

Article 89.

Motion for Appropriate Relief and Other Post-Trial Relief.

**§ 15A-1411. Motion for appropriate relief.**

(a) Relief from errors committed in the trial division, or other post-trial relief, may be sought by a motion for appropriate relief. Procedure for the making of the motion is as set out in G.S. 15A-1420.

(b) A motion for appropriate relief, whether made before or after the entry of judgment, is a motion in the original cause and not a new proceeding.

(c) The relief formerly available by motion in arrest of judgment, motion to set aside the verdict, motion for new trial, post-conviction proceedings, coram nobis and all other post-trial motions is available by motion for appropriate relief. The availability of relief by motion for appropriate relief is not a bar to relief by writ of habeas corpus.

(d) A claim of factual innocence asserted through the North Carolina Innocence Inquiry Commission does not constitute a motion for appropriate relief and does not impact rights or relief provided for in this Article. (1977, c. 711, s. 1; 2006-184, s. 4; 2010-171, s. 5.)

**§ 15A-1412. Provisions of Article procedural.**

The provision in this Article for the right to seek relief by motion for appropriate relief is procedural and is not determinative of the question of whether the moving party is entitled to the relief sought or to other appropriate relief. (1977, c. 711, s. 1.)

**§ 15A-1413. Trial judges empowered to act; assignment of motions for appropriate relief.**

(a) A motion for appropriate relief made pursuant to G.S. 15A-1415 may be heard and determined in the trial division by any judge who (i) is empowered to act in criminal matters in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the judgment was entered and (ii) is assigned pursuant to this section to review the motion for appropriate relief and take the appropriate administrative action to dispense with the motion.

(b) The judge who presided at the trial is empowered to act upon a motion for appropriate relief made pursuant to G.S. 15A-1414. The judge may act even though the judge is in another district or even though the judge's commission has expired; however, if the judge who presided at the trial is still unavailable to act, the senior resident superior court judge or the chief district court judge, as appropriate, shall assign a judge who is empowered to act under subsection (a) of this section.

(c) Repealed by Session Laws 2012-168, s. 2(a), effective December 1, 2012.

(d) All motions for appropriate relief filed in superior court shall, when filed, be referred to the senior resident superior court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, including disclosure of expert witness information described in G.S. 15A-903(a)(2) and G.S. 15A-905(c)(2) for expert witnesses reasonably expected to be called at a hearing on the motion, or other appropriate actions.

All motions for appropriate relief filed in district court shall, when filed, be referred to the chief district court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions.

(e) The assignment of a motion for appropriate relief filed under G.S. 15A-1415 is in the discretion of the senior resident superior court judge or chief district court judge as appropriate. (1977, c. 711, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 71; 2012-168, s. 2(a); 2017-176, s. 1(a).)

**§ 15A-1414. Motion by defendant for appropriate relief made within 10 days after verdict.**

(a) After the verdict but not more than 10 days after entry of judgment, the defendant by motion may seek appropriate relief for any error committed during or prior to the trial.

(b) Unless included in G.S. 15A-1415, all errors, including but not limited to the following, must be asserted within 10 days after entry of judgment:

- (1) Any error of law, including the following:
  - a. The court erroneously failed to dismiss the charge prior to trial pursuant to G.S. 15A-954.
  - b. The court's ruling was contrary to law with regard to motions made before or during the trial, or with regard to the admission or exclusion of evidence.
  - c. The evidence, at the close of all the evidence, was insufficient to justify submission of the case to the jury, whether or not a motion so asserting was made before verdict.
  - d. The court erroneously instructed the jury.
- (2) The verdict is contrary to the weight of the evidence.
- (3) For any other cause the defendant did not receive a fair and impartial trial.
- (4) The sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing. This motion must be addressed to the sentencing judge.

(c) The motion may be made and acted upon in the trial court whether or not notice of appeal has been given. (1977, c. 711, s. 1; 1979, c. 760, s. 3; 1981, c. 179, s. 6.)

