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THE FAIR SENTENCING ACT: EXPLORING SOLUTIONS TO UNINTENDED INTERPRETATIONS OF LAW

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Murderers and other violent criminals who were convicted under the North Carolina Fair Sentencing Act (FSA or the Act) could be entitled to immediate release. This means that violent criminals would be free to mingle amongst law-abiding citizens without being subject to a parole board, a parole officer or any type of formal supervision. The FSA applies to offenses committed from 1981 through 1994.¹ However, the Act was repealed in 1994 and is no longer current law.²

State v. Bowden brought the implications of the Act to the judiciary forefront.³ Bowden contended his sentence was cut in half as a result of the sentencing credits received under the 1981 Retroactive Provision of the Act, thus entitling him to immediate release from prison.

This note focuses on the *Bowden* case and the relatively limited history of sentence reduction credits associated with the FSA. The facts and holding of the case are explained in detail followed by an analysis of the options available to the court. Finally, the note considers the impact of the various possible outcomes on society and whether or not the Governor of North Carolina has the authority to prevent the release of inmates sentenced under the Act.

THE CASE

In 1975, Bobby E. Bowden was convicted of two counts of first-degree murder and sentenced to death.⁴ In 1976, the North Carolina Supreme Court vacated Bowden's death sentence and remanded so that life sentences could be imposed.⁵ Subsequently, the defendant was given two life sentences, which are presumed to run concur-

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1. *Price v. Beck*, 153 N.C. App. 763, 766, 571 S.E.2d 247, 250 (2002).

2. N.C. GEN. STAT. § 15A-1340.1 (1993) (repealed 1994).

3. *State v. Bowden*, No. COA08-372. (N.C. Ct. App. Nov. 4, 2008), 668 S.E.2d 107 (2008).

4. *Id.* at 597, 668 S.E.2d at 108.

5. *State v. Bowden*, 290 N.C. 702, 717, 228 S.E.2d 414, 424 (1976).

rently.⁶ In 2005, Bowden filed a Petition for the Issuance of a Writ of *Habeas Corpus ad Subjiciendum*. Bowden argued that he should have received good time credit and good conduct credit as required by the 1981 Retroactive Provision of the Fair Sentencing Act⁷. He contended that due to the number of credits he had accumulated, his sentence would be cut in half, thereby reducing his eighty-year life sentence to forty years, and entitling him to immediate release.⁸ In 2006, the trial court denied Bowden's petition.⁹

Next, Bowden appealed to the North Carolina Court of Appeals, where the matter was considered a motion for appropriate relief.¹⁰ The Court vacated the trial court's order and ordered the lower court to conduct an evidentiary hearing to resolve issues of fact raised in Bowden's petition.¹¹ After conducting an evidentiary hearing, the trial court found that all of Bowden's good time, merit time, and gain time credits had been applied to his sentence.¹² However, the Department of Correction later retroactively changed the status of Bowden's sentence reduction credits from "applied" to "pending".¹³ Thus, the trial court issued an order denying Bowden's claim for relief.¹⁴ The trial court held that, "N.C. Gen. Stat. § 14-2 (1974) only requires the Department of Correction to treat [Bowden's] life sentence as a term of eighty years for purposes of parole eligibility."¹⁵

Again, Bowden appealed this decision contending that N.C. Gen. Stat. § 14-2 (1974) grants him a statutory right to have his life sentence treated as an eighty-year sentence for all purposes, including determination of his unconditional release date.¹⁶ The Court of Appeals agreed with Bowden and held as such.¹⁷ The Court's rationale was based on the plain language of the statute in providing, "life imprisonment shall be considered as a sentence of imprisonment for a term of eighty years in the State's prison without limitation or restriction."¹⁸ There was no indication within the wording of the statute which suggested that the eighty-year life sentence only pertained to parole eligibility.¹⁹ The Court held that "[Bowden's] life sentence is considered as

6. *Jernigan v. State*, 279 N.C. 556, 563, 184 S.E.2d 259, 265 (1971).

7. *Bowden* at 597, 668 S.E.2d at 108.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Bowden*, at 599, 668 S.E.2d at 108-09.

17. *Id.* at 599, 668 S.E.2d at 109.

18. *Id.* at 601, 668 S.E.2d at 110.

19. *Id.* at 601, 668 S.E.2d at 110.

an eighty-year sentence for all purposes.”²⁰ The Court then reversed the trial court’s order and remanded for a hearing to determine how many sentence reduction credits Bowden is eligible to receive and how those credits are to be applied.²¹ Subsequently, Bowden appealed to the North Carolina Supreme Court, which held that discretionary review was improvidently allowed.²²

BACKGROUND

The Fair Sentencing Act of North Carolina (FSA or the Act) applies to offenses committed from 1981 through 1994.²³ Notably, Bowden’s 1975 convictions do not fall within the specified timeframe. However, the Act included a retroactive provision that covered crimes committed before 1981.²⁴ This provision provided as follows:

(b) With respect to prisoners who are serving prison or jail terms not subject to Article 81A of Chapter 15A of the General Statutes and prisoners serving a life term for a Class C felony, the Secretary of Correction, *may*, in his discretion, issue regulations regarding deductions of time from the terms of such prisoners for good behavior, meritorious conduct, work or study, participation in rehabilitation programs, and the like.

