

Criminal Procedure Sentencing

State v. Pinkerton, __ N.C. __, __ S.E.2d __ (Feb. 4, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8zMjFBMTAtMS5wZGY=>). In a per curiam opinion, the court reversed, for the reasons stated in the dissenting opinion below, the decision of the court of appeals in *State v. Pinkerton*, __ N.C. App. __, 697 S.E.2d 1 (July 20, 2010). The court of appeals had held, over a dissent, that when sentencing the defendant in a child sexual assault case, the trial court impermissibly considered the defendant's exercise of his right to trial by jury. After the jury returned a guilty verdict and the defendant was afforded the right to allocution, the trial court stated that "if you truly cared—if you had one ounce of care in your heart about that child—you wouldn't have put that child through this." Instead, according to the trial court, defendant "would have pled guilty, and you didn't." The trial court stated: "I'm not punishing you for not pleading guilty . . . I would have rewarded you for pleading guilty." The dissenting judge found no indication of improper motivation by the trial court judge in imposing the defendant's sentence.

Motion for Appropriate Relief

State v. Long, __ N.C. __, __ S.E.2d __ (Feb. 4, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8yNjVQQTAtNS5LTEucGRm>). With one justice taking no part in consideration of the case and with the other members of the court equally divided, the court affirmed, without opinion, a ruling by the trial court on the defendant's motion for appropriate relief. The case was before the court on writ of certiorari to review the trial court's order. The question presented, as stated in the defendant's appellate brief, was: "Whether the trial court erred in finding in a capitally-charged case that failing to disclose exculpatory SBI reports, testifying falsely as to what evidence was brought to the SBI and failing to preserve irreplaceable biological evidence did not violate due process?"