule ranges from Schedule I, which are drugs having the highest potential for abuse, to Schedule V, which are drugs having the least potential for abuse (U.S. Drug Enforcement Administration 2018). Marijuana, for example, is labeled a Schedule I drug. Drug abuse research found that in 2015, 4.0 million people in the United States had some form of marijuana dependent disorder (National Institute on Drug Abuse 2018). However, people are divided on the issue of how addictive Marijuana is in comparison to other drugs (such as opioids) (National Institute on Drug Abuse 2018). Considering the extra-legal factors and knowing *who* is most likely to use and sell this drug can explain.

Discussions about who used what drugs have created images of offenders that can influence those in the criminal justice system. When crack cocaine spread rapidly through poor black neighborhoods, the Reagan administration in the 1980s created a moral panic about the 'drug epidemic', exaggerating the ideology around drug use and drug control. The media sensationalized images of crack cocaine overtaking inner-city neighborhoods, allowing many people to assume that the War on Drugs was launched in response to

those images (Alexander 2010). The images were not exhaustive for every race, though; it specifically targeted black people. Images of black 'crack whores', 'crack dealers', and 'crack babies' demonized black communities and pushed negative racial stereotypes (Alexander 2010). The intersection of race, class, and gender, painted poor African American women in a negative stereotypical light further justifying the harsh punishment and anti-leniency that African American women received as forms of punishment compared to White women.

These negative images of African American women reinforced racial narratives about their crime, which also contributed greatly to drug crime legislation. An example of legislation that is well worth mentioning is the crack cocaine/powder crack sentencing disparity. The Controlled Substances Act established that a mandatory minimum sentence of five years would be given to a person who possessed five grams of crack cocaine. To receive the same five-year sentence, a person with powered crack would need to have five hundred grams. At the time when this legislation was put in place, African Americans were more likely to possess crack cocaine than whites; whites were more likely to possess powdered crack than blacks (Bush-Baskette 1998; Alexander 2010). The established 'crack epidemic' was obviously harsher on the Black population than their European American counterparts. Although the crack cocaine and powder crack sentencing disparity has been decreased, the fact remains that a prescribed sentence can be mandated to discriminate based on who the offender most likely will be. The War on Drugs has taken a toll on the urban male population; what is often overlooked is the impact of the War on Drugs initiative towards many lower class, Black females.

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CHAPTER III

CONCEPTUAL FRAMEWORK

Discussions on mass incarceration tend to be centered on African American men. Literature on mass incarceration seldom mentions African American women. The issue of why African American men are disproportionately represented in the penal system compared to their white counterparts is important to note. African American women, however, are also disproportionately incarcerated.

African American women face discriminatory acts based on their race and gender. However, class, age, and ethnicity can also shape how African American women are perceived and treated in America. The theory of intersectionality helps to more sufficiently address the conceptions of the marginalization of African American women that other theories fail to take into account. Below, I review the theoretical perspective of intersectionality, which keeps women and the role that their identities play centralized.

Intersectionality

Coined by legal scholar Kimberle Crenshaw (1989), intersectionality addresses the "single-axis framework" that previous scholars have used to describe African American women's "multidimensional experiences". African American women were the center of her 1989 analysis and this term was coined to help explain the different oppressions that African American women face (Crenshaw 1989). This "single-axis

framework" – a perspective that recognizes one oppression but not more than one erases African American women's experiences that are related to "race and sex discrimination by limiting the inquiry to experiences of otherwise-privileged members of the groups" (Crenshaw 1989:140). In other words, discussions about race discrimination often come from the perspective of the middle to upper class African Americans (both men and women); discussions about sex discrimination come from the perspective of the middle to upper class Whites (Crenshaw 1989). Focusing on the most privileged group members marginalizes those who are multiply-burdened and distorts the analysis of marginalized groups experiences (Crenshaw 1989).

Crenshaw (1989) examined how Black women plaintiffs' stories were interpreted in the court system. DeGraffenreid v. General Motors (1976) examined how five black women brought suit against General Motors, alleging that "the employer's seniority system perpetuated the effects of past discrimination against Black women" (Crenshaw 1989:141). The women's claims were rejected, not on behalf of Blacks or women, but specifically on behalf of Black women (Crenshaw 1989). The lawsuit had to be examined for "race discrimination, sex discrimination, or alternatively either, but not a combination of both" (DeGraffenreid, 413 F Supp at 143; Crenshaw 1989:141) because black women were not a "special class to be protected from discrimination" (DeGraffenreid, 413 F Supp at 143; Crenshaw 1989:141). In other words, the African American women could not claim both race and sex discrimination simultaneously. A sex-discrimination suit was filed against General Motors but did not stand because female employees (European American women) were hired prior to the Civil Rights Act of 1964, thus no sex

discrimination took place (DeGraffenreid, 413 F Supp at 143; Crenshaw 1989:142). The collective idea of racial and sexual allegations intersecting was not recognized by the court system for these Black female plaintiffs. I would like to suggest that the modern judicial system continue to view African American women similarly to how they did in the past, if not the same. The single-axis framework operates to marginalize African American women and denies them the unique compoundedness of their identities (Crenshaw 1989). The problem, as Crenshaw (1989) states, is that African American women receive protection only to the extent that their experiences are recognizably similar to those experiences of privileged White women and African American men. Sexism and/or racism cannot be adequately and meaningfully discussed while dismissing those who are marginalized.

