The Newsletter of North Carolina Prisoner Legal Services, Inc. Volume III, Issue 1, March 2003

NCPLS ACCESS

Challenging A Conviction -- Can You Receive A Greater Sentence?

By Senior Attorney Kristin D. Parks

On December 20, 2002, the North Carolina Supreme Court issued an opinion in *State of North Carolina v. Wagner*, 356 N.C. 599, 572 S.E.2d 777 (2002). The Court ruled that "a defendant whose sentence has been successfully challenged cannot receive a more severe sentence for the same offense or conduct on remand." Attorney Clarke Fischer of Winston-Salem represented the defendant-inmate. NCPLS appeared in the case as *amicus curiae* (friend of the court), filing a brief and participating in oral argument on behalf of the defendant.

The North Carolina Supreme Court Justices

In this case, the defendant entered a guilty plea to attempted possession of cocaine as an habitual felon for a sentence of 101-131 months. The sentence was based on a prior record level VI under the Structured Sentencing Act. The defendant subsequently filed a Motion for Appropriate Relief (MAR), claiming that he should actually have been sentenced as a level V offender. The Superior Court agreed and found that the plea bargain was a product of "mutual mistake." The court set aside the defendant's plea and conviction.

The prosecutor subsequently indicted defendant on charges of (i) attempt to possess cocaine, (ii) being an habitual felon, and a new charge, (iii) felonious possession of drug paraphernalia. Following a jury trial, the defendant was convicted and received two, consecutive sentences of 135-171 months.

N.C. Gen. Stat. §15A-1335 provides:

> When a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense, or conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served.

Notwithstanding the statute, both the Superior Court and the North Carolina Court of Appeals found that this defendant could receive a sentence of more than twice what had previously been imposed.

The State argued that §15A-1335 should not apply because this case

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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 33,500 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.

Access is published four (4) times a year. Articles, ideas and suggestions are welcome: *tsanders@ncpls.org*

Challenging A Conviction -- (Continued)

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involved a guilty plea, rather than a jury verdict. The North Carolina Supreme Court found that distinction of no consequence. According to the Court, a sentence for the same offense that exceeded the original sentence violated the statute. *State v. Wagner*, 356 N.C. at 602, 572 S.E.2d at 779.

The *Wagner* case provides important protection to defendants who successfully challenge errors in their cases. However, some questions remain, even after *Wagner*. For example, it is not clear how courts will view cases in which the State has obtained a conviction on charges previously dismissed as part of plea agreement that was subsequently overturned. Would a lengthier sentence resulting from conviction upon previously dismissed charges comport with §15A-1335? (In *Wagner*, defendant's indictment and conviction for felonious possession of drug paraphernalia was not supported by any statute – there is no such crime under North Carolina law. The trial court's lack of jurisdiction therefore made the conviction void. It is not clear whether the result would be the same if the charged crime were supported by statute.) The answer to that question, and others, will have to await further developments in the courts.

Update on R.D.M. Legal Research

In our June 2002 issue of ***Access,*** we reported that the Attorney General's (AG) Office, Consumer Protection Section, was investigating R.D.M. Legal Research. The AG filed an action in the Wake County Superior Court alleging that the practices of R.D.M. violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §75-1.1. *State of North Carolina v. Richard D. Mears d/b/a R.D.M. Legal Research*, 02 CVS 8415 (Wake Co., June 2002).

The State filed a complaint alleging that R.D.M. solicited fees from inmates and their families to secure clemency or pardons within a specific period of time. The complaint further alleges that, after the fees were collected, the inmates were not released by the date specified and were not refunded their money. On February 18, 2002, the AG argued for summary judgment before the Honorable Superior Court Judge W. Osmond Smith, III.

