

A GUIDE TO POST-CONVICTION PROCEDURES FOR NORTH CAROLINA PRISONERS

1. Introduction

This guide is intended to provide North Carolina prisoners helpful information about post-conviction procedures. We have included basic information about the criminal courts, as well as tips for the more advanced *pro se* (meaning, self-represented) litigator. The most relevant statutes and forms are included at the end. This guide only deals with procedures and does not try to explain all the possible grounds for post-conviction challenges. This manual applies only to non-capital convictions.

Post-conviction proceedings are the legal means to challenge a conviction after losing a direct appeal. To challenge a conviction in state court, you can file a Motion for Appropriate Relief (MAR). If the MAR is denied, there is no right to appeal, but you can ask for appellate review by filing a Petition for Writ of Certiorari (PWC). To challenge a conviction in federal court you can file a Petition for Habeas Corpus (PHC), but only after you have lost in post-conviction proceedings in state court. If denied, you can ask to appeal to the Fourth Circuit Court of Appeals.

In both state and federal courts, self-represented persons will be appointed a lawyer if the court finds that the case has enough merit to require an in-court hearing with witnesses. Therefore, this guide will focus on how to present your case in writing to maximize your chances of obtaining a hearing but will not cover how to conduct the hearing itself.

2. Jury Trials v. Guilty Pleas

Trials and guilty pleas occur in both District and Superior Courts. Jury verdicts are considered final when rendered. Jury trials are recorded but jury selection usually is not. If a jury verdict is appealed a written transcript of the recording is prepared. A defendant convicted at trial has an absolute right to appeal the conviction and has the right to be represented by a lawyer on the appeal.

Guilty pleas are considered final when entered. When a defendant pleads guilty to a felony in District or Superior Court, the proceeding is recorded. A written transcript is not usually prepared since there is no right to appeal a guilty plea. There are a few exceptions that might allow the appeal of a guilty plea and the appointment of counsel in the appeal:

- 1) If the defendant filed a motion to suppress evidence which was denied before entering the guilty plea AND he specifically reserved the right to appeal the suppression issue before entering the plea, the defendant has the right to appeal.
- 2) If you were sentenced under Fair Sentencing, there is a right to appeal a sentence if it was greater than the presumptive sentence for the crime. The issue to be appealed is the judge's finding of aggravating factors. However there is no right to appeal if the specific sentence was agreed to as part of a plea arrangement.
- 3) Under Structured Sentencing, a defendant who pled guilty has the right to appeal his sentence if he receives a sentence outside the presumptive range for the defendant's prior record level and

offense class. Appeal is also allowed when the defendant is improperly sentenced due to an error in calculating the prior record level or a mistake in classifying the offense.

In order to appeal, the defendant or defense attorney must give oral notice of appeal in open court or file a written notice of appeal with the clerk of Superior Court in the convicting county within 14 days of the conviction. If the defendant files a Motion for Appropriate Relief within 10 days of conviction, the appeal deadline doesn't expire until 10 days after the MAR is decided.

If you missed the deadline for filing notice of appeal, you can file a Petition for Certiorari in either of the two North Carolina Appellate courts - the NC Supreme Court or Court of Appeals. Petitioning for Certiorari means you are asking the appellate court to consider your case even though you have no right to an appeal. In the Petition you must explain the reason you missed the deadline. For most felonies the appeal goes to the NC Court of Appeals, which meets in panels of 3 judges at a time.

3. Direct Appeal

In North Carolina there are two levels of appeal: the North Carolina Court of Appeals (COA) and the North Carolina Supreme Court (NCSC). These courts do not conduct trials; they review written trial records for errors that might make the conviction illegal. If the court finds what it considers to be a "harmless error" that didn't affect the outcome of the trial, it will not grant relief. If the court finds an error that did affect the outcome of the case, it can grant relief by ordering a new trial, ordering a new sentence or freeing the inmate.

The appeal process takes a long time and can easily take a year or more from notice of appeal to decision. The convicting court must prepare the transcript. The prosecutor and defense attorney must collect the documents for the court's review, conduct legal research and prepare legal briefs. The appellate court must then review the materials. The COA does not often hear oral arguments in cases, it simply reviews the record. The NCSC does hear oral arguments from the attorneys; however, defendants do not have a right to be present at the oral argument of their case.

