Criminal Procedure

Counsel Issues

State v. Williamson, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC04ODMtMS5wZGY=). Because the defendant's lawyer adopted the defendant's pro se filing under G.S. 15A-711 by submitting evidence to the trial court in support of it, the trial court properly considered the pro se filing, made while the defendant was represented by counsel.

In Re P.D.R., __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNTE5LTEucGRm). In a termination of parental rights (TPR) case, the trial court erred by allowing the respondent mother to waive counsel and represent herself. Analogizing to criminal cases, the court held that trial court's inquiry into the respondent's desire to waive counsel was insufficient because it did not determine, among other things, whether she comprehended the nature of the proceedings. Citing *Indiana v. Edwards*, 554 U.S. 164 (2008) (holding that states may require counsel to represent defendants who are competent to stand trial but who suffer from severe mental illness to the extent that they are not competent to represent themselves) and record evidence regarding the respondent's competency, the court also concluded that "the trial court had a duty to inquire into respondent mother's competence not only to waive counsel, but also to represent herself in the TPR proceedings."

Jury Instructions--Multiple Defendants

State v. Adams, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC05MDYtMS5wZGY=). In a case in which two defendants were convicted of attempted murder and felonious assault, the trial judge committed plain error by giving jury instructions that impermissibly grouped the defendants together in presenting the charges and issues to the jury. In its instructions, the trial court repeatedly referred to the defendants collectively (e.g.,: "For you to find *the defendants guilty* of this offense . . . ."; the State must prove "that [when] each of the defendant had this intent[,] *they performed an act* that was calculated and designed to accomplish the crime").

Speedy Trial/Attendance of Defendant

State v. Williamson, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC04ODMtMS5wZGY=). (1) G.S. 15A-711 is not a speedy trial statute. G.S. 15A-711 provides an imprisoned criminal defendant the right to formally request that the prosecutor make a written request for his or her return to the custody of local law enforcement officers in the jurisdiction in which the defendant has other pending charges. The temporary release of the defendant to the local jurisdiction may not exceed 60 days. If the prosecutor is properly served with the defendant's request and fails to make a written request to the custodian of the institution where the defendant is confined within six months from the date the defendant's request is filed with the clerk of court, the charges pending against the defendant must be dismissed. The State's compliance with G.S. 15A-711 does not require that the defendant's trial occur within a given time frame. The State satisfies its statutory duty when the prosecutor timely makes the written request for the defendant's transfer, whether or not the trial actually takes place during the statutory period of six months plus the 60 days temporary release to local law enforcement officials. (2) Because the trial court failed to make the proper inquiry in response to the defendant's motion under G.S. 15A-711 (the proper

inquiry is whether the prosecutor made a timely written request for the defendant's transfer to a local law enforcement facility), the court vacated and remanded for a new hearing.

DWI Procedure

State v. Petty, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC04NDYtMS5wZGY=). (1) After accepting a defendant's guilty plea to DWI, the district court had no authority to arrest judgment. (2) Once the defendant appealed to superior court from the district court's judgment for a trial de novo, the superior court obtained jurisdiction over the charge and the superior court judge erred by dismissing the charge based on alleged non-jurisdictional defects in the district court proceedings.

Sex Offenders

State v. Merrell, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMzA0LTEucGRm). The trial court erred by ordering the defendant to enroll in lifetime satellite-based monitoring. The defendant was convicted of attempted first-degree rape under G.S. 14-27.2, and indecent liberties under G.S. 14-202.1, both sexually violent offenses and thus reportable convictions. At the sentencing hearing, the court found that the offenses "did involve the physical, mental, or sexual abuse of a minor . . . but no risk assessment is required from the [DOC] because lifetime satellite-based monitoring is required . . . ." The trial court ordered that lifetime monitoring based upon a finding that defendant had been convicted of "rape of a child, G.S. 14-27.2A, or sexual offense with a child, G.S. 14-27.4A, or an attempt, solicitation, or conspiracy to commit such offense . . . as a principal." However, defendant was convicted under G.S. 14-27.2 and 14-202.1, not 14-27.2A or 14-27.4A. Moreover, the trial court did not find that defendant was a sexually violent predator or that defendant was a recidivist, and it found that the offense was not an aggravated offense. Therefore, the trial court erred in ordering lifetime satellite-based monitoring and in failing to order that a risk assessment be performed pursuant to G.S. 14-208.40A(d) prior to ordering enrollment in lifetime monitoring.