On March 5, 2003, Judge Smith entered an Order Granting Partial Summary Judgment and a Permanent Injunction against Richard D. Mears, doing business as R.D.M. Legal Research. The trial court found that the State was entitled to summary judgment with respect to liability under the North Carolina Unfair and Deceptive Trade Practices Act. The court permanently

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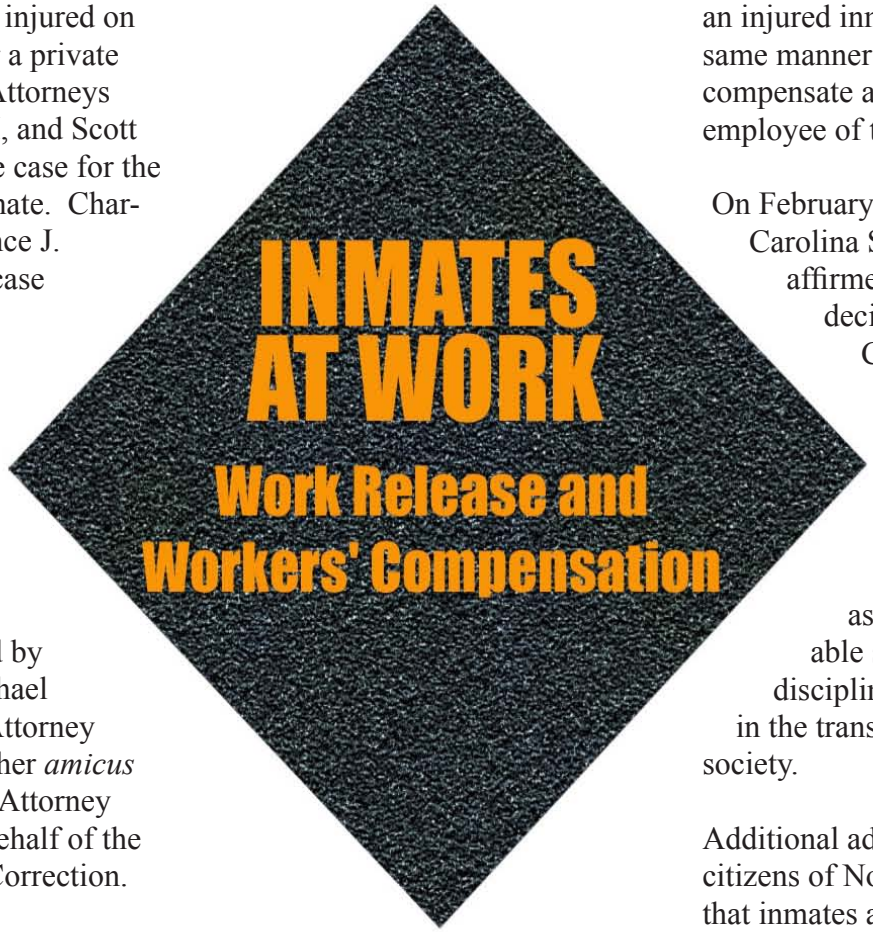
North Carolina Supreme Court Rules in Work Release/Workers' Compensation Case

By Senior Attorney Linda B. Weisel

On February 3, 2003, the North Carolina Supreme Court heard oral arguments in the case of *Harris v. Thompson Contractors and United States Fidelity*, No. 122P002 (NC S.Ct. 2002). This case deals with the important issue of an inmate's eligibility for workers' compensation if the inmate is injured on a work release job for a private employer. Gastonia Attorneys Joseph B. Roberts, III, and Scott W. Roberts argued the case for the plaintiff, a former inmate. Charlotte Attorney Lawrence J. Goldman argued the case for the employer.



As previously reported in ***Access***, two *amicus* (friend of the court) briefs were filed in support of the plaintiff. One *amicus* brief was filed by NCPLS Director Michael Hamden and Senior Attorney Linda Weisel. The other *amicus* brief was filed by the Attorney General's Office on behalf of the N.C. Department of Correction.

The employer's attorney argued that former inmate Harris was being worked by the State when he was injured on his work release job for a private employer and that he is not entitled to full recovery under the Workers' Compensation Act. The plaintiff's attorneys argued that inmates on work release jobs are not being worked by the State, but are working to further the business of the private employer for whom they are working. The plaintiff's attorneys further argued that the work release policies of North Carolina require private businesses to compensate an injured inmate employee in the same manner the employer would compensate any non-inmate employee of the business.

On February 28, 2003, the North Carolina Supreme Court affirmed the unanimous decision by the North Carolina Court of Appeals in favor of the inmate-employee. This victory will benefit literally thousands of inmates as they develop marketable skills and learn the discipline required to succeed in the transition to life in free society.

Additional advantages to the citizens of North Carolina are (1) that inmates are able to pay taxes, restitution, and court costs, (2) the Department of Correction is able to recover some of the costs of housing work release inmates, and (3) private employers have an enthusiastic and committed pool of employees upon which to draw to further their businesses.

