


Criminal Law Update

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 UNC | SCHOOL OF GOVERNMENT

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Traffic Stops after *Rodriguez v. United States*

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Duration / Extension of Stops

- *Rodriguez v. United States*, 575 U.S. 348 (2015) (a traffic stop may not be extended for reasons unrelated to the stop)
- *State v. Bullock*, 370 N.C. 256 (2017) (frisking a driver before ordering him to sit in a police vehicle did not “measurably” extend the stop and in any event promoted officer safety; officer was free to ask driver unrelated questions while awaiting the results of a database query)
- *State v. Reed*, 373 N.C. 498 (2020) (officer improperly extended stop when he told driver to “sit tight” in the officer’s vehicle while he asked another passenger for consent to search without reasonable suspicion)

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Duration / Extension of Stops

- Issues for consideration:
 - Is there any limit on officers’ ability to ask questions while multitasking?
 - Brief extensions: “measurable” vs. “de minimis”
 - Asking for consent:
 - Is it the time to *ask* or the time to *search* that matters?
 - Is reasonable suspicion required?

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Hemp / Marijuana

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Hemp / Marijuana

- S.L. 2022-32 defined “hemp” as any part of the cannabis sativa plant, and any derivative, with delta-9 THC content less than 0.3%, and “marijuana” as any part of the plant, and any derivative, that isn’t hemp

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Hemp / Marijuana

- State v. Parker, 277 N.C. App. 531 (2021) (prior cases approving of visual identification of marijuana and holding that the odor of marijuana provides probable cause to search “may need to be reexamined” in light of legal hemp, but finding probable cause based on the smell of burning marijuana plus other factors)
- State v. Teague, 2022-NCCOA-600 (Nov. 1, 2022) (canine sniff of a package containing marijuana at a FedEx facility was not a Fourth Amendment search or seizure)

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Hemp / Marijuana

- State v. Walters, 2022-NCCOA-796 (Dec. 6, 2022) (K-9 sniff not a search when capable of detecting methamphetamine collocated with what might have been lawful hemp)

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Hemp / Marijuana

- Issues for consideration:
 - Status of delta-9 THC derived or concentrated from legal hemp
 - What about delta-8 THC (or other forms of THC)?
 - Does odor alone provide probable cause?

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Juvenile Life Without Parole

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De Facto Life Without Parole

- State v. Kelliher, 2022-NCSC-77 (2022)
- State v. Conner, 2022-NCSC-79 (2022)

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Miller v. Alabama (2012)

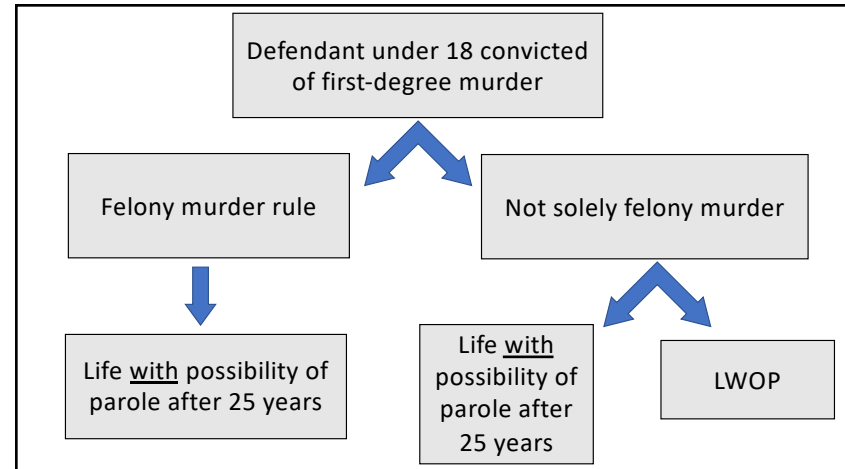
- A sentencing law calling for mandatory life imprisonment without parole for a homicide committed by a defendant under 18 is cruel and unusual punishment

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Miller Fix Legislation (2012)

- Created option for life with possibility of parole after 25 years for first-degree murder defendants under 18

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Miller Sentencing Hearings

- Focus on the offender, not the offense
- Guiding question:
Is this the “exceedingly rare” juvenile offender who is “incorrigible” or “irredeemable” such that rehabilitation is impossible?