(Emphasis added) N.C.G.S. § 148-13(b). In essence, the retroactive provision affected Class C felony sentences imposed prior to 1981.²⁵ Class C felonies may be punishable by life imprisonment.²⁶ For prisoners convicted of a Class A or B felony, a distinctly different subsection applied which *mandated* sentence reduction credits,

(b) A prisoner committed to the Department of Correction or a jail to serve a sentence for a felony *shall* receive credit for good behavior at the rate of one day deducted from his prison or jail term for each day he spends in custody without a major infraction of prisoner conduct rules.

(Emphasis added) N.C.G.S. § 15A-1340.7(b). For well-behaved Class A and B felony prisoners, this provision could cut his or her sentence in half.²⁷ Prisoners sentenced under the FSA are “eligible for release on parole only upon the completion of the service of th[e] minimum term or one fifth of the maximum penalty allowed by law. . . whichever

20. *Id.*

21. *Id.*

22. *State v. Bowden*, No. 514PA08, slip op. (N.C. Oct. 9, 2009).

23. See N.C. GEN. STAT. §§ 15A-1340.1-1340.7 (1993) (repealed 1994).

24. N.C. GEN. STAT. § 148-13(b) (1993) (repealed 1995).

25. § 148.

26. *Teasley v. Beck*, 155 N.C. App. 282, 286, 574 S.E.2d 137, 139 (2002).

27. *Id.* at 287, 574 S.E.2d at 140.

is less, less any credit.”²⁸ However, for prisoners serving a life sentence for a Class C felony (like Bowden) sentence reduction credits are not mandatory, nor guaranteed.²⁹

Supplementing this legislation are regulations from the North Carolina Administrative Code.³⁰ According to the Code, “sentence reduction credits” are “[t]ime credits applied to an inmate’s sentence that reduce the amount of time to be served.”³¹ This includes good time, gain time, and meritorious time.³² Good time is “credit for good behavior at the rate of one day deducted for each day he spends in custody without a major infraction of prison conduct rules.”³³ Gain time is “credit for participation in work and program activities,”³⁴ and meritorious time is credit given “for acts of exemplary conduct or work under extraordinary conditions.”³⁵

Under North Carolina law, the Director of Prisons is vested with the authority to determine the allowance and forfeiture of gain time at his sole discretion.³⁶ Gain time and good time credit determinations have been deemed to be strictly administrative decisions and not within the judicial realm.³⁷ Therefore, giving or withholding these types of sentence reduction credits is not a matter in which courts are authorized to deal.³⁸ The Court of Appeals has previously held that sentence reduction regulations of the Department of Correction do not apply to inmates serving Class C life sentences for purposes of determining parole eligibility.³⁹

The FSA was subsequently replaced with the Structured Sentencing Act, which is effective on or after October 1, 1994.⁴⁰ Nevertheless, the FSA comes into play periodically for defendants like Bowden. The facts in *Bowden* present a truly novel issue for the courts regarding the number of credits to which he is entitled, and whether they should be applied to his sentence.

28. N.C. GEN. STAT. § 15A-1355(c) (allocating credit that can be given to prisoners with Class C felonies).

29. N.C. GEN. STAT. § 148-13(b).

30. Teasley, 155 N.C. App. at 287, 574 S.E.2d 137 at 140.

31. *Id.*

32. *Id.*

33. 5 N.C. ADMIN. CODE 2B.0110(1)(repealed 1995).

34. 5 N.C. ADMIN. CODE 2B.0110(2)(repealed 1995).

35. 5 N.C. ADMIN. CODE 2B.0110(3)(repealed 1995).

36. Teasley v. Beck, 155 N.C. App. 282, 287, 574 S.E.2d 137, 140-41 (2002).

37. State v. Stone, 71 N.C. App. 417, 419, 322 S.E.2d 413, 415 (1984). See State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

38. State v. McCall, 273 N.C. 135, 136, 159 S.E.2d 316,317 (1968). See also N.C. GEN. STAT. § 148-13.

39. Teasley, 155 N.C. App. at 292, 574 S.E.2d at 143.

40. *Id.* at 285, 574 S.E.2d at 139.

ANALYSIS

On remand, if the trial court decides to apply all of Bowden's sentence reduction credits, he could be entitled to immediate release with no parole supervision. Additionally, a domino effect would occur amongst prisoners in legal situations similar to Bowden's. Hence, prisoners from all over the state would begin advocating for and insisting on being released from prison with no strings attached.