If the COA affirms your conviction, depending on the circumstances, there are 3 ways to seek further review.

- 1) If one of the COA judges dissented or the appeal raises a question of State or Federal constitutional law, you can appeal to the NCSC. The Notice of Appeal must be received at the NCSC within 35 days from the date of the COA opinion. The same lawyer who represented you on your direct appeal may represent you in this appeal.
- 2) You can file a Petition for Discretionary Review (PDR) asking the NCSC to exercise its discretion and review the COA decision because the case has significant public interest, involves important legal principles or conflicts with a decision of the NCSC. A PDR must be received in the NCSC within 35 days of the COA opinion.
- 3) If the deadline for filing a PDR has passed, you can seek review by filing Petition for Certiorari in the NCSC without unreasonable delay. Unreasonable delay has not been defined but is taken to mean as soon as possible.

If you lose in the NCSC, you can file a Petition for Writ of Certiorari (PWC) in the U.S. Supreme Court asking that it review your case. The U.S. Supreme Court rarely reviews state criminal cases so the likelihood of review is rare. It will only consider federal issues, not questions of state law. If your conviction was based on a violation of your federal constitutional rights, in order to seek federal review you must have appealed to the NCSC.

Federal courts have the power to reverse state court convictions if the conviction violated federal constitutional rights as long as the issue was properly preserved (attorney voiced objections at each stage of your case when your rights were violated) and exhausted (argument was made to each court which can consider the argument for state review). If your issue has not been preserved and exhausted the federal courts will consider it procedurally barred, meaning procedure was not followed so they will not hear the case. For example, if the COA refused to rule on a claim that your rights were violated at trial because there was no objection to the violation in the trial court, the federal courts will consider your claim procedurally barred and will deny your petition. If your attorney properly objected at trial and unsuccessfully argued your constitutional claim in the COA, your claim is not exhausted until there is an appeal to the NCSC setting forth the constitutional law to be presented in federal court. Both conditions, preservation and exhaustion of issues, must be met before filing for federal review. The standard for relief in federal court is very high; you will need to establish that the state courts reviewing your conviction disregarded or were unreasonable in their application of clearly established federal law.

4) Getting a Lawyer after your Direct Appeal

You may hire an attorney to represent you in post-conviction proceedings. If you are indigent, NCPLS staff attorneys can evaluate your case free of charge. We will not review your case if it is still on direct appeal. However, after direct appeal, if you would like a staff attorney to evaluate your case for possible representation, write to us and request a "Post-Conviction Request for Assistance" form. Complete and return the form and we will collect the necessary court documents so we can review your case. Once our evaluation is complete we will write you with our findings. If an issue that has reasonable likelihood of winning relief for you is identified we can represent you in both state and federal courts. Please know that very few cases are won at post-conviction. At the point that your case comes to NCPLS you have already lost at trial and on direct appeal or you pled guilty. It is a rare case that will convince a judge to overrule all the judges who have already reviewed the case.

5) Self-Help

If NCPLS does not agree to represent you, you still have the right to represent yourself. Although the procedures can be difficult and success is rare, a few inmates have gained new trials by filing their own post-conviction papers. NCPLS does not provide legal research, copying or other support services to inmates who proceed on their own.

6) Motions for Appropriate Relief (MAR) in State Court

If your direct appeal is denied, the first decision you need to make is whether to file an MAR in State Court or a Petition for Habeas Corpus (PHC) in federal court.

A. When is an MAR necessary?

1. If your post-conviction arguments are based on facts presented at trial and the arguments were presented to the state appellate court, then you don't need to file an MAR before going into Federal court (issues have been preserved and exhausted). You must file your Federal habeas petition within one year of your conviction becoming final.
2. If your post-conviction argument is based on facts not presented at trial that can only be proved with additional evidence, or if you want to raise a legal argument that was not raised on direct appeal then an MAR filed in the convicting Superior Court is the next step after an unsuccessful appeal.

