

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 45*

Short Title: Streamline Crim. Appeals.

(Public)

Sponsors: Senators Hartsell, Cochrane, McKoy, Carrington, Sawyer; Kincaid, Blackmon, Allran, Foxx, Carpenter, Forrester, Smith, Ballantine, Little, McDaniel, and Dannelly.

Referred to: Judiciary II/Election Laws.

January 26, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO STREAMLINE THE APPEALS PROCESS IN NORTH CAROLINA FOR
3 CRIMINAL CASES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 15A-1419 reads as rewritten:

6 **"§ 15A-1419. When motion for appropriate relief denied.**

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

9 (1) Upon a previous motion made pursuant to this Article, the defendant
10 was in a position to adequately raise the ground or issue underlying the
11 present motion but did not do so. This subdivision does not apply to a
12 motion based upon deprivation of the right to counsel at the trial or
13 upon failure of the trial court to advise the defendant of such right. This
14 subdivision does not apply when the previous motion was made within
15 10 days after entry of judgment.

16 (2) The ground or issue underlying the motion was previously determined
17 on the merits upon an appeal from the judgment or upon a previous
18 motion or proceeding in the courts of this State or a federal court, unless

1 since the time of such previous determination there has been a
2 retroactively effective change in the law controlling such issue.

- 3 (3) Upon a previous appeal the defendant was in a position to adequately
4 raise the ground or issue underlying the present motion but did not do
5 so.

6 (b) ~~Although the~~ The court ~~may~~ shall deny the motion under any of the
7 circumstances specified in this section, except that in the interest of justice and for good
8 cause ~~shown~~ shown, it may in its discretion grant the motion if it is otherwise meritorious.
9 A claim of ineffective assistance of prior postconviction counsel shall not constitute good
10 cause for lifting an otherwise valid procedural bar."

11 Sec. 2. (a) G.S. 15-217.1 is recodified as G.S. 15A-1420(b1).

12 (b) G.S. 15A-1420, as amended by subsection (a) of this section, reads as
13 rewritten:

14 **"§ 15A-1420. Motion for appropriate relief; procedure.**

15 (a) Form, Service, Filing.

- 16 (1) A motion for appropriate relief must:

17 a. Be made in writing unless it is made:

- 18 1. In open court;
19 2. Before the judge who presided at trial;
20 3. Before the end of the session if made in superior court;
21 and
22 4. Within 10 days after entry of judgment;

23 b. State the grounds for the motion; and

24 c. Set forth the relief sought.

- 25 (2) A written motion for appropriate relief must be served in the manner
26 provided in G.S. 15A-951(b). When the written motion is made more
27 than 10 days after entry of judgment, service of the motion and a notice
28 of hearing must be made not less than five working days prior to the
29 date of the hearing. When a motion for appropriate relief is permitted to
30 be made orally the court must determine whether the matter may be
31 heard immediately or at a later time. If the opposing party, or his
32 counsel if he is represented, is not present, the court must provide for
33 the giving of adequate notice of the motion and the date of hearing to
34 the opposing party, or his counsel if he is represented by counsel.

- 35 (3) A written motion for appropriate relief must be filed in the manner
36 provided in G.S. 15A-951(c).

37 (b) Supporting Affidavits.

- 38 (1) A motion for appropriate relief made after the entry of judgment must
39 be supported by affidavit or other documentary evidence if based upon
40 the existence or occurrence of facts which are not ascertainable from the
41 records and any transcript of the case or which are not within the
42 knowledge of the judge who hears the motion.

- 43 (2) The opposing party may file affidavits or other documentary evidence.

1 (b1) ~~Filing petition with clerk; delivery of copy to district attorney; review of~~
2 ~~petition by judge. Filing motion with clerk; review of motion by judge.~~

3 (1) The proceeding shall be commenced by filing with the clerk of superior
4 court of the county in which the conviction took place a ~~petition, with~~
5 ~~two copies thereof, verified by affidavit. One copy shall be delivered by the~~
6 ~~clerk to the district attorney of the prosecutorial district as defined in G.S. 7A-~~
7 ~~60 who prosecutes the criminal docket of the superior court of the county in~~
8 ~~which said petition is filed, either in person or by ordinary mail, and the clerk~~
9 ~~shall enter upon his docket the date and manner of delivery of such copy.~~
10 ~~motion, with service on the district attorney.~~

