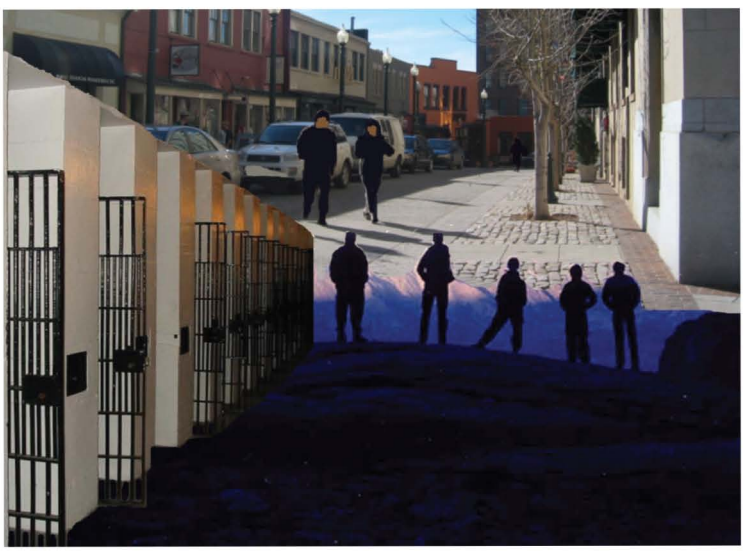
The Newsletter of North Carolina Prisoner Legal Services, Inc. Volume V, Issue 4, December 2005

NCPLS Access

Paroles to Increase Under Recent Legislation

Under legislation passed by the General Assembly last summer, the Post-Release Supervision and Parole Commission (Parole Commission) is required to determine the identity and number of inmates sentenced under the Fair Sentencing Act (FSA) who have served longer terms of imprisonment than would have been required if they had been sentenced to maximum terms under the Structured Sentencing Act (SSA). Senate Bill 622, Session Law 2005-0276, §17.28(a) at p. 250. The Parole Commission is further required to consider those prisoners for parole. *Id.* at §17.28(c), p. 251. In addition, the Parole Commission "shall make a good faith effort to enroll at least twenty percent (20%) of all program-eligible, pre-Structured Sentencing felons in the Mutual Agreement Parole Program (MAPP) by May 1, 2006." *Id.*, §17.27 at p. 250.



According to Melita Groomes, Executive Director of the Parole Commission, early release was granted to about 708 pre-SSA prisoners last year. (An additional 989 prisoners convicted of DWI offenses were released to treatment facilities.) A total of about 3,700 prisoners were released from prison in 2004-2005 (including SSA prisoners who left prison on post-release supervision). Those releases represented about 10% of the prison population, which today stands at more than 37,000 people. The new legislation is expected to substantially increase the number of paroles that will be granted this year. There are 4,538 prisoners in North Carolina being held under convictions pre-dating the SSA (3,952 FSA, and 586 pre-FSA prisoners).

To be considered for parole, an inmate must be in medium or minimum custody, learn job skills, and participate in rehabilitative programs related to the offense for which the inmate was convicted. For parole to be granted, two of the three Parole Commissioners must agree to approve the offender's release.

SSA Sentenced Offenders: The Structured Sentencing Act, which became law October 1, 1994, eliminated the possibility of parole, opting instead for "post-release supervision." Post-release supervision begins on the "date equivalent to [the offender's] maximum imposed prison term less nine months, less any earned time awarded . . ." by DOC, and further reduced by jail credit. NC Gen. Stat. §15A-1368.2.

In this Issue:

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 36,000 prisoners and 14,000 pretrial 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.

PLEASE NOTE: ACCESS is published four (4) times a year.

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

NCPLS CONTRACTS WITH IDS

As readers of ***ACCESS*** will recall, legislation passed by the General Assembly last summer transferred the authority to contract for prisoner legal services from the Department of Correction to the Office of Indigent Defense Services (IDS). Senate Bill 622, Session Law 2005-0276, §14.9. IDS representatives stated an intention to administer the contract in a manner that ensured the delivery of legal services of at least the same quality, and at least to the same extent as those services were then being provided.

