

No Relief from Fair Sentencing

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In a post [here](#) Jamie discussed whether a defendant who was sentenced under the Fair Sentencing Act (FSA) can successfully bring a motion for appropriate relief asserting that he or she is entitled to “retroactive” application of the provisions of Structured Sentencing Law (SSL). Jamie posited—correctly as it turns out—that the answer to this question is no. Nevertheless several trial judges have been granting motions for appropriate relief asserting this claim. The N.C. Supreme Court recently weighed in, holding that there is no basis for retroactively applying SSL to FSA offenses.

In [State v. Whitehead](#), the defendant pled guilty to second-degree murder on 29 July 1994. The offense occurred on 25 August 1993. The trial court imposed a life sentence, the maximum aggravated term for second-degree murder, a Class C felony under the FSA. Subsequently, the General Assembly enacted SSL. As compared to the FSA, SSL imposes shorter terms of imprisonment for second-degree murder. In 2010, the defendant filed a motion for appropriate relief seeking to have his sentence modified under SSL. After a hearing, the trial judge concluded that SSL “retroactively” applied to the defendant and modified the defendant’s sentence accordingly. The State’s petitioned the N.C. Supreme Court for writ of certiorari to determine whether the trial judge erred in modifying the defendant’s FSA sentence. Noting that the N.C. Constitution grants it “jurisdiction to review upon appeal any decision of the courts below,” the court exercised its “rarely used general supervisory authority,” and agreed to review the trial court’s ruling.

Turning to the substantive issue, the court determined that the modified sentence “contravenes the appropriate sentencing statutes.” According to the court, the General Assembly “clearly and unambiguously” provided that the SSL may not be applied retroactively. Specifically it noted the following effective date language in the relevant Session Law:

This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

Slip op. at 6 (quoting Ch. 24, sec. 14, 1993 N.C. Sess. Laws (Extra Sess. 1994) at 96). It thus concluded that the trial court erred by applying SSL retroactively to an offense committed before 1 October 1994. Further, the court noted, that same provision expressly states that sentences for offenses occurring before the SSL’s effective date shall not be affected by the Act. Thus, the court concluded, “the FSA remains the applicable law for the defendant’s sentence.”

The court quickly disposed of the defendant’s argument that his FSA sentence violated the Eighth Amendment. It then vacated and remanded for reinstatement of the original judgment.

I have received many questions about this issue over the years. It’s nice to have a final answer.