

MOTIONS FOR APPROPRIATE RELIEF

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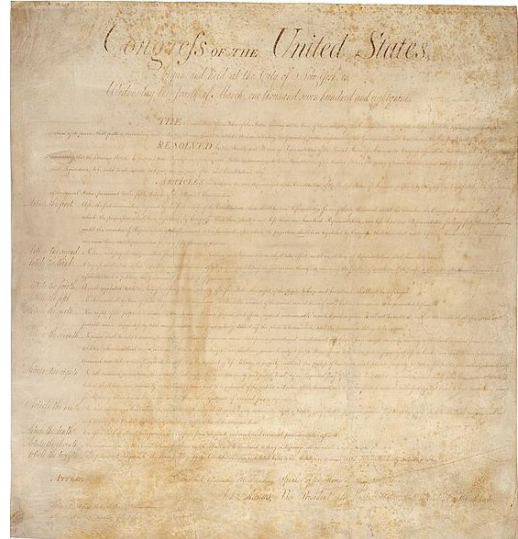


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There is No Constitutional Right to Appeal

- “[A] North Carolina criminal defendant’s right to appeal a conviction is provided entirely by statute.”
- “The authority for appellate review in criminal proceedings is found in the North Carolina General Statutes and Rules of Appellate Procedure.”



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Statutes Governing the Right to Appeal



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- A defendant who has entered a plea of not guilty, and who has been found guilty of a crime, is entitled to appeal when final judgment has been entered.
- The State may appeal:
 - Dismissal of charges;
 - Certain sentencing issues;
 - Order granting a motion to suppress.*

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The Rules of Appellate Procedure

Any party entitled by law to appeal from an order or judgment in a criminal action may take appeal by:

- (1) giving oral notice of appeal at trial; or
- (2) filing written notice of appeal within **fourteen** days after entry of judgment or order . . . or within **fourteen** days after a ruling on a motion for appropriate relief made within the **fourteen**-day period following entry of judgment or order.

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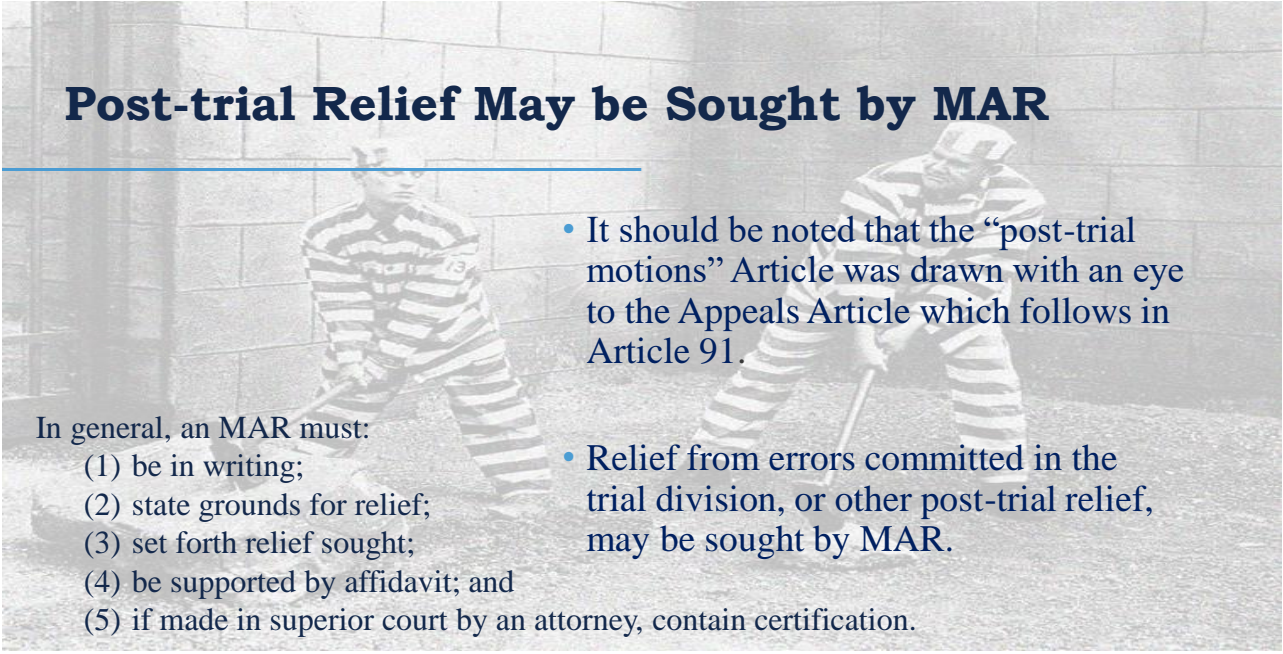
1. Types and Timing

WILMINGTON, NC

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Post-trial Relief May be Sought by MAR



- It should be noted that the “post-trial motions” Article was drawn with an eye to the Appeals Article which follows in Article 91.
- Relief from errors committed in the trial division, or other post-trial relief, may be sought by MAR.