INEFFECTIVE ASSISTANCE OF COUNSEL: *PARKER V. YORK*

BY SENIOR ATTORNEYS KRISTIN D. PARKS & SUSAN H. POLLITT

On December 10, 2002, NCPLS won a petition for federal *habeas corpus* in the case of *Parker v. York,* No. 5:01-HC-736-BO. Chief United States District Court Judge Terrence W. Boyle of the Eastern District of North Carolina issued an Order finding that Parker's attorney provided ineffective assistance of counsel. Judge Boyle vacated and set aside Mr. Parker's conviction and ordered Mr. Parker's unconditional release from custody unless the State retried him within 90 days. Mr. Parker filed his petition for the writ of *habeas corpus* on his own. Judge Boyle appointed NCPLS to respond to the State's Motion for Summary Judgment. The State's motion was denied and an evidentiary hearing was ordered. The hearing was conducted in October 2002 in Raleigh.

The Federal Courthouse, Raleigh, NC

Claims of ineffective assistance are often difficult to win on *habeas* review. Such claims require satisfying a two-pronged test that requires a showing of deficient performance by the attorney, and that this deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668 (1984). To establish deficient performance, a petitioner must show that counsel made errors so serious that he was not functioning as the "counsel" guaranteed under the Sixth Amendment. *Strickland*, 466 U.S. at 687. With respect to the prejudice prong, *Strickland* held that a defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694. However, a court's review of an attorney's performance is highly deferential. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id*. at 694-695.

At the hearing in the *Parker* case, strong expert testimony was provided by Raleigh Attorney Thomas Manning concerning the standards of criminal defense practice. NCPLS also put on evidence of several eyewitnesses who would have testified that Mr. Parker was in Alabama at the time of the robbery in Goldsboro, North Carolina. The attorney failed to arrange for the witnesses to appear at the trial. Several of the witnesses appeared at the evidentiary hearing, and others submitted affidavits. This evidence was sufficiently persuasive to overcome the strong presumption that an attorney's conduct is within a wide range of reasonable professional assistance.

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North Carolina FAMM Gears-Up For Action

Members of North Carolina Families Against Mandatory Minimums (NC-FAMM) are gearing up for a day of lobbying in Raleigh on March 19, 2003. Their goals are to: (1) win support for bills replacing mandatory minimum drug sentences with sentencing guidelines; (2) give judges greater discretion in imposing sentences; and (3) modify the State's harsh sentences for defendants charged as "habitual felons."

"FAMM's North Carolina sentencing reform campaign is desperately needed," said LaFonda Jones, FAMM's NC Project Director. Before joining NC-FAMM, Jones was a FAMM coordinator in Fayetteville, NC. Since taking on the duties of Project Director, Jones has been building support by speaking to groups across the State. "Leaders of many grassroots organizations are excited that FAMM is focusing on the habitual felon issue," Jones said. For example, the State Chapter of the NAACP is making this issue one of its top legislative priorities because of its disproportionate impact on people of color, Jones reports. That organization is expected to be one of those that will join FAMM members to lobby legislators.

Mandatory Sentences Override State Guidelines

North Carolina has long been hailed for innovative sentencing policies. Its sentencing guidelines, similar to the federal system, have helped to keep the prison population in line with prison capacity.

But so-called "tough on crime" mandatory penalties that override the guidelines and lengthen sentences are leading to a prison overcrowding crisis at the same time the state's budget is in the worst shape since the Great Depression.

The "habitual felon" statute is the best example. Prosecutors can charge a defendant with three prior felonies that have not been used to calculate a prior record level as the basis for an "habitual felon" indictment. Habitual felons must be sentenced at the fourth-most severe guideline level, requiring minimum sentences of 5 to 14 years. Yet, the felony that can trigger habitual felon status is often comparatively minor, nonviolent conduct, frequently carrying a penalty of less than a year in prison.

It appears that the vast majority of defendants charged as habitual felons are untreated addicts committing low-level crimes. Habitual felons make up almost one-tenth of the state's prison population - approximately 3,200 prisoners - and there are enough new habitual felon convictions per year to fill a medium-size prison. Statewide, 73% of all convicted habitual felons are African American.

North Carolina's mandatory drug trafficking sentences also override the sentencing guidelines. Prosecutors may bring charges for each of a number of elements in an offense (transporting, possessing, manufacturing, selling/delivering and conspiracy), even though all the charges are related to the same quantity of drugs. The sentence for each count may be required to be served consecutively to other sentences, leading to extremely long sentences.