Negotiations between NCPLS and IDS were concluded on September 29, 2005, when the parties executed a new contract. The contract provides a term of five months. The financial terms of the new contract are based upon the legislative appropriation, derived from rates agreed in 2002. But since 2002, the prison population has increased almost 12% (from 33,104 prisoners in 2002, to more than 37,000 today). A further 2.8% increase (more than 1,000 additional prisoners) is projected this year. With the increasing prison population, there is a corresponding increase in the demand for legal services. And the cost of providing those services has also increased by 4.7% per year since October 2002, according to the Consumer Price Index. IDS expressed regret that no additional funding had been appropriated.

As a consequence of inadequate funding, it appears that NCPLS will be forced to adopt measures consistent with the financial constraints of our new contract. Balancing the value to our clients of the services we presently provide against the available funding, we will have to identify the kinds of services that can be eliminated. These difficult decisions will be the subject of deliberations at the next meeting of the NCPLS Board of Directors this month. In the meantime, we have submitted a request to the Department of Correction for supplemental funding which is presently under consideration.

During the coming months, we will be working with IDS to develop information and materials that will help the General Assembly to understand the services NCPLS provides, as well as the value of those services to our clients and the citizens of North Carolina. We hope to report further developments in future editions of ***ACCESS***.

In re: Hassan

[***Editor's note:*** For the past decade, NCPLS has provided limited assistance to inmates in connection with immigration matters. For instance, we have successfully represented prisoners who were United States citizens, but who were erroneously being considered for deportation, non-English speaking prisoners who were convicted without the benefit of an interpreter, and non-citizens who were not advised of the immigration consequences of entering a guilty plea. As in this case, NCPLS has also successfully represented non-citizen prisoners who faced persecution, torture, or murder upon removal.]

Staff Attorneys Lisa Chun and Hoang Lam

NCPLS Staff Attorneys Lisa Chun and Hoang Lam successfully defended a client in immigration court on removal proceedings in which the Bureau of Immigration and Customs Enforcement (BICE) (formerly known as the Department of Immigration and Naturalization (INS)) attempted to deport our client to his native country, Somalia. *In re: Hassan*, File No. A 76 413 781 (U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement) (October 25, 2005).

Having been granted political asylum, our client was legally residing in the United States. However, he was subsequently convicted of embezzlement and sentenced to 8 to 10 months to be served in the North Carolina Department of Correction.

While our client was incarcerated, BICE filed an immigration detainer against him alleging that he was deportable due to his conviction of an aggravated felony. In response, NCPLS filed a claim in immigration court asserting that there was a clear probability that our client would face persecution and torture if he were forced to return to Somalia. Therefore, despite his conviction of an aggravated felony, NCPLS argued that our client was entitled to remain in the United States under a procedure known as Withholding of Removal.

In the early 1990's, Somalia was gripped by a civil war in which the government was overthrown by clan warlords. Our client's family had held prominent positions in the former government and were members of a minority clan traditionally discriminated against by the clan headed by the warlords who had overthrown the government. Because of his family's involvement in the former government and his membership in a minority clan, our client suffered severe persecution and torture in the aftermath of the civil war, until he was able to escape to the United States where he was granted political asylum.

Conditions in Somalia have not improved for the minority clan since the civil war – the country continues to be plagued by clan warfare and rampant human rights abuses. With no central government to protect those who are vulnerable in these circumstances, our client faced grave and perhaps mortal danger if he were forced to return to Somalia. This critical point was established with expert testimony and was argued on our client's behalf. The immigration judge found the argument persuasive and ruled in our client's favor. As a result, our client is permitted to remain and work in the United States. Upon his release, our client has reunited with his family (who also escaped from Somalia). They have made the United States of America their new home.

