

## PLEA AGREEMENTS

### **(1) Trial Court's Failure to Follow Procedure in G.S. 15A-1022 in Accepting Guilty Plea Did Not Prejudice Defendant's Decision to Enter Plea**

### **(2) "Package Deal" in Which Prosecutor Offered Plea Arrangement to Defendant's Wife Contingent on Defendant's Agreement to Plead Guilty Did Not Violate Defendant's Constitutional Rights**

### **(3) Trial Court Did Not Err in Denying Defendant's Post-Sentencing Motion to Set Aside His Guilty Plea**

*State v. Salvetti*, \_\_\_ N.C. App. \_\_\_, 687 S.E.2d 698 (19 January 2010).

The defendant entered an *Alford* guilty plea to Class E felony child abuse and his wife entered guilty pleas to other child abuse offenses. The defendant was sentenced to a term of imprisonment. Two days after his plea, the defendant filed a motion to withdraw the plea, which the trial court denied. The defendant filed a notice of appeal and a writ of certiorari for review of other issues. (1) The court ruled that the trial court's failure to follow the procedure in G.S. 15A-1022 in accepting the defendant's guilty plea did not prejudice the defendant's decision to enter the plea. (See the court's extensive analysis in its opinion.) (2) The court rejected the defendant's argument that the prosecutor's offer of a "package deal" constituted undue pressure and violated the defendant's constitutional rights. The prosecutor offered the defendant's wife a plea deal contingent on the defendant's agreement to plead guilty. The court noted that other jurisdictions have found that package deal pleas are not per se involuntary, although they present a greater risk of inducing a false guilty plea by altering the defendant's assessment of the attendant risks. The court ruled that the prosecutor in this case did not use improper pressure to induce the defendant's plea. (3) The court ruled that the trial court did not err in denying the defendant's post-sentencing motion to set aside his guilty plea.

### **(1) Application of Satellite-Based Monitoring Program (SBM) to Defendant Did Not Violate Ex Post Facto Clause Although Legislature Enacted SBM After Defendant Had Been Convicted of Offenses That Subjected Him to SBM**

### **(2) Defendant's Guilty Plea Was Not Involuntary**

*State v. Bare*, \_\_\_ N.C. App. \_\_\_, 677 S.E.2d 518 (16 June 2009).

The defendant in 1998 was convicted based on a plea of guilty to indecent liberties and sentenced to prison. In 2002, he was convicted based on a no contest plea to failure to register as a sex offender and sexual activity by a custodian of a minor; he was sentenced to prison. In 2006, the legislature enacted the satellite based monitoring program (SBM). The defendant was released in 2007 and enrolled in SBM. In 2008, the trial court held a determination hearing under G.S. 14-208.40B and found that the defendant was convicted of a reportable conviction as defined under G.S. 14-208.6(4) and was a recidivist. The defendant was ordered to enroll in SBM for the remainder of his natural life. The court ruled that application of SBM to the defendant did not violate the Ex Post Facto Clause although the legislature enacted SBM after the defendant had been convicted of offenses that subjected him to SBM. The court concluded that the legislature intended SBM to be a civil and regulatory scheme, not a criminal punishment. Nor was SBM so punitive in purpose or effect to negate the legislature's intention to deem it civil. (2) The court rejected the defendant's two

20 arguments concerning the trial court's acceptance of his 2002 no contest plea. First, the defendant argued that the trial court violated G.S. 15A-1002(a)(6) (informing defendant of possible sentence and related matters) when it failed to inform him that imposition of SBM would be a direct consequence of his plea. The court stated that the defendant's argument was predicated on the assumption that SBM is punishment, which the court had rejected under its Ex Post Facto Clause analysis. Second, the defendant argued that his plea was involuntary because imposition of SBM was a direct consequence of his no contest plea, and thus he had to be informed of SBM when entering his plea. The court noted that imposition of SBM was not an automatic result of his no contest plea.

## **(2) Trial Judge Did Not Err in Denying Defendant's Motion to Withdraw Guilty Plea**

*State v. Watkins*, \_\_\_ N.C. App. \_\_\_, 672 S.E.2d 43 (3 February 2009).

