No Reduction Credits for 80-Year Life Sentences

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The Supreme Court of North Carolina decided *Lovette v. Department of Correction* last Friday. The case has nothing to do with Laurence Lovette—the man found guilty of killing UNC student body president Eve Carson—whose case was also recently before our appellate courts (discussed here). Rather, it concerned Clyde Vernon Lovette and fellow petitioner Charles Lynch, two inmates serving life sentences for crimes committed in the mid-1970s. They committed their crimes during a four-year time period when a life sentence was defined in North Carolina as a term of 80 years. The supreme court decided last week that the men were not entitled to any reduction credits against their 80-year sentences, despite being convicted of crimes other than first-degree murder.

To understand *Lovette* fully requires a look back at earlier chapters in the "80-year life" saga. Here is a review:

Bowden. In *State v. Bowden*, 193 N.C. App. 597 (2008), the court of appeals held that under a former version of G.S. 14-2, a life sentence entered for an offense committed between April 8, 1974 and July 1, 1978, is an 80-year sentences for all purposes, including the determination of the inmate's outright release date. As it was written at that time, G.S. 14-2 included a provision saying that a "sentence of life imprisonment shall be considered as a sentence of imprisonment for a term of 80 years in the State's prison." The Supreme Court of North Carolina initially agreed to review *Bowden*, but then decided that discretionary review had been improvidently allowed. 363 N.C. 621 (2009). *Bowden* is summarized here.

Jones. In *Jones v. Keller*, 364 N.C. 249 (2010), the supreme court considered what sentence reduction credits, if any, can be earned by inmates in the *Bowden* class. The petitioner in that case, Alford Jones, was serving a life sentence for a first-degree murder committed in 1975. He argued that if he received all the credits generally applicable to an inmate serving a term-of-years sentence, his 80-year life sentence would be complete: "good time" would roughly cut the sentence in half, and "gain time" and "meritorious time" would further reduce it by another 10 years or so.

A divided supreme court disagreed with him, holding that reduction credits were an administrative matter within the discretion of the Department of Correction, and that DOC's decision to deny credit was not unconstitutional in light of the state's compelling interest in public safety. The three-justice majority was careful to limit its decision to the first-degree murderers within the *Bowden* class, *Jones*, 364 N.C. at 252, and sent signals that the same rule might not apply to inmates sentenced to life imprisonment for other crimes, *id.* at 257 ("This State interest in ensuring public safety is particularly pronounced when dealing with those convicted of first-degree murder."). Justice Newby, joined by former Justice Brady, concurred in the result, indicating that he would have extended the rule denying credit to any life sentence, regardless of the underlying offense. Former Justice Timmons-Goodson dissented, joined by Justice Hudson. The Supreme Court of the United States denied certiorari in *Jones*. 131 S. Ct. 2150 (2011). *Jones* is summarized here.

Waddell. An inmate similarly situated to Jones—a man named Larry Waddell who was sentenced to life imprisonment for a first-degree murder committed in July of 1974—lost his petition for federal habeas corpus relief in the Western District of North Carolina. The Fourth Circuit affirmed the denial of the petition on appeal. Waddell v. Department of Correction, 680 F.3d 384 (4th Cir. 2012). The Supreme Court denied certiorari, 133 S. Ct. 451 (2011)—some 36 years after vacating the death sentence he originally received in 1975. Waddell v. North Carolina, 428 U.S. 904 (1976).

Waddell is summarized here.

Lovette. That brings us to last week's case. Like Bowden, Jones, and Waddell, Clyde Lovette and Charles Lynch were sentenced to life imprisonment for crimes committed between 1974 and 1978. Unlike those inmates, Lovette and Lynch were convicted of crimes other than first-degree murder—second-degree murder for Lovette and second-degree burglary for Lynch. Based on that distinction, the men petitioned for a writ of habeas corpus, arguing that they were not subject to the rule from *Jones*, and that they were thus entitled to good time, gain time, and meritorious time credits that made them eligible for immediate release.

The trial judge agreed, finding that the majority opinion in *Jones* was expressly limited to first-degree murderers, and that the petitioners were "part of a distinguishable subset of the *Bowden* class." The writ was allowed and the men were ordered to be discharged.

The Department of Correction petitioned for a writ of certiorari to the court of appeals, where a divided panel affirmed the trial judge's order granting the inmates' release. Lovette v. Dep't of Correction, __ N.C. App. __, 731 S.E.2d 206 (2012). The majority noted that in *Jones*, the "Supreme Court went to great lengths to distinguish the *Jones* defendants—those who committed first-degree murder and were sentenced to life imprisonment for first-degree murder—from other defendants serving life terms . . . ." *Id.* at 209.

Judge Ervin wrote a lengthy dissent, concluding that even if the court of appeals wasn't bound by the *Jones* holding in Lovette's case, it was still bound by the analytical framework set out in *Jones*. To evaluate an inmate's constitutional challenge to DOC's denial of credit, the supreme court instructed lower courts to "weigh [the inmate's] liberty interest, if any, in having his earned time credits used to calculate his unconditional release date against the State's interest in keeping inmates incarcerated until they [could] be released with safety to themselves and to the public." *Id.* at 213 (Ervin, J., dissenting) (internal quotations omitted). If the prisoner's interest in the credits was, as the supreme court said in *Jones*, "de minimis," then even crimes less serious than first-degree murder can tip the balance to a denial of credit. Second-degree murder and second-degree burglary are serious enough, the dissent concluded, to raise the same public safety concerns at issue in *Jones*. And so the credits should be denied.

The Department of Correction petitioned the state supreme court for a writ of supersedeas and a temporary stay, which were allowed. The case was argued on February 14, 2013, and—as I mentioned 1,100 words ago—decided last week. In a short per curiam opinion, the court adopted Judge Ervin's dissent and ruled against the inmates. "For the reasons stated in the dissenting opinion, we reverse the decision of the Court of Appeals and remand this matter to that court for remand to the trial court for further proceedings not inconsistent with this opinion."

Given the divided court in *Jones*, I frankly did not expect the unanimous, per curiam decision that emerged from the supreme court in *Lovette*, which struck me as a closer case. But I suppose the makeup of the court has changed since then, with the author of the *Jones* dissent no longer on the court. Going forward, it seems that any life-sentenced offense from the 80-year-life era is probably serious enough to support a denial of sentence reduction credits. But after all the twists and turns of five plus years of litigation, I'm not making any predictions.