Foothills Opens Security Threat Group Unit

A "Security Threat Group" unit (designated the STGU) opened this summer at Foothills Correctional Institution that houses inmates who have been identified as prison gang members.

Not every inmate validated as a gang member is eligible for placement at the STGU, but must meet additional criteria. A prisoner is initially "validated" as a gang member by the Facility Intelligence Officer, based upon a determination that the prisoner meets one of twelve criteria that are used to establish membership in a Security Threat Group. To be eligible for placement at the STGU, an inmate must meet two of those criteria. (Most states operating similar programs only require that one of the criteria be met.) A validated inmate's status is reviewed at a hearing every six months.

NCPLS met with DOC officials to gain information about this program, conducted research into the law governing such designations and the operation of similar programs, and a team of NCPLS advocates has visited the STGU.

The STGU is a 192-bed unit made possible by a $770,000 federal grant to the North Carolina Department of Correction. The DOC's stated purpose for the STGU unit is not to subject gang members to more onerous restrictions, but to educate gang members through cognitive behavior therapy. The goal of cognitive behavior therapy is to help achieve a change in the way people think, feel, and behave. Several states have implemented similar programs and report positive results. Not only has gang-related violence decreased, but prison violence within their entire systems declined in those states that implemented an STGU. North Carolina's program is modeled on a similar program in Connecticut, one that has had excellent results.

Validation and Legal Standards

Many state prisons, including those in North Carolina, "validate," or identify, gang members. If identified as a gang member, the inmate faces more restrictions than members of the general population of prisoners. The practice of placing additional restrictions on those validated as gang members was challenged in federal court by inmates in South Carolina. The South Carolina Department of Correction developed a policy that provided for the identification of members of a "Security Threat Group," and required housing assignments in a segregation unit with limitations on their privileges.

In the case, *In re Long Term Admin. Segregation of Inmates Designated as Five Percenters*, 174 F.3d 464, 471 (4th Cir.), *cert. denied*, *Mickle v. Moore*, 528 U.S. 874, 145 L.Ed.2d 151, 120 S. Ct. 179 (1999), the U.S. Court of Appeals for the Fourth Circuit upheld the policy and practice. According to the court, the transfer of an inmate to less amenable and more restrictive quarters for non-punitive reasons is "well within the terms of confinement ordinarily contemplated by a prison sentence. *Hewitt v. Helms*, 459 U.S. 460, 468 (1983)."

Thus, there appears to be no legal basis to oppose a policy or practice involving the identification and segregation of prisoners designated as members of a security threat group. That conclusion is consistent with previous decisions of the courts. For example, there is no constitutional right to be housed in a particular prison. *Meachum v. Fano*, 427 U.S. 215 (1976). The courts allow correctional officials wide discretion in determining how to classify and house inmates.

Background and Mission

By comparison with other states, North Carolina has relatively few gang members. The DOC has identified only about 470 prisoners as gang members, out of a population of 37,000 inmates. North Carolina prison officials said they confirmed that eleven assaults were gang-related last year. During the same period, there were 552 assaults on officers and 165 inmate-on-inmate assaults.

The idea behind the STGU in North Carolina, as expressed by DOC officials, is to prevent growth in gang-related violence. Some states, like New Jersey, experienced a rapid increase in gang members, and prison violence, over a relatively short period of time. Those states had to create solutions in the

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Security Threat Group Unit (Continued)

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midst of crisis, something North Carolina seems to have avoided with this pro-active approach.

Assignments to the STGU are Limited

To be assigned to the STGU, an inmates who has been validated previously as a member of a gang must be referred for placement by their Facility Intelligence Officer. There are four criteria (which the DOC has not disclosed) which the inmate must meet in order to be referred for placement. Additionally, the placement must be approved by the Superintendent of the referring prison.

