

## Statutes

### § 7A-451. Scope of entitlement. (as amended by S.L. 2017-176).

- (a) An indigent person is entitled to services of counsel in the following actions and proceedings:
- (1) Any case in which imprisonment, or a fine of five hundred dollars (\$500.00), or more, is likely to be adjudged;
  - (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
  - (3) A motion for appropriate relief under Chapter 15A of the General Statutes if appointment of counsel is authorized by Chapter 15A of the General Statutes and the defendant has been convicted of a felony, has been fined five hundred dollars (\$500.00) or more, or has been sentenced to a term of imprisonment;
  - (4) A hearing for revocation of probation;
  - (5) A hearing in which extradition to another state is sought;
  - (6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.
  - (7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;
  - (8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;
  - (9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;
  - (10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and applicable to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of April 17, 2003.
  - (11) A proceeding for the provision of protective services according to Chapter 108A, Article 6 of the General Statutes;
  - (12) In the case of a juvenile alleged to be abused, neglected, or dependent under Subchapter I of Chapter 7B of the General Statutes;
  - (13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;
  - (14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;
  - (15) An action brought pursuant to Article 11 of Chapter 7B of the General Statutes to terminate an indigent person's parental rights.
  - (16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.
  - (17) A proceeding involving limitation on freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145.
  - (18) A proceeding involving placement into satellite monitoring under Part 5 of Article 27A of Chapter 14 of the General Statutes.
- (b) In each of the actions and proceedings enumerated in subsection (a) of this section, entitlement to the services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process. Entitlement continues through any critical stage of the action or proceeding, including, if applicable:
- (1) An in-custody interrogation;
  - (2) A pretrial identification procedure which occurs after formal charges have been preferred and at which the presence of the indigent is required;

- (3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;
- (4) A probable cause hearing;
- (5) Trial and sentencing;
- (6) Review of any judgment or decree pursuant to G.S. 7A-27, 7A-30(1), 7A-30(2), and Subchapter XIV of Chapter 15A of the General Statutes;
- (7) In a capital case in which a defendant is under a sentence of death, subject to rules adopted by the Office of Indigent Defense Services, review of any judgment or decree rendered on direct appeal by the Supreme Court of North Carolina pursuant to the certiorari jurisdiction of the United States Supreme Court; and
- (8) In a noncapital case, subject to rules adopted by the Office of Indigent Defense Services, review of any judgment or decree rendered on direct appeal by a court of the North Carolina Appellate Division pursuant to the certiorari jurisdiction of the United States Supreme Court, when the judgment or decree:
  - a. Decides an important question of federal law in a way that conflicts with relevant decisions of the United States Supreme Court, a federal Court of Appeals, or the court of last resort of another state;
  - b. Decides an important question of federal law that has not been, but should be, settled by the United States Supreme Court; or
  - c. Decides a question of federal law in the indigent's favor and the judgment or decree is challenged by opposing counsel through an attempt to invoke the certiorari jurisdiction of the United States Supreme Court.

**§ 15A-1414. Motion by defendant for appropriate relief made within 10 days after verdict.**

- (a) After the verdict but not more than 10 days after entry of judgment, the defendant by motion may seek appropriate relief for any error committed during or prior to the trial.
- (b) Unless included in G.S. 15A-1415, all errors, including but not limited to the following, must be asserted within 10 days after entry of judgment:
  - (1) Any error of law, including the following:
    - a. The court erroneously failed to dismiss the charge prior to trial pursuant to G.S. 15A-954.
    - b. The court's ruling was contrary to law with regard to motions made before or during the trial, or with regard to the admission or exclusion of evidence.
    - c. The evidence, at the close of all the evidence, was insufficient to justify submission of the case to the jury, whether or not a motion so asserting was made before verdict.
    - d. The court erroneously instructed the jury.
  - (2) The verdict is contrary to the weight of the evidence.
  - (3) For any other cause the defendant did not receive a fair and impartial trial.
  - (4) The sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing. This motion must be addressed to the sentencing judge.
- (c) The motion may be made and acted upon in the trial court whether or not notice of appeal has been given.