The defendant filed a motion to withdraw his guilty plea. The defendant's former attorney, who had represented the defendant during the plea negotiations leading to the guilty plea, testified over the defendant's objection about a meeting with the defendant in which the defendant provided the attorney with his proposed testimony to be relayed to the prosecutor (this occurred during the plea negotiation process to show what testimony the defendant could offer at a possible trial of co-defendants).

(2) The court ruled that the trial judge did not err in denying the defendant's motion to withdraw his guilty plea. Based on the factors set out in *State v. Handy*, 326 N.C. 532 (1990), the defendant failed to show a fair and just reason for withdrawing his plea. (See the court's discussion of these factors and the facts in this case.)

## **Court Vacates Defendant's Guilty Plea Because Plea Agreement Stated That Defendant's Pretrial Motions Were Preserved for Appeal, But Appellate Review Was Unavailable for One of Defendant's Pretrial Motions**

*State v. Smith*, \_\_\_ N.C. App. \_\_\_, 668 S.E.2d 612 (18 November 2008).

The defendant was charged with a drug offense and habitual felon. Two of his pretrial motions were denied: (1) a motion to suppress evidence based on an alleged Fourth Amendment violation; and (2) a motion to dismiss the habitual felon indictment on the ground that the habitual felon law was unconstitutional. The defendant then entered a guilty plea pursuant to a plea agreement in which one of its terms was: "the defendant's pretrial motions shall be preserved for appeal." The court ruled, relying on *State v. Wall*, 348 N.C. 671 (1998), that the defendant's guilty plea must be vacated because the defendant was entitled to receive the benefit of the plea agreement, and the pretrial motion to dismiss the indictment was not subject to appellate review by appeal of right or by writ of certiorari.

**(1) G.S. 15A-1024 (Judge Imposing Sentence Other Than Provided in Plea Agreement Must Allow Defendant to Withdraw Plea) Did Not Apply When Judge Found Defendant Failed to Comply with Plea Agreement and Thus No Plea Agreement Existed at Time of Sentencing**

**(2) Trial Judge Did Not Err in Not Allowing Defendant to Withdraw Guilty Plea**

*State v. Hatley*, \_\_\_ N.C. App. \_\_\_, 648 S.E.2d 222 (7 August 2007).

The defendant pled guilty pursuant to a plea agreement in which he would provide truthful statements to a SBI agent and the state would recommend a specific sentence. If the defendant failed to provide truthful statements, the agreement specifically provided that the state was not bound to recommend the specific sentence. The prosecutor later determined that the defendant did not provide truthful statements and thus the defendant was not entitled to the sentencing recommendation in the plea agreement. The trial judge denied the defendant's motion to withdraw his guilty plea and sentenced him to a more severe sentence than provided in the plea agreement. (1) The court ruled that G.S. 15A-1024 (judge imposing sentence other than provided in plea agreement must allow defendant to withdraw plea) did not apply when the judge found that the defendant failed to comply with the plea agreement and thus no plea agreement existed at the time of sentencing. (2) The court ruled that the trial judge did not err in not allowing the defendant to withdraw his guilty plea. The defendant did not meet his burden of proving a "fair and just" reason to support his motion to withdraw.

**Insufficient Factual Basis to Support Judge's Acceptance of Guilty Plea**

*State v. Agnew*, 361 N.C. 333, 643 S.E.2d 581 (4 May 2007), reversing, 178 N.C. App. 234, 630 S.E.2d 743 (20 June 2006) (unpublished opinion).

On June 9, 2004, in taking the defendant's guilty plea to trafficking cocaine by possession, the trial judge asked defense counsel if counsel stipulated that there was a factual basis to support the plea and whether the defendant waived the formal presentation of evidence. Defense counsel responded affirmatively. Pursuant to the plea arrangement, the trial judge ordered that the sentencing hearing be continued until scheduled by the state. On March 10, 2005, a different trial judge held the sentencing hearing. The defendant told the judge that he had never seen the evidence in his case, never possessed the drugs, did not understand how he could be charged with trafficking by possession, had been under the influence of marijuana when he pled guilty on June 9, 2004, and had been under the impression that he would receive probation based on his cooperation. Treating the defendant's request as a motion to withdraw the guilty plea, the trial judge denied the motion and asked the prosecutor to tell the judge about the case. The prosecutor summarized the facts, and after further

