

## **Criminal Procedure Appeal**

*State v. Blount*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/10-352-1.pdf>). A defendant seeking review of a trial court's compliance with G.S. 15A-1024 (withdrawal of guilty plea when sentence not in accord with plea arrangement) must obtain grant of a writ of certiorari; a challenge to the procedures for taking a plea does not come within the scope of G.S. 15A-1444, which specifies the grounds for appeals as of right

*State v. Blount*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/10-352-1.pdf>). The issue of restitution is preserved for appellate review even when there was no objection at trial.

### **Indictment Issues**

*State v. Blount*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/10-352-1.pdf>). (1) A defendant may challenge the sufficiency of an indictment even after pleading guilty to the charge at issue. (2) An obstruction of justice indictment properly charged a felony when it alleged that the act was done "with deceit and intent to interfere with justice." G.S. 14-3(b) provides that a misdemeanor receives elevated punishment when done with "deceit and intent to defraud." The language "deceit and intent to interfere with justice" adequately put the defendant on notice that the State intended to seek a felony conviction. Additionally, the indictment alleged that the defendant acted "feloniously."

### **Pleas**

*State v. Blount*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/10-352-1.pdf>). The trial court did not violate G.S. 15A-1024 (withdrawal of guilty plea when sentence not in accord with plea arrangement) by sentencing the defendant in the presumptive range. Under G.S. 15A-1024, if the trial court decides to impose a sentence other than that provided in a plea agreement, the court must inform the defendant of its decision and that he or she may withdraw the plea; if the defendant chooses to withdraw, the court must grant a continuance until the next court session. Although the defendant characterized the agreement as requiring sentencing in the mitigated range, the court found that his interpretation was not supported by the plain language of the plea arrangement, which stated only that the State "shall not object to punishment in the mitigated range."

### **Sentencing Prior Record Level**

*State v. Blount*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/10-352-1.pdf>). Although the trial court incorrectly determined that the defendant had a total of 8 prior record level points rather than six,

the error was harmless. The defendant was assigned to prior record level III, which requires 5-8 points. A correct calculation of defendant's points would have placed him in the same level.

### **Restitution**

*State v. Blount*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/10-352-1.pdf>). Because no evidence was presented in support of restitution and the defendant did not stipulate to the amount, the trial court erred by ordering restitution. During sentencing, the prosecutor presented a restitution worksheet requesting restitution for the victim to compensate for stolen items. The victim did not testify, no additional documentation was submitted, and there was no stipulation to the worksheet.

### **Post-Conviction Clerical Errors**

*State v. Blount*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/10-352-1.pdf>). Listing the victim on the restitution worksheet as an "aggrieved party" was a clerical error.

### **Evidence Opinions**

*State v. Jennings*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/10-503-1.pdf>). (1) The trial court did not err by allowing the State's expert in family medicine to testify that if there had been a tear in the victim's hymen, it probably would have healed by the time the expert saw the victim. The testimony explained that the lack of physical findings indicative of sexual abuse did not negate the victim's allegations of abuse and was not an impermissible opinion as to the victim's credibility. Even if error occurred, it was not prejudicial in light of overwhelming evidence of guilt. (2) The trial court did not err by allowing the State's expert in forensic computer examination to testify that individuals normally try to hide proof of their criminal activity, do not normally save incriminating computer conversations, the defendant would have had time to dispose of incriminating material, and that someone who sets up a site for improper purposes typically would not include their real statistics. Law enforcement officers may testify as experts about the practices criminals use in concealing their identity or criminal activity. The testimony properly explained why, despite the victim's testimony that she and defendant routinely communicated through instant messaging and a web page and that defendant took digital photographs of her during sex, no evidence of these communications or photographs were recovered from defendant's computer equipment, camera, or storage devices. Even if error occurred, it was not prejudicial in light of overwhelming evidence of guilt.

### **Arrest, Search & Investigation Vehicle Stops**

*State v. Chlopek*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/10-766-1.pdf>). An officer lacked reasonable suspicion to stop the defendant's vehicle. Around midnight, officers were conducting a traffic stop at Olde Waverly Place, a partially developed subdivision. While doing so, an officer noticed the defendant's construction vehicle enter the subdivision and proceed to an undeveloped section. Although officers had been put on notice of copper thefts from subdivisions under construction in the county, no such thefts had been reported in Olde Waverly Place. When the defendant exited the subdivision 20-30 minutes later, his vehicle was stopped. The officer did not articulate any specific facts about the vehicle or how it was driven which would justify the stop; the fact that there had been numerous copper thefts in the county did not support the stop.

*State v. Williams*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/09-1656-1.pdf>). Officers had reasonable suspicion to stop a vehicle in which the defendant was a passenger based on the officers' good faith belief that the driver had a revoked license and information about the defendant's drug sales provided by three informants. Two of the informants were confidential informants who had provided good information in the past. The third was a patron of the hotel where the drug sales allegedly occurred and met with an officer face-to-face. Additionally, officers corroborated the informants' information. As such, the informants' information provided a sufficient indicia of reliability. The officer's mistake about who was driving the vehicle was reasonable, under the circumstances.

## **Search**

*State v. Williams*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Jan. 18, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=2011/09-1656-1.pdf>). Probable cause and exigent circumstances supported an officer's warrantless search of the defendant's mouth by grabbing him around the throat, pushing him onto the hood of a vehicle, and demanding that he spit out whatever he was trying to swallow. Probable cause to believe that the defendant possessed illegal drugs and was attempting to destroy them was supported by information from three reliable informants, the fact that the defendant's vehicle was covered in talcum powder, which is used to mask the odor of drugs, while conducting a consent search of the defendant's person, the defendant attempted to swallow something, and that other suspects had attempted to swallow drugs in the officer's presence. Exigent circumstances existed because the defendant attempted to swallow four packages of cocaine, which could have endangered his health.