In general, an MAR must:

- (1) be in writing;
- (2) state grounds for relief;
- (3) set forth relief sought;
- (4) be supported by affidavit; and
- (5) if made in superior court by an attorney, contain certification.

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There Are Two Types of MARs:

DECEMBER						
S	M	T	W	T	F	S
..	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31

- **Within 10 days of judgment**, the defendant may by MAR seek relief from any error committed during or prior to trial.
- **Within 10 days of judgment**, the State may by MAR seek relief from any error which it may assert upon appeal.
- The case remains open for taking appeal until the court has ruled on the MAR.

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Beyond 10 Days, MAR Grounds are Limited:

JURISDICTION CLAIMS

- The trial court lacked jurisdiction;
- Acts charged in the pleading did not, at the time committed, constitute a violation of criminal law;

CONSTITUTIONAL CLAIMS

- The conviction was obtained in violation of the state or federal constitution.
- The defendant was convicted or sentenced under unconstitutional statute;
- The conduct for which the defendant was prosecuted was protected by the state or federal constitution;

SENTENCING CLAIMS

- The sentence imposed was unauthorized by law at the time imposed;
- The defendant is entitled to release because his sentence has been fully served.

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Beyond 10 Days, MAR Grounds are Limited:

RETROACTIVITY CLAIMS

- There has been a significant change in law and retroactive application of the changed legal standard is required.

NEWLY DISCOVERED EVIDENCE CLAIMS

- Evidence is available which was unknown or unavailable at the time of trial, which could not with due diligence have been discovered or made available, including recanted testimony.

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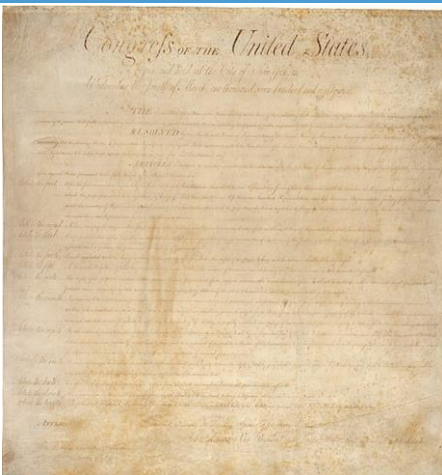
2. Counsel Issues

NEW BERN, NC

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Right to Postconviction Counsel



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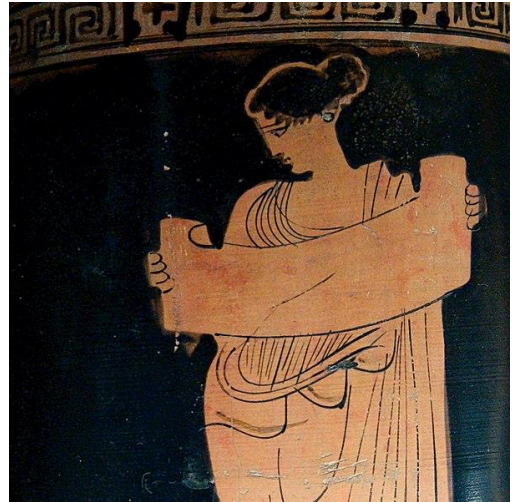
- In general, there is no constitutional right to postconviction counsel.
- By statute (G.S. 7A-451), an indigent defendant is entitled to counsel if:
 - (1) Appointment is authorized by Ch. 15A; and
 - (2) The defendant has been convicted of a felony, fined \$500 or more, or sentenced to a term of imprisonment.

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Counsel Authorized by Chapter 15A

FRIVOLITY REVIEW

- The judge assigned to the MAR shall conduct an initial review of the motion.
- If the judge determines the claims are frivolous, the judge shall **deny** the MAR.
- The judge shall appoint counsel if:
 - (1) The MAR warrants a hearing, or
 - (2) The interests of justice so require.



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Counsel's Duties Upon Appointment



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- Counsel shall review the MAR filed by the defendant and either adopt the MAR or file an amended motion.
- The defendant may file amendments to an MAR:
 - (1) 30+ days prior to commencement of a hearing, or
 - (2) at any time before the date of a hearing has been set.
- After postconviction counsel files an initial or amended motion, the judge may direct the State to file an answer.

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Waiver of Attorney-Client Privilege

- When a defendant by MAR alleges ineffective assistance of trial or appellate counsel . . .
- The defendant is deemed to waive the attorney-client privilege.
- This waiver is **automatic** upon the filing of the MAR, and the superior court need not enter an order waiving the privilege.



