

NCPLS



ACCESS

BLAKELY: IMPACT ON NORTH CAROLINA

By Billy Sanders, CLAS; Commissioner
N.C. Sentencing & Policy Advisory Commission

In the last edition of *ACCESS*, we reported the decision of the United States Supreme Court in *Blakely v. Washington*, 542 U.S. ___, 159 L.Ed.2d 403, 124 S.Ct. 2531 (2004). In that report, we briefly discussed the potential impact of the *Blakely* case on sentencing in North Carolina. In the most recent legislative session, the North Carolina General Assembly enacted Senate Bill 1152, which required the North Carolina Sentencing and Policy Advisory Commission to study the North Carolina Structured Sentencing Act in light of the holding in *Blakely*, and to report its findings and recommendations, including any proposed legislation, to the 2005 General Assembly.

On December 3, 2004, the North Carolina Sentencing and Policy Advisory Commission approved a recommendation on changes to the Structured Sentencing Act to comply with *Blakely* and submitted proposed legislation for the consideration of the General Assembly.

In essence, *Blakely* held that aggravating factors other than a prior conviction must be proven “beyond a reasonable doubt” as determined by the trier of fact. This decision followed *Apprendi v. New Jersey*, 530 U.S. 466 (2000), in which the United States Supreme Court held that any fact (again, except for

prior convictions) that increases the defendant’s maximum sentence beyond the statutory maximum must be heard by a jury and proven beyond a reasonable doubt. In some jurisdictions, a criminal defendant may waive the right to a



jury trial and leave such determinations to the judge. That was not the case in Washington State, where the *Blakely* case originated, and it is not the case in North Carolina. The North Carolina Constitution provides that “No person shall be convicted of any crime but by the unanimous verdict of a jury in open court.” N.C. Const., Art. I, §24.

Prior to *Blakely*, North Carolina procedures did not require the submission of the facts necessary to prove aggravating factors to a jury to be found beyond a reasonable doubt. Instead, such determinations were routinely made by the trial judge, who decided whether it was more likely than not (by a

“preponderance” of the evidence) that a particular factor (aggravating or mitigating) was present. If a criminal defendant was found guilty or pled guilty to a felony, the judge would consider evidence as to any aggravating or mitigating factors. Depending upon the judge’s determination, a criminal defendant could be sentenced at the mitigated range, the presumptive range, or the aggravated range, in accordance with the class of the offense and the prior record level of the defendant. The presence of aggravating factors often led to a sentence in the aggravated range. Conversely, the presence of mitigating factors could result in a sentence in the mitigated range. When there were no aggravating or mitigating factors, or when both were present but were given equal weight by the judge, a presumptive sentence was imposed.

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ACCESS is a publication of North Carolina Prisoner Legal Services, Inc. Established in 1978, NCPLS is a non-profit, public service organization. The program is governed by a Board of Directors who are designated by various organizations and institutions, including the North Carolina Bar Association, the North Carolina Association of Black Lawyers, the North Carolina Association of Women Attorneys, and law school deans at UNC, Duke, NCCU, Wake Forest and Campbell.

NCPLS serves a population of more than 33,500 prisoners and 14,000 pre-trial detainees, providing information and advice concerning legal rights and responsibilities, discouraging frivolous litigation, working toward administrative resolutions of legitimate problems, and providing representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

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Articles, ideas and suggestions are welcome: tsanders@ncpls.org

NCPLS WELCOMES MICHELLE COFIELD TO THE BOARD OF DIRECTORS

The North Carolina Bar Association (NCBA) recently designated Michelle S. Cofield to the NCPLS Board of Directors. Ms. Cofield, who serves as the Director of Public Service and Pro Bono Activities for the NCBA, is a 1991 graduate of the law school at the University of North Carolina. As an attorney deeply committed to social justice, Ms. Cofield worked for a number of years providing direct legal services to indigent people through North State Legal Services, Inc., located in Hillsborough, North Carolina. Beginning in November of 1995, Ms. Cofield accepted a position as Assistant Dean of Students at UNC Chapel Hill. In the autumn of 1998, she joined the staff of the NCBA. In her capacity as Director of Public Service and Pro Bono Activities, she guides the Bar Association's efforts to ensure equal access to justice for all North Carolinians; she provides support for lawyers engaged in all kinds of public service activities; and she coordinates efforts to utilize volunteer attorneys in the delivery of civil legal



