

## Appeal of a Ruling on a Motion for Appropriate Relief

[\*State v. Thomsen\*](#), \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Aug. 19, 2016). The Court of Appeals had subject-matter jurisdiction to review, pursuant to the State's petition for writ of certiorari, a trial court's grant of its own motion for appropriate relief (MAR). The defendant pleaded guilty to rape of a child by an adult offender and to sexual offense with a child by an adult offender, both felonies with mandatory minimum sentences of 300 months. Pursuant to a plea arrangement, the trial court consolidated the convictions for judgment and imposed a single active sentence of 300 to 420 months. The trial court then immediately granted its own MAR and vacated the judgment and sentence. It concluded that, as applied to the defendant, the mandatory sentence violated the Eighth Amendment; the court resentenced the defendant to 144 to 233 months. The State petitioned the Court of Appeals for a writ of certiorari to review the trial court's MAR order. The defendant responded, arguing that under *State v. Starkey*, 177 N.C. App. 264, the court of appeals lacked subject-matter jurisdiction to review a trial court's sua sponte grant of a MAR. The Court of Appeals allowed the State's petition and issued the writ. The Court of Appeals found no Eighth Amendment violation, vacated the defendant's sentence and the trial court's order granting appropriate relief, and remanded the case for a new sentencing hearing. See *State v. Thomsen*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 776 S.E.2d 41, 48 (2015). Before the supreme court, the parties disagreed on whether the trial court's sua sponte motion was pursuant to G.S. 15A-1415(b) (defendant's MAR) or G.S. 15A-1420(d) (trial court's sua sponte MAR). The court found it unnecessary to resolve this dispute, holding first that if the MAR was made under G.S. 15A-1415, *State v. Stubbs*, 368 N.C. 40, 42-43, authorized review by way of certiorari. Alternatively, if the MAR was made pursuant to G.S. 1420(d), G.S. 7A-32(c) gives the Court of Appeals jurisdiction to review a lower court judgment by writ of certiorari, unless a more specific statute restricts jurisdiction. Here, no such specific statute exists. It went on to hold that to the extent *Starkey* was inconsistent with this holding it was overruled.