

Criminal Procedure Counsel Issues

State v. Anderson, __ N.C. __, __ S.E.2d __ (Mar. 9, 2012)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8zODJBMTEtMS5wZGY=>). In a per curiam opinion, the court affirmed *State v. Anderson*, __ N.C. App. __, __ S.E.2d __ (Aug. 16, 2011) (holding that the trial court erred by allowing the defendant to waive counsel after accepting a waiver of counsel form but without complying with G.S. 15A-1242; among other things, the trial court failed to clarify the specific charges or inform the defendant of the potential punishments or that he could request court-appointed counsel).

Sentencing/Post-Conviction

State v. Whitehead, __ N.C. __, __ S.E.2d __ (Mar. 9, 2012)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8yNzIQQTEtLTEucGRm>). The superior court judge erred by “retroactively” applying Structured Sentencing Law (SSL) provisions to a Fair Sentencing Act (FSA) case. The defendant was sentenced under the FSA. After SSL came into effect, he filed a motion for appropriate relief asserting that SSL applied retroactively to his case and that he was entitled to a lesser sentence under SSL. The superior court judge granted relief. The supreme court, exercising rarely used general supervisory authority to promote the expeditious administration of justice, allowed the State’s petition for writ of certiorari and held that the superior court judge erred by modifying the sentence. The court relied on the effective date of the SSL, as set out by the General Assembly when enacting that law. Finding no other ground for relief, the court remanded for reinstatement of the original FSA sentence.

Evidence

404(b) Evidence

State v. Brown, __ N.C. __, __ S.E.2d __ (Mar. 9, 2012)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8yMThBMTEtMS5wZGY=>). In a per curiam opinion, the court affirmed the decision below in *State v. Brown*, __ N.C. App. __, 710 S.E.2d 265 (May 3, 2011) (in a case in which the defendant was charged with sexually assaulting his minor child, the court rejected the defendant’s argument that the trial court erred by admitting evidence that he possessed pornographic materials (“Family Letters,” a publication purporting to contain letters regarding individuals’ sexual exploits with family members); the defendant argued that the evidence was inadmissible under Rule 404(b) absent a showing that he used the materials during the crimes or showed them to the victim at or near the time of the crimes; the court concluded that the evidence was properly admitted to show motive and intent; as to motive, it stated: “evidence of a defendant’s incestuous pornography collection sheds light on that defendant’s desire to engage in an incestuous relationship, and that desire serves as evidence of that defendant’s motive to commit the underlying act – engaging in sexual intercourse with the victim/defendant’s child – constituting the offense charged”; as to intent, it concluded that the defendant’s desire to engage in incestuous sexual relations may reasonably be inferred from his possession of the incestuous pornography, a fact relevant to the attempted rape charge; the court also found the evidence relevant to show a purpose of arousing or gratifying sexual desire in connection with an indecent liberties charge; finally, the court concluded that

the evidence passed the Rule 403 balancing test, noting that it was admitted with a limiting instruction).

Criminal Offenses

Sexual Assaults

State v. Hunt, __ N.C. __, __ S.E.2d __ (Mar. 9, 2012)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8xOTVQQTEuLTEucGRm>). (1) Reversing a decision of the court of appeals in *State v. Hunt*, __ N.C. App. __, 710 S.E.2d 339 (May 3, 2011), the court held that expert testimony was not required for the State to establish that the victim had a mental disability for purposes of second-degree sexual offense. In the opinion below, the court of appeals reversed the defendant's conviction on grounds that there was insufficient evidence as to the victim's mental disability, reasoning: "where the victim's IQ falls within the range considered to be 'mental retardation[,] but who is highly functional in her daily activities and communication, the State must present expert testimony as to the extent of the victim's mental disability as defined by [G.S.] 14-27.5." The supreme court, however, found the evidence sufficient. First, it noted, there was evidence that the victim was mentally disabled. The victim had an IQ of 61, was enrolled in special education classes, a teacher assessed her to be in the middle level of intellectually disabled students, and she required assistance to function in society. Second, the victim's condition rendered her substantially incapable of resisting defendant's advances. The victim didn't know the real reason why the defendant asked her to come into another room, his initial acts of touching scared her because she didn't know what he was going to do, she was shocked when he exposed himself, she was frightened when he forced her to perform fellatio and when she raised her head to stop, he forced it back down to his penis. Finally, there was evidence that the defendant knew or reasonably should have known about the victim's disability. Specifically, his wife testified that she had discussed the victim's condition with the defendant. The court emphasized that "expert testimony is not necessarily required to establish the extent of a victim's mental capacity to consent to sexual acts when a defendant is charged with second-degree sexual offense pursuant to section 14-27.5." (2) Reversing the court of appeals, the court held that the State presented sufficient evidence of crime against nature. The defendant conceded knowing that the victim was 17 years old. For the reasons discussed above, the court concluded that there was sufficient evidence that the victim's conditions rendered her substantially incapable of resisting the defendant's advances. All of this evidence indicates that the sexual acts were not consensual. In addition, the court noted, the record suggests that the acts were coercive, specifically pointing to the defendant's conduct of forcing the victim's head to his penis. The court emphasized that "expert testimony is not necessarily required to establish the extent of a victim's mental capacity to consent to sexual acts when a defendant is charged with . . . crime against nature."