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Court communities in local context: a multilevel analysis of felony sentencing in South Carolina

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This study examines county-level influences on sentencing practices in South Carolina, a state with a sentencing structure that is different from many of the jurisdictions that have been the focus of recent county-level studies. Using multilevel models, we examined the impact that changes in socioeconomic disadvantage, changes in crime rates, the county political makeup, and county caseload had on incarceration and expected sentence length determinations. For the incarceration decision, worsening socioeconomic disadvantage was associated with a modest increase in the likelihood of incarceration in a county while counties with heavier caseloads were slightly less likely to incarcerate offenders. None of the county-level indicators were significant for the sentence length decision. The results reveal relatively small levels of variation in outcomes across counties, suggesting that South Carolina court communities are largely characterized by similarities, perhaps due to the state's legal culture characteristics and sentencing structure.

Keywords: sentencing; court communities; disparities; multilevel modeling

Since the 1970s, the 50 US states have enacted a broad array of sentencing reforms designed to increase certainty and fairness in punishment by controlling judicial discretion. The piecemeal adoption of contemporary innovations such as determinate sentencing, guidelines, truth-in-sentencing, and mandatory minimums has created a diverse landscape of state sentencing regimes (Bushway and Piehl 2007; Engen 2009; Reitz 1998, 2010; Ulmer 2012). While sentencing scholars have naturally sought to understand the impact of these various reforms, much of the research has focused on a small subset of states that enacted sentencing guidelines, especially those with active sentencing commissions and a mandate to collect standardized sentencing data.[1] In contrast, sentencing practices in other jurisdictions with less robust data infrastructures, including those that retained their indeterminate sentencing schemes, have not been subjected to a similar level of empirical scrutiny.

Because sentencing reforms in most states remain largely unexamined, several prominent scholars have called for a broader research program that encompasses a more diverse set of jurisdictions and sentencing regimes (Engen 2009; Reitz 1998, 2010; Ulmer 2012). This call is motivated, in part, by the consensus view that context influences variation in sentencing practices and outcomes. Social, political, and economic effects

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have long been recognized as important but unaccounted factors in sentencing research (Peterson and Hagan 1984; Thomson and Zingraff 1981), and the accumulated evidence over the past decade affirms that local context matters for individual-level sentencing outcomes (Britt 2000; Johnson 2011). Indeed, one noted scholar recently concluded that 'substantial evidence exists that what kind of sentence one gets, and the factors that predict why one gets it, in significant part depends on where one is sentenced' (Ulmer 2012, 14). However, as with sentencing research in general, the conclusion that context matters is based largely on studies from just a few jurisdictions, particularly Pennsylvania (e.g., Britt 2000; Haynes, Ruback, and Cusick 2010; Johnson 2006; Ulmer and Johnson 2004) and Florida (e.g., Caravelis, Chiricos, and Bales 2011; Bontrager, Bales, and Chiricos 2005; Crow and Gertz 2008).[2]

The present study therefore aims to fill a gap in the literature by investigating the effects of individual- and county-level factors on sentencing outcomes in South Carolina – a state with no sentencing guidelines and a partially indeterminate sentencing structure. In light of sentencing guidelines research that continues to find both jurisdictional variation and extralegal disparities in sentencing, we expect such effects will be even more pronounced in a state such as South Carolina where there are no sentencing guidelines to help address these concerns. Before describing in further detail the legal context of sentencing in South Carolina, we first review the literature more generally as it pertains to individual and contextual influences in sentencing.

Individual and contextual factors in sentencing

Much of what matters in sentencing decision-making is well established: research consistently finds that legal factors operating at the offender level – such as the seriousness of the offense and the criminal history of the defendant – are the best predictors of whether the defendant is incarcerated and for how long (Griffin and Wooldredge 2006; Johnson 2006; Spohn and Holleran 2000). Extralegal characteristics also influence sentencing, including race (Chiricos and Crawford 1995; Mitchell 2005; Spohn 2000), age (Spohn and Holleran 2000; Steffensmeier, Kramer, and Ulmer 1995; Steffensmeier, Ulmer, and Kramer 1998), and gender (Koons-Witt 2002; Steffensmeier, Ulmer, and Kramer 1998).

Many theoretical explanations for the influence of individual-level factors on sentencing decisions are rooted in *symbolic interactionism* (Blumer 1969; Wooldredge 2007). In the court context, symbolic interactionism suggests that the decisions of judges and attorneys are based on meanings these court actors ascribe to the offender's characteristics, actions, and past behaviors – e.g., the meaning a judge attributes to a 'black male' or a 'violent offender.' More specifically, courtroom actors develop patterned responses to certain cues, such as the seriousness of the offense and the defendant's criminal record, as well as indirectly through characteristics such as race, gender, and socioeconomic status (Albonetti 1991; Steffensmeier, Ulmer, and Kramer 1998).

Prominent among individual-level theories is the *focal concerns perspective* which proposes that punishment decisions are guided by three key concerns, which themselves are informed by court actors' offender attributions (Steffensmeier, Kramer, and Ulmer 1995; Steffensmeier, Ulmer, and Kramer 1998). First, criminal justice actors are concerned with offender blameworthiness, and will seek harsher punishment against offenders who are deemed more culpable (Steffensmeier, Ulmer, and Kramer 1998). Second, court personnel are concerned with community safety and will increase punishment to protect the public from dangerous offenders. Third, actors are mindful of a

variety of practical constraints connected to their punishment decisions, such as local jail overcrowding and the desire to avoid case backlogs. These practical constraints modify punishment decisions because court actors wish to ensure appropriate punishment for the most blameworthy and dangerous offenders. If jail space is limited, for instance, judges will identify those offenders most deserving of incarceration pursuant to the first two focal concerns (Steffensmeier, Kramer, and Streifel 1993; Ulmer and Kramer 1996).