Since you generally can't appeal a guilty plea, an MAR is a way you can challenge the validity of a guilty plea if it was based on your misunderstanding of the law, bad advice or a broken plea bargain. You would need to request a hearing and if granted you would have an opportunity to testify about what happened and why you pled to the case. There are very few grounds upon which a court will set aside a guilty plea, and in many cases a defendant risks the possibility of being convicted of and serving additional time for charges dismissed as part of the original plea agreement. Proceed with extreme caution.

If you are raising a federal issue that has not been considered by the state courts, you should first file an MAR. For instance if you argued on direct appeal that evidence was admitted in violation of the state rules of evidence, but the federal constitution was not mentioned, then the federal claim is not exhausted. The federal court will not consider a federal PHC until you have done a state MAR that presents your federal constitutional argument to the state courts.

There is no need to file an MAR if all your claims are based on evidence in the record and all your arguments have been presented to the state courts on trial and direct appeal. In that case your claim is exhausted and you should file a PHC in federal court.

B. Obtaining a Guilty Plea Transcript

If you pled guilty to a felony and had no direct appeal, the clerk of court will have a copy of the Transcript of Plea form that you signed. The proceeding was recorded but will only be transcribed if a request is made. There are 3 ways to get the transcript. Options 1 and 2 yield the most success.

- 1) Pay for a copy of the transcript - Write the clerk of court and request the court reporter's contact information. Write the court reporter and request a transcript. The fee varies by court reporter.
- 2) File an MAR and include a request for transcript in the MAR.
- 3) If you cannot afford to pay for a transcript, submit a Motion for Preparation of a Transcript to the court requesting a transcript be provided free of charge.

C. How to File an MAR

The MAR is filed in the Superior Court in which you were indicted and convicted. There is no filing fee. You must also send a copy of the MAR, and any other documents you filed with it, to the District Attorney. Mail the MAR and related documents to the District Attorney with a "Certificate of Service" (there is a copy in the forms included with this packet).

Your MAR must include a clear statement of all the facts relevant to your claim that your conviction should be overturned. If the MAR is based on facts that can't be determined from the court record, then you must attach affidavits from witnesses who could provide evidence of those facts. You can be a witness in your own case and can attach your own affidavit. An affidavit must 1) show the person making the statement is competent to testify to the matters in the affidavit; 2) present facts admissible in court; and 3) present facts made on personal knowledge. The affidavit must be signed, dated and notarized by a notary public. File the original notary-stamped copy with the court.

In addition to stating the facts, the MAR should state one or more legal arguments as to why your conviction should be overturned. Clearly state the constitutional rights you are asserting. Arguments based on NC state laws can be made as well. A well-drafted MAR should include all available factual and legal arguments to insure claims are exhausted. There is no time limit for filing an MAR however there is a time limit for filing in federal court. If you want to preserve your right to file in federal court you must file your MAR within 1 year of your guilty plea or the direct appeal decision.

D. After the MAR is filed

The judge may read your MAR and dismiss it if he or she does not believe it has merit. The Judge may order the District Attorney to respond to the MAR, and may dismiss it after the DA responds. If the judge feels your MAR has merit, you will then be appointed an attorney to represent you at further proceedings. Write the clerk and ask about the status of your MAR if you have not heard anything from the court after a reasonable time (about 8 weeks). If four months pass and you still have heard no answer, you may write directly to the Senior Resident Superior Court Judge for the county and ask for a ruling on the MAR. If you still receive no response you may file a Petition for Writ of Mandamus to the Court of Appeals (COA). If the COA grants the writ, it will order the Superior Court to rule on the MAR.

E. Petition for Certiorari

If your MAR is dismissed or denied, you can file a Petition for Certiorari with the appellate courts. It is filed in the COA and must include all the factual and legal arguments that were in the MAR. You can attach a copy of the MAR to the petition. There is no deadline for filing but it should be filed without unreasonable delay. The Petition must be filed in order to exhaust your arguments so you may then file in federal court. Because of the deadline in federal court you should file the petition as soon as possible after the MAR is denied. A copy of the petition must be served on the NC Attorney General.