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3. Procedural Bars

RALEIGH, NC

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Grounds for Denial of an MAR

- The ground or issue was previously determined on the merits upon a prior appeal or upon a previous motion or proceeding in state or federal court.
- Upon a previous appeal or upon a previous MAR, the defendant was in a position adequately to raise the ground or issue but did not do so.

The court **shall deny** the MAR under these circumstances

UNLESS . . .

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Bypassing the Procedural Bar

The court shall deny the MAR unless the defendant can demonstrate:

- (1) (a) **good cause** for excusing the grounds for denial prescribed, and
 - (b) can demonstrate **actual prejudice** resulting from the claim; or
- (2) that failure to consider the claim will result in a **fundamental miscarriage of justice**.

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Good Cause Defined

Good cause may be shown only if the defendant establishes that his failure to raise the claim was:

- (1) the result of unconstitutional state action, including IAC;
- (2) the result of the recognition of a new right 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.

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Actual Prejudice Defined

Actual prejudice may be shown only if . . .

- (1) the defendant shows that an error occurred during trial or sentencing; and
- (2) that, but for the error, a different result would have occurred.

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Fundamental Miscarriage of Justice Defined

A fundamental miscarriage of justice results only if:

- (1) The defendant shows that, but for the error, no reasonable fact finder would have found the defendant guilty; or
- (2) The defendant shows that, in light of newly discovered evidence, no reasonable juror would have found the defendant guilty.

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4. Evidentiary Hearings

CHARLOTTE, NC

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Whether to Conduct a Hearing

Any party is entitled to a hearing unless the court determines the MAR is **without merit**.

An MAR is meritless if:

- There are no disputed issues of fact, and the claim must fail as a matter of law;
- Assuming all disputed issues of fact are resolved in the movant's favor, the claim must fail as a matter of law; or
- The defendant cannot show prejudice or the error is harmless beyond a reasonable doubt.



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Whether to Conduct an *Evidentiary* Hearing



The court must determine whether an evidentiary hearing is required to resolve **questions of fact**.

- If the court cannot rule on the MAR without the hearing of evidence, it must conduct an evidentiary hearing for the taking of evidence.
- The court must determine the MAR without an evidentiary hearing when the MAR presents only questions of law.

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Procedure at an Evidentiary Hearing

If an evidentiary hearing is conducted:

- The defendant has a right:
 - (1) To be present at the hearing, and
 - (2) To be represented by counsel.
- The Rules of Evidence apply at the hearing.

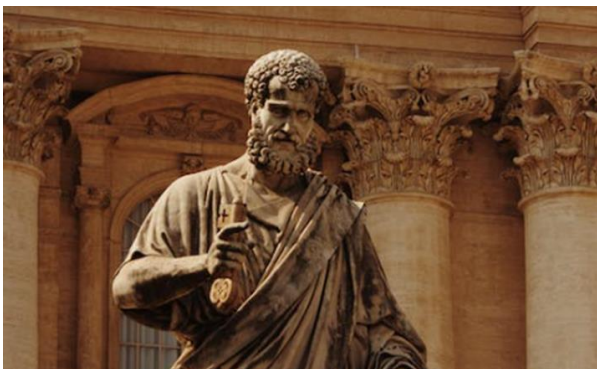


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Burdens at an Evidentiary Hearing

If an evidentiary hearing is conducted:



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- The moving party has the burden of proving by a **preponderance of the evidence** every fact essential to support the MAR.
- A defendant must show the existence of the asserted ground for relief.
- Relief must be denied unless prejudice appears.

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5. Orders and Appeals

ASHEVILLE, NC

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Findings & Conclusions

- The court must rule upon the motion and enter its order accordingly.
- If the court conducts an evidentiary hearing, it must make **findings of fact**.
- When the MAR is based on an alleged violation of federal rights, the court must make **conclusions of law** and a statement of reasons to indicate whether the defendant has had a full and fair hearing on the merits.

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Appellate Review

MAR WITHIN 10-DAYS OF JUDGMENT

The grant or denial of relief sought under G.S. 15A-1414 is subject to review only in an appeal regularly taken.

MAR BEYOND 10-DAYS OF JUDGMENT

The court's ruling on an MAR under G.S. 15A-1415 is subject to review:

- If the time for appeal from the conviction has not expired, by appeal.
- If an appeal is pending when the ruling is entered, in that appeal.
- If the time for appeal has expired and no appeal is pending, by writ of certiorari.

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The Rules of Appellate Procedure

The writ of certiorari may be issued in appropriate circumstances to permit review of the judgments and orders of trial tribunals when:

- (1) The right to prosecute an appeal has been lost by failure to take timely action, or
- (2) When no right to appeal from an interlocutory order exists, or
- (3) **For review pursuant to G.S. 15A-1422(c)(3) of an order of the trial court ruling on an MAR.**



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