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De Facto Life Without Parole

- Even a sentence to life with the possibility of parole could violate the Constitution if the opportunity for parole review comes too late to offer a “meaningful opportunity for release”

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Parole Eligibility

- Parole eligibility periods for consecutive sentences are aggregated into a single parole eligibility term
 - Robbins v. Freeman, 347 N.C. 664 (1998) (abolishing “paper parole”)

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De Facto Life Without Parole: COA

- State v. Kelliher (2020)
 - Consecutive sentences of life with parole after 25 years
 - Parole eligibility after 50 years is a de facto LWOP sentence
- State v. Conner (2020)
 - Parole eligibility after 45 years is not a de facto LWOP sentence when life expectancy for a 15-year-old is 61.7 years
- State v. Anderson (2020)
 - Parole eligibility after 50 years is not a de facto LWOP sentence when life expectancy for a 17-year-old is 59.8 years

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State v. Conner

- First-degree murder and first-degree rape of 15-year-old defendant’s aunt
- Trial court conducted Miller sentencing hearing
- Consecutive sentences:
 - Murder: Life with possibility of parole after 25 years
 - Rape: 240-348 months
 - Total: 45 years

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State v. Conner

- How long is too long?
 - Enough time to mature and rehabilitate in prison
 - Sufficiently early to allow “worthwhile undertakings outside of prison” if parole is granted
 - Must respect the trial judge’s authority to impose consecutive sentences under G.S. 15A-1354

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State v. Conner

“[T]his Court establishes the quantum of forty years of incarceration as the point in time at which a juvenile offender who has not been deemed to be incorrigible or irredeemable by a trial court . . . is eligible to seek release pursuant to parole provisions.”

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State v. Conner

- Remand for further proceedings
- Murder: Life with possibility of parole after 25 years
- Rape?

$$25 + \underline{\quad} \leq 40$$

A	
240-300	
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State v. Kelliher

- 17-year-old defendant participated in the killing of a man and his pregnant girlfriend
- At Miller resentencing hearing, trial court found defendant “neither incorrigible nor irredeemable” and ordered consecutive sentences of life with the possibility of parole after 25 years (50-year aggregate eligibility)

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State v. Kelliher

- 50-year aggregate eligibility exceeds the 40-year threshold established by the N.C. Supreme Court
- Decision expressly grounded on article I, section 27 of the North Carolina Constitution
- Remand with instructions to enter two concurrent sentences of life with parole

$$25 + ~~25~~ \leq 40?$$

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Sex Offenders

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In re Pellicciotti

- 2022-NCCOA-624

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Out-of-State Offenses

- The definition of “reportable conviction” includes:
 - “A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor [kidnapping, etc.] or a sexually violent offense,” or
 - “A final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state”

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Substantial Similarity

- Grabarczyk v. Stein (E.D.N.C. 2020)
 - Local sheriff made determination that Wisconsin sexual assault required registration in N.C.
 - Federal judge ruled that this violated due process

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Substantial Similarity

“North Carolina provides neither prior notice nor a hearing. In fact, North Carolina provides nothing at all. . . . The sheriff’s deputies making the determinations do not need to consult with legal counsel, even though substantial similarity has been described as a ‘question of law.’ . . .”

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S.L. 2020-83

- Enacted new G.S. 14-208.12B
 - Judicial determination of substantial similarity
 - Hearing is in superior court in county of residence
 - Petitioner is entitled to appointed counsel

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S.L. 2020-83

- D.A. has the burden to prove substantial similarity
 - Court may review copies of out-of-state law and “compare the elements” to the purportedly similar N.C. offense
- If substantially similar, petitioner must register
- If not, no registration required

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STATE OF NORTH CAROLINA		File No. AOC-CR-259
_____ County		In The General Court Of Justice Superior Court Division
IN THE MATTER OF <small>Name And Current Mailing Address Of Petitioner</small>		PETITION AND ORDER FOR JUDICIAL DETERMINATION OF SEX OFFENDER REGISTRATION REQUIREMENT <small>G.S. 14-208.12B</small>

<small>Petitioner's Telephone No.</small>		<small>Name And Address Of Petitioner's Attorney</small>
<small>Race</small>	<small>Sex</small>	<small>Date Of Birth</small>
<small>Sex Offender And Public Protection Registry No. (if applicable)</small>		<small>Attorney's Telephone No.</small>
I. PETITION		
NOTE TO PETITIONER: <i>File this petition with the clerk of superior court in the county in which you currently reside.</i>		
The petitioner named above hereby moves for a judicial determination as to whether the petitioner is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes and, in support of this petition, states the following:		