Michelle S. Cofield

services across the state. Indeed, as we report in this edition of *ACCESS*, Ms. Cofield has been instrumental in helping NCPLS to further develop our volunteer program, and in strengthening our ties to the North Carolina Bar Association.

As a member of the Board of Directors, Ms. Cofield will join representatives of the law schools at UNC, Wake Forest, Duke and Campbell; designees from the Southern Prisoners' Defense Committee, the North Carolina Association of Black Attorneys, and others to set policy and provide governance for NCPLS.



BLAKELY (CONTINUED)

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Aggravated sentences that were imposed in North Carolina after *Blakely* was decided may be subject to challenge. Of course, a defendant can always admit the aggravating factors. But where aggravating factors were not admitted by the defendant but were instead determined by the judge, the defendant may be entitled to a new sentencing hearing under *Blakely*. Because the law is unsettled and North Carolina's Structured Sentencing Act appears to be inconsistent with the *Blakely* ruling, the General Assembly turned to the Sentencing and Policy Advisory Commission, seeking analysis and recommendations.

There are 19 statutory aggravating factors set out in N.C. Gen. Stat. §15A-1340.16(d). In addition, N.C. Gen. Stat. §15A-1340.16(d)(20) permits the imposition of an aggravated sentence when the judge determines there is present "[a]ny other aggravating factor reasonably related to the purposes of sentencing." This type of aggravating factor is referred to as a "non-statutory aggravating factor."

The Commission's report to the General Assembly contains recommendations for several changes:

- 1) The Commission recommended that state prosecutors notify criminal defendants of their intention to seek an aggravated sentence based upon a statutory aggravating factor, specifying the statutory aggravating factor involved, ten days prior to trial;
- 2) The Commission recommended that the trial of aggravating factors take place simultaneously with the trial of the criminal offense, unless a separate trial on the aggravating factor is in the interest of justice; and
- 3) The Commission recommended that non-statutory aggravating factors be alleged in the indictment.
- 4) The Commission further recommended that aggravating factors be submitted to a jury and be proven beyond a reasonable doubt.

With its recommendations, the Sentencing and Policy Advisory

Commission submitted proposed legislation to effect the necessary changes in law. However, the General Assembly is not required to adopt the recommendations or enact the proposed legislation. Although the Commission's recommendations are sound and seem to comply with the requirements of *Apprendi* and *Blakely*, the Legislature may choose a different course of action.

Most prisoners in North Carolina are not likely to be affected by the mandates of *Apprendi* and *Blakely*. It does not seem that those legal principles will apply to convictions or sentences imposed before the decisions were announced. Moreover, even if applied retroactively, *Blakely* would affect only aggravated sentences. Data gathered by the Sentencing and Policy Advisory Commission reveal that only 7% of all those incarcerated in North Carolina received aggravated sentences.

Further developments will be reported in future editions of *ACCESS*.

Christmas Thoughts

May you have the gladness of Christmas
which is hope;
The spirit of Christmas which is peace;
The heart of Christmas which is love.

- Ada V. Hendricks

Blessed is the season which engages the whole
world in a conspiracy of love.

- Hamilton Wright Mabi

'Twas Christmas broach'd the mightiest ale;
'Twas Christmas told the merriest tale;
A Christmas gambol oft could cheer
The poor man's heart through half the year.

- Sir Walter Scott "Marmion"

At Christmas play and make good cheer,
For Christmas comes but once a year.

