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## Foreword

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**STATE V. BOWDEN:  
INTERPRETING THE FAIR SENTENCING ACT**

**FOREWORD**

The following case notes explore the controversy surrounding the North Carolina Court of Appeals' recent decision in *State v. Bowden*.<sup>1</sup> The Court of Appeals in *Bowden* opined that the plain language of the Fair Sentencing Act of 1981<sup>2</sup> ("the Act") defined a term of life in prison as 80 years for "all purposes."<sup>3</sup> The Court of Appeals directed the trial court to determine Bowden's eligibility for release after applying credits earned under the terms of the Act.<sup>4</sup> The trial court later held an evidentiary hearing and the North Carolina Department of Correction provided evidence of Bowden's earned credits.<sup>5</sup> Contrary to the Court of Appeals' opinion above, the trial court ultimately applied Bowden's credits for parole purposes only and denied his release.<sup>6</sup> The decision in *Bowden* has caused uproar from interested groups statewide, including politicians, attorneys, crime victims and their advocates and the public as a whole.

*Bowden* and the related cases following it will have an impact on the custody status over 40 inmates.<sup>7</sup> With that said, it is imperative that the reader of the following case notes is cognizant of the "big picture." Of particular importance is the case of *Brown v. North Carolina Dep't. of Correction*.<sup>8</sup> *Brown* is a post-*Bowden* decision out of Wake County, North Carolina. In *Brown*, Superior Court Judge Ripley Rand held that two inmates whose sentences were made subject to the Fair Sentencing Act of 1981 should be immediately released.<sup>9</sup> Governor Beverly Purdue immediately stepped in to ensure that those inmates remained incarcerated and directed that Attorney General

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1. *State v. Bowden*, No. COA08-372 slip op. (N.C. Ct. App. Nov. 4, 2008).
  2. N.C. GEN. STAT. § 14-2 repealed by Laws 1993, ch. 538, § 2.1).
  3. *Bowden*, No. COA08-372, slip op. at 7.
  4. *Id.*
  5. *Id.* at 2-3.
  6. *Id.* at 3.
  7. Mandy Locke, *E-mail shows state planned to release lifers*, THE NEWS & OBSERVER, Feb. 2, 2010, available at <http://www.newsobserver.com/politics/story/316428.html>.
  8. *Brown v. North Carolina Dep't of Corr.*, No. 09CVS23746, slip op. (N.C. Super. Ct. Dec. 14, 2009).
  9. *Brown*, No. 09CVS23746, slip op. at 19.

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Roy Cooper prepare the State's case to protest the inmates' release.<sup>10</sup> Oral arguments in *Brown* are calendared to begin on February 16, 2010 before the North Carolina Supreme Court.<sup>11</sup> At the time this foreword and the following case notes were submitted for publication, the North Carolina Supreme Court ("the Court") had not yet heard or rendered a decision in *Brown*. Therefore, readers are encouraged to read the case notes, research the Court's decision and compare the authors' analyses with the Court's final interpretation of the law as it applies to the affected inmates.

DEANNA COLEMAN, *Executive Editor*

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10. Mandy Locke, *E-mail shows state planned to release lifers*, THE NEWS & OBSERVER, Feb. 2, 2010, available at <http://www.newsobserver.com/politics/story/316428.html>.

11. See <http://www.ncappellatecourts.org/cgi-bin/ds/getCal.pl?date=2010-02-15&court=1>