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In re Pellicciotti

- Defendant convicted of Pennsylvania offense: “Sexual intercourse with a complainant under the age of 16 years and that person is four or more years older than the complainant”
- Trial court found that crime substantially similar to Statutory Rape of a Person 15 or younger, G.S. 14-27.25(a) (defendant at least 6 years older) and ordered registration
- Defendant appealed, arguing the offense was more similar to the “more than 4, less than 6” years older version in G.S. 14-27.25(b), which does not require registration

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In re Pellicciotti

- Court of Appeals:
 - Trial court order affirmed
 - Under State v. Graham, 379 N.C. 75 (2021), crimes need only be “similar” not “identical”
 - Unlike comparable prior record level cases, rule of lenity does not apply here

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Satellite-Based Monitoring

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Satellite-Based Monitoring (SBM)

- State v. Grady (Grady III)
 - SBM is facially unconstitutional for unsupervised recidivists
- State v. Hilton:
 - SBM is reasonable as applied to an aggravated offender
 - Studies show SBM is effective, and the State no longer needs to establish that on a case-by-case basis

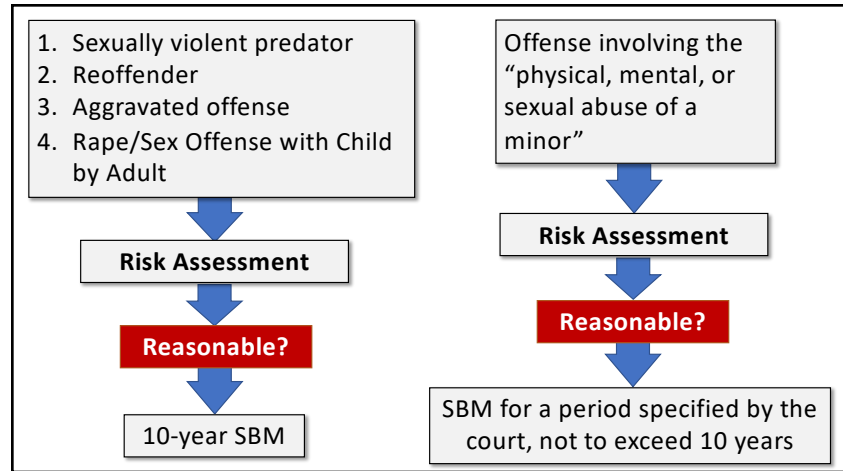
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Satellite-Based Monitoring (SBM)

- 2021 statutory amendments:
 - Recidivist category replaced by “Reoffender”
 - No more lifetime SBM; now capped at 10 years
 - Individualized risk assessment in every case (Static 99)
 - Procedure for judicial review (replaces Parole Commission)

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Reasonableness after *Hilton*

Nature of the privacy interest intruded upon

- Diminished by virtue of registration



Importance of the State interest

- Protect the public, especially children, from future crimes
- Studies show it is effective

Character of the intrusion

- Not physically intrusive
- “Small, unobtrusive device”

REASONABLE

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Recent Cases

- State v. Strudwick (N.C., 2021)
 - SBM reasonable for defendant convicted of aggravated offense (first-degree rape), despite 30-year sentence
 - Assess reasonableness now (at sentencing)
 - Future consideration permissible through Rule 60 or subsequent judicial review

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Recent Cases

- State v. Carter (N.C. Ct. App., 2022)
 - SBM reasonable for repeat offender convicted of first-degree statutory sexual offense
 - Trial court erred by ordering a second reasonableness hearing upon defendants release from prison
 - Use Rule 60 or new judicial review process

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Recent Cases

- State v. Anthony
 - SBM reasonable for aggravated offense under revised law
- State v. Gordon
 - SBM reasonable for aggravated offense
 - No need for the State to prove efficacy on an individualized basis in light of legislative and Supreme Court findings (Hilton)
 - State does not have to demonstrate future reasonableness

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Legislation

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S.L. 2022-58

- Post-release supervision search condition amended

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S.L. 2022-58

- “Nothing . . . specifically authorized the [Parole] Commission to impose a condition of PRS requiring Defendant to submit to *warrantless* searches of his *premises*.”

State v. McCants, 275 N.C. App. 801 (2020)

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S.L. 2022-58

- **Revised G.S. 15A-1368.4(e)**: Submit at reasonable times to warrantless searches ~~of the supervisee's person~~ by a post-release supervision officer of the supervisee's person and of the supervisee's vehicle and premises while the supervisee is present for purposes reasonably related to the post-release supervision.

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