- Thomas Tusser "The Farmer's Daily Diet"

EXPANDING VOLUNTEER OPPORTUNITIES

For many years, NCPLS has enlisted the aid of law students and college students to assist in the provision of services to North Carolina inmates. NCPLS is working to expand its volunteer program to include attorneys (to help provide legal services) and high school students (to help out in the office). For the past seven years, Senior Attorney Letitia Echols has coordinated both our Intern and Volunteer Programs; recruiting, training, and supervising student interns and volunteers.

Law students serve as full-time interns during the summer, conducting legal research, drafting legal memoranda, interviewing clients, providing file management support, and performing various other duties. During the year, students from local colleges and universities volunteer time and earn academic credit in criminal justice, sociology, and paralegal programs. These students generally work 100 to 120 hours per semester. Over the past few years, interns and volunteers have provided literally thousands of hours of service to NCPLS and its clients.

Among those who have worked as interns or provided volunteer services at NCPLS, we have sometimes recruited additions to our staff. For example, Senior Attorney Elizabeth Raghunanan served as a summer intern before joining our staff. Now, in addition to her duties as supervisor of family law services and the Safe & Humane Jails Project, Ms. Raghunanan assists Ms. Echols in coordinating the Intern Program. Similarly, Ms.

Kim Church, who volunteered her time as a college student, joined our staff as a full-time paralegal immediately following her graduation last spring. Most recently, Attorney Janine M. Zanin came to us as a volunteer. She immediately demonstrated knowledge and skills that would make her an excellent addition to our staff. Ms. Zanin recently accepted a position as a Staff Attorney with NCPLS.

Because of the outstanding and cost-effective services our clients have received, we are working to broaden our base of volunteers. Working with Certified Legal Assistant Yvonne Lewis, Ms. Echols and NCPLS are partnering with the North Carolina Bar Association (NCBA) to create opportunities for attorneys to volunteer to assist our clients. Ms. Lewis and Ms. Echols recently attended the North Carolina Pro Bono Coordinator's Institute sponsored by the N.C. Bar Association. At the two-day training event, coordinators from legal aid agencies, private law firms, and all five of North Carolina's law schools saw presentations on outstanding pro bono projects. The NCBA's Director of Public Service and Pro Bono Activities, Ms. Michelle Cofield, provided a wealth of information on strategies for recruiting and retaining pro bono attorneys and volunteers.

With the support of the NCBA, Ms. Echols and Ms. Lewis will plan training and awareness events that will eventually reach attorneys throughout the state. We are calling upon local attorneys to assist us with investigations and to appear at

court proceedings across the state to vindicate our clients' rights.

On another front, we're recruiting the help of young people. One of our newest staff members, Paralegal Sharon Donelli, is working with Ms. Echols to develop and coordinate an externship and volunteer opportunities for high school seniors. Ms. Donelli, who has directed job-shadowing and volunteer programs involving high school students in the past, has identified local high schools with volunteer programs in place and is developing relationships with their volunteer coordinators. High school students will assist with office functions such as filing, sorting and scanning mail, and otherwise assisting as needed. NCPLS expects its first extern to begin in the spring of 2005.

Pro Bono attorneys, volunteers, summer interns, and semester externs increase our ability to provide timely and effective legal services. But recruitment and coordination take time, diligence, and the investment of resources. The pay-off? An opportunity to educate others about the hardships of incarceration, the criminal law, and the limited civil protections afforded prisoners. Those efforts may eventually increase public awareness and bring about a more rational system of justice. In the meantime, volunteers will help us to provide more extensive services in a more timely fashion. And, as we know from experience, among those volunteers will come some of the most creative, committed, and effective advocates of tomorrow.

