

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 9*

Short Title: Streamline Crim. Appeals.

(Public)

Sponsors: Representatives Brawley, Justus, Daughtry, Hayes, Russell, Bowie, Kiser, Eddins, Pulley, Thompson; Aldridge, Arnold, Baker, Braswell, Buchanan, Cansler, Capps, Carpenter, Clary, Cocklereece, Culp, Cummings, Davis, Decker, Dickson, Dockham, Edwards, Esposito, Gray, Hiatt, Holmes, Ives, Lemmond, McComas, McCombs, McMahan, K. Miller, Mitchell, Neely, Nichols, Pate, Preston, Rayfield, Reynolds, Robinson, Sexton, Sharpe, Shubert, Snowden, Tallent, Warner, C. Wilson, G. Wilson, and Wood.

Referred to: Judiciary II.

January 26, 1995

A BILL TO BE ENTITLED

1 AN ACT TO STREAMLINE THE APPEALS PROCESS IN NORTH CAROLINA FOR
2 CRIMINAL CASES.

3
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

1 subdivision does not apply when the previous motion was made within
2 10 days after entry of judgment.

3 (2) The ground or issue underlying the motion was previously determined
4 on the merits upon an appeal from the judgment or upon a previous
5 motion or proceeding in the courts of this State or a federal court, unless
6 since the time of such previous determination there has been a
7 retroactively effective change in the law controlling such issue.

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

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

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

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

19 "**§ 15A-1420. Motion for appropriate relief; procedure.**

20 (a) Form, Service, Filing.

21 (1) A motion for appropriate relief must:

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

23 1. In open court;

24 2. Before the judge who presided at trial;

25 3. Before the end of the session if made in superior court;
26 and

27 4. Within 10 days after entry of judgment;

28 b. State the grounds for the motion; and

29 c. Set forth the relief sought.

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

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

42 (b) Supporting Affidavits.

- 1 (1) A motion for appropriate relief made after the entry of judgment must
2 be supported by affidavit or other documentary evidence if based upon
3 the existence or occurrence of facts which are not ascertainable from the
4 records and any transcript of the case or which are not within the
5 knowledge of the judge who hears the motion.
- 6 (2) The opposing party may file affidavits or other documentary evidence.
- 7 (b1) ~~Filing petition with clerk; delivery of copy to district attorney; review of~~
8 ~~petition by judge. Filing motion with clerk; review of motion by judge.~~
- 9 (1) The proceeding shall be commenced by filing with the clerk of superior
10 court of the county in which the conviction took place a ~~petition, with~~
11 ~~two copies thereof, verified by affidavit. One copy shall be delivered by the~~
12 ~~clerk to the district attorney of the prosecutorial district as defined in G.S. 7A-~~
13 ~~60 who prosecutes the criminal docket of the superior court of the county in~~
14 ~~which said petition is filed, either in person or by ordinary mail, and the clerk~~
15 ~~shall enter upon his docket the date and manner of delivery of such copy.~~
16 motion, with service on the district attorney.
- 17 (2) ~~The clerk-clerk, upon receipt of the motion, shall place the petition upon~~
18 ~~the motion on the criminal docket upon his receipt thereof. docket.~~ The
19 clerk shall promptly ~~after the delivery of copy to the district attorney~~ bring
20 the ~~petition, motion, or a copy thereof, of the motion,~~ to the attention of
21 the resident judge or any judge holding the courts of the district or any
22 judge holding court in the county. ~~Such~~ The judge shall review the
23 ~~petition motion and make such an order as he deems appropriate with~~
24 ~~respect to permitting the petitioner defendant to prosecute such the action~~
25 ~~without providing for the payment of costs, costs and with respect to the~~
26 ~~appointment of counsel, and with respect to the time and place of hearing~~
27 ~~upon the petition. counsel. If a hearing is necessary, the district attorney~~
28 ~~shall calendar the case for hearing without unnecessary delay. If it~~
29 ~~appears to the judge that substantial injustice may be done by any delay~~
30 ~~in hearing upon the matters alleged in the petition, he motion, the judge~~
31 ~~may issue such an order as may be appropriate to bring the petitioner~~
32 ~~defendant before the court without delay, and may direct the district~~
33 ~~attorney to answer the petition motion at a time specified in the order, and~~
34 ~~the order. The court shall thereupon then inquire into the matters alleged~~
35 ~~as directed by the reviewing judge, as in the case of a writ of habeas~~
36 ~~corpus. If upon review of the petition motion it does not appear to the~~
37 ~~judge that an order advancing the hearing or other order is appropriate,~~
38 ~~he the judge shall return the petition motion to the clerk with a notation~~
39 ~~to that effect.~~
- 40 (c) Hearings, Showing of Prejudice; Findings.
- 41 (1) Any party is entitled to a hearing on questions of law or fact arising
42 from the motion and any supporting or opposing information presented
43 unless the court determines that the motion is without merit. The court

1 must determine, on the basis of these materials and the requirements of
2 this subsection, whether an evidentiary hearing is required to resolve
3 questions of fact.

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

7 (3) The court must determine the motion without an evidentiary hearing
8 when the motion and supporting and opposing information present only
9 questions of law.

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

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

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

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

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

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

34 **"§ 15A-1448.1. Production and delivery of trial court transcript.**

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

42 (b) The court reporter shall deliver the completed transcript to the parties, as
43 ordered, within the time provided by this section. The reporter shall certify to the clerk of

1 the trial tribunal that the parties' copies have been so delivered, and shall send a copy of
2 the certification to the appellate court to which the appeal is taken. The appealing party
3 shall retain custody of the original of the transcript and shall transmit the original
4 transcript to the appellate court upon settlement of the record on appeal."

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