**§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time.**

(a) At any time after verdict, a noncapital defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section. In a capital case, a postconviction motion for appropriate relief shall be filed within 120 days from the latest of the following:

- (1) The court's judgment has been filed, but the defendant failed to perfect a timely appeal;
- (2) The mandate issued by a court of the appellate division on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;
- (3) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina;
- (4) Following the denial of discretionary review by the Supreme Court of North Carolina, the United States Supreme Court denied a timely petition for writ of certiorari seeking review of the decision on direct appeal by the North Carolina Court of Appeals;
- (5) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme

Court of North Carolina or North Carolina Court of Appeals, but subsequently left the defendant's conviction and sentence undisturbed; or

(6) The appointment of postconviction counsel for an indigent capital defendant.

(b) The following are the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment:

(1) The acts charged in the criminal pleading did not at the time they were committed constitute a violation of criminal law.

(2) The trial court lacked jurisdiction over the person of the defendant or over the subject matter.

(3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.

(4) The defendant was convicted or sentenced under a statute that was in violation of the Constitution of the United States or the Constitution of North Carolina.

(5) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.

(6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 719, s. 1, effective June 21, 1996.

(7) There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.

(8) The sentence imposed was unauthorized at the time imposed, contained a type of sentence disposition or a term of imprisonment not authorized for the particular class of offense and prior record or conviction level was illegally imposed, or is otherwise invalid as a matter of law. However, a motion for appropriate relief on the grounds that the sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing must be made before the sentencing judge.

(9) The defendant is in confinement and is entitled to release because his sentence has been fully served.

(10) The defendant was convicted of a nonviolent offense as defined in G.S. 15A-145.9; the defendant's participation in the offense was a result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated.

(c) Notwithstanding the time limitations herein, a defendant at any time after verdict may by a motion for appropriate relief, raise the ground that evidence is available which was unknown or unavailable to the defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon the defendant's eligibility for the death penalty or the defendant's guilt or innocence. A motion based upon such newly discovered evidence must be filed within a reasonable time of its discovery.

(d) For good cause shown, the defendant may be granted an extension of time to file the motion for appropriate relief. The presumptive length of an extension of time under this subsection is up to 30 days, but can be longer if the court finds extraordinary circumstances.

(e) Where a defendant alleges ineffective assistance of prior trial or appellate counsel as a ground for the illegality of his conviction or sentence, he shall be deemed to waive the attorney-client privilege with respect to both oral and written communications between such counsel and the defendant to the extent the defendant's prior counsel reasonably believes such communications are necessary to defend against the allegations of ineffectiveness. This waiver of the attorney-client privilege shall be automatic upon the filing of the motion for appropriate relief alleging ineffective assistance of prior counsel, and the superior court need not enter an order waiving the privilege.

(f) In the case of a defendant who is represented by counsel in postconviction proceedings in superior court, the defendant's prior trial or appellate counsel shall make available to the defendant's counsel their complete files relating to the case of the defendant. The State, to the extent allowed by law, shall make available to the defendant's counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. If the State has a reasonable belief that allowing inspection of any portion of the files by counsel for the defendant would not be in the interest of justice, the State may submit for inspection by the court those portions of the files so identified. If upon examination of the files, the court finds that the files could not assist the defendant in investigating, preparing, or presenting a motion for appropriate relief, the court in its discretion may allow the State to withhold that portion of the files.

(g) The defendant may file amendments to a motion for appropriate relief at least 30 days prior to the commencement of a hearing on the merits of the claims asserted in the motion or at any time before the date for the hearing has been set, whichever is later. Where the defendant has filed an amendment to a motion for appropriate relief, the State shall, upon request, be granted a continuance of 30 days before the date of hearing. After such hearing has begun, the defendant may file amendments only to conform the motion to evidence adduced at the hearing, or to raise claims based on such evidence. (1977, c. 711, s. 1; 1981, c. 179, s. 7; 1993, c. 538, s. 25; 1994, Ex. Sess., c. 24, s. 14(b); 1995 (Reg. Sess., 1996), c. 719, s. 1; 2009-517, s. 2; 2013-368, s. 9; 2019-158, s. 5(a).)

#### **§ 15A-1416. Motion by the State for appropriate relief.**

(a) After the verdict but not more than 10 days after entry of judgment, the State by motion may seek appropriate relief for any error which it may assert upon appeal.

(b) At any time after verdict the State may make a motion for appropriate relief for:

- (1) The imposition of sentence when prayer for judgment has been continued and grounds for the imposition of sentence are asserted.
- (2) The initiation of any proceeding authorized under Article 82, Probation; Article 83, Imprisonment; and Article 84, Fines, with regard to the modification of sentences. The procedural provisions of those Articles are controlling. (1977, c. 711, s. 1.)