As noted above, decisions about individual offenders are made within a particular local setting, and the *courts as communities* theoretical perspective contemplates why differences in sentencing outcomes occur across community and courtroom contexts. Courts function like communities with their own working norms, organizational interrelationships, and political climates (Eisenstein, Flemming, and Nardulli 1988; Ulmer 1997). The perspective emphasizes several key processes in the development of localized courtroom practices (Eisenstein, Flemming, and Nardulli 1988; Ulmer 1997). First, the ongoing working relationships among courtroom actors – prosecutors, defense counsel, and judges, as well as probation officers and court administrators – create collegial interdependencies that counter the view of courts as adversarial battlegrounds (Eisenstein, Flemming, and Nardulli 1988). Second, the local legal culture reflects the attitudes, values, and norms that develop in a court community concerning criminal behavior, 'going rates,' and case processing procedures (Church 1978; Eisenstein, Flemming, and Nardulli 1988; Worden 2007). Third, local customs are influenced by other local politicians and the broader political and social context of the county (Worden 2007).

County-level predictors frequently examined in the sentencing literature include race and political makeup, crime and employment rates, and caseload size (Britt 2000; Bontrager, Bales, and Chiricos 2005; Fearn 2005; Johnson 2005; Myers and Talarico 1987). According to Nardulli, Eisenstein, and Flemming (1988), factors such as social heterogeneity, affluence, and economic composition affect the nature and flow of cases. For instance, affluent counties may produce a different case portfolio than impoverished counties. The nature of crime in a county will also affect the community's perception of the crime problem, and these community perceptions will inform expectations of the court community. Court communities may be particularly influenced by *changes* in county characteristics such as socioeconomic conditions and crime rates, and these factors may exert differential influence depending on whether the indicators are trending up or down (Nardulli, Eisenstein, and Flemming 1988).

The court communities theory also contemplates different norms of case processing based on the size of the court community and its caseload (Eisenstein, Flemming, and Nardulli 1988). Sentencing research has primarily conceived of the impact of caseload size as a product of bureaucratization and the need to efficiently process heavy caseloads in large jurisdictions (Dixon 1995; Johnson 2006; Ulmer and Johnson 2004). The local political culture may also influence courtroom actors and case processing through community expectations and political links as courtroom actors often are publicly elected officials, highlighting a potential nexus to the political preferences, views, and attitudes of local constituents (Helms and Jacobs 2002). In addition, local political elites such as mayors, county board members, and advocacy groups can exert influence over workgroup members (Eisenstein, Flemming, and Nardulli 1988). Workgroup members with greater political ambitions may feel it wise to remain responsive to concerns of political leaders who could assist them in future political endeavors.

The substantive findings on the influence of county-level factors have been mixed and inconsistent. For instance, Helms and Jacobs (2002) found that conservative ideology was associated with more punitive sentencing, but most of the multilevel studies to examine

political ideology have found it to be a non-significant predictor (Fearn 2005; Johnson 2005; Ulmer and Johnson 2004; Weidner, Frase, and Schultz 2005). Crow and Gertz (2008) found political makeup to be insignificant under the 1994 Florida guidelines system, but found that percent Republican was associated with an increase in the odds of incarceration under the subsequent 1998 guidelines, which increased the upward sentencing discretion of judges. Likewise, the effects of crime rates are mixed, with most studies finding no significant effects (Britt 2000; Crow and Gertz 2008; Ulmer and Johnson 2004; Wang and Mears 2010), others revealing a positive effect for certain sentencing outcomes (Fearn 2005; Helms and Jacobs 2002; Myers and Talarico 1987), and still others indicating a negative relationship (Weidner, Frase, and Schultz 2005).

In summary, the court communities theory is well-suited for organizing the familiar array of county-level sentencing predictors. Socioeconomic factors and crime rates not only impact the case flow into the court communities, but also affect local perceptions and expectations and thus the pressure the public and local elites place on the courtroom actors. The political makeup of the county citizenry and elected officials would impact their perception of crime and the appropriate response to fluctuations in social and economic conditions, as well as changes in crime rates.

The legal context of sentencing in South Carolina

This study expands on existing research by examining felony sentencing in South Carolina, a state that invites study for several reasons. First, despite the efforts of a longstanding but intermittently active Sentencing Commission (1982–2003), sentencing guidelines never received judicial or prosecutorial support in the state and were therefore never adopted. The Sentencing Commission was also weak institutionally (Reitz 1998), having a small budget and staff and enjoying no formal rule-making authority. The Commission's primary duty was to develop guidelines and other sentencing proposals for the General Assembly to consider and vote upon. Reform efforts to restrict parole for certain classes of offenses were successful in the 1990s. As a result, the state now operates under a hybrid indeterminate system wherein parole eligibility is determined by the category of offense. For all but the most serious offenses (e.g., offenses with a maximum penalty of 20 years or more), offenders are eligible for parole after serving either 25% or 33% of their sentence.[3]

In addition, other distinctive features of South Carolina's demography and legal culture characterize the state's court communities. The state is geographically compact, a median state population-wise, and among the bottom fifth in land size (Census Bureau 2001). Further, there are no large metropolises in South Carolina; during the 2000s (the period for this study), the state's three largest cities – Columbia, Charleston, and Greenville – all had populations under 150,000. This is noteworthy because sentencing practices can be disproportionately shaped and influenced by large metropolitan centers with their 'distinctive organizational and cultural features' (Ulmer and Johnson 2004, 141).

South Carolina also has a small bar with one of the lowest per capita rates of practicing attorneys (Carson 2004). The majority of the state bar attended the same in-state law school and were taught by many of the same professors.[4] Thus, the pool of attorneys and judges in the state has similar legal training and professional socialization experiences that contribute to a shared judicial acculturation (see Eisenstein, Flemming, and Nardulli 1988; Eisenstein and Jacob 1977). Adding to this, South Carolina continues the practice of judicial circuit riding wherein trial judges regularly rotate throughout the state's 16

judicial circuits. This judicial rotation likely serves to reinforce the ties between court actors across counties, attenuating some of the county-specific sentencing norms that might otherwise form.