Federal Court

A. Stating a Federal Claim under the U.S. Constitution

Federal courts are only concerned with violations of the U.S. Constitution. They will not hear cases involving state law errors. Federal courts will not hear a case involving federal constitutional errors until state courts have been given a chance to correct them. All federal claims must first be presented to the state courts and appealed to the highest state court before the federal court will hear it. Your federal habeas petition will be dismissed if you have not exhausted your claims in state court. You must tell the state court the factual basis for your claim and the specific constitutional right it violated.

If the state courts reject your claim on the grounds that you failed to follow state procedure, the federal court will not hear your claim. The claim is considered to be “procedurally defaulted”.

When you draft your MAR include all claims that have a reasonable chance of success and make specific reference to the U.S. Constitution. NC courts are required to find procedural default 1) when a defendant could have raised an issue in the MAR and did not or 2) the issues raised have been previously ruled on by a state or federal court unless there has been a change in the law that is retroactive or 3) in a previous appeal the issue could have been raised but was not.

An exception to procedural default is that the last state court to rule on the claim must unambiguously base its decision on procedural default. The court must use the language, “procedurally defaulted”. Also, a federal court may still hear the claim if it finds the state court was wrong as a matter of state law in applying the procedural bar to your case.

It may be possible to avoid procedural default if the lawyer’s failure to object at trial or raise an issue on direct appeal amounted to ineffective assistance of counsel. A criminal defendant has a Sixth Amendment right to effective assistance of counsel.

7) The Petition for Habeas Corpus (PHC)

The PHC must be filed within 1 year from the final state court affirmance of your conviction or upon expiration of the time to seek that review. If you have a MAR pending in state court or a petition for writ of certiorari pending, the federal clock stops running. Once it is decided, the clock begins again.

Preparing the PHC

The federal courts have a form that is used for this purpose. To complete the form you will need your state court appellate brief and opinion, any state MARs you filed and the orders on the MARs. If you pled guilty there will likely not be an appellate brief or opinion. These materials can be obtained from

your attorney or clerk of court. There may be a copying fee. If your lawyer has these documents they may be turned over to you. If the lawyer does not have them or has already turned them over to you, they do not have to obtain them for you again or make duplicate copies.

Your PHC must contain all the claims you want the federal court to consider stated in federal constitutional terms. All claims must have been presented to the state court either on direct appeal or in an MAR followed by a cert petition.

B. Filing the PHC

Mail the PHC to the federal court district that includes the county of your conviction (Eastern, Middle or Western). The PHC should include the request to proceed in forma pauperis (IFP). We recommend you pay the filing fee because it can help you avoid the months of delay while the court tries to verify your trust account. The IFP should still be completed though because it enables you to receive appointed counsel.

Filing Motions with the PHC

It is always good to file a separate motion for appointment of counsel with your PHC. If there is evidence in your case in possession of the District Attorney you can file a “Motion for Leave to Conduct Discovery” to request it. Motions are simple written requests to the court to do something on your behalf. Your motions should explain why you cannot present your case without the requested materials or assistance. You must be able to support the motion with reasonable and specific arguments.

Review by the Court and Answer

The court will read the PHC and if they find no claims they will dismiss it. If the court finds claims, it will forward a copy to the Attorney General (AG) ordering them to answer the allegations in the PHC within 45 days. When the AG responds, you will be sent a copy of the answer also. From then on every time you or the AG corresponds with the court the correspondence must also be sent to the opposing party.

If the AG asks the court to dismiss your PHC, it is a good idea to file a “Response to the State’s Answer” that provides the court with information, arguments or explanations addressing each of the issues raised by the State. Provide documentation if necessary to support your responses. For instance if the state’s answer contains facts that you think are not true your response should point out what you think the true facts are and if available support them by witness affidavits.

- I) State’s Answer says your claims are not exhausted but you think they are: explain to the court why you think your claims have been fairly presented
 - If the state is correct and you have unexhausted claims you can ask the court to dismiss those claims, losing them forever, so you can proceed on the exhausted claims or ask the court to be allowed to amend the PHC to take out the unexhausted claims or voluntarily dismiss the petition so you can exhaust the claims in state court
- State’s Answer, “abused the writ” by not including your current claims in your previous petition: you should explain to the court why you should be excused for failing to make

the claims in a previous petition, for instance you lacked legal materials, weren't in a position at the time of prior filing to know about the claim. A second petition will be dismissed unless there is cause for the omission and the grounds you are alleging would have made a real difference at your trial and it's not just a technical violation

State's Answer – procedural default: explain to the court why the decision of the last state court reviewing the claims wasn't explicitly based on procedural default or that they were wrong to apply it

Habeas rules don't state a time frame for responding to the State's answer. If the court orders a specific time then follow that order but if not, try to respond within 10 days of receiving the answer.