colloquy with the defendant, the judge sentenced the defendant. The court ruled that when the trial judge accepted the defendant's guilty plea on June 9, 2004, the judge did not comply with G.S. 15A-1022(c) because the judge did not determine that there was a factual basis for the plea. The transcript, defense counsel's stipulation, and the indictment taken together did not contain enough information for an independent determination of the defendant's actual guilt in this case. The court noted that the prosecutor's summary of facts on March 10, 2005, could not serve as the factual basis in this case because that summary occurred months after the plea had been accepted.

**Proper Remedy Under Defendant's Motion for Appropriate Relief When Defendant Was Sentenced to Illegal Concurrent Sentence Pursuant to Plea Agreement Was to Allow Defendant to Withdraw Guilty Plea; Judge Had No Authority to Order Sentence to Run Concurrently**

*State v. Ellis*, 361 N.C. 200, 639 S.E.2d 425 (26 January 2007), reversing, 167 N.C. App. 276, 605 S.E.2d 168 (7 December 2004).

The defendant pled guilty to armed robbery in 1992 when the law required the sentence to run consecutively to any sentences being served. However, the state and the defendant in the plea agreement agreed that the sentence would run concurrently with the sentences the defendant was then serving. The judge sentenced the defendant for the armed robbery, but did not indicate whether it was to run concurrently or consecutively. The Department of Correction recorded the sentence as consecutive to the sentence he then was serving. The defendant filed a motion for appropriate relief requesting that he be allowed to withdraw his guilty plea. The trial court judge hearing the motion for appropriate relief instead ordered the sentence to run concurrently. The court ruled, relying on *State v. Wall*, 348 N.C. 671, 502 S.E.2d 585 (1998), that the proper remedy was to allow the defendant to withdraw his guilty plea, and the defendant could proceed to trial or attempt to negotiate another plea agreement. The judge at the MAR hearing had no authority to order the sentence to run concurrently. The defendant was not entitled to specific performance of the plea agreement that would result in an illegal sentence.

**Accomplice's Plea Agreement and Plea Transcript – Agreement to Testify Against Defendant – Relevant to Credibility**

*State v. McCord*, 140 N.C. App. 634 (2000).

The trial court did not err in a prosecution for first-degree murder, first-degree rape, first-degree kidnapping, robbery with a firearm, and first-degree burglary by admitting evidence of an accomplice's plea agreement and plea transcript under N.C.G.S. § 8C-1, Rule 401, because the fact that

the accomplice entered into a plea agreement with the State in which she agreed to testify against defendant was relevant to the accomplice's credibility.

### **Sentencing-Variance From Plea Bargain-Right To Withdraw Agreement**

*State v Carriker 180 N.C. App. 470 (2006)*

A guilty plea was vacated and remanded where the judge failed to inform a defendant of her right to withdraw her plea after deciding to impose a sentence other than as indicated in the plea agreement. Defendant's request came the day after sentencing and involved a fair and just reason (the differing sentence). N.C.G.S. § 15A-1024.

#### **1. Criminal Law--request to withdraw guilty plea--confusion as to terms of plea agreement**

*State v Robinson 177 N.C. App. 225 (2006)*

The trial court did not err in a trafficking in cocaine case by denying defendant's request to withdraw his guilty plea made before sentencing based on alleged confusion as to the terms of the plea agreement regarding whether he had to testify against his brother truthfully, or truthfully and consistently with his earlier statement to law enforcement, because: 1) defendant moved to withdraw his guilty plea approximately three and one-half months after its entry; 2) defendant asserted neither legal innocence nor lack of representation by counsel at all relevant times; 3) defendant did not argue misunderstanding of the consequences of a guilty plea, hasty entry of the plea, or coercion; 4) the plea agreement stated defendant would testify truthfully and consistently with prior statements to law enforcement, and there was no ambiguity in the written statement; 5) defendant testified to his understanding of the agreement, and defendant understood the guilty plea process; and 6) defendant did not present any fair or just reason to allow the withdrawal of his guilty plea.