Current study

The current study performs the first multilevel analysis of the effects of individual- and county-level factors on sentencing outcomes in South Carolina. Based on the preceding, we expect that individual-level legal factors will strongly predict felony sentencing outcomes. In light of the state's relatively unstructured sentencing system and the pronounced discretion this affords judges, we also expect that extra-legal factors such as race, gender, and age will stand as important individual-level predictors. We anticipate that blacks, younger offenders, and males will be more likely to be sentenced to prison and to receive longer sentences.

In addition, we expect county-level predictors to condition sentencing across counties. First, we expect that worsening socioeconomic conditions in a county will be associated with a more punitive orientation toward offenders. Second, we anticipate increasing crime rates in a county will lead to more punitive sentencing. Third, given the traditional law-and-order orientation of Republican voters, we expect that counties with a higher proportion of Republican voters will punish offenders more harshly. Finally, as research has consistently found caseload size to be an indicator of bureaucratization, we control for this and anticipate that court communities with heavier caseloads will sentence offenders more leniently in an effort to induce plea agreements and ensure more efficient case processing.

Methods

Data

We obtained FY2001 sentencing data that had previously been compiled by the South Carolina Sentencing Guidelines Commission. The data include individual-level information on sentencing outcomes collected from the state's independent judicial, corrections, and probation/parole departments. The electronic data file analyzed for this study was obtained from the South Carolina Department of Archives and History, where it had been deposited by the Commission upon disbanding in 2004.

The target population for this study includes felony and serious misdemeanor offenders sentenced in the state's Circuit Courts during FY2001. The Commission data-set initially included 24,204 cases. To delimit our analyses to an annual period of sentencing, we first dropped 1550 cases representing offenders who had *entered* the corrections system in FY2001 but who had been sentenced prior to FY2001. Next, we removed 4327 misdemeanor cases that had sentences of 90 days to a year in prison. These cases are not representative of all misdemeanor offenses, but were originally included in the data-set because of the Commission's statutory focus on state prison resources combined with the state's institutional arrangement whereby any sentence longer than 90 days, regardless of the underlying offense, is served in state prison rather than local jail. We retained serious misdemeanor cases carrying a maximum sentence of 1 year or more, the traditional definition of a felony offense.[5] After dropping another 656 cases for various reasons,[6] we were left with an analytic sample of 17,671 felony and serious misdemeanor cases.

We supplemented the Commission's data with additional information from the South Carolina Office of Court Administration on the offender's mode of case disposition by

acquiring a list of cases that went to trial in Circuit Court during FY2001. Of the 306 trial cases in FY2001, we successfully matched 85% to the Commission data by cross-referencing warrant and indictment numbers which were included in both data-sets.[7] County-level indicators were developed from the Uniform Crime Reports, the U.S. Census Bureau, and S.C. Court Administration.

Measures

Dependent variables

We analyzed two outcome measures: (1) a binary measure of *incarceration versus probation* and (2) a continuous measure of the *expected minimum sentence* in months for those offenders sentenced to prison. Consistent with previous application (Chiricos and Bales 1991; Gertz and Price 1985; Spohn and Cederblom 1991), we operationalized sentence length as the expected minimum time served in order to account for variation in parole eligibility. As noted above, some offenses are nonparolable, whereas others have different rules regarding when parole eligibility begins, that is, after serving 25%, 33%, or 85% of the court-imposed sentence. We therefore calculated the expected minimum sentence as the product of the court-imposed maximum and the minimum proportion required to be served (i.e., 0.25, 0.33, 0.85, 1.0). Thus, if the court imposed a 60-month sentence, the expected minimum would be 15, 19.8, 51, or 60 months, respectively.[8]

Because our measure of sentence length was positively skewed, we took the natural log to address non-normality (as well as potential outlier cases) (Bushway and Piehl 2001; Johnson 2006). While scholars have taken a variety of approaches to coding life and death penalty sentences, we followed Johnson, Ulmer, and Kramer (2008) and Steffensmeier and Demuth (2000) in top-coding these sentences at 470 months prior to log transformation. This procedure affected a total of 110 offenders (0.6%).

Offender-level measures

Offense seriousness was operationalized as an eight-level ordinal variable including serious misdemeanors, six classified felonies (A–F), and unclassified felonies.[9] A *multiple offense score*, constructed by the Commission, captures the number of the current offenses.[10] *Offense type* captures 10 specific crime categories (i.e., homicide, rape, robbery, aggravated assault, burglary, drug distribution, drug possession, theft, fraud, and other offenses). *Criminal history* is a five-level ordinal variable, also constructed by the Commission, that measures the extent of the offender's prior record.[11] *Trial conviction* measures whether the offender was convicted by trial or guilty plea. Following Steffensmeier, Kramer, and Ulmer (1995) and Wooldredge (2010), we operationalized *age group* using five categories (i.e., 16–19, 20–29, 30–39, 40–49, 50+) to account for the potential curvilinear impact of age on sentencing. Lastly, we included individual-level measures for demographic attributes of *black* and *male*.

County-level measures

We developed four county-level measures to examine the influence of context. First, *percent Republican* was operationalized as the proportion of the electorate in the 2000 presidential election that voted for George W. Bush. Second, *criminal caseload* measures the number of criminal cases sentenced in the county, divided by the number of weeks that criminal court was held in the county for the fiscal year. Although only a few of the largest

counties had more than one judge holding criminal court during the same week, this measure does count each judge/court week separately (i.e., if two judges held criminal court in the same county during the same week we added two court weeks to the denominator of the measure). This rate was then divided by a factor of 10 to aid interpretation and presentation of results (see Johnson, Ulmer, and Kramer 2008; Ulmer and Johnson 2004).

