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BLURRING THE LINES
HOW STATE V. BOWDEN ACCURATELY
INTERPRETS THE MEANING
OF LIFE SENTENCE

SIDNEY MINTER*

INTRODUCTION

What is the meaning of life imprisonment? Does it mean that a prisoner should spend their entire *natural life* behind bars? Is life imprisonment determined by some set term of years? If so, how is the number calculated? This topic has been debated over many years in the homes of citizens, by attorneys inside various courtrooms, by legislators in the general assembly, and most recently by the governor of North Carolina, Beverly Perdue (Perdue). As much as the topic has been debated, the answer to the seemingly complex question is rather simple. The Legislature enacted a statute in 1974 that clearly defined “life imprisonment.”¹ N.C. Gen. Stat. § 14-2, provided the following:

Every person who shall be convicted of any felony for which no specific punishment is prescribed by statute shall be punished by fine, by imprisonment for a term not exceeding 10 years, or by both, in the discretion of the court. *A sentence of life imprisonment shall be considered as a sentence of imprisonment for a term of 80 years in the State’s prison.*²(emphasis added)

Before the recent *Bowden*³ decision, neither the North Carolina Court of Appeals nor the North Carolina Supreme Court (the Court) had dealt with the issue of life imprisonment in the context of a prisoner being released from prison based on good behavior credits. Mainly, each court dealt with the issue in the context of whether a prisoner sentenced to life would be eligible for parole consideration.⁴ In *Bow-*

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1. N.C. GEN. STAT. § 14-2 (1974) *repealed by* Laws 1993, ch. 538, § 2.1.

2. N.C. GEN. STAT. § 14-2 (1974) *repealed by* Laws 1993, ch. 538, § 2.1.

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

4. Jack Betts, *Warden Perdue’s Prisoners*, CHARLOTTE OBSERVER, Oct. 25, 2009, available at <http://www.charlotteobserver.com/343/story/1018020.html>.

den, the defendant claimed that N.C. Gen. Stat. § 14-2 “grant[ed] him the statutory right to have his life sentence treated as an 80-year sentence for all purposes, including the determination of his unconditional release date.”⁵ The State of North Carolina (State) argued that a life sentence cannot be determined by a term of years; it opined that a person must be imprisoned for their entire natural life instead.⁶ The court agreed with Bobby Bowden (Bowden) and ruled that his life sentence should be considered as an 80-year sentence for all purposes.⁷

The following note will focus on the effect the *Bowden* decision will have on North Carolina state prisoners who committed offenses between April 8, 1974 and June 30, 1978.⁸ Secondly, the note will discuss a brief history of N.C. Gen. Stat. § 14-2 and how it has been applied by the courts of North Carolina and the North Carolina Department of Correction (the NCDOC). Finally, the note will briefly discuss the constitutional underpinnings implicit in the *Bowden* decision.

THE CASE

The current case arises from an appeal of a murder conviction from December 20, 1975.⁹ At the trial court, Bowden was convicted of two counts of first degree murder and later sentenced to death.¹⁰ Bowden shot and killed two individuals while robbing a convenience store.¹¹ Following the shooting, Bowden told his girlfriend that he had shot someone who held a gun on his partner.¹² He told her that he planned to go to New Orleans to dispose of the car used in the shooting.¹³ The following afternoon, Bowden saw his girlfriend again and told her more details about the shooting.¹⁴ Shortly after this visit, he was arrested and never made it to New Orleans.¹⁵

On appeal, Bowden challenged an order denying his motion for appropriate relief.¹⁶ On October 5, 1976, the Court vacated Defendant’s death sentences and remanded so that a life sentence could be im-

5. Bowden at 599, 668 S.E.2d at 109.

6. *Id.*

7. *Id.* at 601, 669 S.E. 2d at 110.

8. *Id.* at 599, 669 S.E.2d at 109.