#### **2. Criminal Law--Request To Withdraw Guilty Plea--Meeting Of Minds**

*State v Robinson 177 N.C. App. 225 (2006)*

The trial court did not err in a trafficking in cocaine case by denying defendant's request to withdraw his guilty plea even though defendant contends the plea agreement was void as there was no meeting of the minds as to whether defendant was to testify against his brother truthfully, or truthfully and in conformity with his earlier statements to law enforcement, because: 1) defendant testified that he understood the plea agreement required him to testify truthfully and

consistently with his previous statement to law enforcement officers; 2) although defendant contends a sergeant testified that defendant only had to testify truthfully, the sergeant's understanding is irrelevant when he is not a party to the plea agreement; and 3) defendant presented no evidence that the prosecutor had a different understanding than that of the text of the agreement.

### **3. Criminal Law-Plea Agreement--Failure To Provide Substantial Assistance To Law Enforcement**

*State v. Robinson 177 N.C. App. 225 (2006)*

The trial court did not abuse its discretion in a trafficking in cocaine case by finding that defendant did not provide substantial assistance to law enforcement and by failing to depart from the statutorily mandated sentence, because the trial court's decision was not manifestly unsupported by reason.

### **4. Evidence--Cross-Examination--Letters from defendant to district attorney--Plea discussions**

*State v. Walker 167 N.C. App. 110 (2004)*

The trial court erred in a robbery with a dangerous weapon and assault with a deadly weapon inflicting serious injury case by allowing the State to cross-examine defendant Walker with letters he wrote to the district attorney in which he offered to plead guilty, and defendant is entitled to a new trial, because the letters constituted a plea discussion within the meaning of N.C.G.S. § 15A-1025 and N.C.G.S. § 8C-1, Rule 410 when: 1) the letters stated defendant was willing to confess and help in any way in order to get probation, which articulated the plea arrangement defendant sought; 2) even though the prosecutor did not initially respond to defendant's letters, the letters ultimately led to the prosecutor entering into plea discussions with defendant that resulted in defendant entering a guilty plea which was subsequently withdrawn; and 3) the admission of evidence that defendant was considering pleading guilty to the charges against him were highly prejudicial to his case and potentially influenced the jury's decision.

### **Jury--Voir dire--Automatic disregard of testimony in light of plea bargain \*\*\*\*\***

*State v. Johnson 164 N.C. App. 1 (2004)*

The trial court did not abuse its discretion in a robbery with a dangerous weapon, attempted robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon case by permitting the State to ask potential jurors during voir dire if there was anyone who would automatically disregard any and all testimony of a coparticipant even in light of other believable evidence if the jury found out that the coparticipant actually received a plea bargain, because: (1) the question was not directed at discerning whether the potential jurors would

believe the coparticipant in spite of his having agreed to a plea bargain, but whether jurors would be able to consider his testimony notwithstanding his having agreed to a plea bargain; and (2) the question properly was directed at the potential juror's ability to be fair and impartial.

### **Criminal Law--Plea agreement--Validity**

*State v. Daniels* 164 N.C. App. 558 (2004)

The trial court did not err in a statutory sex offense, sexual activity by a substitute parent, indecent liberties with a child, first-degree statutory rape, and first-degree statutory sex offense case by concluding that a valid plea agreement did not exist between defendant and the State on 15 July 2002, because: 1) defendant rejected three plea arrangements before this case went to trial; and 2) the fact that the trial court rejected the 26 June 2002 plea arrangement means that the arrangement was no longer available for defendant to accept on 15 July 2002 unless the prosecutor negotiated another plea arrangement with defendant, and the record does not reflect that such a negotiation took place.