Third, because the courts as communities perspective also stresses the dynamic nature of social and economic problems (Green, Strolovitch, and Wong 1998; King and Wheelock 2007; Nardulli, Eisenstein, and Flemming 1988), we measured the *change in concentrated disadvantage* following Sampson, Morenoff, and Earls (1999). We constructed concentrated disadvantage indexes from independent factor analyses of five county-level indicators collected by the 1990 and 2000 U.S. Censuses (i.e., percent below poverty line, percent on public assistance, percent unemployed, percent of female-headed households with a child, and percent black), with higher index scores reflecting greater levels of concentrated disadvantage.[12] The final indicator was then operationalized as the difference between the 2000 and 1990 index scores (a positive change score indicates a community in decline).

Fourth, we measured the *percentage change in the index crime rate*. While much of the empirical literature has employed static measures of crime (Fearn 2005; Weidner, Frase, and Schultz 2005), Nardulli, Eisenstein, and Flemming (1988, 104) emphasize the importance of capturing 'long-term trends and pressures' of changing crime rates. While previous studies have used 10-year (Nardulli, Eisenstein, and Flemming 1988) or 3-year crime trends (Britt 2000), this study measured changes in uniform crime report (UCR) index crime rates over the 6-year period 1994–2000. Six years was chosen as being long enough to avoid the inadequacies of measuring short-term changes, as criticized by Nardulli, Eisenstein, and Flemming (1988), but not so long as to provide an incongruous historical comparison between periods of generally rising and falling crime rates.[13] Using percentage rather than absolute change affords more meaningful comparisons between counties (e.g., an additional 100 crimes per 100,000 would have a profoundly different effect depending on whether a county had a starting crime rate of 100 or 1000).[14]

Analytic strategy

Given this study's emphasis on the differences in sentencing across court communities, we employ a multilevel modeling strategy – hierarchical logistic regression for the incarceration decision and hierarchical linear regression for expected minimum sentence. These methods adjust for correlated error among offenders nested within a given county, and provide significance tests based on the proper degrees of freedom for the county-level predictors (Johnson 2005, 2010; Raudenbush and Bryk 2002; Steiner 2009). Analyses were conducted using HLM software, version 6.08.

Standard multilevel modeling strategy involves the sequential estimation of several nested models. First, we estimate unconditional models to determine whether sentencing outcomes differ by county (and thus merit further investigation within a multilevel framework) (Raudenbush and Bryk 2002; Wooldredge, Griffin, and Pratt 2001). If the unconditional models indicate significant county-level variation, we estimate random coefficients models populated with the offender-level predictors. To determine which predictors should be fixed and which should vary randomly, we systematically proceed through a series of random coefficients models, first allowing all variables to vary randomly, and then fixing those predictors where testing of the

variance component indicates it does not vary randomly across counties (Raudenbush and Bryk 2002).

After determining whether the offender-level coefficients should be fixed or random, we estimate the fully specified main effects mixed models that include the county-level predictors (Johnson 2010; Raudenbush and Bryk 2002). We grand mean center the individual-level variables to control for individual-level effects and to provide for more rigorous tests of county effects (Enders and Tofighi 2007; Johnson 2006; Raudenbush and Bryk 2002).

When estimating our multilevel models for the incarceration and expected sentence length decisions, we do not attempt to account for possible sample selection bias (Berk and Ray 1982). Although criminological researchers commonly address sample selection bias through the use of Heckman-type selection models, even occasionally within a multilevel investigational framework (e.g., Crow and Gertz 2008), such 'corrected' estimates often prove to be less reliable than those produced by the standard two-part model (Bushway, Johnson, and Slocum 2007; Koons-Witt et al. 2014). In our case, because we could not identify a valid exclusion restriction in our data – that is, an observed variable that enters the incarceration equation but not the sentence length equation – estimates from a sample selection model would likely be poorly identified and imprecise (Bushway, Johnson, and Slocum 2007). Rather than introduce a statistical fix which our data do not support, we analyze our two sentencing outcomes independently, with the sentence length equation conditional on the sample of offenders sentenced to incarceration.

Findings

The descriptive statistics, reported in Table 1, reveal that more than 37% of the sample was incarcerated, and of those sentenced to prison, the average expected minimum sentence was 39 months. Notably, only 1.5% of offenders were sentenced after a jury trial rather than a guilty plea, and the sample was predominately male (83.4%), black (62.0%), and under the age of 40 (78.5%).

For the county-level predictors, change in concentrated disadvantage had a mean of zero and ranged from a minimum of −0.79 to a maximum of 0.54, indicating that some jurisdictions experienced improvements in the index whereas others suffered declines. The percentage change in the index crime rate had a mean of −3.17, indicating a slight overall decline in crime from 1994 to 2000. In the average county, 52% of votes cast in the 2000 presidential election were for the Republican candidate. This ranged from 29% to 71%. Finally, county criminal caseload had a mean of 11.7, which means the average county processed 116 cases each week of criminal court, but this ranged from 61 cases per criminal court week in the least burdened counties, to 223 per court week for the most active county courts.

The incarceration decision

In this section, we examine the decision to incarcerate.[15] The unconditional model, reported in Table 2, indicates the incarceration decision varied significantly across counties, and that approximately 2.5% of the variation in the decision to incarcerate was attributable to the county-level. This is about half the county-level variation found in other research (e.g., Johnson 2006), which suggests that some elements of the legal culture of South Carolina promote relatively more uniform decision-making at the local level. Adding in the individual-level predictors, we found that criminal history, multiple offense

Table 1. Descriptive statistics.