#### **§ 15A-1416.1. Motion by the defendant to vacate a nonviolent offense conviction for human trafficking victim.**

(a) A motion for appropriate relief seeking to vacate a conviction for a nonviolent offense based on the grounds set out in G.S. 15A-1415(b)(10) shall be filed in the court where the conviction occurred. The motion may be filed at any time following the entry of a verdict or finding of guilty. Any motion for appropriate relief filed under this section shall state why the facts giving rise to this motion were not presented to the trial court and shall be made with due diligence after

the defendant has ceased to be a victim of such trafficking or has sought services for victims of such offenses, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion or for other reasons consistent with the purpose of this section. The motion shall be contemporaneously served upon the district attorney in the prosecutorial district in which the conviction was entered. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the motion.

(b) The court may grant the motion if, in the discretion of the court, the defendant has demonstrated, by the preponderance of the evidence, that the violation was a direct result of the defendant having been a victim of human trafficking or sexual servitude and that the offense would not have been committed but for the defendant having been a victim of human trafficking or sexual servitude. Evidence of such may include any of the following documents listed in subdivisions (1) through (4) of this subsection; alternatively, the court may consider such other evidence as it deems of sufficient credibility and probative value in determining whether the defendant is a trafficking victim:

- (1) Certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a person charged with an offense under G.S. 14-43.11, G.S. 14-43.13, or under 22 U.S.C. Chapter 78.
- (2) Certified records of "approval notices" or "enforcement certifications" generated from federal immigration proceedings available to such victims.
- (3) A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.
- (4) A sworn statement or affidavit from a federal, State, or local law enforcement officer who investigated the violation of G.S. 14-43.11, G.S. 14-43.13, or the federal Trafficking Victims Protection Act, as stated within the defendant's motion.

(c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances.

(d) A previous or subsequent conviction shall not affect a person's eligibility for relief under this section. (2013-368, s. 10; 2019-158, s. 6(a).)

#### **§ 15A-1417. Relief available.**

- (a) The following relief is available when the court grants a motion for appropriate relief:
- (1) New trial on all or any of the charges.
  - (2) Dismissal of all or any of the charges.
  - (3) The relief sought by the State pursuant to G.S. 15A-1416.
  - (3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.
  - (4) Any other appropriate relief.

(b) When relief is granted in the trial court and the offense is divided into degrees or necessarily includes lesser offenses, and the court is of the opinion that the evidence does not sustain the verdict but is sufficient to sustain a finding of guilty of a lesser degree or of a lesser

offense necessarily included in the one charged, the court may, with consent of the State, accept a plea of guilty to the lesser degree or lesser offense.

(c) If resentencing is required, the trial division may enter an appropriate sentence. If a motion is granted in the appellate division and resentencing is required, the case must be remanded to the trial division for entry of a new sentence. (1977, c. 711, s. 1; 2006-184, s. 3; 2010-171, s. 5.)

#### **§ 15A-1418. Motion for appropriate relief in the appellate division.**

(a) When a case is in the appellate division for review, a motion for appropriate relief based upon grounds set out in G.S. 15A-1415 must be made in the appellate division. For the purpose of this section a case is in the appellate division when the jurisdiction of the trial court has been divested as provided in G.S. 15A-1448, or when a petition for a writ of certiorari has been granted. When a petition for a writ of certiorari has been filed but not granted, a copy or written statement of any motion made in the trial court, and of any disposition of the motion, must be filed in the appellate division.

(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, whether it is necessary to remand the case to the trial division for taking evidence or conducting other proceedings, or, for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case.

(c) The order of remand must provide that the time periods for perfecting or proceeding with the appeal are tolled, and direct that the order of the trial division with regard to the motion be transmitted to the appellate division so that it may proceed with the appeal or enter an appropriate order terminating it. (1977, c. 711, s. 1; 2006-184, s. 5; 2010-171, s. 5.)

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

(a) The following are grounds for the denial of a motion for appropriate 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 when the previous motion was made within 10 days after entry of judgment or the previous motion was made during the pendency of the direct appeal.
- (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.
- (4) The defendant failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a).