While intersectionality addresses the race and sex discrimination, intersectionality still leads to bias and other forms of discrimination. The feminist movement taps into intersectional bias and intersectional discrimination by investigating and challenging the forces that cause further injustice or inequality (Miller and Mullins 2008). Intersectionality ties to the feminist movement and gives us a better understanding of how women's overlapping identities – including race, class, ethnicity, religion, and sexual orientation – impact the way they experience oppression and discrimination.

Feminism/Feminist Criminology

Feminist theory is the belief that both men and women deserve equal opportunities and representation in every social institution. Typically, maleness is the

normative standard (Miller and Mullins 2008). Feminist ideology was purposed to make women the center of "intellectual inquiry, not peripheral, invisible, or appendages to men" (Miller and Mullins 2008:218). With making women the center of research, it was necessary to define *who* the targeted women seeking equality would be: middle/upper class White women.

The development of feminism was formulated from the perspective of middle class, European American women and their experiences in relation to men. Although the feminist movement was revolutionary, the lack of acknowledgement for the minority racial and lower-class groups led to an even greater gap in privilege between European American and African American women. The lived experiences of middle to upper class European American women were similar but not the same as for African American women.

Feminist criminology refers to the body of criminological research that situates the study of crime and criminal justice within a complex literature, recognizing that sex and gender shape social life and social institutions (Miller and Mullins 2008). How women experience gender is based on their position in racial and class hierarchies (Miller and Mullins 2008), thus reiterating the ideology of intersectionality. Simply put, there is an intersection between crime, gender relations, race, and class. The way criminal behavior is studied for White women should be different than how it is studied for African American women. Further research should seek to explain the differences in criminality between White and African American women.

Stereotypical ideas about African American women have shaped how society sees black women (Collins 2010). A vast amount of scholarship on teenage pregnancy, broken homes, unwed mothers, and welfare dependency mentions African American women (Collins 2010). Areas that typically go unaddressed for African American women include the school system and how it treats young, African American girls, the wage-gap for African American women compared to White men and White women, and the rate of imprisonment for African American women and how it surpasses the rate for White women (Collins 2010). The racial difference in incarceration rates for African American and White women is a topic of great concern for African American women because the way that crime is understood for European American women is different from the way crime *should* be understood for African American women, especially when considering intersectional identities – i.e., age, class, religion, sexuality, etc.

What I do seek to suggest, though, is that the theory of intersectionality taps into the Feminist movement to help understand conceptions of African American women and how they are treated by the criminal justice system. There is no one identity that shapes how a woman is perceived. All of her identities intersect with one another and influence how she is perceived and treated. Intersectionality, helps to account for most of the identities that could potentially influence the sentence that is prescribed for a woman during the sentencing stages of a court proceeding.

CHAPTER IV

METHODS

This study will rely on a quantitative analysis of data collected from the North

Carolina Department of Public Safety (NCDPS) website. The NCDPS website has an

"Offender Public Information Search" section, which is where I obtained the information to

create my dataset. I decided to look at all women between the ages of 18-35 who were

actively incarcerated in the state of North Carolina on the date of October 12, 2017. An

Offender Public Information Search allows anyone to view the offender number, name,

race, and age of any person that is currently incarcerated in NC on the date the website is

accessed. Because the population of incarcerated individuals changes daily, the information

that I collected on October 12th would not be the same as another given day, backing my

subtitle of *It Depends on the Day*. I purposely chose to look at women ages 18-35 because

scholars suggest that there is a correlation between age and delinquent behavior which

suggests that criminal activities are most actively committed from mid to late teens and does

not decrease until early to mid-thirties (Ulmer and Steffensmeier 2014). Upon collecting this

data, I created a SPSS spreadsheet of 1,455 women whose general information included

their offender number, last name, first name, middle initial, gender, race, birth date, and age.

The dataset was further reduced to contain only women whose most recent offense

was drug related; thus, all women who have committed any other crime were removed

from the dataset leaving a database with 322 women. I also chose to look specifically at

those women who committed drug crimes. Recent reports show that in 2014, women in state prisons were still more likely than men to be incarcerated for drug offenses than any other type of offense (Bureau of Justice Statistics 2015). Twenty-four percent of female prisoners were convicted of a drug offense, compared to 15% of male prisoners. Some scholars suggest that the War on Drugs has had great influence on the African American women population and has contributed greatly to the expansion of the women's prison population. Scholar Stephanie Bush-Baskette (1998) notes in her article entitled *The War on Drugs as a War Against Black Women* that the number of Black females incarcerated for drug offenses "increased by 828% between 1986 and 1991" (Bush-Baskette 1998:185). This increase was approximately "twice that of Black males (429%) and more than three times the increase in the number of White females (241%)" (Bush-Baskette 1998:185).

On the Offender Public Information Search website, anyone can click on the incarcerated individual's offender number and look at their individual case files. These case files only included public information, which includes their incarceration summary (incarceration status, primary crime, admission date, and other public information) and offender sentence history (crimes that they have previously been sentenced for). The offender case files were used to create the variables included in the database.