9. See *State v. Bowden*, 290 N.C. 702, 228 S.E.2d 414 (1976). See also *Bowden*, 197 N.C. App. 597, 668 S.E.2d 107 (2008).

10. *State v. Bowden*, 290 N.C. 702, 704, 228 S.E.2d 414, 416 (1976).

11. *Id.* at 705, 228 S.E.2d at 417.

12. *Id.* at 707, 228 S.E.2d at 418.

13. *Id.* at 707, 228 S.E.2d at 418.

14. *Id.* at 707, 228 S.E.2d at 418.

15. *Id.* at 707, 228 S.E.2d at 418.

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

posed.¹⁷ On October 26, 1976, Defendant was given two life sentences, and the sentences were presumed to run concurrently.¹⁸ Defendant has been incarcerated since December 20, 1975 and became eligible for parole in 1987.¹⁹ On December 20, 2005, Defendant filed a Petition for a *Writ of Habeas Corpus ad Sudiendum*, arguing that, based on his sentence reduction credits, he was eligible for immediate release from his incarceration.²⁰ Defendant relied on the previously mentioned statute, §14-2, which provided that a life sentence should be considered as imprisonment for 80 years.²¹ Defendant also relied on the 1981 Retroactive Provision of the Fair Sentencing Act (the Act), which effectively reduced his 80-year sentence to 40 years.²² Defendant also argued that he had accumulated 2,500 days of gain time credits based on his good conduct while he was incarcerated.²³ On January 25, 2006, the trial court denied his petition.²⁴

The North Carolina Court of Appeals vacated the trial court's order and remanded it for "an evidentiary hearing pursuant to N.C. Gen. Stat. § 15A-14-20."²⁵ The trial court conducted the hearing on August 27, 2007 and Defendant provided detailed records from the NCDOC regarding his sentence reduction credits.²⁶ Sometime after the hearing, the NCDOC retroactively changed Defendant's credits from "applied" to "pending."²⁷ The NCDOC never gave an explanation as to why it changed Bowden's credits.²⁸ On August 27, 2007, the trial court denied Defendant's claim for relief and concluded that N.C. Gen. Stat. § 14-2 only requires the NCDOC to treat Bowden's life sentence as a term for years for purposes of parole eligibility.²⁹ In short, the trial court refused to allow Bowden to apply credits he had earned while he was incarcerated towards his outright release from prison. The North Carolina Court of Appeals reversed this ruling and remanded to the trial court to determine how many credits Bowden had earned and how those credits should be applied.³⁰ On October 9, 2009, the Court issued a decision that discretionary review of the case

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

18. *Id.* at 597-98, 668 S.E.2d at 108.

19. *Id.* at 598, 668 S.E.2d at 108.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

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

was improvidently granted.³¹ In accordance with the North Carolina Court of Appeals ruling, Defendant's credits should be applied to his life sentence; therefore, he should be eligible for immediate release.

BACKGROUND

N.C. Gen. Stat. § 14-2 provided that “[a] sentence of life imprisonment shall be considered as a sentence of imprisonment for *a term or 80 years in the State’s prison.*”³²(emphasis added) The statute has since been repealed, and applies retroactively to crimes committed between April 8, 1974 and June 30, 1978.³³ Bowden’s crimes were committed in August 1975; therefore, the statute should have been retroactively applied to his crimes.³⁴ On appeal, the State argued that the statute only applied when determining a defendant’s eligibility for parole.³⁵ The State also asserted that the statute was ambiguous on its face.³⁶ The State believed that life imprisonment meant that a person must be imprisoned for the term of their natural life.³⁷ The State also asserted that § 14-2 must be read along with N.C. Gen. Stat. § 148-58 which provides, in pertinent part, the following:

All prisoners shall be eligible to have their cases considered for parole when they have served one fourth of their sentence, if their sentence is determinate, and a fourth of their minimum sentence, if their sentence is indeterminate; provided, that any prisoner serving sentence for life shall be eligible for such consideration when he has served 20 years of his sentence.³⁸