Variables	Mean	SD	Min.	Max.
Outcome measures				
Incarcerated (%)	37.41	48.39	0.00	1.00
Expected time served (log months)[a]	2.56	1.41	0.00	6.00
Offender-level predictors ($N = 17{,}671$)				
Offense seriousness	2.64	1.50	1.00	8.00
Multiple offense score	1.94	1.84	1.00	12.00
Offense type (%)				
Homicide	1.55	12.36	0.00	1.00
Rape	1.62	12.62	0.00	1.00
Robbery	3.38	18.08	0.00	1.00
Aggravated assault	10.25	30.33	0.00	1.00
Burglary	11.69	32.13	0.00	1.00
Drug distribution	16.79	37.38	0.00	1.00
Drug possession	14.36	35.07	0.00	1.00
Theft	7.22	25.88	0.00	1.00
Other	21.50	41.08	0.00	1.00
Fraud	11.63	32.06	0.00	1.00
Criminal history	2.14	1.19	1.00	5.00
Trial conviction (%)	1.46	12.00	0.00	1.00
Age group (%)				
16–19	10.18	30.24	0.00	1.00
20–29	38.51	48.66	0.00	1.00
30–39	29.81	45.74	0.00	1.00
40–49	16.48	37.1	0.00	1.00
50+	5.02	21.84	0.00	1.00
Black (%)	61.97	48.55	0.00	1.00
Male (%)	83.42	37.19	0.00	1.00
County-level predictors ($N = 46$)				
Change in concentrated disadvantage	0.00	0.29	−0.79	0.54
Change in index crime rate (%)	−3.17	26.64	−50.00	102.00
Republican (%)	52.17	10.36	29.00	71.00
Criminal caseload	11.68	4.13	6.11	22.33

[a]The expected sentence length (logged) descriptives are based on the subsample of offenders actually incarcerated ($N = 6611$).

Table 2. Unconditional models of incarceration and expected time served.

Incarceration			Expected time served		
Fixed effects	*b*	SE	Fixed effects	*b*	SE
Intercept	−0.41	0.05***	Intercept	2.55	0.04***
Variance components	Variance	SD	Variance components	Variance	SD
Intercept1, U0	0.08	0.29***	Intercept1, U0	0.04	0.20***
Level-1, R	–	–	Level-1, R	1.96	1.40
			Deviance = 23,266.86		
			Parameters = 2		
Intraclass correlation		0.025	Intraclass correlation		0.021

Notes: The intraclass correlation for incarceration is based on the assumption that the level-1 has a standard logistic distribution with a variance of $\pi^2/3$.
***$p \leq 0.001$.

score, and conviction for drug distribution (relative to fraud) varied randomly across counties, whereas other individual-level predictors revealed no significant variation across counties.

The effects of individual-level measures on the likelihood of incarceration were generally consistent with prior research. As reported in Table 3, legal factors had significant and sizable effects on the likelihood of incarceration. For instance, the odds of incarceration increased about 86% with each unit increase in offense seriousness, and each unit increase in the multiple offense score increased the odds of incarceration by more than one-third. Relative to fraud, committing other offenses generally increased the odds of incarceration, especially for violent (homicide, rape, robbery) and drug trafficking crimes. In addition, prior criminality was particularly salient, with each unit increase in the criminal history category corresponding to a 2.6 factor increase in the odds of incarceration. Disposition status also had a substantial impact, with offenders who were found guilty after a trial experiencing more than nine times the odds of incarceration relative to those who pled guilty.

After controlling for legal variables, extralegal characteristics remained significant predictors of incarceration. Offenders who were 20–29 years old were the most likely to be incarcerated compared to the other age groups, suggesting a nonlinear effect of age whereby younger and older offenders were increasingly less likely to be incarcerated

Table 3. Individual- and county-level effects on incarceration.

	b	SE	OR	Variance
Individual-level ($N = 17{,}671$)				
Intercept	0.25	0.32	1.28	
Offense seriousness	0.62	0.02***	1.86	
Multiple offense score[a]	0.33	0.02***	1.39	0.01***
Offense type (ref.: Fraud)				
Homicide	2.40	0.25***	11.07	
Rape	1.68	0.20***	5.35	
Robbery	1.47	0.15***	4.36	
Assault	0.50	0.10***	1.65	
Burglary	0.65	0.10***	1.92	
Drug distribution[a]	1.58	0.12***	4.83	0.21***
Drug possession	0.51	0.09***	1.67	
Theft	0.54	0.10***	1.72	
Other	0.68	0.08***	1.98	
Criminal history[a]	0.97	0.04***	2.64	0.16***
Trial conviction	2.20	0.33***	9.03	
Age (ref.: 20–29)				
16–19	−0.35	0.08***	0.71	
30–39	−0.13	0.05**	0.88	
40–49	−0.22	0.06***	0.80	
50+	−0.30	0.10**	0.74	
African-American	0.39	0.05***	1.48	
Male	0.49	0.06***	1.63	
County-level ($N = 46$)				
Change in concentrated disadvantage	0.37	0.21	1.45	
Change in UCR rates (%)	0.19	0.27	1.21	
Republican (%)	−0.51	0.64	0.60	
County caseload	−0.03	0.01*	0.97	

*$p \leq 0.05$, **$p \leq 0.01$, ***$p \leq 0.001$.
[a]Denotes random variation across counties.

(cf. Steffensmeier, Kramer, and Ulmer 1995). However, age effects are somewhat modest, reducing the odds of incarceration by only 12–29% depending on the comparison age group. Finally, all else equal, the odds of black offenders being incarcerated were 1.5 times that of white offenders on average, and the odds of incarceration were 1.6 times greater for males compared to females.

Table 3 also contains the county-level incarceration findings. Change in concentrated disadvantage was in the expected direction with increases in disadvantage being associated with greater likelihoods of incarceration, but fell short of statistical significance at the 0.05 level ($p = 0.08$). Change in index crime rates was associated with increased likelihood of imprisonment, but failed to reach statistical significance. The relationship between the decision to incarcerate and proportion Republican was counter to our expectations, but did not reach statistical significance. Finally, county caseload was statistically significant and in the negative direction, indicating that counties with heavier caseloads were less likely to impose a prison term on offenders. Taken as a whole, the results demonstrate relatively little variation at the county level. Moreover, of the four county-level predictors examined, only one – county caseload – was statistically significant by conventional standards, and its effect size was small, indicating modest substantive importance of caseload size in workgroup decisions to incarcerate.