Variables/Description of Data

Dependent Variables

The dependent variable for this analysis is the length of sentence measured in months. The length of sentence, the number of months prescribed to the defendant for the

drug related offense, is separated into two variables: minimum months given and maximum months given. Most of the persons in my sample received a minimum month sentence and a maximum month. However, when a drug crime is consolidated with another crime in which the offender was already incarcerated for, there is no minimum sentence for the drug offense because the offender is already in prison. Some incarcerated women in my dataset did not have a maximum sentence; they were only given a minimum sentence. In most cases where a maximum sentence is not given, the offender is only required to serve the minimum months and upon serving the minimum months prescribed, their release will be up for discussion. Thus, not all women have both a minimum and maximum sentence.

To measure for minimum months and maximum months, I simply took the number of years someone was sentenced and converted it to months. For the purposes of SPSS and being able to run the data, I used a ratio level of measurement (keyed in the numerical value of the months prescribed). Below is a descriptive table of my dependent variable:

Table 1. Outcome Variables of Minimum and Maximum Sentences (in months)

	N	Minimum	Maximum	Mean	Std. Deviation
Minimum sentence in months	320	3.00	225.00	22.7000	27.17049
Maximum sentence in month	289	4.00	279.00	38.5744	32.70760

Table 1 shows the number of women who have a minimum sentence, which is 320 out of the 322 in my dataset. Table 2 also shows that fewer women, 289 out of 322,

were prescribed a maximum sentence. The shortest minimum sentence is 3 months and the longest minimum sentence is 225 months (which is 18 years and 9 months). The shortest maximum sentence is 4 months and the longest maximum sentence is 279 months (which is 23 years and 3 months). On average, the women received a minimum sentence of almost 23 months (almost 2 years) and on average the women received a maximum sentence of about 38 and a half months (a little more than 3 years).

Independent Variables

Table 2 presents the descriptive statistics for my independent variables. The independent variables of my dataset are grouped into two categories, legal factors and extralegal factors. Listed first are the independent legal variables. Legal factors are the factors that determine how a case should be decided based on rules and logic (Black 1993). In my dataset, these factors are the more legitimate predictor of sentencing outcomes, and they include: schedule level of the drug, class level of the offense, and prior record level. The offender's prior record level is defined by whether they had previously been sentenced for another crime prior to this offense. To measure prior record, I looked at each person's individual case file to see if the drug offense was their first offense. If the drug offense was their first offense, they would be deemed to having no prior record; if the drug offense was not their first offense, they would be marked as having a prior record.

The first legal variable mentioned is the schedule level of the offense which is a ratio level measure of the particular drug category a person is sentenced for. The schedule

level of the drug is based on the addictiveness of the drug. Each schedule level contains

certain drugs; thus, the different schedule levels indicate the particular drug category a

person is sentenced for. The drug schedule ranges from Schedule I, which are drugs

having the highest potential for abuse, to Schedule V, which are drugs having the least

potential for abuse (U.S. Drug Enforcement Administration 2018). The specific drugs

associated with each schedule level are shown Table 2. The women in my dataset were

most frequently sentenced for a drug offense for those drugs categorized in Schedule

Level II (52.5 percent); the second highest schedule level was Schedule Level I (45.0

percent); the third, Schedule Level VI (2.1 percent); the fourth, Schedule Level IV (0.4

percent). There were no women in my dataset who possessed drugs categorized in

Schedule Levels III or V.

The second legal variable in my dataset is the class level of the drug offense. The

class level is based on the seriousness of the crime as defined by the Felony Offense

Classification List under the North Carolina Structured Sentencing Act. Each class level

indicates the level of seriousness for a crime, with Level A being the most serious and

Level I being the least serious. The specific offenses associated with each class level are

shown the Table 2. The women in my dataset were most likely to have committed a Class

F felony (31.3 percent); the second highest frequency were Class I (27.1 percent)

defendants; the third, Class H (17.0 percent); the fourth, Class G (12.2 percent); the fifth,

Class E (6.3 percent); the sixth, Class C (5.6 percent); the seventh, Class D (0.7 percent).

There were no women in my dataset who committed a felony that were categorized Class

A or B (Class A offense being Murder in the 1st degree; Class B offense being 1st degree rape and/or sexual assault and Murder in the 2nd degree).

The third legal variable in my dataset is prior record. Prior record is determined by analyzing the women's individual case files to see if they were ever convicted of any other offenses prior to their most recent charge (the drug related offense). About three fourths of the women in my dataset (74.5 percent) had prior records while 25.5 percent did not. Although there are other legal factors that can be considered during sentencing (such as whether a weapon was used), these factors were not available on the NCDPS dataset.

The only extralegal factor that I will examine is race with a focus on the two racial groups of European American/White and African American/Black. The race of the women was determined by analyzing their individual case files to see if their ethnic and racial groups were European American/White or African American/Black. These racial groups were defined on the website by how the women labeled themselves during the booking portion of their initial arrest. The majority of women in my dataset are European American/White (87.6 percent), while only 12.4 percent are African American/Black.