The Court disagreed with the State and held that N.C. Gen. Stat. § 14-2 was not ambiguous and clearly defined a life sentence as 80 years for all purposes.³⁹

Bowden argued that his life sentence should be considered as an 80 year sentence for all purposes.⁴⁰ Both the North Carolina Court of Appeals and the Court agreed with Bowden and cited several cases where our courts used § 14-2 to define a life sentence for purposes other than parole eligibility.⁴¹

31. State v. Bowden, 363 N.C. 621, 683 S.E.2d 208 (2009).

32. Act of Apr. 8, 1974, ch. 1201, sec. 6, §14-2, 1973 N.C. Sess. Laws 323-324 (repealed 1977).

33. Bowden, 193 N.C. App. at 599, 668 S.E.2d at 109 n.1.

34. State v. Bowden, 290 N.C. 702, 705, 228 S.E.2d 414, 416 (1976).

35. Bowden at 599, 668 S.E.2d at 109.

36. *Id.*

37. *Id.*

38. *Id.* at 599-600, 668 S.E.2d at 109.

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

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

41. *Id.* at 600, 668 S.E.2d at 109-10.

Since 1955, it has been a policy of the NCDOC to apply the good and gain time credits, regarding life sentences, to earning prison privileges such as more favorable custody grades, or becoming parole eligible.⁴² The Secretary of Correction has the discretion to allow the credits to be applied to other purposes.⁴³ However, the current Secretary of Correction, Alvin Keller Jr. (the Secretary) has declined to retroactively alter the award of good behavior credits based on the procedures of past Secretaries.⁴⁴ He has decided to award good behavior credits for prisoners with life sentences, but only for the limited purpose of earning a more favorable custody grade or becoming eligible for parole.⁴⁵ Our Courts have interpreted § 14-2 to define “life” as 80 years. However, the Secretary, relying on past Secretaries of Correction, insists on applying the 80 year life term only in the narrow context of parole eligibility and favorable custody grades.

After the *Bowden* decision, the NCDOC should comply with the Court’s interpretation of § 14-2. If the NCDOC adheres to the *Bowden* decision, a number of events will occur. First, Bowden would be immediately released from prison. Secondly, the courts could avoid similar interpretation and application issues in the future because *Bowden* would establish a precedent that must be followed. Finally, and most importantly, uniformity between the courts and the NCDOC would strengthen the Court’s decision. This final act would also help to uphold the integrity of the North Carolina Constitution (the Constitution).

ANALYSIS

Our State must follow the *Bowden* decision and allow Bowden and other similarly situated prisoners to use their credits outside the context of parole eligibility. According to state records, over 120 people serving life sentences could qualify for early release under the Court’s ruling.⁴⁶ These inmates must be allowed to use their good behavior credits towards an outright release from prison. For inmates that committed crimes between April 8, 1974 and June 30, 1978, N.C. Gen. Stat. § 14-2 applies retroactively to their crimes.

Thus, the prisoners are eligible for outright release. Once the law is codified in statutes, it must be followed and it cannot be avoided so that a more favorable public outcome can be reached. According to

42. Memorandum from Alvin W. Keller, Jr., Sec’y of Corr., N.C. Dep’t of Corr., to prison officials and directors (Nov. 17, 2009).

43. *Id.* at 2.

44. *Id.*

45. *Id.*

46. Bruce Mildwurf, *Pending inmate releases could prompt legislative session*, WRAL, Nov. 19, 2009, <http://www.wral.com/news/local/politics/story/6357370/>.

Tom Bennett, executive director of the North Carolina Victim Assistance Network, “many of their victims are frightened, angry and bitter.”⁴⁷ The nature of the crimes of the individuals set to be released from prison is very troubling. However, the feelings and emotions of the general public cannot be used to overrule the laws of our state. At the time of their crimes, N.C. Gen. Stat. § 14-2 was the law of the State.