**§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time.**

- (a) At any time after verdict, a noncapital defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section. In a capital case, a postconviction motion for appropriate relief shall be filed within 120 days from the latest of the following:
  - (1) The court's judgment has been filed, but the defendant failed to perfect a timely appeal;

- (2) The mandate issued by a court of the appellate division on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;
- (3) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina;
- (4) Following the denial of discretionary review by the Supreme Court of North Carolina, the United States Supreme Court denied a timely petition for writ of certiorari seeking review of the decision on direct appeal by the North Carolina Court of Appeals;
- (5) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina or North Carolina Court of Appeals, but subsequently left the defendant's conviction and sentence undisturbed; or
- (6) The appointment of postconviction counsel for an indigent capital defendant.

(b) The following are the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment:

- (1) The acts charged in the criminal pleading did not at the time they were committed constitute a violation of criminal law.
- (2) The trial court lacked jurisdiction over the person of the defendant or over the subject matter.
- (3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.
- (4) The defendant was convicted or sentenced under a statute that was in violation of the Constitution of the United States or the Constitution of North Carolina.
- (5) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
- (6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 719, s. 1, effective June 21, 1996.
- (7) There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.
- (8) The sentence imposed was unauthorized at the time imposed, contained a type of sentence disposition or a term of imprisonment not authorized for the particular class of offense and prior record or conviction level was illegally imposed, or is otherwise invalid as a matter of law. However, a motion for appropriate relief on the grounds that the sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing must be made before the sentencing judge.
- (9) The defendant is in confinement and is entitled to release because his sentence has been fully served.
- (10) The defendant was convicted of a first offense of prostitution under G.S. 14-204, and the court did not discharge the defendant and dismiss the charge pursuant to G.S. 14-204(b); the defendant's participation in the offense was a result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated.

(c) Notwithstanding the time limitations herein, a defendant at any time after verdict may by a motion for appropriate relief, raise the ground that evidence is available which was unknown or unavailable to the defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon the defendant's eligibility for the death penalty or the defendant's guilt or innocence. A motion based upon such newly discovered evidence must be filed within a reasonable time of its discovery.

(d) For good cause shown, the defendant may be granted an extension of time to file the motion for appropriate relief. The presumptive length of an extension of time under this subsection is up to 30 days, but can be longer if the court finds extraordinary circumstances.

(e) Where a defendant alleges ineffective assistance of prior trial or appellate counsel as a ground for the illegality of his conviction or sentence, he shall be deemed to waive the attorney-client privilege with respect to both oral and written communications between such counsel and the defendant to the extent the defendant's prior counsel reasonably believes such communications are necessary to defend against the allegations of ineffectiveness. This waiver of the attorney-client privilege shall be automatic upon the filing of the motion for appropriate relief alleging ineffective assistance of prior counsel, and the superior court need not enter an order waiving the privilege.

(f) In the case of a defendant who is represented by counsel in postconviction proceedings in superior court, the defendant's prior trial or appellate counsel shall make available to the defendant's counsel their complete files relating to the case of the defendant. The State, to the extent allowed by law, shall make available to the defendant's counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. If the State has a reasonable belief that allowing inspection of any portion of the files by counsel for the defendant would not be in the interest of justice, the State may submit for inspection by the court those portions of the files so identified. If upon examination of the files, the court finds that the files could not assist the defendant in investigating, preparing, or presenting a motion for appropriate relief, the court in its discretion may allow the State to withhold that portion of the files.

(g) The defendant may file amendments to a motion for appropriate relief at least 30 days prior to the commencement of a hearing on the merits of the claims asserted in the motion or at any time before the date for the hearing has been set, whichever is later. Where the defendant has filed an amendment to a motion for appropriate relief, the State shall, upon request, be granted a continuance of 30 days before the date of hearing. After such hearing has begun, the defendant may file amendments only to conform the motion to evidence adduced at the hearing, or to raise claims based on such evidence.

#### **§ 15A-1416. Motion by the State for appropriate relief.**

(a) After the verdict but not more than 10 days after entry of judgment, the State by motion may seek appropriate relief for any error which it may assert upon appeal.