Table 2. Descriptive Statistics of Independent Variables

	Frequency	Percent
INDEPENDENT LEGAL VARIABLES		
Schedule Level for Drug Offense		
I. Heroin, Lysergic Acid Diethylamide (LSD), Marijuana (Cannabis), 3,4-Methylenedioxymethamphetamine (Ecstasy), Methaqualone, and Peyote	109	45.0
II. Combination products with less than 15 milligrams of Hydrocodone per dosage unit (Vicodin), Cocaine, Methamphetamine, Methadone, Hydromorphone (Dilaudid), Meperidine (Demerol), Oxycodone (OxyContin), Fentanyl, Dexedrine, Adderall, and Ritalin	127	52.5
IV. Xanax, Soma, Darvon, Darvocet, Valium, Ativan, Talwin, Ambien, Tramadol	1	0.4
VI. Cough preparations with less than 200 milligrams of Codeine or per 100 milliliters (Robitussin AC), Lomotil, Motofen, Lyrica, Parepectolin	5	2.1
Class Level for Drug Offense		
C. Selling or delivering a controlled substance by a person 18 or over to a person under 13. (G.S. 90-95(e)(5)); Trafficking in methamphetamine or amphetamine (400 grams or more). (G.S. 90-95(h)(3b)c); Trafficking in opium or heroin (28 grams or more). (G.S. 90-95(h)(4)c);	16	5.6
D. Selling or delivering a controlled substance by a person 18 or over to a person under 16 but more than 13 or a pregnant female (G.S. 90-95(e)(5)); Trafficking in marijuana (10,000 pounds or more). (G.S. 90-95(h)(1)d; Trafficking in methaqualone (10,000 or more dosage units). (G.S. 90-95(h)(2)c; Trafficking in cocaine (400 grams or more). (G.S. 90-95(h)(3)c); Trafficking in Lysergic Acid Diethylamide (1,000 or more dosage units). (G.S. 90-95(h)(4a)c); Trafficking in MDA/MDMA (1000 or more dosage units/400 grams or more). (G.S. 90-95(h)(4b)c); Promoting drug sales by a minor. (G.S. 90-95.6)	2	0.7
E. Manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance within 300 feet of a child care center, elementary or secondary school. (G.S. 90-95(e)(8)); Manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance within 300 feet of a playground in a public park. (G.S. 90-95(e)(10)); Trafficking in methamphetamine or amphetamine (200 grams or more, less than 400 grams). (G.S. 90-95(h)(3b)b); Trafficking in opium or heroin (14 grams or more, less than 28 grams). (G.S. 90-95(h)(4)b)	18	6.3
F. Trafficking in marijuana (2,000 pounds or more, less than 10,000 pounds) (G.S. 90-95(h)(1)c); Trafficking in methaqualone (5,000 or more dosage units, less than 10,000). (G.S. 90-95(h)(2)b); Trafficking in cocaine (200 grams or more, less than 400 grams). (G.S. 90-95(h)(3)b);	90	31.3

	Frequency	Percent

Trafficking in methamphetamine or amphetamine (28 grams or more, less than 200 grams). (G.S. 90-95(h)(3b)a); Trafficking in opium or heroin (4 grams or more, less than 14 grams). (G.S. 90-95(h)(4)a); Trafficking in Lysergic Acid Diethylamide (500 or more dosage units, less than 1,000 dosage units). (G.S. 90-95(h)(4a)b); Trafficking in MDA/MDMA (500 or more dosage units, but less than 1000 dosage units/200 grams or more, less than 400 grams). (G.S. 90-95(h)(4b)b)

G. Sale of Schedule I or II Controlled Substance. (G.S. 90-95(b)(1)); Trafficking in marijuana (50 pounds or more, less than 2,000 pounds). (G.S. 90-95(h)(1)b); Trafficking in methaqualone (1,000 or more dosage units, less than 5,000). (G.S. 90-95(h)(2)a); Trafficking in cocaine (28 grams or more, less than 200 grams). (G.S. 90-95(h)(3)a); Trafficking in Lysergic Acid Diethylamide (100 or more dosage units, less than 500 dosage units). (G.S. 90-95(h)(4a)a); Trafficking in MDA/MDMA (100 or more dosage units, but less than 500 dosage units/28 grams or more, less than 200 grams). (G.S. 90-95(h)(4b)a); Participating in a drug violation by a minor (G.S. 90-95.7) — 35 — 12.2

H. Manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I or II Controlled Substance. (G.S. 90-95(b)(1)); Sale of a Schedule III, IV, V or VI Controlled Substance. (G.S. 90-95(b)(2)); Possess an immediate precursor chemical with intent to manufacture a controlled substance. (G.S. 90-95(d1)(1)); Possess or distribute an immediate precursor chemical knowing it will be used to manufacture a controlled substance. (G.S. 90-95(d1)(2)); Possession of a controlled substance on the premises of a penal institution or local confinement facility. (G.S. 90-95(e)(9)); Trafficking in marijuana (more than 10 pounds, less than 50 pounds). (G.S. 90-95(h)(1)a) — 49 — 17.0

I. Using drugs or instruments to produce miscarriage or injure pregnant woman. (G.S. 14-45); Manufacture, deliver, or possess with intent to manufacture, sell or deliver, a Schedule III, IV, V, or VI Controlled Substance. (G.S. 90-95(b)(2)); Create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance. (G.S. 90-95(c)); Possession of a Schedule I Controlled Substance. (G.S. 90-95(d)(1)); Possession of more than four dosage units of Hydromorphone. (G.S. 90-95(d)(2)); Possession of more than 100 dosage units of any controlled substance. (G.S. 90-95(d)(2)); Possession of any amount of Methamphetamine, Amphetamine, Cocaine or Phencyclidine or derivative thereof. (G.S. 90-95(d)(2)); Possession of more than 1.5 ounces of Marijuana or .15 ounces of Hashish. (G.S. 90-95(d)(4)); Drug offense punishable by not more than two years and offender has been previously convicted of a drug offense. (G.S. 90-95(e)(3)); Prohibited acts; penalties (Controlled Substance Act). (G.S. 90-108); Manufacture or delivery of drug paraphernalia (from person over 18 to person under 18). (G.S. 90-113.23(c)) — 78 — 27.1