The reasons for the referral must be fully documented for the review of the Regional Director. If the Regional Director approves the recommendation, he forwards it to the Chief of Security, who provides a fourth level of review before the inmate is finally selected for the STGU. The inmate is then notified of the decision. If the prisoner objects to the decision (either because he will be transferred or the referral was disapproved), he can request a hearing on the issue before the Classification Committee at the unit. If the inmate is not satisfied with the outcome of that proceeding, he can appeal.

The Program

Once admitted to the program, the prisoner will be required to complete three phases. Each phase is designed to take three months, and completion of the entire program can be accomplished in nine months. A Classification Committee meets and decides when an inmate is eligible for "promotion" to the next phase. Incentives, in terms of increased privileges (contact visits, increased out-of-cell time, phone use), are provided as the inmate progresses through each phase.

If the inmate completes the program successfully, he is returned to regular population and loses his "gang member" validation status. However, an inmate who fails to progress through all three stages can remain at the unit indefinitely. An inmate can be "demoted" from one phase to a lower one for misconduct, and could presumably be kicked out of the program altogether (with a consequent negative impact on classification and housing).

In the first phase, conditions are restrictive and controlled. Members of rival gangs are not permitted to be housed together. The inmates receive orientation about the program and also receive an anger management and a stress management program. The inmate has some privileges, but a "no-contact" visitation policy is in effect.

In the second phase, inmates from rival gangs are permitted to intermingle. They form "teams" in which they participate in nearly every activity. The team members exercise together and participate together in other classroom activities (including cognitive behavior

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Security Threat Group Unit (Continued)

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classes). The inmates are also required to keep journals during this phase.

In the third phase, the inmate is prepared for his return to the general prison population. In this phase, prisoners receive most of the privileges enjoyed by general population inmates, including contact visits. Relapse prevention instruction is also provided in this phase.

Staffing

The STGU employs a full-time psychologist who can conduct tests, track results, and monitor the program. There are a number of program counselors, and in addition, there are two "Behavioral Specialists" employed at the unit. These are cognitive behavior therapists whose goal is to help those assigned to the unit to change their thinking and behavior related to gang membership.

Every correctional officer at the unit has to undergo cultural diversity training and other specialized training. The idea is for program and security personnel to work closely together so that the correctional officers understand the goals of the program and do not send mixed signals to the inmates.

The Facility

The STGU comprises one unit of Foothills Correctional Institution, a close custody prison located in Morganton. The unit, divided into different cell blocks, will hold 192 inmates at peak capacity.

NCPLS staff visited the STGU shortly before it became operational. The cell blocks have been re-fitted to contain additional bars on the upper and lower levels of the two-tier cell blocks. There is a small classroom on the top tier of each cell block.

Outside the STGU cellblocks, but within the facility, is an area for counseling services specifically for the inmates assigned to the STGU. This is where the "teams" (in Phase Two) will meet and receive training, classroom instruction, and behavior modification classes. STGU inmates will take their meals in the regular dining area at Foothills, but will have little or no contact with the other inmates at the Institution.

Conclusion

NCPLS appreciates the opportunity extended by DOC officials to tour the STGU and to offer suggestions for safeguarding the rights of prisoners who will be confined there. During the tour, and in conversations before and afterward, it seemed clear that these correctional professionals were sincerely committed to the humane treatment of people who have been validated as gang members, as well as to measures that have been implemented to ensure the protection of their legal rights. We were also impressed by the careful planning that went into the development of the program.

The program has a worthy goal – promoting the safety of both inmates and DOC personnel, and offering prisoners an opportunity to prepare for success upon release. This goal is to be achieved through a forward-thinking program of education, treatment, and therapy. However, organizations can sometimes lose sight of their missions, and people with responsibility can sometimes abuse their authority. NCPLS will monitor the STGU to be sure that any questionable policies or practices receive appropriate attention.