- F. Preliminary Ruling – after the response and any motions have been filed the federal court will issue a ruling. The court may dismiss the PHC, grant an evidentiary hearing or grant the writ. The court may also decide any pre-trial motions. If the petition is not dismissed it is likely you will be appointed counsel. If the recommendation is dismissal, you will be sent a copy of the judge's memo and recommendation advising that you have 10 days to file "Objections to the Recommendation of the Magistrate Judge". If you don't file objections your case is over and you cannot appeal. If you file objections the ruling will be reviewed by a Federal District Court judge who will affirm, reverse or modify the prior ruling. If your case is dismissed by the District Court Judge you will receive a final judgment. You can then appeal to the 4th Circuit Court of Appeals. This is done by filing "Notice of Appeal" within 30 days of the judgment in the district court which denied the petition however certain conditions must be met before you appeal.

Before appealing the District Court must issue a Certificate of Appealability. By federal law, this certificate will only issue where the applicant makes a substantial showing of the denial of a constitutional right. The certificate must also identify which issue satisfies the substantial denial of a constitutional right.

Rule 11 of the Rules Governing Section 2254 Cases in US District Courts says:

- (a) Certificate of Appealability - "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether the certificate should issue. If the court issues a certificate, the court must state the specific issue that satisfies the showing required by law. If the court denies the certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.
- (b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

If the district court denies a certificate of appealability, you may file a request for a certificate to the Fourth Circuit. If the appeal is granted, you will be sent written instructions on how to handle your appeal and an “Informal Brief” form on which to present your arguments.

Petition for Rehearing:

If the U.S. Court of Appeals denies relief, you can file a “Petition for Rehearing” within fourteen days of the judgment. The petition should state the particular points of law or fact which the court overlooked. You also may include a “Suggestion for Rehearing En Banc” which is a request that all the judges of the Fourth Circuit (not just the three-judge panel who denied your appeal) reconsider the case. Such requests are rarely granted.

Petition for Certiorari to the US Supreme Court

You also have the option of filing a “Petition for a Writ of Certiorari in the US Supreme Court, within 90 days of the U.S. Court of Appeals judgment, or within 90 days of the denial of a petition for rehearing, whichever is later. It is not necessary to seek rehearing in the U.S. Court of Appeal before filing a petition for certiorari in the U.S. Supreme Court.

Hopefully this information will prove helpful to you in pursuing your legal claims. Below are relevant addresses and following are forms for your use.

Addresses:

State Courts

(Name of County) Superior Court
(Name of County) County Courthouse
(City), NC (Zip Code)

NC Court of Appeals
P.O. Box 2779
Raleigh, NC 27602-2779

N.C. Supreme Court
P.O. Box 2170
Raleigh, NC 27602

Lawyers for Prisoners

NC Prisoner Legal Services
P.O. Box 25397
Raleigh, NC 27611

Federal Courts

U.S. District Court – Eastern District of NC
P.O. Box 25670
Raleigh, NC 27611

U.S. District Court – Middle District of NC
P.O. Box 2708
Greensboro, NC 27402

U.S. District Court – Western District of NC
401 W. Trade Street
Charlotte, NC 28202

U.S. Court of Appeals for the Fourth Circuit
U.S. Court Annex
1100 East Main Street
Richmond, VA 23219

Lawyers for the State

NC Appellate Defender

123 W. Main Street, Suite 500

Durham, NC 27701

Office of the District Attorney

(Name of the County) County Courthouse

(Name of City/County Seat), NC (Zip Code)