Expected time served

In this section, we examine the expected time to be served.[16] As indicated in Table 2, 2% of the variation in the expected time served was attributable to county differences. The offender-level findings, shown in Table 4, are again consistent with expectations and prior research. Several predictors, including criminal history and offense seriousness among others, varied randomly across counties. Both offense seriousness and multiple offense score were positively related to expected sentence length and maintained statistical significance. For each unit increase in offense seriousness, expected length increased by approximately 49% on average, while each unit increase in the multiple offense score increased an offender's sentence by an average of 9%. The impact of offense type was mixed. We find no evidence that burglary, drug possession, theft, or other offenses were sentenced significantly differently than fraud offenses, but there were greater average sentences for serious crimes such as homicide (85% longer), rape (65% longer), robbery (36% longer), and drug distribution (33% longer), among others. Criminal history was associated with a modest 4% average increase in expected length for each unit increase in criminal history category. The decision to go to trial was a markedly influential predictor, with offenders convicted after trial receiving roughly 72% longer terms than similarly situated offenders who pled guilty.

With respect to demographic factors, the age group predictors revealed a complex picture when compared to the inverted 'U' shaped findings for incarceration. Compared to the 20- to 29-year-olds, the youngest offenders and those 40 and older were given longer sentences, while there were no statistically significant differences in sentence lengths given to those in the age group of 20–29 and those in the age group of 30–39. On average, black offenders received around 7% longer sentences than whites, and males were given approximately 7% longer sentences than females.

Table 4 also provides the county-level findings. Change in concentrated disadvantage was in the expected direction but not statistically significant. Change in UCR rates and proportion voting Republican were both in the opposite direction hypothesized, but neither was statistically significant. Finally, county caseload had a positive sign, indicating increased caseload led to longer sentences, but the results again did not achieve statistical

Table 4. Individual- and county-level effects on expected time served.

	b	SE	Variance
Individual level ($N = 6611$)			
Intercept	2.57	0.12***	
Offense seriousness[a]	0.49	0.01***	0.00***
Multiple offense score	0.09	0.00***	
Offense type (ref.: Fraud)			
Homicide	0.85	0.07***	
Rape[a]	0.65	0.09***	0.12**
Robbery	0.36	0.06***	
Assault[a]	0.13	0.06*	0.04**
Burglary	0.00	0.05	
Drug distribution[a]	0.33	0.06***	0.04***
Drug possession	0.06	0.06	
Theft	−0.01	0.06	
Other	−0.01	0.05	
Criminal history[a]	0.04	0.01***	0.00**
Trial conviction	0.72	0.05***	
Age (ref.: 20–29)			
16–19	0.11	0.04**	
30–39[a]	0.02	0.03	0.01*
40–49	0.06	0.03*	
50+	0.16	0.05**	
African-American	0.07	0.02**	
Male	0.07	0.04*	
County-level ($N = 46$)			
Change in concentrated disadvantage	0.02	0.08	
Change in UCR rates (%)	−0.11	0.10	
Republican (%)	−0.07	0.23	
County caseload	0.00	0.00	

*$p \leq 0.05$, **$p \leq 0.01$, ***$p \leq 0.001$.
[a] Denotes random variation across counties.

significance. This group of findings suggests that some inter-county differences exist in local legal culture (e.g., in the degree of reliance on criminal history and offense seriousness in apportioning sentence length). However, the key county-level predictors at the center of this inquiry were not significant, suggesting that sentence length decisions among the court communities in South Carolina may conform to a set of relatively uniform, statewide norms.

Discussion

This study sheds light on the role of local context in South Carolina sentencing practices and underscores the importance of studying court communities and legal structures in different states. Overall, we found little county-level variation in sentencing and the individual-level results were largely consistent with prior research. Still, the present study contributes to the sentencing literature by responding to calls to analyze courts and sentencing across a broader range of jurisdictions. Indeed, as we accumulate more evidence from different state contexts, our sentencing theories should become more broadly generalizable and the policy implications more widely applicable. Certainly, as states continue to seek smarter sentencing alternatives, the current study provides a small but important contribution to this overarching research agenda.

Our study found that the context is not strongly related to incarceration decisions in South Carolina. Changes in crime rates and overt indicators of county political preference did not predict sentencing outcomes. The findings regarding trends in socioeconomic conditions were not statistically significant at conventional levels for the decision to incarcerate. Further, caseload pressure in South Carolina was associated with a decreased likelihood of imprisonment in the more heavily burdened counties, although this effect appeared modest. Finally, none of the county-level predictors were significant predictors of expected sentence length, and very little of the variation in length was attributable to county differences.

Few inter-county differences emerged in our study, contrasting the comparatively uniform practices in South Carolina with the greater variability uncovered in previous multilevel sentencing research (see Johnson 2006). Several potential reasons for this relative uniformity exist. Unlike most jurisdictions which have been studied, South Carolina is not characterized by the degree of county-level variation found in states that have large metropolitan areas such as Philadelphia and Detroit. Furthermore, this homogeneity highlights the complexities of court processes outlined in the court communities' framework. In particular, South Carolina courts are characterized by inter-jurisdictional ties, including the common legal training of the majority of practicing state attorneys and the judicial rotation system, making familiarity and shared experiences among court personnel all the more likely. Compare, for example, Haynes, Ruback, and Cusick's (2010) study of sentencing in Pennsylvania which found that 72% of judges and 53% of district attorneys attended a law school in Pennsylvania which, at that time, had seven ABA accredited law schools in the state (ABA n.d.). Thus, even the 72% of judges who attended law school in Pennsylvania were dispersed among a number of Pennsylvania institutions. Although we do not have data on where prosecutors in our study attended law school, 86% of the South Carolina judges all attended the same South Carolina law school.