(b) The court shall deny the motion under any of the circumstances specified in this section, unless the defendant can demonstrate:

- (1) Good cause for excusing the grounds for denial listed in subsection (a) of this section and can demonstrate actual prejudice resulting from the defendant's claim; or
- (2) That failure to consider the defendant's claim will result in a fundamental miscarriage of justice.

(c) For the purposes of subsection (b) of this section, good cause may only be shown if the defendant establishes by a preponderance of the evidence that his failure to raise the claim or file a timely motion was:

- (1) The result of State action in violation of the United States Constitution or the North Carolina Constitution including ineffective assistance of trial or appellate counsel;
- (2) The result of the recognition of a new federal or State right which is 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 on a previous State or federal postconviction review.

A trial attorney's ignorance of a claim, inadvertence, or tactical decision to withhold a claim may not constitute good cause, nor may a claim of ineffective assistance of prior postconviction counsel constitute good cause.

(d) For the purposes of subsection (b) of this section, actual prejudice may only be shown if the defendant establishes by a preponderance of the evidence that an error during the trial or sentencing worked to the defendant's actual and substantial disadvantage, raising a reasonable probability, viewing the record as a whole, that a different result would have occurred but for the error.

(e) For the purposes of subsection (b) of this section, a fundamental miscarriage of justice only results if:

- (1) The defendant establishes that more likely than not, but for the error, no reasonable fact finder would have found the defendant guilty of the underlying offense; or
- (2) The defendant establishes by clear and convincing evidence that, but for the error, no reasonable fact finder would have found the defendant eligible for the death penalty.

A defendant raising a claim of newly discovered evidence of factual innocence or ineligibility for the death penalty, otherwise barred by the provisions of subsection (a) of this section or G.S. 15A-1415(c), may only show a fundamental miscarriage of justice by proving by clear and convincing evidence that, in light of the new evidence, if credible, no reasonable juror would have found the defendant guilty beyond a reasonable doubt or eligible for the death penalty. (1977, c. 711, s. 1; 1995 (Reg. Sess., 1996), c. 719, s. 2.)

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

(a) Form, Service, Filing. –

- (1) A motion for appropriate relief must:
  - a. Be made in writing unless it is made:
    1. In open court;
    2. Before the judge who presided at trial;
    3. Before the end of the session if made in superior court; and

4. Within 10 days after entry of judgment;
  - b. State the grounds for the motion;
  - c. Set forth the relief sought;
  - c1. If the motion for appropriate relief is being made in superior court and is being made by an attorney, the attorney must certify in writing that there is a sound legal basis for the motion and that it is being made in good faith; and that the attorney has notified both the district attorney's office and the attorney who initially represented the defendant of the motion; and further, that the attorney has reviewed the trial transcript or made a good-faith determination that the nature of the relief sought in the motion does not require that the trial transcript be read in its entirety. In the event that the trial transcript is unavailable, instead of certifying that the attorney has read the trial transcript, the attorney shall set forth in writing what efforts were undertaken to locate the transcript; and
  - d. Be timely filed.
- (2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.
  - (3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).
  - (4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c).
  - (5) An oral or written motion for appropriate relief made in superior court and made by an attorney may not be granted by the court unless the attorney has complied with the requirements of sub-subdivision c1. of subdivision (1) of this subsection.
- (b) Supporting Affidavits. –
- (1) A motion for appropriate relief made after the entry of judgment must be supported by affidavit or other documentary evidence if based upon the existence or occurrence of facts which are not ascertainable from the records and any transcript of the case or which are not within the knowledge of the judge who hears the motion.
  - (2) The opposing party may file affidavits or other documentary evidence.
- (b1) Filing Motion With Clerk. –
- (1) The proceeding shall be commenced by filing with the clerk of superior court of the district wherein the defendant was indicted a motion, with service on the district attorney in noncapital cases, and service on both the district attorney and Attorney General in capital cases.