Office of the Attorney General

NC Department of Justice

P.O. Box 629

Raleigh, NC 27602

POST-CONVICTION FORMS FOR USE BY PRISONERS PROCEEDING *PRO SE*

1. **Letter to the Clerk of Superior Court.** Use this to request court documents and information on how to obtain a guilty plea hearing transcript from the court reporter.
2. **Motion for Preparation of a Stenographic Transcript.** File this in the Superior Court of the county in which you were convicted in order to request the Court to provide you with a free transcript of your guilty plea hearing.
3. **Motion for Appropriate Relief.** File this in the Superior Court of the county in which you were convicted in order to request the Court to overturn your conviction or your sentence. As a general rule, defendants are only allowed **ONE** Motion for Appropriate Relief. It should be notarized.
4. **Affidavit.** Use this to present the sworn statement of a witness in support of the facts alleged in your Motion for Appropriate Relief. It must be notarized.
5. ***In Forma Pauperis* Affidavit.** Fill out this form, have your trust account certified by an officer at your unit, and submit it to the Court with your Motion for a Transcript, Motion for Appropriate Relief, or Petition for Writ of Habeas Corpus. It should be notarized.
6. **Petition for Writ of Certiorari.** File this in the North Carolina Court of Appeals (or North Carolina Supreme Court if you were convicted of first degree murder) after your Motion for Appropriate Relief is denied by the Superior Court.
7. **Petition for Writ of Habeas Corpus.** File this in the United States District Court for the district (Eastern, Middle or Western) which contains the county in which you were convicted. As a general rule, you are only allowed to file **ONE** Writ of Habeas Corpus. **There is a one-year statute of limitations for filing a Petition for Writ of Habeas Corpus.**
8. **Objections to the Recommendations of the U.S. Magistrate Judge.** File this in the U.S. District Court to get a U.S. District Court judge to review the Magistrate Judge's recommendation that your Petition of Habeas Corpus is denied.
9. **Notice of Appeal.** File this in the U.S. District Court after a U.S. District judge denies your Petition for Habeas Corpus. The Fourth Circuit will then contact you with further instructions.
10. **Request for Certificate of Appealability.** File this in the U.S. Court of Appeals for the Fourth Circuit, after a U.S. District Court judge denies your Petition for Habeas Corpus. The Fourth Circuit Court will issue an Order either allowing you to appeal the denial of your PHC or dismiss your appeal.

Name: _____

OPUS: _____

Address: _____

Date: _____

To the Honorable Clerk of Superior Court:

_____ County Courthouse

_____ North Carolina _____

_____ (Zip Code) _____

Dear Clerk of Court:

I am writing to request copies of the following documents out of my Court records (put an "X" beside each item you are requesting):

_____ Arrest Warrant

_____ Indictment

_____ Transcript of Plea Form

_____ Judgment and Commitment

_____ Appellate Opinion

_____ Other (specify): _____

_____ Other (specify): _____

_____ Please advise me of the cost of preparing a verbatim transcript of my guilty plea hearing, or send me the name and address of the Court reporter so I can write for this information.

I am requesting the above records about the following convictions:

File number(s) (if you know): _____

Date of conviction: _____

Offense(s) convicted of: _____

Plea (guilty or not guilty): _____

Sentence(s): _____

I am requesting these documents in order to evaluate my legal situation and prepare a post-conviction petition. I can't afford to pay for copies and I would appreciate your assistance in providing these copies to me without cost. I would be happy to send you an "*In Forma Pauperis* Affidavit" or provide whatever other information you need, if you write to me at the above address.

Thank you very much for your assistance.

Sincerely,

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: _____

STATE OF NORTH CAROLINA

V.

Defendant

)
)
)
)
)
)

MOTION FOR PREPARATION OF
STENOGRAPHIC
TRANSCRIPT

NOW COMES _____, Defendant *pro se* in the above-captioned case, and respectfully moves the Court for an Order that a stenographic transcript be prepared of the hearing at which defendant entered a plea of guilty. In support, Defendant shows the Court the following:

1) Defendant is seeking to have the Court review the legality of the following convictions:
Date of conviction(s): _____
Presiding Judge: _____
Plea (guilty or not guilty): _____
Offense(s) convicted of: _____
Sentence(s): _____

2) Defendant lacks sufficient funds to have a verbatim transcript of his/her plea hearing prepared, as shown by the prison trust fund certification which is attached. Plea hearing transcripts are usually short, from ten to forty pages, which results in a cost of under seventy-five dollars (\$75.00) in most cases. The burden on the state of transcript preparation is thus expected to be minimal.