(b) At any time after verdict the State may make a motion for appropriate relief for:

- (1) The imposition of sentence when prayer for judgment has been continued and grounds for the imposition of sentence are asserted.
- (2) The initiation of any proceeding authorized under Article 82, Probation; Article 83, Imprisonment; and Article 84, Fines, with regard to the modification of sentences. The procedural provisions of those Articles are controlling.

#### **§ 15A-1419. When motion for appropriate relief denied.**

(a) The following are grounds for the denial of a motion for appropriate relief, including motions filed in capital cases:

- (1) Upon a previous motion made pursuant to this Article, the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so. This subdivision does not apply when the previous motion was made within 10 days after entry of judgment or the previous motion was made during the pendency of the direct appeal.
- (2) The ground or issue underlying the motion was previously determined on the merits upon an appeal from the judgment or upon a previous motion or proceeding in the courts of this State or a federal court, unless since the time of such previous

determination there has been a retroactively effective change in the law controlling such issue.

- (3) Upon a previous appeal the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so.
- (4) The defendant failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a).

(b) The court shall deny the motion under any of the circumstances specified in this section, unless the defendant can demonstrate:

- (1) Good cause for excusing the grounds for denial listed in subsection (a) of this section and can demonstrate actual prejudice resulting from the defendant's claim; or
- (2) That failure to consider the defendant's claim will result in a fundamental miscarriage of justice.

(c) For the purposes of subsection (b) of this section, good cause may only be shown if the defendant establishes by a preponderance of the evidence that his failure to raise the claim or file a timely motion was:

- (1) The result of State action in violation of the United States Constitution or the North Carolina Constitution including ineffective assistance of trial or appellate counsel;
- (2) The result of the recognition of a new federal or State right which is retroactively applicable; or
- (3) Based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim on a previous State or federal postconviction review.

A trial attorney's ignorance of a claim, inadvertence, or tactical decision to withhold a claim may not constitute good cause, nor may a claim of ineffective assistance of prior postconviction counsel constitute good cause.

(d) For the purposes of subsection (b) of this section, actual prejudice may only be shown if the defendant establishes by a preponderance of the evidence that an error during the trial or sentencing worked to the defendant's actual and substantial disadvantage, raising a reasonable probability, viewing the record as a whole, that a different result would have occurred but for the error.

(e) For the purposes of subsection (b) of this section, a fundamental miscarriage of justice only results if:

- (1) The defendant establishes that more likely than not, but for the error, no reasonable fact finder would have found the defendant guilty of the underlying offense; or
- (2) The defendant establishes by clear and convincing evidence that, but for the error, no reasonable fact finder would have found the defendant eligible for the death penalty.

A defendant raising a claim of newly discovered evidence of factual innocence or ineligibility for the death penalty, otherwise barred by the provisions of subsection (a) of this section or G.S. 15A-1415(c), may only show a fundamental miscarriage of justice by proving by clear and convincing evidence that, in light of the new evidence, if credible, no reasonable juror would have found the defendant guilty beyond a reasonable doubt or eligible for the death penalty.

**§ 15A-1420. Motion for appropriate relief; procedure. (as amended by S.L. 2017-176)**

(a) Form, Service, Filing. -

- (1) A motion for appropriate relief must:
  - a. Be made in writing unless it is made:
    1. In open court;
    2. Before the judge who presided at trial;
    3. Before the end of the session if made in superior court; and
    4. Within 10 days after entry of judgment;
  - b. State the grounds for the motion;