11 (2) ~~The clerk~~ clerk, upon receipt of the motion, shall place the ~~petition upon~~
12 ~~the motion on the criminal docket upon his receipt thereof. docket.~~ The
13 clerk shall promptly after the delivery of copy to the district attorney bring
14 the ~~petition, motion,~~ or a copy thereof, of the motion, to the attention of
15 the resident judge or any judge holding the courts of the district or any
16 judge holding court in the county. ~~Such~~ The judge shall review the
17 ~~petition motion~~ and make ~~such an~~ order as he deems appropriate with
18 respect to permitting the ~~petitioner~~ defendant to prosecute ~~such the~~ action
19 without providing for the payment of ~~costs,~~ costs and with respect to the
20 appointment of counsel, and with respect to the time and place of hearing
21 upon the ~~petition.~~ counsel. If a hearing is necessary, the district attorney
22 shall calendar the case for hearing without unnecessary delay. If it
23 appears to the judge that substantial injustice may be done by any delay
24 in hearing upon the matters alleged in the ~~petition,~~ he motion, the judge
25 may issue ~~such an~~ order as may be appropriate to bring the ~~petitioner~~
26 ~~defendant~~ before the court without delay, and may direct the district
27 attorney to answer the ~~petition motion~~ at a time specified in the order, and
28 ~~the order.~~ The court shall ~~thereupon then~~ inquire into the matters alleged
29 as directed by the reviewing judge, as in the case of a writ of habeas
30 corpus. If upon review of the ~~petition motion~~ it does not appear to the
31 judge that an order advancing the hearing or other order is appropriate,
32 ~~he the judge~~ shall return the ~~petition motion~~ to the clerk with a notation
33 to that effect.

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

35 (1) Any party is entitled to a hearing on questions of law or fact arising
36 from the motion and any supporting or opposing information presented
37 unless the court determines that the motion is without merit. The court
38 must determine, on the basis of these materials and the requirements of
39 this subsection, whether an evidentiary hearing is required to resolve
40 questions of fact.

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

- 1 (3) The court must determine the motion without an evidentiary hearing
2 when the motion and supporting and opposing information present only
3 questions of law.
- 4 (4) If the court cannot rule upon the motion without the hearing of
5 evidence, it must conduct a hearing for the taking of evidence, and must
6 make findings of fact. The defendant has a right to be present at the
7 evidentiary hearing and to be represented by counsel. A waiver of the
8 right to be present must be in writing.
- 9 (5) If an evidentiary hearing is held, the moving party has the burden of
10 proving by a preponderance of the evidence every fact essential to
11 support the motion.
- 12 (6) A defendant who seeks relief by motion for appropriate relief must
13 show the existence of the asserted ground for relief. Relief must be
14 denied unless prejudice appears, in accordance with G.S. 15A-1443.
- 15 (7) The court must rule upon the motion and enter its order accordingly.
16 When the motion is based upon an asserted violation of the rights of the
17 defendant under the Constitution or laws or treaties of the United States,
18 the court must make and enter conclusions of law and a statement of the
19 reasons for its determination to the extent required, when taken with
20 other records and transcripts in the case, to indicate whether the
21 defendant has had a full and fair hearing on the merits of the grounds so
22 asserted.

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

26 Sec. 3. Article 91 of Chapter 15A of the General Statutes is amended by
27 adding a new section to read:

28 "**§ 15A-1448.1. Production and delivery of trial court transcript.**

29 (a) From the date of the court reporter's receipt of a contract for the production of
30 a trial transcript, the reporter shall have either: (i) 30 days to produce and deliver the
31 transcript of a criminal case, or (ii) a period of time equal to the length of time that the
32 criminal trial lasted. Where the clerk's order of transcript is accompanied by the trial
33 court's order establishing the indigency of the appellant and directing the transcript to be
34 prepared at State expense, the time for production of the transcript begins seven days
35 after the filing of the clerk's order of transcript.

36 (b) The court reporter shall deliver the completed transcript to the parties, as
37 ordered, within the time provided by this section. The reporter shall certify to the clerk of
38 the trial tribunal that the parties' copies have been so delivered, and shall send a copy of
39 the certification to the appellate court to which the appeal is taken. The appealing party
40 shall retain custody of the original of the transcript and shall transmit the original
41 transcript to the appellate court upon settlement of the record on appeal."

42 Sec. 4. This act becomes effective December 1, 1995, and applies to motions
43 for appropriate relief filed on or after that date.