The Court noted in the opinion that "for reasons unclear to this Court, the Department of Correction later retroactively changed the status of [Bowden's] sentence reduction credits from "applied" to "pending.""⁴¹Based on the current law, no reason need be given to the judiciary because the decision of whether to apply or not to apply sentence reduction credits lies squarely in the domain of the Department of Correction.⁴² Therefore, it is quite possible that upon review, the Department of Correction may determine that the change in Bowden's sentence reduction credit status from "applied" back to "pending" will remain the same.⁴³ If this is the case, no reduction credits would be applied and Bowden would be forced to serve the remainder of his eighty-year life sentence.⁴⁴

More importantly, from a public policy perspective, it would be in society's best interests for the Department of Correction not to allow Bowden (or any other felons in a similar situation) to accumulate enough credits to obtain "immediate release" under the FSA. If so, Bowden, along with many other inmates, will be allowed to walk the streets with no supervision and no "big brother" system to ensure that they make a smooth transition back into mainstream America.

The problem lies strictly with the FSA and its wording. The Act provided that a prisoner shall receive one credit for good behavior for each day he spends in custody without a major infraction.⁴⁵ However, the word "major" is not defined anywhere within the provision.⁴⁶ Yet, the language states that it is mandatory that the prisoner receive this credit (as indicated by the word "shall"). How can the Director of Prisons be forced to allocate credits to prisoners that will result in early release when there are no criteria for determining whether the

41. *State v. Bowden*, 193 N.C. App. 597, 598, 668 S.E.2d 107, 108 (2008).

42. *Stone*, 71 N.C. App. at 419, 322 S.E.2d at 415.

43. It is important to note that, if this were to occur, it would not be considered *ex post* legislation because Bowden's sentence would not be increased. Bowden would simply be required to serve out the remainder of his initial sentence.

44. "A sentence of life imprisonment shall be considered as a sentence of imprisonment for a term of 80 years in the State's prison." N.C. GEN. STAT. § 14-2, *See also* *Bowden*, 193 N.C. App. at 599, 668 S.E.2d at 109.

45. *Teasley* at 286, 574 S.E.2d at 140.

46. § 15A-1340.7 *repealed* by Laws 1993, ch.538, § 14.

prisoner met the applicable standard? Surely, this was one of the reasons the FSA is no longer in existence.⁴⁷

The only way to find a solution to the problems that the ambiguities in the FSA provisions have left us with is to determine whether or not it was the intention of the legislature to vest within the Director of Prisons the power to drastically reduce the sentences of prisoners. It is my opinion that this was not the intention of the legislature and, therefore, is one of the main reasons the Act was repealed. Furthermore, an assessment must be made as to whether the legislature intended for the FSA to cut the sentences of numerous inmates in half, by making it seemingly mandatory for each person to be given a sentence reduction credit each day. It seems preposterous that the ordinary, reasonable person would believe that such an intention existed. Here, we have a case in which the best interests of society and the most rational interpretation of the provision should prevail against “a possible” interpretation of the provision. More specifically, the Department of Correction should keep the status of Bowden’s credits and others like him in the “pending” category and not “apply” this inordinate amount of credits to his sentence. This should be coupled with a clear articulation by the Court that it appears to not have been within the vision of the legislature to place such mighty authority in the hands of the Director of Prisons.

Notably, North Carolina Governor Beverly Perdue is making every effort to block the release of Bowden and other similarly situated persons. However, the truth of the matter is that the power to make such a change does not rest with the Governor, but instead it is the legislature and the judiciary who must work together, yet independently, to achieve such an outcome.

CONCLUSION

Given the novelty of the issue, the trial court is going to have a difficult time deciding how to apply sentence reduction credits and the number of credits an inmate convicted under the FSA is entitled to receive. The key to making such a decision turns on the judiciary’s analysis of the legislative intent supporting the FSA at the time of its enactment. It is my opinion that the legislature did not intend for the Director of Prisons to have unquestionable authority to single-handedly reduce the sentences of prisoners. Equally as far-fetched, is the idea that such authority would be mandatory. This type of supreme power vested in one individual would undermine the judicial

47. The FSA was repealed and replaced by the Structured Sentencing Act. See N.C. GEN. STAT. § 14-1.1 (1986) repealed by Laws 1993, ch. 538, § 2.

sentencing process and set the stage for abuse of power. Given these considerations, coupled with societal and public policy concerns, the court will likely find that the legislature did not intend for the FSA to be interpreted as Bowden desires; and that the inordinate amount of sentence reduction credits allegedly received by Bowden should not be applied to his sentence.

Although one person has brought this issue to the forefront, the ultimate decision will impact many. The decision will affect all of the other felons who were sentenced under this Act, and all of the people those felons will interact with if allowed to be released from prison with no supervision. The release of prisoners from incarceration should not be an accidental or unexpected occurrence: it should be a deliberate and planned result, given at the appropriate time, for those who have paid his or her debt to society.