A "Smart on Crime" Solution

"FAMM's campaign could not come at a better time," said Jones. "North Carolina's budget crisis is threatening public education, jobs and critical health services. At the same time, the Legislature is planning to spend millions more to build new prisons.

"If the Legislature would enact modest reforms -- allow nonviolent offenders convicted of drug trafficking to be sentenced under the guidelines, and reform the habitual felon statute -- pressure on both bed space and the budget would be greatly reduced without jeopardizing public safety," Jones said.

FAMM has retained Randolph Cloud, a seasoned North Carolina lobbyist who also represents substance abuse and mental health treatment providers. Bruce Cunningham, a defense attorney in private practice, is providing *pro bono* legal assistance and heads FAMM's North Carolina volunteer legal team.

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IMPACT Update: People Still Entering Prison Without Credit For Time Spent at IMPACT

By Senior Attorneys Kari L. Hamel and Susan H. Pollitt

In August 2002, the North Carolina Supreme Court ruled that time people spent in IMPACT (Intensive Motivational Program of Alternative Correctional Treatment) must be credited against their activated sentence. *State v. Hearst*, 356 N.C. 132, 567 S.E.2d 124 (N.C. 2002). NCPLS participated as a friend of the court in that case. After the Supreme Court's ruling, we have been working hard to make sure people receive the credit to which they are entitled. The DOC has helped by providing lists of people in prison who also went to IMPACT.

Only a judge can award credit for IMPACT. When an inmate requests our help, we verify his participation in IMPACT and determine if the credit that he may have already received includes credit for IMPACT. During our investigation, we have discovered that some inmates are entitled to additional jail credit, as well. NCPLS then writes to the clerk of court requesting an order for the additional time. Usually, our effort results in an Order Providing Credit Against Service of Sentence, which is sent by the clerk of court to Combined Records in Raleigh.

In August 2002, we received names of more than 650 inmates in the DOC who participated in IMPACT. We prioritized the list by identifying those inmates who would be released immediately if they got their IMPACT credit. We are pleased to report that we helped get 63 people immediately released from prison. We have also gotten IMPACT credit for an additional 125 more people who will now be released from prison at an earlier date.

In December 2002, we asked the DOC for another list of people who participated in IMPACT and entered the DOC after August 2002. The DOC was cooperative, providing a list of more than 100 names, which included people who would be entitled to immediate release upon receiving the IMPACT credit. Again, we prioritized the work by release date. We are pleased to report that we have gotten, or expect to get IMPACT awards for an additional 30 people. To date, courts throughout North Carolina have ordered more than 15,000 days of credit be applied toward inmates' sentences.

NCPLS and DOC agree that no inmate should spend a single day in prison beyond the lawful term of incarceration. Working with the DOC, NCPLS has been able to identify and get relief for a number of our clients.

If you entered the DOC after December 20, 2002, you participated in IMPACT, and you believe you did not receive credit for the time you spent in IMPACT, you should write to us to request assistance. In order to obtain the greatest possible benefit from that credit, you should act immediately.

The Paralegals of NCPLS
(Not picturerd, Bruce Creecy, Sharon Robertson & Billy Sanders)

Sentence Reduction Credits for Inmates "Medically Unfit" to Participate in Rehabilitative Activities

On September 26, 2001, the North Carolina Legislature enacted an amendment to N.C. Gen. Stat. 15A-1355(d), which allows the Department of Correction to award earned time credits to inmates serving sentences under the Structured Sentencing Act who are classified as "medically unfit." The DOC recently published regulations under the statute. See DOC Policy and Procedure Manual, 5 NC Administrative Code Section 2B.0116. The policy took effect 3 February 2003. Qualifying inmates are entitled to credit from that date, forward.

"Inmates in the custody of the Department of Correction who suffer from medical conditions or physical disabilities that prevent their assignment to work release or other rehabilitative activities may, consistent with rules of the Department of Correction, earn credit based upon good behavior or other criteria determined by the Department that may be used to reduce their maximum terms of imprisonment . . .." N.C. Gen. Stat. §1355(d).

For inmates determined to be "medically unfit," the regulations provide four days of sentence reduction credits per month. To be classified medically unfit, the medical authority must determine that the person cannot engage in any available work or program assignment due to a medical or mental health problem, or a physical disability.