### **Evidence--Plea agreement of codefendant--False evidence--No expression of opinion by trial court**

*State v. Nevills* 158 N.C. App. 733 (2003)

The trial court did not commit structural or plain error in an attempted first-degree murder, first-degree murder, first-degree kidnapping, and conspiracy case by admitting evidence that the trial court had consolidated charges against a codefendant for sentencing on the condition that she give truthful testimony in proceedings related to the victim and by allegedly giving the impression that the codefendant was testifying pursuant to an agreement with the court, because: 1) the actions of the judge and the State did not constitute presentation of known false evidence in violation of defendant's due process rights even though defendant contends the terms of the codefendant's sentencing condition were patently misleading to the jury since they improperly conveyed that the trial court possessed the authority to enter an agreement with the codefendant; 2) considering the totality of circumstances, it cannot be said that the judge expressed an impermissible opinion to the jury by permitting others to refer to the sentencing condition as an agreement; and 3) the jury was properly admonished by the trial court's instruction to carefully consider whether to believe the codefendant's testimony despite the court's reference to the sentencing condition as an agreement.

### **1) Criminal Law--Unlawful plea agreement--Appellate review**

*State v. Jones* 161 N.C. App. 60 (2003)

The trial court erred in a possession with intent to sell and deliver cocaine case by allowing defendant to specifically condition his plea agreement on appellate review of the denial of his habeas corpus motion, his motion to suppress, his motion to dismiss the habitual felon charge as being double jeopardy based on alleged unlawful detention maintained in his previously denied habeas corpus motion, and the case is vacated and remanded because: 1) defendant only has a right of appeal for his motion to suppress; 2) the Court of Appeals is without authority to review either by right or by certiorari the trial court's denial of defendant's motion for a writ of habeas corpus, his motion to dismiss based on his claim of unlawful detention maintained in his habeas corpus motion, or his assertion on appeal that he was denied a probable cause hearing; and 3) where a defendant's bargain violates the law, the appellate court should vacate the judgment and remand the case to the trial court where defendant may withdraw his guilty plea and proceed to trial on the criminal charges or withdraw his plea and attempt to negotiate another plea agreement that does not violate the law.

**2) Criminal Law--Guilty plea--Failure to timely notify DMV of change of address--Court's failure to comply with statutory requirements**

*State v. Glover 156 N.C. App 139 (2003)*

A defendant's plea of guilty of failure to timely notify the Department of Motor Vehicles (DMV) of a change of address must be vacated based on the trial court's failure to comply with N.C.G.S. §§ 15A-1022 and 15A-1026, because: 1) the record contains no transcript of the plea nor an indication, oral or written, that the trial court ever personally addressed defendant regarding the issues contained in N.C.G.S. § 15A-1022; and 2) there was more than technical non-compliance where there is no indication in the record of compliance nor does the record contain any factual basis for the plea from which the Court of Appeals may evaluate whether it was properly accepted.

**Criminal Law--Guilty plea--Motion to withdraw--Denied**

*State v. Ager 152 N.C. App. 577 (2002)*

The trial court did not err by denying defendant's motion to withdraw a guilty plea to first-degree murder where defendant never asserted his legal innocence; the case for premeditation and deliberation was not "weak"; the record is silent as to the length of time between the entry of the plea and defendant's desire to withdraw it; defense counsel was effective; defendant was competent at the time of the plea; there was plenary evidence that defendant's plea was not made hastily; and, while defendant argued a lack of prejudice to the State, the defendant must first meet his burden of showing a fair and just reason for withdrawal.

## **Criminal Law--Plea agreement--Motion to withdraw**

*State v. Russell 153 N. C. App. 508 (2002)*

The trial court's denial of defendant's post-sentencing motion to withdraw his guilty plea to the charge of conspiracy to commit assault inflicting serious bodily injury did not result in manifest injustice, because: 1) even though defendant contends the plea agreement would allow him to go to trial if he refused to testify against his codefendants, the plea agreement gave the State the option of declaring the plea null and void, necessitating a trial, or praying for judgment, and the State chose to pray for judgment; 2) there was no contention the trial court failed to inform defendant of the maximum sentence available; and 3) defendant signed a transcript of plea form and the trial court conducted the proper inquiry which was sufficient to show defendant's plea was entered into knowingly and voluntarily with full awareness of the direct consequences of his plea.

