

Motions for Appropriate Relief: Procedural Issues

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- ❑ Claims & Timing Rules
- ❑ Counsel Issues
- ❑ Procedural Default
- ❑ Evidentiary Hearings
- ❑ Burdens & Showing
- ❑ The Order

Claims & Timing Rules

By the state (15A-1416)

- Limited

Claims & Timing Rules

By defendant (15A-1414 & 1415)

- Within 10 days of entry of judgment
- **Any error**

- More than 10 days after entry of judgment
- **Exclusive list of claims**

Claims & Timing Rules

G.S. 15A-1415 Claims

- No outer time limit

Claims & Timing Rules

G.S. 15A-1415 Claims

1. Acts do not constitute a violation of law
15A-1415(b)(1)

Claims & Timing Rules

G.S. 15A-1415 Claims

2. Trial court lacked jurisdiction

15A-1415(b)(2)

Claims & Timing Rules

G.S. 15A-1415 Claims

3. Unconstitutional conviction

15A-1415(b)(3)

Claims & Timing Rules

G.S. 15A-1415 Claims

3. Unconstitutional conviction

Examples:

- Ineffective assistance
- *Boykin* claim

Claims & Timing Rules

G.S. 15A-1415 Claims

4. Unconstitutional statute

15A-1415(b)(4)

Claims & Timing Rules

G.S. 15A-1415 Claims

5. Constitutionally protected conduct
15A-1415(b)(5)

Claims & Timing Rules

G.S. 15A-1415 Claims

6. Retroactive change in the law
15A-1415(b)(7)

Claims & Timing Rules

G.S. 15A-1415 Claims

7. Sentence was unauthorized, illegal or invalid

15A-1415(b)(8)

Claims & Timing Rules

G.S. 15A-1415 Claims

8. Sentence fully served

15A-1415(b)(9)

Claims & Timing Rules

G.S. 15A-1415 Claims

9. Newly discovered evidence

G.S. 15A-1415(c)

Claims & Timing Rules

The “Consent” MAR

Claims & Timing Rules

Other timing details

- Post-verdict motion
- When D pleads guilty, can be filed after sentencing

Claims & Timing Rules

Other timing details

- Capital cases

 - 120-day time limit for filing

 - Rule 25 of General Rules of Practice

Claims & Timing Rules

Judge's authority to act sua sponte

15A-1420(d)

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.

Counsel

- Right to Counsel on a MAR

7A-451(a)(3)

Indigent entitled to counsel for a MAR if
(1) convicted of a felony; (2) fined
\$500.00 or more; or (3) sentenced to a
term of imprisonment

Counsel

- When does the right attach?

7A-451(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 . . .

Counsel

- When does the right attach?
 - After frivolity review?
 - Only when evidentiary hearing required?

Counsel

- Procedural considerations
 - Appoint someone other than trial counsel
 - Have counsel file amended MAR
 - Order state to answer

Procedural Default

- Mandatory bar

15A-1419(b)

The court **shall** deny the motion under any of the circumstances specified in this section . . .

Procedural Default

- The rules – 15A-1419(a)
 1. On a previous MAR, D was in an adequate position to raise the issue but didn't
 2. Issue previously determined on a prior proceeding or appeal
 3. On a previous appeal, D was in a position to raise the issue but didn't
 4. Failure to timely file a MAR

Procedural Default

- The exceptions: 15A-1419(b)
 1. Good cause & actual prejudice
 2. Fundamental miscarriage of justice

Hearings, Burdens & Showing

- D has a right to be present
 - Waiver must be in writing
 - Indigent needs counsel
 - Rules of evidence apply
 - Movant bears burden of showing facts by a preponderance
- 15A-1420(c)(5)

Hearings, Burdens & Showing

- Even if claim is valid there must be prejudice in accordance with 15A-1443
See 15A-1420(c)(6)

Hearings, Burdens & Showing

15A-1443:

Non-constitutional errors: reasonable possibility that, had the error not been committed, a different result would have been reached at trial

US Constitutional errors: prejudicial unless state proves error was harmless beyond a reasonable doubt

The Order

- Get consent if taking it under advisement
- State your reasons

The Order

The claim raised in the MAR is denied on grounds of procedural default. Specifically, the claim is denied because *[Describe the rule relied upon, e.g., the defendant failed to file a timely MAR as required by G.S. 15A -1415(a)]. [Add citation to statutory procedural bar, e.g., G.S. 15A-1419(a)(4) and relevant facts].*

The Order

- Rule in the alternative

The Order

- If federal constitutional rights are at issue make conclusions of law & “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.” G.S. 15A-1420(c)(7)