"[S]tructured sentence inmates designated as an Acuity Level IV by a Department of Correction medical authority . . ." will be considered "medically unfit." An Acuity Level IV inmate is one who may require constant medical intervention in a hospital or other medical facility." Examples of Acuity Level IV inmates include those persons who are wheelchair-bound and require complete assistance; persons isolated for contagious diseases; people who require feeding tubes; and pregnancy. Other conditions may provide grounds for a finding of medical unfitness, in the discretion of health care authorities. Once an inmate is designated as medically unfit, the person will continue in that status until a medical authority determines that the health condition or disability no longer prevents assignment to work or other activities.

Many inmates will not be designated medically unfit. These include: (1) persons who are able to participate in appropriate work or other assignments but refuse to work or participate; (2) persons whose medical or mental health condition is the result of self-injury; and (3) persons on segregation status (including MCON, ICON, and HCON).

If an individual has limitations that prevent assignment to some, but not all work or program activities, he will not be designated as medically unfit. Instead, an assignment should be given that is appropriate to the inmate's health condition or physical disability. Sentence reduction credits will be earned based on the particular assignment.

If you believe that you are eligible for sentence reduction credits under this policy but do not know whether you are receiving credits, you should first check with your case manager. If you are not designated as medically unfit and you believe you should be, you should sign up to see the unit physician. Explain your medical or mental health problems, or your disability, and ask to be designated as medically unfit. If the health authority determines that you are not eligible to be designated as medically unfit, ask what assignments or programs would be appropriate in light of your health problems or disability. Then take that information back to your case manager and ask for any available assignment that you can perform.

If you are not designated as medically unfit but you believe the decision was wrong, or if you are unable to get an appropriate work or program assignment, you can raise your concerns through the grievance procedure.

New Litigation

By Assistant Director James W. Carter

Sentence Reduction Credits Should Apply Upon Revocation of Post-Release Supervision

NCPLS Senior Attorneys Susan H. Pollitt and James W. Carter filed a class action complaint and a motion for class certification in the Wake County Superior Court on December 20, 2002. In *Reep v. Beck*, *et. al*, 02-CVS-16880, Plaintiffs allege that the Department of Correction fails to apply any excessive sentence reduction credits an inmate may have earned while previously incarcerated to his post-release sentence if, and when, it is revoked. Plaintiffs contend that the application of those credits is required by North Carolina statutes.

Inmates convicted under Structured Sentencing of a Class B1 through E felony are released from prison on post-release supervision. During their initial period of confinement, they can earn sentence reduction credits that are not applied to their active sentence because doing so would reduce their minimum sentence below what they are required to serve by law. If they fail to meet the conditions of their post-release supervision, a revocation will result and they will be returned to prison. Upon their return, the Plaintiffs in *Reep* allege that the earned, but previously unapplied, credit should then be applied to reduce the remaining portion of their maximum sentence.

On February 18, 2003, the parties appeared in superior court to argue Plaintiffs' class certification motion. On February 27, 2003, the Honorable Evelyn W. Hill, Superior Court Judge of Wake County entered an Order of Dismissal of the Class Action Complaint. The court found that Mr. Reep received an additional sentence which is longer than his nine-month sentence for violating the terms of his post-release supervision. Therefore, he cannot show any injury by the failure to apply the earned, but unapplied sentence reduction credit to his post-release sentence. Since Plaintiff could not show injury, the court found that Mr. Reep's claim was moot and dismissed the action.

Plaintiffs have 30 days to decide whether to appeal the court's ruling to the North Carolina Court of Appeals.

The North Carolina Supreme Court and Court of Appeals are Side-By-Side

Sentence Reduction Credits Should Apply to Class C Life Terms

Class C Life sentences are "indeterminate," in the sense that they do not specify a date on which the sentenced inmate will be released from prison. The Department of Correction has taken the position that, since there is no projected release date, sentence reduction credits cannot be applied. That postion has been challenged in two companion cases. *Teasley v. Beck*, and *Bates v. Beck*, No. 105P03 (NC S.Ct. 2003). At a hearing in September 2001, Superior Court Judge Donald W. Stephens observed that the law requires the application of

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Update on R.D.M. (Continued)

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barred the defendant from offering or contracting to assist any party in securing an inmate's release from prison, transfer to another prison, or enrollment in any special program. The court ordered that all of the defendant's contracts for early release or enrollment in M.A.P.P. contracts be cancelled, and that the defendant make restitution of all uncontested sums collected from consumers who were parties to the cancelled contracts. Restitution is to be paid to the AG's Office and will be paid to the victims on a *pro rata* basis as soon as practicable.