Motion to Dismiss

State v. Hayden, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMzA2LTEucGRm). In a case involving a 1972 homicide, the trial judge erred by denying the defendant's motion to dismiss due to insufficient evidence that he was the perpetrator. When the State presents only circumstantial evidence that the defendant is the perpetrator, courts look at motive, opportunity, capability and identity to determine whether a reasonable inference of the defendant's guilt may be inferred or whether there is merely a suspicion that the defendant is the perpetrator. Evidence of either motive or opportunity alone is insufficient to carry a case to the jury. Here, the evidence was sufficient to show motive; it showed hostility between the victim and the defendant that erupted at times in physical violence and threats. However, there was insufficient evidence of opportunity. The court noted that for there to be sufficient evidence of opportunity, the State must present evidence placing the defendant at the crime scene when the crime was committed. Here, the only evidence of opportunity was the defendant's statement, made 26 years after the murder, that he was briefly in a spot two miles away from the crime scene. Finally, the court agreed with the defendant's argument that State's evidence of his means to kill the victim was insufficient because it failed to connect the defendant to the murder weapon.

Criminal Offenses

Obstruction of Justice

State v. Taylor, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC01NTEtMS5wZGY=). (1) By enacting G.S. 14-223 (resist, delay, obstruct an officer), the General Assembly did not deprive the State of the ability to prosecute a defendant for common law obstruction of justice, even when the defendant's conduct could have been charged under G.S. 14-223. (2) In a case in which the defendant, a sheriff's chief deputy, was alleged to have obstructed justice by interfering with police processing duties in connection with a DWI charge against a third-person, the trial judge did not err by failing to instruct the jury on the lack of legal authority to require the processing with which the defendant allegedly interfered.

Post-Conviction

Error Correction

State v. Petty, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC04NDYtMS5wZGY=). Having erroneously arrested judgment on a DWI charge to which the defendant had pleaded guilty, the trial court had authority to correct the invalid judgment and sentence the defendant even after the session ended. Citing *State v. Branch*, 134 N.C. App. 637 (1999), the court noted in dicta that the trial court's authority to correct invalid sentences includes sentences that exceed the statutory maximum. For a more detailed discussion of *Branch* and the trial court's authority to sua sponte correct errors, see *Jessica Smith, Trial Judge's Authority to Sua Sponte Correct Errors after Entry of Judgment in a Criminal Case*, ADMIN. OF JUSTICE. BULL. May 2003 (UNC School of Government) (online: http://www.sog.unc.edu/sites/www.sog.unc.edu/files/aoj200302.pdf).

Motions for Appropriate Relief—Default

State v. Taylor, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC01NTEtMS5wZGY=). The court suggested in dicta that on a motion for appropriate relief (as on appellate review) a defendant may be deemed to have waived errors in jury instructions by failing to raise the issue at trial. However, the court did not decide the issue since it concluded that even when considered on the merits, the defendant's alleged instructional error lacked merit.

Defenses

Voluntary Intoxication

State v. Merrell, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMzA0LTEucGRm). Because the defendant failed to present evidence of intoxication to the degree required to show that he was incapable of forming the requisite intent to commit attempted statutory rape and indecent liberties, the trial court did not commit plain error by failing to instruct the jury on voluntary intoxication. The State's evidence showed that the defendant made careful plans to be alone with the child, and in at least one instance, tricked her into coming out of her room after she had locked herself away from him. The defendant offered evidence that he has abused alcohol and drugs for so long that his memory has deteriorated so that he cannot remember the relevant events. However, the court concluded, the

defendant's failure to remember later when accused is not proof of his mental condition at the time of the crime.

Statute of Limitations

State v. Taylor, __ N.C. App. __, __ S.E.2d __ (June 7, 2011) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC01NTEtMS5wZGY=). The statute of limitations applicable to misdemeanor offenses does not apply when the issue of a defendant's guilt of a misdemeanor offense is submitted to the jury as a lesser included offense of a properly charged felony. Applying this rule, the court held that the two-year misdemeanor statute of limitations does not bar conviction for misdemeanor common law obstruction of justice when the misdemeanor was submitted to the jury as a lesser-included offense of felonious obstruction of justice, the crime charged in the indictment.