	Frequency	Percent
Prior Conviction		
Yes	240	74.5
No	82	25.5
INDEPENDENT EXTRALEGAL VARIABLES		
Race		
European American /White	282	87.6
African American /Black	40	12.4

In 1996, the Sentencing Commission of North Carolina enacted sentencing guidelines to help determine an appropriate sentence for defendants based on the class level of their offense and their prior record. These variables, the class level of the offense and prior record level, are categorized as legally relevant factors, and shape the way that sentencing guidelines were developed in the state of North Carolina. Although the North Carolina Felony Punishment Chart, a visual tool created to clearly define sentencing ranges, considered legal factors only, I still questioned whether extralegal factors, too, influenced sentencing decisions.

Thus, my main research questions are as follows:

- Which are more relevant: the legal or extralegal factors?
- Is there racial disparity in women's sentencing for drug-related offenses in the state of North Carolina?
- How can these disparities be explained?

CHAPTER V

RESULTS

Table 3 presents the results of racial difference in sentencing based on the minimum months that the women received. In the OneWay Anova test, the dependent variable is minimum months and the independent variable is race. Two hundred and eighty European American women and forty African American women whose most recent offense was drug related were prescribed a minimum month sentence a. The OneWay Anova shows that the relationship between the race of an incarcerated woman and the minimum number of months that she received is not significant. The raw numbers, however, reveal that the longest minimum sentence for a European American woman was 90 months (7 years and 6 months), however the longest minimum sentence for an African American woman is 225 months (18 years and 9 months). Although not significant, this difference is noteworthy.

Table 3. Descriptives of OneWay Anova for Minimum Months by Race

	N	Mean	Std. Deviation	Std. Error	Minimum	Maximum
European American	280	22.3107	24.91678	1.48906	3.00	90.00
African American	40	25.4250	39.85286	6.30129	3.00	225.00
Total	320	22.7000	27.17049	1.51888	3.00	225.00
Level of Significance = 0.499						

*$p \leq .05$

Table 4 presents the results of racial difference in sentencing based on the maximum months that the women were prescribed. The OneWay Anova shows that the relationship between the race of a woman and the maximum number of months that she could possibly receive is not significant. Despite the data not being significant, the raw number of months and the difference between races is worth mentioning.

The lowest maximum months sentence that a European American woman received in my dataset was 4 months, while the lowest maximum months sentence for an African American woman was 11 months. This means that the shortest number of months (at most) that an African American woman was sentenced is still longer than the shortest number of months (at most) for a European American woman. Additionally, the longest maximum sentence for a European American woman is 120 months (10 years). The longest maximum sentence for an African American woman is 279 months (23 years and 3 months).

With analyzing the data from Table 3 and 4, it is very likely that an outlier has caused the vast difference between the longest minimum sentences for African American and White women. One way to determine if the data is skewed would be by examining the standard deviation and mean. The standard deviation is greater than the mean, thus leading to an assumption of potential skewness in the data. An outlier analysis revealed that the maximum value for African American women was the result of one case.

Table 4. Descriptives of OneWay Anova for Maximum Months by Race

	N	Mean	Std. Deviation	Std. Error	Minimum	Maximum
European American	253	38.1225	29.85941	1.87724	4.00	120.00
African American	36	41.7500	48.69871	8.11645	11.00	279.00
Total	289	38.5744	32.70760	1.92398	4.00	279.00
Level of Significance = 0.534						

*p ≤ .05

Even though there is not a significant relationship between race and the minimum and maximum sentence, the difference in the length of sentences that European Americans and at least one African American woman receive is striking. Thus, the following analyses examine the relationship between race and each of the legal factors that can explain differences in sentencing to help understand the patterns present in Table 3 and Table 4.

Table 5 presents the results of racial difference in prior record history. To test for significance, I performed a Crosstabulation of race by prior record. The Chi-Square results revealed that this analysis was not significant. The p-value for this test is 0.445, which means that the race of a woman is not related to the likelihood of having a prior record.

What is to be noted, though, is that even with European American women composing most of the prison population, they are still less likely to have had a prior record. Examining across race, 26.2% of European American women had no prior record, while only 20.0% of African American women had no prior record. There were 73.8% of European American women who had a prior record, and 80.0% of African American

women who had a prior record, too. While not significant, I do suggest future researchers look at the number of prior records instead of the binary 'YES or NO' answer choices. A ratio level of measurement for this analysis could change the level of significance. By doing so, one would be able to filter out those will fewer prior records and those with more prior records to see if the level of significance would change from the level it was in the binary analysis.

Table 5. Crosstabulation of Race and Prior Record

		Prior Record		Total
		NO	YES	
European American	Count	74	208	282
		26.2%	73.8%	
African American	Count	8	32	40
		20.0%	80.0%	
Chi-Square Test				
		Value	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square		.719	.445	.261

$*p \leq .05$

Table 6 presents the results of a racial difference by the class level of the drug offense. To test for significance, I performed a Crosstabulation of race by the class level of the drug offense. The Chi-Square results revealed that this analysis was not significant. The p-value for this test is 0.526, which means that the race of a woman is not significantly related to the type of drug crime she is charged for.

