

Criminal Procedure

Pleas

[*State v. Khan*](#), __ N.C. __, __ S.E. 2d __ (Mar. 8, 2013). (1) There was no ambiguity in a plea agreement with regard to whether the defendant understood that he was stipulating to an aggravating factor that could apply to both indictments. Although the Transcript of Plea Form listed only a file number for the first indictment, the document as a whole clearly referenced all of the charges and the in-court proceedings confirmed that the stipulation applied to both indictments. (2) The trial court properly followed the procedure in G.S. 15A-1022.1 for accepting an admission of an aggravating factor. (3) The evidence was sufficient to establish the aggravating factor that the defendant took advantage of a position of trust or confidence to place the victim in a vulnerable position. The defendant referred to the victim as his “twin,” was brought into the murder conspiracy as a friend of the victim, participated in hatching the details of the plan to kill the victim, and agreed to incapacitate the victim so others could kill him.

Sentencing

[*State v. Lovette*](#), __ N.C. __, __ S.E. 2d __ (Mar. 8, 2013). In a per curiam decision, the court reversed the court of appeals for the reasons stated in the dissenting opinion. In the opinion below, *Lovette v. North Carolina Department of Correction*, __ N.C. App. __, 731 S.E.2d 206 (2012), the court of appeals, over a dissent, affirmed a trial court order holding that the petitioners had fully served their life sentences after credits had been applied to their unconditional release dates. Both petitioners were sentenced to life imprisonment under former G.S. 14-2, which provided that a life sentence should be considered as imprisonment for eighty years. They filed habeas petitions alleging that based on credits for “gain time,” “good time,” and “meritorious service” and days actually served, they had served their entire sentences and were entitled to be discharged from incarceration. The trial court distinguished *Jones v. Keller*, 364 N.C. 249 (2010) (in light of the compelling State interest in maintaining public safety, regulations do not require that the DOC apply time credits for purposes of unconditional release to those who committed first-degree murder during the 8 Apr. 1974 through 30 June 1978 time frame and were sentenced to life imprisonment), on grounds that the petitioners in the case at hand were not convicted of first-degree murder (one was convicted of second-degree murder; the other was convicted for second-degree burglary). The trial court went on to grant the petitioners relief. The State appealed. The court of appeals held that the trial court did not err by distinguishing the case from *Jones*. The court also rejected the State’s argument that the trial court’s order changed the petitioners’ sentences and violated separation of powers. Judge Ervin dissented, concluding that the trial court's order should be reversed. According to Judge Ervin, the *Jones* applied and required the conclusion that the petitioners were not entitled to have their earned time credits applied against their sentences for purposes of calculating their unconditional release date.

Criminal Offenses

Drugs

[*State v. Ellison*](#), __ N.C. __, __ S.E. 2d __ (Mar. 8, 2013). Affirming the opinion below, the court held that G.S. 90-95(h)(4) (trafficking in opium) applies in cases involving prescription pharmaceutical tablets

and pills. The court reasoned that the statute explicitly provides that criminal liability is based on the total weight of the mixture involved and that tablets and pills are mixtures covered by that provision.