Editor's Note: The following article, "The Liberating Power of Communications" follows a series of articles by Inmate Michael G. Santos. They have been republished in *ACCESS* by permission of the author. Mr. Santos was convicted of drug distribution and sentenced to serve 45 years in Federal prison. He is scheduled for release in 2013. While in prison he has earned Bachelors and Masters Degrees. He has also written three books available for review and purchase on his web site: www.MichaelSantos.net. Although Mr. Santos does not have direct access to the internet, he can be reached by email at: info@MichaelSantos.net. Mr. Santos can also be reached by writing to him at the following address: Michael G. Santos (Reg. No. 16377-004), Federal Correctional Institution – Florence, Teller 6-212, P.O. Box 5000, Florence, CO 81266-5000.

THE LIBERATING POWER OF COMMUNICATIONS

By Michael G. Santos

Making the bad decisions that can lead a man to prison is easy. Any fool can do it. It is not so simple for those who serve time in prison to develop values and skills that will ensure they never return to confinement after their release. Such a commitment requires a sustained personal effort.

These facilities are built to warehouse human beings. The high recidivism rates make clear that administrators place little value or emphasis on preparing prisoners to lead productive, contributing lives. Those prisoners who choose to succeed must prime themselves to overcome the obstacles and challenges that will confront them once they complete their terms.

A comprehensive self-improvement program should include efforts to become a more polished speaker and writer. Developing strong communication skills while serving time may require a concentrated effort, but those who invest the time and energy to advance their eloquence will reap rewards for the rest of their lives.

Prisons are closed communities, herding together vast amounts of

people with substandard education levels. They tend to stifle a man's ability to communicate effectively. It seems that prisoners punctuate every sentence spoken inside these fences with profanity or vulgar analogies. Few prisoners make an effort at eloquence because such an art has no value inside prison. As I described [in my last] column, losers distinguish themselves in



prison through the ready and agile use of violence. Those who choose to emerge from these vicious circles of failure might consider devoting a few hours each week toward the productive goal of developing a fluency and facility with language.

Prisoners may begin efforts to amplify their oratorical skills by working to enrich their vocabulary.

Languages today are extremely advanced, comprising over one million words. People who understand the power of persuasion recognize that the more words at their command, the more effectively they will communicate. Competent communicators will not use the most complicated words to convey their thoughts, but rather use the best words to help others understand their sentiments. By learning to use words and language gracefully, people enhance their ability to motivate and inspire others. Those skills provide a power that can serve a prisoner well throughout his life, and will prove themselves especially helpful when communicating with prospective employers upon release. Building a vocabulary is not difficult, but it does require a consistent effort. I began struggling to enrich my

adroitness with words out of necessity. At 23 I was sentenced to 45 years, and unless I became a better communicator, I knew that it would be only a matter of time before my language skills deteriorated. If they did, I expected that I would find it even more difficult to find acceptance in the broader society.

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UPDATE ON RDM LEGAL RESEARCH SERVICES

By Staff Attorney Ken Butler

Over the past two years, NCPLS has reported on various groups and individuals that solicit business from inmates by promising remarkable results through legal or administrative proceedings. Several of these entities have been investigated by the N.C. State Bar for the unauthorized practice of law. One such individual was Richard D. Meares, operating as RDM Legal Research Services, out of Mount Airy, North Carolina.

On October 25, 2004, Mr. Meares was convicted of 10 counts of mail fraud and two counts of wire fraud in the United States District Court

for the Middle District of North Carolina. These federal criminal convictions stemmed from cases in which Mr. Meares told inmates or their families that he had political connections through whom he could obtain a commutation or pardon for an inmate. The cost for the proffered service was \$15,000 or more, and one inmate reportedly paid \$30,000.00. (However, the individual that Mr. Meares identified as his political contact denied involvement with any attempts to obtain executive clemency for inmates.) Mr. Meares provided a written guarantee that if the

inmate were not released within six months, Mr. Meares would refund the fee. Although Mr. Meares did not succeed in obtaining a single commutation or pardon, no refunds were ever paid to an inmate or family member.