Table 6. Crosstabulation of Race by Class Level of Drug

		C	**D**	**E**	**F**	**G**	**H**	**I**	**Total**
					Class Level				
African American	.00	1	0	2	7	6	9	9	34
European American		2.9%	0.0%	5.9%	20.6%	17.6%	26.5%	26.5%	100.0%
	1.00	15	2	16	83	29	40	69	254
		5.9%	0.8%	6.3%	32.7%	11.4%	15.7%	27.2%	100.0%
Total		16	2	18	90	35	49	78	288
		5.6%	0.7%	6.3%	31.3%	12.2%	17.0%	27.1%	100.0%

Chi-Square Test

Pearson Chi-Square	Value	Asymptotic Significance (2-sided)
	5.142	.526

*p ≤ .05

Table 7 presents the racial difference in sentencing based on the schedule level of the drug for the conviction. To test for significance, I performed a Crosstabulation of race by the schedule level of the drug. The Chi-Square results revealed that this analysis was significant with a p-value of 0.000. This means that there is a racial difference in the schedule level of the drug for which these women were sentenced. Both European and African American women were most likely to get sentenced for a drug that belonged to Schedule Level II, which includes a combination of products with less than 15 milligrams of Hydrocodone per dosage unit (Vicodin), Cocaine, Methamphetamine, Methadone, Hydromorphone (Dilaudid), Meperidine (Demerol), Oxycodone (OxyContin), Fentanyl, Dexedrine, Adderall, and Ritalin.

After Schedule Level II, African Americans are more likely to be convicted for Schedule Level I drug offenses, the most addictive and serious ranked drugs. European

Americans (after Schedule Level II), are convicted the most for Schedule Level I drugs,

the most addictive and serious ranked drugs, too.

Table 7. Crosstabulation of Race by Schedule Level of Drug

		Schedule Level				
		I	II	IV	VI	Total
African American	.00	11	17	0	4	32
		34.4%	53.1%	0.0%	12.5%	100.0%
European American	1.00	98	110	1	1	210
		46.7%	52.4%	0.5%	0.5%	100.0%
Total		109	127	1	5	242
		45.0%	52.5%	0.4%	2.1%	100.0%
Chi-Square Test						
Pearson Chi-Square		Value	Asymptotic Significance (2-sided)			
		20.517	.000*			

* $p \leq .05$

Table 8 shows the regression models for legal and extralegal factors with the

outcome minimum sentence to examine which are more relevant: the legally or extralegal

factors?

Table 8. Regression for Legal and Extralegal Factors with the Outcome Minimum Sentence

	Model 1	Model 2	Model 3	Model 4
	B (std. err)	B (std. err)	B (std. err)	B (std. err)
Constant	29.956*	120.775*	39.893*	130.747
	(5.112)	(7.184)	(6.876)	(7.769)
White	-3.478	-7.200~	-3.822	-3.325
	(4.590)	(3.782)	(4.876)	(3.688)

	Model 1	Model 2	Model 3	Model 4
	B (std. err)	B (std. err)	B (std. err)	B (std. err)
No Prior Record	-5.664	-.050	-5.529	.605
	(3.477)	(2.805)	(3.688)	(2.781)
Schedule Level			-6.780*	-2.862~
			(2.017)	(1.483)
Class Level		-11.204*		-12.045*
		(.742)		(.792)
R^2	.010	.452	.054	.552

$*p \leq .05 \sim p \leq .10$

Model 1 presents the results for determining if the race of a woman influences her minimum sentence controlling for whether she has a prior record. White women are compared to African American women (the omitted group). Those with a prior record are compared to those who do not have a prior record (the omitted group).

The linear regression data analysis revealed that race was not a significant predictor for the minimum sentence given ($p = 0.449$). Prior record was not a significant predictor for the minimum sentence given, either ($p = 0.104$). The R^2 for this model is 0.01 indicating that not much variance is the minimum month sentence is explained in this model with the variables race and prior record.

Model 2 presents the results of determining if the race of a woman influences her minimum sentence when controlling for whether she has a prior record and the class level of the offense. When controlling for prior record and the class level, race (European American) was nearing significance with a p-value of 0.058 when determining the minimum sentence prescribed. On average, European American women would receive 7

fewer months than African American women when controlling for prior record and the class level of the offense. Having a prior record was not significant (p = 0.986). The class level of the offense was of greater significance compared to the other independent variables by having a p-value 0.000. Thus, each reduction in class level would result in receiving 11 fewer months of a sentence. Conversely, it can be viewed that increasing the class level or severity of the crime would result in an average sentence increase of 11 months of the minimum sentence. The R^2 for this model is 0.452 indicating that approximately 45% of the variance in minimum month sentenced is accounted for in this model.

Model 3 presents the results of whether the racial group, prior record and schedule level of the drug affect the minimum sentence prescribed to these women. When controlling for the three independent variables, race (European American) is not significant (p = 0.434). Prior record is not significant (p = 0.135) in determining the minimum months prescribed. The schedule level of the drug is significant (p = 0.001) in determining the minimum months prescribed. Women would, on average, receive 6 fewer months for being convicted of a lower schedule level drug crime. This means that going from a Schedule Level I offense (the most serious drugs) to a Schedule Level II offense (less serious than a Schedule Level I drug) would decrease her sentence, on average, about 6 months. The R^2 for this model is 0.054 indicating that approximately 5% of the variance in minimum month sentenced is accounted for in Model 3.

