

[REDACTED]

Since the Federal Constitution affords no greater protection than our State Constitution, we need not consider the federal constitutional protections. *See State v. Ball*, supra at 231-32, 471 A.2d at 350-51.

In view of our holding that the defendant in this case had no right to consult with counsel before taking the breath test, we need not consider her argument that the refusal of her request to consult with counsel is a sufficient basis for suppression and exclusion of the results of the breathalyzer test.

The motion to suppress should be denied, and we remand for trial.

*Remanded.*

All concurred.

[REDACTED]

Hillsborough  
No. 85-207

*In re* GENE B.

July 17, 1986

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Stephen E. Merrill*, attorney general (*Tina Schneider*, assistant attorney general, on the brief and orally), for the State.

*Joanne Green*, assistant appellate defender, of Concord, by brief and orally, for the defendant.

MEMORANDUM OPINION

The minor respondent was charged with two unrelated acts of

delinquency. RSA 169-B:2, II (Supp. 1985). The first related to possession of a controlled drug with intent to sell; the second, here on appeal, would have been aggravated felonious sexual assault if perpetrated by an adult. RSA 632-A:2 (Supp. 1983). The Manchester District Court found the minor to be a delinquent under each charge. On the drug offense, the court committed him to the youth development center (YDC) for his minority, RSA 169-B:19, I(i) (Supp. 1985); and on the sexual assault charge it committed him to the house of correction for a term of one year, to begin at the expiration of his commitment to the YDC. RSA 169-B:19, III (Supp. 1985) (a minor found to be delinquent after his seventeenth birthday may be committed to a house of correction but must be confined separately from adults).

The minor appealed the determination of delinquency on the sexual assault charge, *see* RSA 169-B:29 (Supp. 1985), and the matter was heard *de novo* in the Superior Court (*Goode, J.*). On April 24, 1985, he was again found to be delinquent, but the superior court's dispositional order differed from the order below, by providing for the minor's immediate commitment to the house of correction to serve a term expiring on his nineteenth birthday.

In this appeal, the juvenile claims that the commitment to the house of correction for a period twenty-five percent longer than the district court had imposed was a "substantial" increase, which the superior court failed to justify by reasons on the record, and which should therefore be vacated under *State v. Wheeler*, 120 N.H. 496, 499, 416 A.2d 1384, 1386 (1980). For the purposes of applying *Wheeler*, however, we cannot conclude on the present record that there was an increase in the period of commitment, let alone a substantial one.

Our case-by-case approach to the analysis of increases in sentences following *de novo* appeals has at least made it clear that we look to the practical results of sentencing changes when we construe *Wheeler's* requirement that any substantial increase in the length or severity of a sentence be justified by reasons stated on the record. Compare *State v. Fournier*, 123 N.H. 777, 779-80, 465 A.2d 898, 900 (1983) (no substantial increase because only difference in sentence is an additional six months suspended sentence and change from one-year conditional discharge to one year's probation) and *State v. Thaxton*, 122 N.H. 1148, 1150-51, 455 A.2d 1016, 1017 (1982) (change from 90-day sentence to one-year sentence with nine months suspended, fine of \$1,000.00 and one-year probation only arguably substantial because period of confinement the same) with *State v. Hamilton*, 123 N.H. 686, 688-89, 465 A.2d 495, 496-97 (1983)

(increase from suspended thirty-day sentence and \$100.00 fine to thirty-day sentence in house of correction was substantial increase) and *State v. Wheeler supra* (five-fold increase in fine from \$150.00 to \$750.00 was substantial increase).

■ The only obvious practical effect of the superior court's order in this case was to change the place of commitment from the YDC to the house of correction for the period from April 24 through July 25, 1985. The superior court did not increase the duration or severity of the combined commitments so as to implicate *Wheeler*. Defense counsel has suggested a further practical difference, in that a minor at the house of correction is ineligible for the temporary furloughs that would be possible at the YDC. The record, however, furnishes no basis to infer that this difference is anything but *de minimis*.

*Affirmed.*

Hillsborough  
No. 85-249

GENE R. MAILHOT & a.

v.

C & R CONSTRUCTION CO.

July 17, 1986

*Wiggin and Nourie*, of Manchester (*Richard B. McNamara* on the brief and orally), for the plaintiffs.

*Wadleigh, Starr, Peters, Dunn & Chiesa*, of Manchester (*John A. Lassey* and *Robert A. Casassa* on the brief, and *Mr. Lassey* orally), for the defendant.

PER CURIAM. These are related claims for personal injury and loss of consortium allegedly caused by the defendant's breach of a general contractor's duty to the employees of a subcontractor. The plaintiffs claim that the Superior Court (*Dalianis, J.*) erred in