In addition to the federal criminal conviction, Mr. Meares is also subject to a state court civil judgment to repay more than \$600,000 he received in payment for promises of clemency. He will be sentenced on the federal criminal charges at a hearing on January 24, 2005. Mr. Meares was allowed to remain on bond until his sentencing hearing.



POWER OF COMMUNICATIONS (CONTINUED)

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I remember the inadequacy I felt when reading. Every paragraph was replete with words that I did not understand. Like "replete." Had I come across that word during the beginning of my term, I would have stumbled. Or if someone used words in conversation that I did not understand, I somehow felt inferior.

The dictionary became my favorite book. I relied upon it to help me understand the beauty of words, because I knew those words would help me develop the power of

persuasion. As I consulted my dictionary, and committed new words to memory, I would look for opportunities to use my new tools appropriately when speaking or writing. In many ways, I expected those words to become my arsenal of secret weapons to help me win the battles that follow a criminal conviction.

Now that I am in my 17th year of this sentence, I feel more comfortable in my ability to use language. But I continue working to develop my skills every day. Writing helps.

It helps me compose my thoughts in sentences and paragraphs, gives me more confidence as a thinker and as a man. Because of the communication skills I have developed, I no longer see myself as only a prisoner. I am also someone who strives to contribute to the lives of others. By interviewing prisoners and writing books about prisons and the people they hold, I provide readers with a glimpse inside these abnormal communities behind fences. This activity adds meaning to my life, and I hope it makes a contribution to society.

DOC SETTLES “FAILURE TO PROTECT” CLAIMS

By Staff Attorney Michele Luecking-Sunman

Five prisoners were recently vindicated when their claims of mistreatment were reviewed by DOC and settled. Our clients were housed in a segregation unit with numerous other inmates. A dispute among the prisoners escalated and led to a brutal assault on our clients. Although an officer was stationed within view of the incident, the officer failed to intervene and our clients suffered serious physical injuries, as well as emotional and mental distress.

Although they suffered tremendously from their experience and were reluctant to report the matter, our clients wanted to prevent assaults on other prisoners and so, contacted NCPLS. In the spring of this year NCPLS investigated the incident and contacted attorneys for the DOC regarding the matter.

On behalf of the DOC, the Attorney General’s Office proposed a conference to explore settlement possibilities. NCPLS and our clients agreed that this type of



Michele Luecking-Sunman

informal conference would be advantageous to all parties. It offered the opportunity for our clients to communicate their experience, share their concerns, and make their requests for improved security known. It also provided an avenue for a quick resolution of the case without forcing our clients to relive the painful experiences they endured repeatedly through protracted litigation.

Throughout September and October, NCPLS attorneys spoke with representatives of the Attorney General’s Office and counsel for the DOC, in-person and via telephone. The NCPLS attorneys pre-

sented facts and evidence gathered in the investigation, all of which substantiated our clients’ claims and documented their injuries. The DOC offered monetary compensation to each of our clients in an amount sufficient to compensate them for all of their injuries. Additionally, the DOC offered to enter into a written commitment to provide better security at the segregation unit.

Our clients accepted the settlement offer in full settlement of their claims. Although no amount of money could undo the harm that our clients suffered, DOC’s commitment to take steps that will help to prevent similar assaults will benefit our clients and many other prisoners.

[Editor’s note: Specific details regarding the identities of victims, assailants, witnesses, and officers, as well as other information from which such information could be ascertained or inferred, has been withheld in an effort to protect the privacy of our clients.]

More Christmas Thoughts

Let Us Keep Christmas
Whatever else be lost among the years,
Let us keep Christmas still a shining thing;
Whatever doubts assail us, or what fears,
Let us hold close one day, remembering
It’s poignant meaning for the hearts of men.
Let us get back our childlike faith again.
- Grace Noll Crowell

A lovely thing about Christmas is that it’s compulsory, like a thunderstorm, and we all go through it together.
- Garrison Keillor

A turkey never voted for an early Christmas.
- Irish Proverb

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