Model 4 is the full models which presents the results of whether the minimum

sentence is dependent upon the women's race, prior record, schedule level of the drug,

and class level of the offense. Model 4 shows that race (European American) is not

significant (p = 0.368). Prior record is not significant (p = 0.828) in determining the

minimum sentence women are prescribed. Schedule level is slightly significant (p =

0.055) indicating that for each increase in schedule level women would receive 2 fewer

months. The class level of the offense is the most significant independent variable (p =

0.000) indicating that moving from one class level to the next (from one level of

seriousness for a crime to a lesser level of seriousness) results in women receiving 12

fewer months for their minimum sentence. The R^2 for this model is 0.552 indicating that

approximately 55% (more than half) of the variance in minimum month sentenced is

accounted for in this model.

According to Table 8, the legal factors matter more than the extralegal factors.

Both the class level of the offense and the schedule level of the drug matters more than

the race of the woman. The class level of the drug crime appears to be the most

significant predictor of sentencing differentials.

Table 9 shows the regression models for legal and extralegal factors with the

outcome maximum sentence to examine which are more relevant: the legal or extralegal

factors?

Table 9. Regression for Legal and Extralegal Factors with the Outcome Maximum Sentence

	Model 1	Model 2	Model 3	Model 4
	B (std. err)	B (std. err)	B (std. err)	B (std. err)
Constant	48.154*	157.337*	60.781*	163.344*
	(6.499)	(8.325)	(8.703)	(8.927)
White	-4.156	-9.646*	-4.617	-2.759
	(5.817)	(4.433)	(6.146)	(4.299)
No Prior Record	-7.950~	.064	-8.079~	.702
	(4.421)	(3.240)	(4.652)	(3.209)
Schedule Level			-8.443*	-3.200~
			(2.466)	(1.705)
Class Level		-13.733*		-14.331*
		(.854)		(.912)
R^2	0.13	.488	.065	.572

*$p \leq .05$ ~ $p \leq .10$

Model 1 presents the results for determining if the race of a woman influences her maximum sentence when controlling for whether she has a prior record. The linear regression data analysis revealed that race was not a significant predictor for the maximum sentence given and prior record was not a significant predictor for the maximum sentence given. The R^2 for this model is 0.13 indicating that 13% of the variance is the maximum month sentence is explained in this model with the variables race and prior record.

Model 2 presents results of whether prior record affects the maximum sentence that women would receive based on her race and the class level of the offense. What can be concluded from this model is that race is very significant when determining the

maximum sentence prescribed (p = 0.030). On average, European American women would receive 9 fewer months than black women, based on the maximum month prescribed. Having a prior record was not significant (p = 0.984). The class level was of greater significance compared to the other independent variables (p = 0.000). Between class levels, women would, on average, receive 13 fewer months. This means that going from a more serious class level offense to a less serious class level offense would drop a woman's sentence, on average, by about 13 months. The R^2 for this model is 0.488 indicating that approximately 48% of the variance in maximum month sentenced is accounted for in this model.

Model 3 presents the results of whether the racial group, prior record and schedule level of the drug affect the maximum sentence prescribed. When controlling for the three independent variables, race (European American) is not significant. Prior record is nearing significance (p = 0.084). The schedule level of the drug is very significant (p = 0.001) in determining the maximum months prescribed. Women would, on average, receive 8 fewer months for having been convicted of a less addictive (lower schedule level) drug. The R^2 for this model is 0.065 indicating that approximately 6.5% of the variance in maximum month sentenced is accounted for in this model.

Model 4 is the full models which presents the results of whether the maximum sentence is dependent upon the women's race, prior record, schedule level of the drug, and class level of the offense. Model 4 shows that race (European American) is not significant (p = 0.522). Prior record is not significant (p = 0.827) in determining the maximum sentence women are prescribed. Schedule level is reaching significance (p =

0.062) indicating that for each increase/decrease in schedule level women would receive 3 fewer months on their maximum sentence. The class level of the offense is the most significant independent variable (p = 0.000) indicating that for increase in class level, women would receive 14 fewer months to their maximum sentence. The R^2 for this model is 0.572 indicating that approximately 57% (more than half) of the variance in maximum month sentenced is accounted for in this model.

According to Table 9, the legal factors are more significant than the extralegal factors. The class level of the offense and the schedule level of the drug appear to be the most significant factors. The class level and the schedule level remained significant throughout Models 2, 3, and 4.

CHAPTER VI

CONCLUSION

This study of incarcerated women, both African American and European

American, redefines – for some – the traditional outlooks of *who* and *what* women's

incarceration should look like. Racial disparity in the criminal justice system is observed

when "the proportion of a racial/ethnic group within the control of the system (i.e.

criminal justice system) is greater than the proportion of such groups in the general

population" (Schrantz and McElroy 2000:1). Although there is racial disparity present

when looking at the general incarcerated population of women, no disparity was present

for those women incarcerated for drug offenses. When asking the question of "is there

racial disparity in women's sentencing for drug-related offenses in the state of North

Carolina?" this research suggests that no racial disparity is present based on the minimum

and maximum months prescribed. Race, the extralegal factor, is not the factor that

contributed to differences in the length of sentence for 18-35 year old African American

and European American women incarcerated for drug offenses in the state of North

Carolina on October 12, 2017.