4th Circuit Court of Appeals
In Re: Cabey, No. 04-277
(4th Cir., November 15, 2005)

Last month, the U.S. Court of Appeals for the Fourth Circuit ruled that a North Carolina inmate has the right to prosecute his petition for habeas corpus. NCPLS Senior Attorney J. Phillip Griffin was appointed by the court to represent the inmate.

In 1982, our client was convicted of five counts of armed robbery. He was sentenced to four concurrent sentences of 20-25 years, and one consecutive sentence for life. He filed two habeas petitions, one in 1987 challenging his conviction, and another in 1996, challenging the computation of his good time credits. Both petitions were denied by the federal courts.

In 1992, the Parole Commission granted our client a "paper parole" from the life sentence and he began serving the 20-25 year concurrent sentences. ("Paper parole" was a practice of the Department of Correction (DOC) by which an inmate was considered to have completed the term of one sentence, while being retained in custody to serve additional consecutive sentences). Our client's parole from the life sentence expired in 1997, and the Parole Commission issued to our client an unconditional discharge from the terminated sentence.

However, also in 1997, the N.C. Court of Appeals ruled that there was no statutory authorization for paper paroles. *Robbins v. Freeman*, 127 N.C. App. 162, *aff'd per curiam* 347 N.C. 664 (1998). Rather, the court held that the DOC should aggregate consecutive sentences and determine parole eligibility based upon the sum of the sentences. On the basis of the *Robbins* decision, our client's discharge and parole were rescinded, and his life sentence was reinstated.

In 2000, our client filed a motion for appropriate relief in state court, arguing that the reinstatement of a discharged sentence was illegal and that he had completed the 20-25-year sentences and was entitled to immediate release. When the N.C. courts denied his motion, he filed a third petition for a writ of habeas corpus in federal district court.

Under federal law, a "second or successive habeas corpus application" raising issues which were not raised in the earlier petition must be dismissed unless the court of appeals determines that it is either based upon a new rule of law made retroactive by the Supreme Court, or upon facts which would be sufficient to establish actual innocence of the offense. The district court dismissed our client's petition without prejudice to allow him to seek authorization from the Fourth Circuit Court of Appeals to file a second or successive petition. Our client appealed the dismissal. The Fourth Circuit initially treated the appeal as an application for authorization to file a second or successive petition and appointed NCPLS to represent the client.

Under cases from the Supreme Court and other circuit courts of appeal, "second or successive habeas corpus application[s]" refers to petitions that raise issues which had either been raised unsuccessfully in earlier petitions, or which could have been raised but were not. Therefore, we argued that since our client's petition concerned the legality of a change in his sentences which took place after he had filed the earlier petitions, the new petition did not raise issues that could have been raised in an earlier filing. We argued that authorization was not necessary under the circumstances and that the court should remand the petition to the district court and treat it as an initial application.

The State contended that the plain meaning of the statutory phrase "second or successive," encompassed the circumstances of this case. Even though the facts that our client challenged did not exist and could not have been raised in an earlier petition, the State argued that it was the intention of Congress generally to preclude judicial review of claims brought by a prisoner in second or successive petitions.

By a vote of two-to-one, the Fourth Circuit Panel which heard the case agreed with our client's position. Because our client raised for the first time facts that did not exist

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In Re: Cabey (Continued)

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when earlier petitions had been filed, the matter should be treated as an initial application for habeas review.

The dissenting judge argued that the terms, "second or successive," were to be taken literally; that our client's petition should be dismissed since he had filed earlier habeas petitions. The dissenting judge suggested that the court should hear the case *en banc*, a procedure by which all the judges on the court decide the appeal anew. (A rehearing *en banc* may be requested by either party, or by "an active judge of the court." The day after the opinion issued, the State submitted a motion for rehearing. The matter will be decided by the vote of a majority of active circuit judges. F.R.App.P. 35, Local Rule 35(b). We will report in future issues of ***Access*** whether the panel decision becomes final or is heard *en banc*.