In terms of the individual-level effects, the results show that legal characteristics were the strongest offender-level predictors of sentencing for both the incarceration and expected length decisions. The state operates under a largely indeterminate sentencing model which continues to vest substantial discretion with judges, and courtroom workgroups more generally. Our findings indicate that mode of trial has a particularly strong effect – an especially notable finding given the rarity of trial in the state. In our population, only 1.4% of cases went to trial; even considering the ever-decreasing occurrence of trial, this number seems well below recent estimates that put overall trail rates at around 5–10% (Bibas 2011). These findings support the inference of the trial penalty as an inducement to plead guilty (Kramer and Ulmer 2009; see also Bradley-Engen et al. 2011).

In addition, race, gender, and age were all significant extralegal predictors of incarceration. Research has found that even under guidelines – which were largely instituted to reduce or remove extralegal disparities (Frase 2005) – these characteristics frequently continue to impact sentencing outcomes (Koons-Witt 2002; Steffensmeier, Ulmer, and Kramer 1998). Consistent with the predictions of the court communities and focal concerns theories, offenders who were young, black, and male had higher likelihoods of incarceration that could not be explained by prior criminal record, the seriousness or number of current offenses, the type of offense, or mode of conviction.

As for the county-level results, we find the minimal amount of regional variation notable. About 2% of the variation in each sentencing decision was attributable to the county level. This is compared to the 5% at the county level for the incarceration decision and 7% for the length decision found in Pennsylvania (Johnson 2006). Although lower

than the Pennsylvania findings, these intraclass correlations from South Carolina are consistent with Crow and Gertz's (2008) findings of less than 1% of the variation in sentence length being attributable to the county level in Florida. There are still too few studies to develop an informative picture of how characteristics such as legal culture and sentencing structure might contribute to variations in the importance of county context on sentencing. Still, it appears that structural and cultural characteristics of a state have important implications for consistency in sentencing across court communities. As for South Carolina, the findings suggest that the state's sentencing structure and homogenous legal culture may promote statewide uniformity in sentencing practices and norms.

Presumably there is much more involved in jurisdictional diversity than simply the size of a state – South Carolina is not a small state, being close to the median state population-wise, and Florida is the fourth largest state in the nation, yet was characterized by very little variation in sentence length across counties in Crow and Gertz's (2008) study. As we have noted, other legal cultural and structural factors may be at work. It is likely that similar legal socialization experiences promote shared legal values and norms that follow attorneys from the capital (the location of the state's law school) to counties throughout the state. Small numbers of attorneys and judges increase the frequency of interaction among attorneys, and the practice of judicial rotation means that practices unique to one jurisdiction are much less likely to develop or remain entrenched as rotating judges smooth aberrant practices and/or disperse innovative and useful conventions among other counties in the state. Given the recent reassertion that location matters (Ulmer 2012), these suppositions take on a particular importance as they remind us that the degree of inter-jurisdictional variation is variable across legal settings. Indeed, the central contention of courts as communities theory is that legal culture and structure create a complex amalgamation of court communities that may differ from state to state.

Future research should focus on understanding how variations in sentencing structures and legal culture influence county-level practices in different state contexts. Broadening the literature in this way will better enable sentencing scholars to examine the degree to which racial and gender disparities and related areas of concern are affected by factors such as sentencing structure, legal culture, and jurisdictional size and bureaucratization. Currently, we do not have empirical analyses of sentencing practices in a majority of states; for now, we raise the possibility that sentencing in many of these states – particularly the states operating without guidelines, states that are small and medium in size, and states that do not include one of the nation's largest cities – may resemble what we found in South Carolina.

Conclusion

This study is the first county-level analysis of felony sentencing in South Carolina, a state characterized by many sentencing attributes that, while common among the states, have been significantly underrepresented in the sentencing literature. Along with other recent research from this jurisdiction (Koons-Witt et al. 2014), this study provides an important picture of sentencing in a non-guidelines state and answers calls for sentencing studies to be conducted in a variety of jurisdictions (see Bushway and Piehl 2007; Engen 2009; Reitz 1998, 2010; Ulmer 2012).

The study is not without its limitations, however. For one, the data used for this study are from FY2001 and are now more than a decade old. South Carolina has continued to make adjustments to its sentencing laws over the past decade, and therefore our results may not reflect current conditions and practices. Our data also lacked important controls

such as pretrial detention status. While a number of other multilevel studies are likewise unable to control for all theoretically important predictors (see, e.g., Britt 2000; Ulmer and Johnson 2004), many sentencing studies have found pretrial detention status to be an important predictor (Demuth 2003; Spohn 2000). In addition, the Sentencing Commission data did not include all misdemeanor sentences, thus we were limited to analyzing felonies. Also, prior research has found important differences between prison and jail sentencing patterns (Freiburger and Hilinski 2013), but we were not able to explicitly contrast prison and jail outcomes since the latter were not available to us. Finally, as noted above, we do not attempt to account for sample selection bias, and our results need to be interpreted in this light.

Overall, our findings revealed that South Carolina court communities are characterized by a great deal of uniformity in sentencing practices. Although the causes are not entirely clear, it may well be that many of the structural and social aspects of South Carolina's legal landscape foster relatively homogenous sentencing practices. Further, the differences in sentencing variation now uncovered in jurisdictions such as Pennsylvania, Florida, and South Carolina suggest that structural and cultural aspects of a jurisdiction are important for understanding variation in sentencing outcomes. Although this is not a novel claim, it stands at the core of the seminal court communities' work of Eisenstein and colleagues. Our study highlights the ongoing need for research that investigates contextual effects in sentencing.