- (2) The clerk, upon receipt of the motion, shall place the motion on the criminal docket. When a motion is placed on the criminal docket, the clerk shall promptly bring the motion, or a copy of the motion, to the attention of the senior resident superior court judge or chief district court judge, as appropriate, for assignment to the appropriate judge pursuant to G.S. 15A-1413.
- (3) The judge assigned to the motion shall conduct an initial review of the motion. If the judge determines that all of the claims alleged in the motion are frivolous, the judge shall deny the motion. If the motion presents sufficient information to warrant a hearing or the interests of justice so require, the judge shall appoint counsel for an indigent defendant who is not represented by counsel. Counsel so appointed shall review the motion filed by the petitioner and either adopt the motion or file an amended motion. After postconviction counsel files an initial or amended motion, or a determination is made that the petitioner is proceeding without counsel, the judge may direct the State to file an answer. Should the State contend that as a matter of law the defendant is not entitled to the relief sought, the State may request leave to file a limited answer so alleging.
- (b2) Repealed by Session Laws 2013-385, s. 3.1, effective December 1, 2013.
- (b3) Repealed by Session Laws 2013-385, s. 3.1, effective December 1, 2013.
- (c) Hearings, Showing of Prejudice; Findings. –
  - (1) Any party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing information presented unless the court determines that the motion is without merit. The court must determine, on the basis of these materials and the requirements of this subsection, whether an evidentiary hearing is required to resolve questions of fact. Upon the motion of either party, the judge may direct the attorneys for the parties to appear before him for a conference on any prehearing matter in the case.
  - (2) An evidentiary hearing is not required when the motion is made in the trial court pursuant to G.S. 15A-1414, but the court may hold an evidentiary hearing if it is appropriate to resolve questions of fact.
  - (3) The court must determine the motion without an evidentiary hearing when the motion and supporting and opposing information present only questions of law. The defendant has no right to be present at such a hearing where only questions of law are to be argued.
  - (4) If the court cannot rule upon the motion without the hearing of evidence, it must conduct a hearing for the taking of evidence, and must make findings of fact. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present must be in writing.
  - (5) If an evidentiary hearing is held, the moving party has the burden of proving by a preponderance of the evidence every fact essential to support the motion.
  - (6) A defendant who seeks relief by motion for appropriate relief must show the existence of the asserted ground for relief. Relief must be denied unless prejudice appears, in accordance with G.S. 15A-1443.
  - (7) The court must rule upon the motion and enter its order accordingly. When the motion is based upon an asserted violation of the rights of the defendant under the Constitution or laws or treaties of the United States, the court must make and enter conclusions of law and 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.

(d) Action on Court's Own Motion. – 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. The court must cause appropriate notice to be given to the parties.

(e) Nothing in this section shall prevent the parties to the action from entering into an agreement for appropriate relief, including an agreement as to any aspect, procedural or otherwise, of a motion for appropriate relief. (1965, c. 352, s. 1; 1973, c. 47, s. 2; 1977, c. 711, s. 1; 1995 (Reg. Sess., 1996), c. 719, ss. 3, 4; 2006-253, s. 30; 2009-517, s. 1; 2012-168, s. 2(b); 2013-385, s. 3.1; 2017-176, s. 1(b).)

#### **§ 15A-1421. Indigent defendants.**

The provisions of Chapter 7A of the General Statutes with regard to the appointment of counsel for indigent defendants are applicable to proceedings under this Article. The court also may make appropriate orders relieving indigent defendants of all or a portion of the costs of the proceedings. (1977, c. 711, s. 1.)

#### **§ 15A-1422. Review upon appeal.**

(a) The making of a motion for appropriate relief is not a prerequisite for asserting an error upon appeal.

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

(c) The court's ruling on a motion for appropriate relief pursuant to G.S. 15A-1415 is subject to review:

(1) If the time for appeal from the conviction has not expired, by appeal.

(2) If an appeal is pending when the ruling is entered, in that appeal.

(3) If the time for appeal has expired and no appeal is pending, by writ of certiorari.

(d) There is no right to appeal from the denial of a motion for appropriate relief when the movant is entitled to a trial de novo upon appeal.

(e) When an error asserted upon appeal has also been the subject of a motion for appropriate relief, denial of the motion has no effect on the right to assert error upon appeal.

(f) Decisions of the Court of Appeals on motions for appropriate relief that embrace matter set forth in G.S. 15A-1415(b) are final and not subject to further review by appeal, certification, writ, motion, or otherwise. (1977, c. 711, s. 1; 1981, c. 470, s. 3.)

#### **§§ 15A-1423 through 15A-1430. Reserved for future codification purposes.**