New Study on Imprisonment Urges Reconsideration

The spiraling trend toward ever-increasing numbers of prisoners over the past 30 years continues with no end in sight. In 1972, the total prison population in the United States numbered about 330,000 people. Today, there are more than 2,250,000 people in prison.

That enormous growth has been spawned by the notion that a "get tough" approach to crime will better protect society and reduce lawlessness. But a new study by the Sentencing Project, a Washington, D.C. based policy advisory group, concludes that there appears to be little correlation between crime rates and the harsh penalties that have fueled unprecedented growth and unparalleled rates of incarceration in the United States. "Incarceration and Crime: A Complex Relationship," analyzes research conducted on the relationship between incarceration and crime. The popularly held belief that incarceration reduces the crime-rate appears to be a gross over-simplification. While crime rates have dropped significantly in the past decade, only about 25% of the reduction can be attributed to incarceration. Three-quarters of the decline is attributable to other factors, including a growing economy, changes in the market for illegal drugs, law enforcement strategies such as community policing, and community responses to crime. According to the report, there are more effective ways to fight crime than incarceration. For example, drug treatment, interventions with at-risk families, and school completion programs all have a greater impact on crime-prevention and are much more cost-efficient.

As our society bears the exorbitant and escalating costs of incarceration, as communities struggle with the decimation of misguided criminal justice policy, and as families are ripped apart by punishments that are unduly harsh and counter-productive, there is "an urgent need for the reconsideration of the punitive sentencing and parole policies that currently dominate the criminal justice landscape." This report provides a well considered starting point for that reconsideration.

Commission Examines Safety & Abuse in America's Prisons

Each year America spends over $60 billion on corrections. In 2005, more than 13.5 million people will have spent time in prison or jail, and on any given day, the incarcerated population will total more than 2,225,000 people. Over 750,000 people are employed by correctional agencies across the country. Yet, there is little understanding among the general public about what goes on inside correctional facilities, or the problems and dangers faced by those who live and work in a correctional setting.

In an effort to promote better understanding of the correctional system, the Vera Institute of Justice, a nonprofit organization that has worked for more than 40 years to improve the administration of justice, provided funding to create the National Commission on Safety & Abuse in America's Prisons. The Commission is co-chaired by former United States Attorney General Nicholas de B. Katzenbach, and the Honorable John J. Gibbons, former Chief Judge of the Third Circuit Court of Appeals. The 21-member, nonpartisan Commission includes other respected civic leaders, seasoned corrections professionals, advocates for the rights of prisoners, former prisoners, and members of the religious community. Over the course of a year in four public hearings, the Commission will explore violence, sexual abuse, degradation, severe overcrowding, inhumane treatment for the mentally-ill, and insufficient support for the men and women who staff facilities. The Commission will produce a report including practical recommendations that local, state, and federal policy makers can act on.

At the Commission's hearing in St. Louis on November 1, Theodis Beck, Secretary of the North Carolina Department of Correction, described how the job of a corrections officer has become increasingly complex and challenging as the prison and jail population has expanded and grown more diverse and troubled. "Today's correctional officer must be able to look at situations from an inmate's perspective," said Beck. "He must be in tune to the changing situation of aging inmates, know how to deal with offenders who may be suicidal, be able to recognize gang signs and colors, speak foreign languages, and be sensitive to issues involving supervision of offenders of the opposite sex." Secretary Beck advocated greater support for correctional professionals and the commitment of public resources necessary to accomplish the correctional mission.

On day-two of the St. Louis hearing, Michael S. Hamden, executive director of NCPLS, addressed the need for the need for sound operational standards and oversight in the correctional setting. There are no mandatory national standards for prisons and jails, but the American Correctional Association – a professional association largely composed of correctional professionals – develops standards and accredits facilities that meet their standards. Hamden has served since 1998 as a member of ACA's Standards Committee and as a member of the Commission on Accreditation for Corrections. Initially a skeptic of accreditation, Hamden is now a believer in the accreditation process, but he described the limits of the process and distinguished between professional accreditation and other necessary forms of oversight.

