

**Motor Vehicles--habitual DWI--date of prior conviction--amendment of indictment--
substantial alteration**

The decision of the Court of Appeals affirming a sentence for habitual DWI is reversed for the reason stated in the dissenting opinion that the trial court erred in permitting the State to amend the habitual DWI indictment after the close of the State's evidence to reflect the correct date of conviction of one of defendant's prior DWI offenses rather than the date of the offense, which was eight days outside the seven-year time period for habitual DWI, because amendment of the indictment to allege a date within the seven-year period was a substantial alteration prohibited by N.C.G.S. § 15A-923(e).

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 169 N.C. App. 137, 609 S.E.2d 463 (2005), finding no error in a judgment entered 6 November 2001 by Judge J. Richard Parker in Superior Court, Gates County. Heard in the Supreme Court 15 November 2005.

*Roy Cooper, Attorney General, by Patricia A. Duffy, Assistant Attorney General,
for the State.*

Richard E. Jester for defendant-appellant.

PER CURIAM.

For the reasons stated in the dissenting opinion, the decision of the Court of Appeals is reversed, and the case is remanded to the Court of Appeals for further remand to the Superior Court, Gates County, for proceedings not inconsistent with the dissenting opinion.

REVERSED AND REMANDED.