The second research question asked was "which are more relevant: the legal or

extralegal factors?" It is clear that the legally relevant factors matter more than the

extralegal factors. The class level (an indicator of the level of seriousness a crime) of the

offense and the schedule level (an indicator of the level of addictive/the ranking of the

drug) of the drug were the significant predictors of the minimum sentence and maximum sentences given to these women for their drug crimes. Moving one unit in class levels (from a more serious class level to a less serious class level) could result in almost a year (12 months) difference in sentencing for minimum months. This difference is even greater for maximum months; a woman could receive over a year (14 months) difference in sentencing, moving from a more serious class level to a less serious class level.

The last research question asked was, "how can these disparities be explained?" The race variable, an extralegal variable, was not significant, thus it cannot explain the differences in sentencing. The class level of the offense and the schedule level of the drug, though, help to explain the difference in sentencing; this is based on their level of significance shown in certain models located in Table 8 and Table 9. Table 6 shows us *who* is more likely to commit higher class level offenses. This research suggests that European American women commit higher class level offenses than African American women, which should mean that European American women receive longer sentences.

The class level of the offense and the schedule level of the drug were the most significant factors. Considering how important sentencing guidelines have been to this research, I began to wonder how and if the schedule level of the offense mapped onto the North Carolina sentencing guidelines. According to the North Carolina General Statutes, drugs that belong to certain schedule levels have been associated with a certain class level. For example, when selling a Schedule I or II Level drug, it is categorized as a Class G felony. The Class G felony is on the North Carolina Felony Punishment Chart and has different sentence ranges which would then be based on the prior record level for the

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offender. The longest minimum sentence, based on the North Carolina Felony Punishment Chart is 31 months. The maximum sentence, however is not defined.

The North Carolina Federal Punishment Chart (the sentencing guideline table) has a disclosure at the bottom of the chart that states that the sentencing ranges are *suggested minimum sentences*. The North Carolina General Statutes, on the other hand, provides sentences that are termed "up to __ months". This implies that the sentence given by the North Carolina General Statutes is the maximum sentence that could be prescribed. This suggests that drug offenses cannot be sufficiently explained by the North Carolina Federal Punishment Chart because the chart does not give a range for suggested maximum sentences – it only gives the suggested range for minimum sentence. The North Carolina General Statute does not give a suggested minimum sentence range, thus drug offenses cannot be adequately measured by the Felony Punishment Chart.

Compared to men, the treatment of women by the criminal justice system is more lenient. African American women, though, are treated differently than situated European American women. Literature suggests that being African American and being a woman in the criminal justice system predisposes and labels you are being more culpable for committing crime when compared to European American women (Alexander 2010). Race and the perceived severity of crime does not always match what literature suggests. The results of the analysis I performed is not representative of what traditional literature suggests. Let us not be fooled by one's day worth of statistics, though. The War on Drugs can still explain much of the prison expansion that took place in the 1980s (Spohn 2009; Alexander 2010; Bush-Baskette 1998; Moore and Elkavich 2008; Kennedy 1997). The

gap in the rate of imprisonment for African Americans and European Americans is just beginning to close.

For the state of North Carolina, the structured sentencing guidelines were created to handle a problem with sentencing (NC Sentencing and Policy Advisory Commission 2011). The expansion of rapid prison growth from 1980s to the early 2000s can be contributed by fighting the drug epidemic that was defined by politicians (Alexander 2010; NC Sentencing and Policy Advisory Commission 2011). If the sentencing guidelines do not apply to drug offenses in sentencing, what purpose is the guideline truly serving? I speculate that the guidelines were created to pacify a public issue. Race/racism could be built into the way that we think about crime. Some may believe that the guidelines are working because the imprisonment rate is decreasing for minorities, but I speculate that sentencing guidelines are a tool of legalistic language used to cover up a bigger, more subtle issue.

The way that this research has conducted has provided a tentative way to measure prison data past just the rate of imprisonment. We now have a way to look at those who have been in prison for a while and the variables related to why they are in prison and how those things influence the length of their sentence. I have learned the importance of going beyond simply measuring how many people are in prison but looking at the details of their imprisonment. Every day that a person spends in prison is a day to be looked upon to see if our criminal justice system is truly handling the prison population as our sentencing statutes suggests.

This research method is a tentative way to go in and look at one day's worth of data. I was curious to see if North Carolina was representative of traditional literature suggestions and conclusions. What I found is that on this one-day, African American women were not overrepresented in the drug offender population when compared to situated European American women; their race was not a significant factor. I encourage future researchers to continue this project. Women cycle in and out of the prison system daily, thus it is hard to conceptualize a trend of significance from one snapshot of time: a single day. I encourage future researchers to look at the trends of women's incarceration through a longitudinal lens to see if race is significant over a longer period of time. Also, identifying the socioeconomic class of the incarcerated women would greatly add to this research. Looking at the type of legal representative that a woman received (which could be a way to measure for socioeconomic class) could help explain differences in sentencing.

In sum, there are many racial arguments that could be made about incarceration. Women are imprisoned at different rates, based not only on their race but other legal variables that influence sentencing. I hope that this thesis has provided answers to a topic that has previously been under-addressed. Every person that is in prison matters and the variables that influence the sentence that they received matters, too. As the field of Sociology grows, it is my hope that scholars continue to uncover the layers of our criminal justice system, but more specifically, our prison system.

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