

## **Criminal Procedure Appeal**

*State v. Ray*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (Aug. 27, 2010)

(<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/307PA09-1.pdf>). Reversing a decision of the court of appeals, \_\_ N.C. App. \_\_, 678 S.E.2d 378 (July 7, 2009) (ordering a new trial in a child sex case on grounds that the trial court erroneously admitted 404(b) evidence pertaining to instances of domestic violence between the defendant and his former girlfriend that occurred 15 years before the incident in question), the court held that although the defendant objected when the State forecast its evidence, by failing to object when the evidence was introduced at trial, the defendant failed to preserve the issue for appellate review. The court also held that the defendant lost his remaining opportunity for appellate review by failing to argue plain error in the court of appeals. Finally, the court held that even if the defendant had preserved the issue, he would not be entitled to a new trial because he could not show prejudice.

*State v. Davis*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (Aug. 27, 2010)

(<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/320PA09-1.pdf>). By failing to raise a constitutional double jeopardy argument at trial, the defendant failed to preserve the argument for appellate review. However, notwithstanding his failure to raise at trial a claim that under G.S. 20-141.4(b) the trial court lacked authority to impose punishment for certain motor vehicle crimes, the issue was preserved for appeal. When a trial court acts contrary to a statutory mandate and a defendant suffers prejudice, the right to appeal is preserved, notwithstanding a failure to object at trial.

## **Sentencing**

*Jones v. Keller*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (Aug. 27, 2010)

(<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/518PA09-1.pdf>). The trial court erred by granting the petitioner habeas corpus relief from incarceration on the grounds that he had accumulated various credits against his life sentence, imposed on September 27, 1976. The petitioner had argued that when his good time, gain time, and merit time were credited to his life sentence, which was statutorily defined as a sentence of 80 years, he was entitled to unconditional release. The court rejected that argument, concluding that DOC allowed credits to the petitioner's sentence only for limited purposes that did not include calculating an unconditional release date. DOC had asserted that it recorded gain and merit time for the petitioner in the event that his sentence was commuted, at which time they would be applied to calculate a release date; DOC asserted that good time was awarded solely to allow him to move to the least restrictive custody grade and to calculate a parole eligibility date. The court found that the limitations imposed by DOC on these credits were statutorily and constitutionally permissible and that, therefore, the petitioner's detention was lawful. The court also rejected the petitioner's ex post facto and equal protection arguments.

*Brown v. North Carolina DOC*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (Aug. 27, 2010)

(<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/517PA09-1.pdf>). For the reasons stated in *Jones* (discussed above), the court held that the trial court erred by granting the

petitioner habeas corpus relief from incarceration on the grounds that she had accumulated various credits against her life sentence.

### **Motions for Appropriate Relief**

*State v. Chandler*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (Aug. 27, 2010) (<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/298PA09-1.pdf>). On the State's petition for writ of certiorari, the court reversed the trial court and held that no significant change in the law pertaining to the admissibility of expert opinions in child sexual abuse cases had occurred and thus that the defendant was not entitled to relief under G.S. 15A-1415(b)(7) (in a motion for appropriate relief, a defendant may assert a claim that there has been a significant change in law applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required). Contrary to the trial court's findings and conclusions, *State v. Stancil*, 355 N.C. 266 (2002), was not a significant change in the law, but merely an application of the court's existing case law on expert opinion evidence requiring that in order for an expert to testify that abuse occurred, there must be physical findings consistent with abuse.

### **Criminal Offenses**

#### **Motor Vehicle Offenses**

*State v. Davis*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (Aug. 27, 2010) (<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/320PA09-1.pdf>). The trial court erred by imposing punishment for felony death by vehicle and felony serious injury by vehicle when the defendant also was sentenced for second-degree murder and assault with a deadly weapon inflicting serious injury based on the same conduct. G.S. 20-141.4(a) prescribes the crimes of felony and misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony serious injury by vehicle, aggravated felony death by vehicle, and repeat felony death by vehicle. G.S. 20-141.4(b), which sets out the punishments for these offenses, begins with the language: "Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section[.]" Second-degree murder and assault with a deadly weapon inflicting serious injury provide greater punishment than felony death by vehicle and felony serious injury by vehicle. The statute thus prohibited the trial court from imposing punishment for felony death by vehicle and felony serious injury by vehicle in this case.