## **Evidence--Exclusion of coparticipant's plea agreement--Impeachment--Bias**

*State v. Lambert 149 N.C. App. 163 (2002)*

The trial court did not err in a second-degree murder case by excluding evidence of a plea agreement executed by one of defendant's coparticipants even though defendant sought to use the evidence for impeachment purposes to show that the coparticipant had a plea arrangement with the State and to show the coparticipant's potential bias as a witness, because: 1) the trial court did not prohibit defendant from cross-examining the coparticipant about his plea arrangement, and the judge specifically instructed defense counsel on the proper method for questioning the witness regarding this information; 2) defense counsel abandoned his line of questioning regarding the plea agreement, and failure to pursue the right to confrontation does not constitute a denial of the right to confrontation; and 3) there was no evidence that the coparticipant was testifying in exchange for a sentence reduction.

## **Criminal Law--Guilty plea--Motion to withdraw denied**

*State v. Davis 150 N.C. App. 205 (2002)*

The trial court did not err in a prosecution for second-degree murder, driving while impaired, and felony hit and run by denying defendant's motion to withdraw his plea of guilty pursuant to a plea bargain. Although defendant contends that he entered the plea hastily and did not understand that he was pleading guilty to second-degree murder, the record shows otherwise. Furthermore, the State's proffer of evidence was significant.

## **No Constitutional Requirement That Prosecutor Disclose Impeachment Information About Government's Witnesses Before Entering Plea Agreement with Defendant**

*United States v. Ruiz, (25 June 2002).*

The Court ruled that there is no constitutional requirement that a prosecutor must disclose impeachment information about the government's witnesses before entering a plea agreement with the defendant. The Court also ruled that a plea agreement requiring a defendant to waive his or her right to receive information in the prosecutor's possession concerning any affirmative defenses did not violate the constitution.

### **Criminal Law–Plea agreement–Rejection by judge**

*State v. Santiago 148 N.C. App. 62 (2001)*

There was no error where the trial court rejected a plea agreement by which defendant would have pled guilty to felonious child abuse in exchange for dismissing a first-degree sexual offense charge and a limit on his sentence. A plea agreement must have judicial approval before it is effective, and a decision by a judge disapproving a plea agreement is not subject to appeal. N.C.G.S. § 15A-1023(b).

### **1) Criminal Law - Plea agreement - Spirit of agreement violated - Charge used derivatively**

*State v. Blackwell, 135 N.C. App. 729 (1999)*

The trial court's order concerning a drunk driving case is vacated and remanded because although the State did not directly use the felonious impaired driving charge as the underlying felony to prove murder, the State violated the spirit of its plea agreement with defendant when it used the charge derivatively to prove the four assault with a deadly weapon inflicting serious injury charges that were then used as the underlying felonies themselves, since defendant reasonably interpreted the agreement to mean the State promised not to use the felonious impaired driving charge in any way to prove felony murder.

### **2) Criminal Law § 131 (NCI4th Rev.) - Plea agreement - Burglary - Concurrent sentence - Defendant entitled to benefit of bargain - Defendant not entitled to specific performance**

*State v. Wall, 348 N.C. 671 (1998)*

A defendant who entered into a plea agreement in 1994 under which several 1993 cases, including burglary, were consolidated for judgment was entitled to the

benefit of his bargain where defendant, his attorney, and the prosecutor understood that the 1994 sentence was to run concurrently with the sentence defendant was already serving. However, defendant is not entitled to specific performance because that would violate the law of the state. Defendant may withdraw his plea and proceed to trial or attempt to negotiate another agreement that does not violate N.C.G.S. § 14-52.

**3) Criminal Law § 131 (NCI4th Rev.) plea arrangement tender of guilty plea rejection by court  
State not limited as to charge or sentence at trial**

*State v. Wallace, 345 N.C. 462 (1997)*

Defendant was not entitled to be tried only for second-degree murder and to receive a sentence of only twenty years on the ground that defendant acted in reliance upon a plea arrangement to his detriment when he tendered a plea of guilty to second-degree murder in open court pursuant to the arrangement where the trial judge rejected the plea of guilty by withdrawing his concurrence to the plea arrangement in accordance with N.C.G.S. § 15A-1021 (c) upon hearing for the first time during the State's recitation of evidence in support of defendant's tendered plea of guilty that defendant shot the victim through a screen door.

**1. Criminal Law § 1084 (NCI4th) -Guilty plea according to plea arrangement - No right to appeal**

*State v. Washington, 116 N.C. App. 318 (1994)*