The Commission is seeking information and accounts from people who are or have been incarcerated, and from people who work in a correctional facility. Accounts may be submitted to the Commission at 601 Thirteenth Street, N.W., Suite 1150 South, Washington, D.C. 20005. The Commission's final report and recommendations are expected in March 2006.

CASE REPORT: *STATE V. LAWSON*

By Lynne Rupp, NCPLS Senior Staff Attorney

[***Editor's note:*** Ms. Rupp, a former public defender and private practitioner, leads the NCPLS Post-Conviction Team. The following is a brief account of one of Ms. Rupp's recent successes.]

NCPLS accepts a limited number of court appointments to represent defendants in criminal appeals. One of the most recent of those appeals was the case of *State v. Lawson* (COA04-564), in which the defendant was convicted of assault with a deadly weapon inflicting serious injury. The brief filed on behalf of the defendant argued that the State failed to present adequate evidence on the element of the deadly weapon. In a decision filed 20 September 2005, the North Carolina Court of Appeals ruled in favor of the defendant, arresting judgment on the felony assault and remanding the case to the trial court for entry of judgment on the lesser included offense of assault inflicting serious injury, a misdemeanor.

On 30 September 2005, counsel for Mr. Lawson received an addendum to the opinion in the case. On that date, the Court of Appeals granted the defendant's Motion for Appropriate Relief, filed in the Court of Appeals after Mr. Lawson's brief had been filed, but prior to the Court's decision in the case. The argument in this motion was that Mr. Lawson's aggravated sentence on the felony assault violated the requirements of *Blakely v. Washington*, 542 U.S. 296 (2004). The Court of Appeals agreed, again vacating the aggravated sentence and remanding for resentencing.

The State has appealed these decisions to the North Carolina Supreme Court.

GETTING SMART ON CRIME: NORTH CAROLINA'S PRISON CRISIS

By: Kira Weiss, NCPLS Law Clerk

On Monday, November 14, 2005, two North Carolina social justice organizations, N.C. Families Against Mandatory Minimums (NCFAMM) and N.C. Policy Watch, hosted an event in Raleigh called "Getting Smart on Crime: Facing North Carolina's Prison Crisis." The focus of the forum was sentencing law and policy in North Carolina. Key-note speakers included the Honorable Burley Mitchell, Former Chief Justice of the N.C. Supreme Court, Dan Blue, Former Speaker of North Carolina House of Representatives, and Mark Mauer, Executive Director of The Sentencing Project in Washington, D.C. Following opening remarks by NCFAMM's LaFonda Jones, Mr. Mauer delivered an expert presentation on the complex relationship between incarceration and crime. Among the startling statistics he shared were:

— 1 in 3 Blacks, in 6 Hispanics, and 1 in 16 whites can expect to go to prison sometime during their lifetimes
— 1 in 6 prisoners is mentally ill
— 3 of 4 prisoners has a substance abuse problem

These numbers raise questions about whether further tightening our criminal laws and building more prisons can be an effective approach to addressing crime. Mr. Mauer's message was clear: Policy makers need to adopt a *balanced* approach to crime control, including alternatives to incarceration; programming, and treatment for offenders; and community support of ex-offenders.

Over-reliance on incarceration and prison construction has proven costly and comparatively ineffective. One recent study conducted by The Sentencing Project concluded that there appears to be little correlation between crime rates and the harsh penalties that have fueled unprecedented growth and unparalleled rates of incarceration in the U.S. According to the study, "the length of time an offender remains behind bars has a negligible effect on whether or not he or she will [re-offend]." R. King, M. Mauer, & M. Young, *Incarceration and Crime: A Complex Relationship*, The Sentencing Project (2005).