Because additional claims may be pending, the Order provides that the court shall consider and determine the validity and extent of other victims' claims, and defendant's additional restitution obligations to them, based upon written affidavits and supporting documents filed by June 1, 2003. Any claims that have not yet been presented to the Attorney General's Office should be sent to the attention of David N. Kirkman, Assistant Attorney General, Consumer Protection Division, NC Dept. of Justice, P.O. Box 629, Raleigh, NC 27602. Victims who wish to have their claims considered by Judge Smith should communicate with Mr. Kirkman at least one month before the June 1, 2003, deadline set by the court.

The court's Order also provides that any person who has pursued, or wants to pursue, a private legal action against the defendant may do so and will not be prejudiced by the Order. However, such victims must promptly file a written notice in this case advising the court, the plaintiff, and the defendant of the intention to pursue private civil remedies against the defendant. Upon the filing of this notice, that party will no longer be entitled to restitution from this proceeding.

Parker v. York (Continued)

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The court found that the defense attorney conducted an incomplete investigation and presented a poorly prepared case when a strong alibi defense was available. The court found that, under prevailing professional norms, defense counsel's representation fell below an objective standard of reasonableness. The court concluded that there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Following the entry of the court's Order, Mr. Parker was released on bond. The State ultimately decided that it would not attempt to retry him on the charges.

After the court's appointment, with only two weeks to prepare for the evidentiary hearing, NCPLS Senior Attorneys Susan H. Pollitt and Kristin D. Parks represented Mr. Parker in the *habeas* proceeding that won his release.

FAMM (Continued)

(Continued from page 5)

FAMM is working closely with North Carolina's legal community, the NC Chapter of the NAACP, the Carolina Justice Policy Project, treatment providers, and other state-based advocates. FAMM will support some of the North Carolina Sentencing Commission proposals designed to make the guidelines fairer and reduce the number of new prison beds needed.

Jones expressed appreciation for guidance and support received from the Office of the Appellate Defender and NCPLS, and special thanks to the staff of the North Carolina Sentencing Commission for "their gracious assistance in answering questions about the impact of mandatory sentencing policies."

FAMM
Families Against Mandatory Minimums
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NCPLS Assistant Director Named

To further improve program operations, NCPLS has created the new position of "Assistant Director." After almost 25 years of continuous service, NCPLS has grown to a staff of 35. The management of the program involves fund-raising to secure the resources necessary to carry on the work of the program; reporting to and supporting the work of the Board of Directors; the administration of program and human resources; overseeing business operations, including the acquisition and maintenance of materials, supplies and equipment; the supervision of staff and case work; and the development of policies and procedures designed to better serve our clients. These tasks have become more complex and time-consuming as the program has evolved to keep pace with the needs and demands of an ever-increasing population of inmates.

To help meet these challenges, James W. Carter has been promoted to fill the newly-created position of Assistant Director. After 20 years of management experience at IBM, Mr. Carter attended UNC law school where he earned a *juris doctorate* degree. After successfully completing the Bar exam and meeting all other requirements, he was licensed to practice law in North Carolina in March 1998. After a short stint as a lawyer in the Halifax County District Attorney's Office, he came to work for NCPLS in 1999. Since then, Mr. Carter has demonstrated outstanding legal skills and an exceptional level of commitment to NCPLS and our clients. For example, in three separate *habeas corpus* actions brought in the Eastern District of North Carolina, Mr. Carter proved violations of the Double Jeopardy Clause and secured the immediate release of all three clients. *Bates v. Jackson*, 5:98-HC-915-BR(2) (October 19, 2000); *Fields v. Chavis*, 5:00-HC-9-BR(3) (January 29, 2001); and *Milligan v. McDade*, 5:00-HC-8-H (February 15, 2001). Additionally, on his own initiative, Mr. Carter conducted a nine-month study of NCPLS's operations and recommended changes that led to significant structural improvements, including the institution of the Intake Team and the Case Acceptance Committee. In December 2002, Mr. Carter earned promotion to the position of Senior Attorney. In January 2003, he agreed to take on the additional responsibilities of Assistant Director.