- c. Set forth the relief sought;
  - c1. If the motion for appropriate relief is being made in superior court and is being made by an attorney, the attorney must certify in writing that there is a sound legal basis for the motion and that it is being made in good faith; and that the attorney has notified both the district attorney's office and the attorney who initially represented the defendant of the motion; and further, that the attorney has reviewed the trial transcript or made a good-faith determination that the nature of the relief sought in the motion does not require that the trial transcript be read in its entirety. In the event that the trial transcript is unavailable, instead of certifying that the attorney has read the trial transcript, the attorney shall set forth in writing what efforts were undertaken to locate the transcript; and
  - d. Be timely filed.
- (2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.
  - (3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).
  - (4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c).
  - (5) An oral or written motion for appropriate relief made in superior court and made by an attorney may not be granted by the court unless the attorney has complied with the requirements of sub-subdivision c1. of subdivision (1) of this subsection.
- (b) Supporting Affidavits. -
    - (1) A motion for appropriate relief made after the entry of judgment must be supported by affidavit or other documentary evidence if based upon the existence or occurrence of facts which are not ascertainable from the records and any transcript of the case or which are not within the knowledge of the judge who hears the motion.
    - (2) The opposing party may file affidavits or other documentary evidence.
- (b1) Filing Motion With Clerk. -
    - (1) The proceeding shall be commenced by filing with the clerk of superior court of the district wherein the defendant was indicted a motion, with service on the district attorney in noncapital cases, and service on both the district attorney and Attorney General in capital cases.
    - (2) The clerk, upon receipt of the motion, shall place the motion on the criminal docket. When a motion is placed on the criminal docket, the clerk shall promptly bring the motion, or a copy of the motion, to the attention of the senior resident superior court judge or chief district court judge, as appropriate, for assignment to the appropriate judge pursuant to G.S. 15A-1413.
    - (3) The judge assigned to the motion shall conduct an initial review of the motion. If the judge determines that all of the claims alleged in the motion are frivolous, the judge shall deny the motion. If the motion presents sufficient information to warrant a hearing or the interests of justice so require, the judge shall appoint counsel for an indigent defendant who is not represented by counsel. Counsel so appointed shall review the motion filed by the petitioner and either adopt the motion or file an amended motion.

After postconviction counsel files an initial or amended motion, or a determination is made that the petitioner is proceeding without counsel, the judge may direct the State to file an answer. Should the State contend that as a matter of law the defendant is not entitled to the relief sought, the State may request leave to file a limited answer so alleging.

(b2) Repealed by Session Laws 2013-385, s. 3.1, effective December 1, 2013.

(b3) Repealed by Session Laws 2013-385, s. 3.1, effective December 1, 2013.

(c) Hearings, Showing of Prejudice; Findings. -

(1) Any party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing information presented unless the court determines that the motion is without merit. The court must determine, on the basis of these materials and the requirements of this subsection, whether an evidentiary hearing is required to resolve questions of fact. Upon the motion of either party, the judge may direct the attorneys for the parties to appear before him for a conference on any prehearing matter in the case.

(2) An evidentiary hearing is not required when the motion is made in the trial court pursuant to G.S. 15A-1414, but the court may hold an evidentiary hearing if it is appropriate to resolve questions of fact.

(3) The court must determine the motion without an evidentiary hearing when the motion and supporting and opposing information present only questions of law. The defendant has no right to be present at such a hearing where only questions of law are to be argued.

(4) If the court cannot rule upon the motion without the hearing of evidence, it must conduct a hearing for the taking of evidence, and must make findings of fact. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present must be in writing.

(5) If an evidentiary hearing is held, the moving party has the burden of proving by a preponderance of the evidence every fact essential to support the motion.

(6) A defendant who seeks relief by motion for appropriate relief must show the existence of the asserted ground for relief. Relief must be denied unless prejudice appears, in accordance with G.S. 15A-1443.

(7) The court must rule upon the motion and enter its order accordingly. When the motion is based upon an asserted violation of the rights of the defendant under the Constitution or laws or treaties of the United States, the court must make and enter conclusions of law and a statement of the reasons for its determination to the extent required, when taken with other records and transcripts in the case, to indicate whether the defendant has had a full and fair hearing on the merits of the grounds so asserted.

(d) Action on Court's Own Motion. - At any time that a defendant would be entitled to relief by motion for appropriate relief, the court may grant such relief upon its own motion. The court must cause appropriate notice to be given to the parties.

(e) Nothing in this section shall prevent the parties to the action from entering into an agreement for appropriate relief, including an agreement as to any aspect, procedural or otherwise, of a motion for appropriate relief.