Notes

1. These states include Minnesota (e.g., Koons-Witt 2002; Miethe and Moore 1985), Ohio (e.g., Griffin and Wooldredge 2006; Wooldredge 2010), Pennsylvania (e.g., Johnson 2005, 2006; Kramer and Ulmer 1996, 2009; Steffensmeier, Kramer, and Ulmer 1995; Ulmer 1997), and Washington (e.g., Engen and Gainey, 2000; Engen et al. 2003; Piehl and Bushway 2007).
2. Several other multijurisdictional studies that investigate the influence of contextual factors use the State Court Processing Statistics sample of large US counties (e.g., Fearn 2005; Steiner 2009; Wang and Mears 2010; Weidner, Frase, and Schultz 2005).
3. Typically, offenders are eligible for parole after serving 25% of their sentence; offenders guilty of statutorily defined 'violent' offenses are required to serve 33% of their sentence before parole eligibility, and offenders guilty of enumerated 'no parole' offenses must serve at least 85% of their terms (Deutschmann and Benjamin 2000; McAninch, Fairey, and Coggiola 2007). In addition, several offenses carry special parole eligibility restrictions. Consequently, while South Carolina never abolished parole, it also is no longer a mirror image of the traditional indeterminate system (Reitz 1998; Rothman 1980); rather, parole board discretion is severely constrained for certain classes of offenders, making South Carolina's hybrid indeterminacy an important aspect of its sentencing structure.
4. Traditionally, the University of South Carolina School of Law was the state's only law school, and the majority of South Carolina lawyers attended this law school [C. Medlin and S. C. Bar (personal communication, July 6, 2011)]. The Charleston School of Law only opened in 2005 and was given full accreditation by the American Bar Association in 2011 (Behre 2004, 2011).
5. These included some offenses subject to up 10 years in prison (S.C. Code Ann. Section 16-1-20, 17-25-30; McAninch, Fairey, and Coggiola 2007), including assault and battery of a high and aggravated nature, certain destruction of property offenses, indecent exposure, voyeurism, and contributing to the delinquency of a minor, among others (S.C. Code Ann. Section 16-7-170, 16-15-130, 16-17-470(B)(1), 16-17-490; McAninch, Fairey, and Coggiola 2007). Many of these offenses have since been reclassified as felonies under the sentencing reforms enacted in 2010.
6. These included 429 duplicate cases in which the offender was sentenced on two occasions during the fiscal year (we kept the more serious of the two offenses), a small subset of 221 offenders whose race/ethnicity was neither non-Hispanic black or white, and six cases with missing data on covariates.

7. According to the supplemental data, there were 46 trials in FY2001 which we were not able to locate in the Commission data. Five cases supplied by the supplemental Court Administration data were sealed cases, and the Commission may not have had access to those cases. Two cases were trials for assaults on a correctional employee and it is possible the Commission viewed the underlying offense as the driving offense and omitted these two cases for that reason. Finally, one case was a resentence after appeal which may have led the Commission to exclude it. We were unable to match or account for the additional 34 trial cases.
8. In South Carolina, judges impose a single maximum at sentencing, not a range. Nominal parole grant rates are also fairly generous in the state. For example, in 1999 violent offenders served 44% of their imposed sentence on average, which was tied for 10th lowest among the 43 reporting states (Hughes, Wilson, and Beck 2001).
9. Several offenses, mostly common law offenses, remain unclassified in the South Carolina Code. Under South Carolina law, unclassified offenses are subject to a maximum sentence of 10 years. Under the classification scheme, Class E felonies are also capped at 10 years (S.C. Code Ann. Section 17-25-20, 17-25-30; McAninch, Fairey, and Coggiola 2007); accordingly, we recoded these unclassified offenses as Class E felonies.
10. Specifically, according to the South Carolina Sentencing Guidelines Commission (2002, 11), 'one point will be given for each offense in the current commitment, including the maximum penalty offense. If there is more than one A, B, or C felony, each additional A, B, or C felony will receive four points.' Although multiple offense score also includes a coarse measure of the seriousness of the current offense, collinearity diagnostics indicated that multicollinearity was not a problem. In addition, bivariate correlations revealed offense seriousness and multiple offense score were only correlated at 0.32 ($p = 0.000$).
11. According to the South Carolina Sentencing Guidelines Commission (2002, 11, 14), four points were awarded for prior violent and drug trafficking convictions defined in Section 16-1-60 with sentences over 1 year, three points for any other prior convictions with sentences of 1 year or more, two points for prior convictions with sentences of incarceration of less than 1 year, and one point (with a limit of five) for prior convictions with nonincarceration sentences. The scores were then grouped and described as follows: 1 point, no criminal history; 2–4 points, minimal criminal history; 5–13 points, moderate criminal history; 14–21 points, extensive criminal history; 22+points, voluminous criminal history.
12. The factor analysis revealed that all five indicators were loaded on a single factor (Eigenvalue = 4.41 for 1990, Eigenvalue = 4.32 for 2000).
13. To test the robustness of the 6-year change in crime rates, we also ran all models with 2-, 4-, 8-, and 10-year percentage changes in crime rates. The results did not substantially differ regardless of the operationalization.
14. We used the absolute change for concentrated disadvantage since indexes were already standardized by the factor analysis.
15. We also ran supplemental analyses to check for sensitivity in our sampling frame. We found no substantive differences in models that analyzed felonies and misdemeanors subject to more than a year in prison as we report in the paper and models that included only felonies ($N = 14{,}977$ for incarceration, $N = 6241$ for expected time served). The variation in outcomes attributable to the county level was the same for both populations. These supplemental results are available upon request from the first author.
16. As a sensitivity check, we also ran these models using the log of the maximum sentence imposed. Our substantive findings did not change, but not surprisingly the R^2 was reduced from 0.69 to 0.49. These results are available upon request from the first author.

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