The *Bowden* decision has drawn the attention of the State’s top executive official, Perdue. Perdue has taken a stance that the prisoners should not be released because many of them would not have any post release supervision.⁴⁸ Notions of what is regarded as “right” or “wrong” or opinions and feelings of citizens are not the cornerstones of our judicial system; instead, justice is the focus. The legislative enactment of §14-2 clarified the term “life sentence.”⁴⁹ Furthermore, the Court interpreted the statute through case law to apply in circumstances other than determining parole eligibility of prisoners.⁵⁰ In short, after *Bowden*, the statute may be applied in situations leading to the outright release of criminals sentenced to life imprisonment.

The Constitution protects individuals from incarceration once their sentence requirements have been fulfilled. Sympathy for the victim’s of *Bowden*’s crimes may resonate in the hearts of many citizens. However, citizens do not have the authority to determine what constitutes fulfillment of a sentence. If the State does not follow the *Bowden* decision, *Bowden* will be forced to remain in prison even after he has fulfilled the requirements of his sentence. This would clearly be a violation of his constitutional rights.

Prior to *Bowden*, the NCDOC and the Court had not applied N.C. Gen. Stat. § 14-2 in the same manner. Before the *Bowden* ruling, the Court applied § 14-2 to all purposes related to life sentences.⁵¹ However, since 1955, the Secretary has the authority to establish rules and regulations governing the state prison system.⁵² More specifically, he has the authority to establish rules or policies as to grades of prisoners, rewards and privileges.⁵³ The current Secretary has taken the po-

47. Sloan Heffernan, *Appeals court halts release of two “life” inmates*, WRAL, Dec. 14, 2009, <http://www.wral.com/news/local/story/6611093/>.

48. Martha Waggoner, *Gov. Perdue Won’t free 20 Violent Criminals*, FOXCHARLOTTE, Oct. 22, 2009, http://www.foxcharlotte.com/dpp/news/gov_perdue_wont_free_violent_criminals_102209.

49. N.C. GEN. STAT. § 14-2 (repealed 1977).

50. *State v. Bowden*, No. COA08-372, slip op. at 6 (N.C. Ct. App. Nov. 4, 2008); *See, e.g., State v. Williams*, 295 N.C. 655, 679, 249 S.E.2d 709, 713 (1978); *See also State v. Richardson*, 295 N.C.318, 245 S.E.2d 754 (1978).

51. *Bowden*, No. COA08-372, slip op. at 6.

52. Memorandum from Alvin W. Keller, Jr., Sec’y of Corr., N.C. Dep’t of Corr., to prison officials and directors (Nov. 17, 2009).

53. *Id.* at 2.

sition that good and gain time credits should be limited to earning prison privileges, such as more favorable custody grades or parole eligibility.⁵⁴ He said, “I have determined that such life prisoners will not receive good behavior credits for purposes of reducing the amount of time required to be served before unconditional release from prison.”⁵⁵ It is clear that the NCDOC has used its discretion for a number of years in its application of N.C. Gen. Stat. § 14-2. Now that the Court has ruled, the Secretary’s discretion must be removed. It should be replaced with a new mandatory protocol in compliance with the *Bowden* decision.

Clearly, the NCDOC and our Courts are not applying the law the same way to prisoners. The Court has clearly interpreted that 80 years means life for all purposes. On the other hand, the NCDOC has applied the 80 year life definition only to matters concerning parole eligibility. This creates a serious problem in the application of the law in this state. Essentially, it gives the NCDOC the authority to interpret the laws that are enacted by our Legislature. The interpretation of our law is a function of the judiciary. Now that the Court has interpreted the statute, the NCDOC must comply with it. Otherwise, the state risks dilution of the powers of the judicial branch. More importantly, the dilution of power can lead to different results based on identical facts. The NCDOC must comply with the *Bowden* decision and allow worthy prisoners the opportunity to be released from prison.

