

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1994

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SENATE BILL 136

Short Title: Expedite Criminal Appeals.

(Public)

Sponsors: Senators Perdue; and Allran.

Referred to: Courts.

February 15, 1994

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS CRIMINAL APPEALS STATUTES TO
EXPEDITE THE APPEALS OF CAPITAL AND OTHER CRIMINAL CASES.

The General Assembly of North Carolina enacts:

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

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

(a) The following are grounds for the denial of a motion for appropriate ~~relief~~
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 to a motion based upon deprivation of the right to counsel at the trial or upon failure of the trial court to advise the defendant of such right. This subdivision does not apply when the previous motion was made within 10 days after entry of judgment.

(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.

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

6 Sec. 2. G.S. 15-217.1 is recodified as subsection (b1) of G.S. 15A-1420 and
7 reads as rewritten:

8 "**§ 15-217.1. Filing petition with clerk; delivery of copy to district attorney; review**
9 **of petition by judge.**

10 (b1) Filing motion with clerk; review of motion by judge.

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

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

42 Sec. 3. G.S. 15-194 reads as rewritten:

43 "**§ 15-194. Time for execution.**

1 Whenever the Supreme Court has filed an opinion upholding the sentence of death,
2 or a stay of execution granted by any competent judicial tribunal or proceeding has
3 expired or been terminated, or a reprieve by the Governor has expired or been
4 terminated, a hearing shall be held in a superior court anywhere within the district
5 where the case was tried to fix a new date for the execution of the original sentence.
6 The district attorney shall promptly calendar such hearing. The condemned person shall
7 be present at the hearing unless the condemned person has an attorney appearing at the
8 hearing. The judge shall set the date of execution for not less than ~~60~~21 days nor more
9 than ~~90~~30 days from the date of the hearing. The hearing may be conducted, whether or
10 not in session, by any regular or special superior court judge resident in the district or
11 assigned to hold court in this district wherever the case is docketed. The order fixing
12 the date shall be recorded in the minutes of the court, and the clerk of the superior court
13 shall immediately send a certified copy to the warden of the State penitentiary, at
14 Raleigh. The clerk shall also send certified copies to the condemned person, the
15 condemned person's attorney, and the district attorney who prosecuted the case."

16 Sec. 4. G.S.7A-450(b1) is repealed.

17 Sec. 5. This act becomes effective July 1, 1994. Sections 1 and 2 of this act
18 apply to motions pending or filed on or after that date.