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GETTING SMART ON CRIME (CONTINUED)

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Most of the people who go to prison return to live in society. But criminal justice policy provides too little help in preparing prisoners to succeed, and too little support once they are released. According The Sentencing Project, "studies show that community supervision combined with some form of rehabilitative program following a prisoner's release helps reduce recidivism, [yet] more than 100,000 prisoners are being released each year without any form of community correctional supervision."

The cost of housing one inmate in a N.C. prison for a year averages $23,199. According to Mr. Mauer, the cost of providing the kind of supportive and rehabilitative services advocated by The Sentencing Project, FAMM, and many correctional professionals costs about $2,000 per year per inmate.

While there is no question that these issues are important, another critical piece of the prison crisis was conspicuously missing from the dialogue (at least to the prisoner rights advocates in the audience). What about the impact that conditions of confinement have on the future health and well-being of inmates? Not a day goes by that NCPLS does not receive a candid letter from an inmate asking "Why, since I obviously need _____ (e.g. substance abuse treatment, an education, a trade, mental health treatment), can't I get into a program while I'm incarcerated?" Many prisoners know they need help if they are to have a realistic prospect of success after release. Certainly, it would be "smart on crime" to ensure that every prisoner who wants and needs help receives it.

The Honorable Burley Mitchell followed Mr. Mauer taking an unexpected and courageous stand on a controversial topic. The solution to North Carolina's prison crisis, he explained, is the decriminalization of street drugs. Mr. Mitchell, a former Chief Justice of the N.C. Supreme Court, predicted that such an approach would "considerably decrease the number of murders and robberies" that occur in N.C. It would also have a profound impact in reducing the prison population and the cost of our correctional system. While he did not provide hard data, some in the audience appeared receptive to the idea.

The following day, N.C. Policy Watch's Chris Fitzsimon wrote that "Mitchell is far from the only voice advocating decriminalization of drugs. Many other law enforcement officials and judges agree. That doesn't mean it is the right thing to do, but it does mean that the proposal deserves some honest debate." "The discussion of decriminalization," Fitzsimon went on to say, "forces us to consider the role of substance abuse in crime and may lead to more support for drug treatment programs as an alternative to prison." Fitzsimon endorsed Mitchell's break from the conventional approach to policy debate that makes controversial ideas and creative solutions to social issues off-limits to politicians. In his remarks, Justice Mitchell advocated an unconventional approach to addressing a controversial subject in a meaningful way which deserves serious consideration.

But perhaps the most profound exchange heard during the event came at the end. When the floor was opened to comments from the audience, a man asked the panel the following questions:

1. "Do you believe offenders can be rehabilitated?"
2. "If so, do you personally know any who have been rehabilitated?"
3. And, "If you do know any, why aren't they sitting up there on the panel with you?"

The panel's answer? Silence.

About the Sponsors:

N.C. Policy Watch monitors public policies and state budgets to protect human services for people in need in N.C.. You can write to this organization at P.O. Box 12800, Raleigh, NC 27605. On the web: *www.ncpolicywatch.org*

NCFAMM supports flexible sentencing laws that give judges the discretion to distinguish between defendants and sentence them according to their culpability. For more information about NCFAMM, write to 115 Market Street, Suite 360-C, Durham, NC 27701. FAMM (the national organization) on the web: *www.famm.org*.

The Sentencing Project promotes reduced reliance on incarceration and increased use of more effective and humane alternatives to deal with crime. It is a nationally recognized source of criminal justice policy analysis, data, and program information. The Sentencing Project can be reached at 514 Tenth Street, NW, Suite 1000, Washington DC 20004. On the web: *www.sentencingproject.org*.

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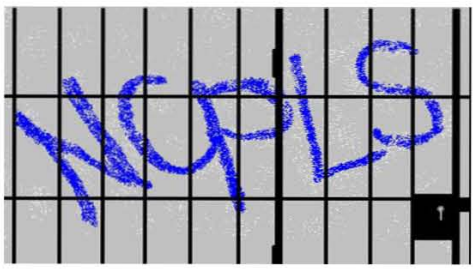

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