“The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.”⁵⁶ The Legislature has defined the term of life imprisonment, defined crimes and set punishment for those crimes.⁵⁷ The highest court of the state has interpreted the meaning of N.C. Gen. Stat. § 14-2. The executive branch executes the laws of our state. The blending or overlapping of the branches of government is inevitable. However, when one branch attempts to usurp the powers of another branch, an infringement on the separation of powers arises.⁵⁸ Here, it appears that Perdue is attempting to usurp the power of interpretation reserved for the judicial branch.

Perdue has spoken out against the *Bowden* ruling. She has stated that she was “appalled that the state of North Carolina is being forced to release prisoners who have committed the most heinous crimes,

54. *Id.*

55. *Id.*

56. N.C. CONST. art. I, § 6.

57. *Bowden*, No. COA08-372, slip op. at 7.

58. 16A AM. JUR. 2D Constitutional Law § 246 (2009).

without any review of their cases.”⁵⁹ Perdue stated that, “This is not how government and the courts are supposed to work for the people of North Carolina. This is wrong; I’ve been in politics a long time, and I have never been this disgusted with the system in my life.”⁶⁰ Perdue’s words send a clear message that she does not agree with the Court’s decision in the matter. Undoubtedly, many citizens of this state agree with Perdue. However, the law has been enacted and interpreted; therefore, the opinion of Perdue should not stop the prisoners from receiving an outright release. Perdue’s comments regarding the *Bowden* decision does not further any goals of our state government. If the executive branch is allowed to circumvent and overrule the authority of the judicial branch, then I ask, what is the purpose of having a judicial system? The drafters of our state constitution created a means for challenging legislation. One such way would require Perdue to call a special session of the General Assembly to address the issue.⁶¹ However, N.C. Gen. Stat. § 14-2 has been repealed and is no longer the law of the state. Therefore, I’m not sure how a special session could resolve Perdue’s problem with the *Bowden* ruling.

Many historical court decisions are controversial. In *Roe v. Wade*, the United States Supreme Court ruled on the controversial topic of abortion.⁶² In this case, I’m sure that every citizen of the United States did not agree with the decision that was rendered. However, it would have been an intrusion upon the power of the judiciary, if the President disregarded the ruling simply because he did not agree with it. Perdue and her supporters must challenge the *Bowden* decision using conventional methods. Meanwhile, the prisoners that are eligible for release must be released immediately.

CONCLUSION

The *Bowden* decision is a landmark decision in the State of North Carolina. It established that N.C. Gen. Stat. § 14-2 should be applied in all crimes committed during the years of April 8, 1974 and June 30, 1978⁶³. The decision should be followed because it is now the law of the land. As a result of the ruling, many prisoners should be eligible for immediate release from their incarceration.⁶⁴ The precedent the

59. Jack Betts, *Warden Perdue’s Prisoners*, CHARLOTTE OBSERVER, Oct. 25, 2009, available at <http://www.charlotteobserver.com/343/story/1018020.html>.

60. Sloan Heffernan, *Appeals court halts release of two “life” inmates*, WRAL, Dec. 14, 2009, <http://www.wral.com/news/local/story/6611093/>.

61. Bruce Mildwurf, *Pending inmate releases could prompt legislative session*, WRAL, Nov. 19, 2009, <http://www.wral.com/news/local/politics/story/6357370/>.

62. *Roe v. Wade*, 410 U.S. 113 (1973).

63. *Bowden*, No. COA08-372, slip op. at 7.

64. *Id.*

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case established must also be followed by the NCDOC. The NCDOC should not be allowed to apply its own interpretation to the law when the Court interpreted the law. Finally, we have three branches of government as codified in our state constitution. The powers of each are distinct and separate and shall remain that way until the Constitution is amended.