. . . outstanding legal skills and an exceptional level of commitment to NCPLS and our clients.

Commenting on his new responsibilities, Mr. Carter stated, "I hope to build on the NCPLS tradition of service to our clients by focusing on the way we do business, by providing additional support to the advocates who deliver those services, and by identifying opportunities to further improve the services we offer."

Everyone at NCPLS extends their congratulations and wishes Mr. Carter every success as he meets this new challenge.

Assistant Director James W. Carter

New Litigation (Continued)

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sentence reduction credits to an inmate's aggregate parole eligibility date, citing *Robbins v. Freeman*, 127 N.C. App. 162, 487 S.E.2d 771, *affirmed per curiam*, 347 N.C. 664, 496 S.E.2d 375 (1998). The trial court granted a declaratory judgment that Plaintiffs' parole eligibility dates on their Class C life sentences should be reduced by gain and merit time earned by or awarded to Plaintiffs. *Teasley & Bates*, 99-CVS-11631 (Wake Co., Sept. 18, 2002).

Defendants filed Notice of Appeal to the North Carolina Court of Appeals, which reversed the lower court's Order. *Teasley & Bates*, No. COA02-212 (NC Ct.App. Dec. 31, 2002). Plaintiffs-Appellants' Petition for Rehearing was denied by the Court of Appeals on January 30, 2003, and a Petition for Discretionary Review was filed with the North Carolina Supreme Court on February 11, 2003. On February 25, 2003, NCPLS filed a motion to appear in the case as a "friend of the court."

In its motion, NCPLS argued that the resolution of this case will have far-reaching effects on inmate opportunities for custody promotion, participation in programs, and eligibility for eventual parole. Since 1999, NCPLS has been involved in litigation seeking a definitive judicial ruling on the rights of persons serving Class C life sentences to have their parole eligibility dates moved forward by the application of gain and meritorious time. See, for example, *Vest v. Easley*, 145 N.C. App. 70, 549 S.E.2d 568 (2001) (plaintiff's claims mooted by eligibility for parole without regard to sentence reduction credits). Indeed, NCPLS is currently litigating the questions presented in this case in an action in Wake County Superior Court on behalf of five inmates seeking a declaration of rights. *Vereen, Cannon, Fisher, Grubb and Langley v. Beck, Baker, Buck and Dunn*, 01-CVS-15053 (Wake Co. Superior Ct.). Thus, NCPLS has significant familiarity with these issues and can provide a perspective that may assist the Court in resolving the dispute.

The Supreme Court's decision on NCPLS's motion, as well as the ultimate disposition of the case, will be reported in future editions of ***Access***.

Tips on Corresponding With NCPLS

NCPLS receives hundreds of letters from inmates each week. The following steps make it easier for us to provide better service.

1. Put your OPUS number on all your correspondence. Some inmates have the same name, but OPUS numbers are unique. Using your OPUS number helps your mail get into the file for the staff member handling your request.
2. Try to write as clearly as possible, especially when writing your name, the name of any witnesses to an incident, or the staff member(s) about whom you are complaining.
3. If you are known by another name (an alias), particularly if you corresponded with NCPLS under that name, please let us know.
4. It would help us to know if you have any problems with reading or writing, including whether anyone else is writing the letter for you.
5. Try to be specific when describing your problem(s). Broad claims that your rights have been violated, without facts to support your claims, cannot be investigated.
6. If you have grieved an issue, let us know. In most cases, we will need to see copies of any grievance(s) you have filed concerning your problem. We will also need to see all the responses and appeal results. Remember that NCPLS is *not* the place to file the DC-410 grievance forms. These forms must be submitted to the staff at your unit or, in the case of a confidential grievance, to the Director of Prisons. Our office will **not** forward grievances for inmates.

THE NEWSLETTER OF NORTH CAROLINA PRISONER LEGAL SERVICES, INC.

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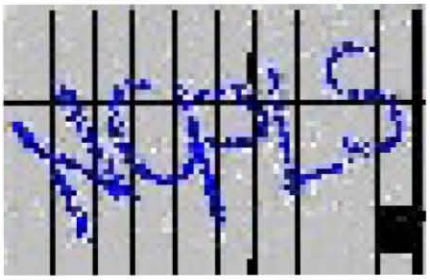

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