3) A verbatim transcript is necessary to resolve genuine issues of fact that would constitute good grounds for filing a post-conviction motion. The particular issues sought to be resolved in this case are as follows:

ARGUMENT

Under these circumstances, defendant submits that a transcript of Defendant's plea hearing shall be prepared at state expense. A guilty plea involves the waiver of valuable constitutional and statutory rights. "Presuming waiver from a silent record is impermissible." *Carnley v. Cochran*, 369 U.S. 506, 516, 82 S.Ct. 884, 890, 8 L.Ed.2d 70 (1962). There must have been "an intentional relinquishment of a known right or privilege," *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1232, 1242, 51 L.Ed.2d 424 (1977). When a Defendant raises a substantial question concerning the waiver of fundamental rights, inspection of the actual verbatim record is appropriate and necessary.

It has been held that the standard for determining whether an indigent is entitled a transcript prepared at state expense is (1) whether a transcript is necessary for preparing an effective defense, and (2) whether there are alternative devices available to the defendant which are substantially equivalent to a transcript. *State v. Rankin*, 306 N.C. 712, 295 S.E.2d 416 (1982). Transcripts are particularly necessary

in the evaluation of potential problems in guilty plea proceedings because the record reflects the waiver of so many important rights. The defendant's signature on the form is "no substitute" for actual compliance with the courtroom procedures mandated by North Carolina General statute. *State v. Wells*, 78 N.C. App. 769, 338 S.E.2d 573 (1986).

General statute 12A-1026 requires that a verbatim record of such proceedings be maintained and preserved. Furthermore, transcripts for indigents are an ordinary part of the budget of the Administrative Office of the Courts. *See*, G.S. 7A-300(a)(8), (9) and (11). These statutes plainly establish a legislative policy in favor of allowing review of the record to ensure compliance with the various statutory and constitutional mandates. Such review can be realized only if a transcript is prepared. The legislature could not have intended that a verbatim record be preserved, only for it to remain unavailable for inspection upon a reasonable request of a defendant or his counsel.

Although the right to direct appeal from a conviction on a guilty plea is limited, G.S. 15A-1444(e), defendants may challenge such convictions by means of a Certiorari petition, *id.*, or a Motion for Appropriate Relief. G.S. 15A-1411, *et seq.* Indigent defendants may be "entitled to the services of counsel" in post-conviction proceedings. G.S. 15A-1421; 7A-451(a)(3); 7A-451(B)(6).

Whenever an indigent defendant is "entitled to counsel," it is the responsibility of the state to provide "the other necessary expenses of representation." G.S. 7A-450(b). Unless transcript preparation is ordered, defendant may be placed in the unfair position of having a legal "entitlement" to counsel and to preparation of a transcript at state expense, and yet be unable to show such legal entitlement simply because the transcript has not yet been prepared.

It is often impossible to fully evaluate a defendant's claims without reviewing the verbatim transcript. For instance, in *State v. Dickens*, 299 N.C. 76, 261 S.E.2d 183 (1980), the Supreme Court overturned the trial court's denial of defendant's Motion to Withdraw Guilty Plea, finding that because the verbatim transcript had not been included in the record on appeal, it would be necessary to hold an evidentiary as to what occurred.

A defendant can lose important legal rights by filing an improperly drafted Motion for Appropriate Relief. G.S. 15A-1419. Therefore it is important to have the transcript prepared *before* the Motion for Appropriate Relief is filed.

WHEREFORE, Defendant respectfully asks the Court to order that a verbatim transcript of Defendant's guilty plea hearing be prepared at state expense and provided to the Defendant.

Respectfully submitted, this the ____ day of _____, 20__.

Defendant *pro se*

Address: _____

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: _____

STATE OF NORTH CAROLINA)

V.)

MOTION FOR APPROPRIATE RELIEF

Defendant)

NOW COMES _____, Defendant *pro se* in the above-captioned case(s), and respectfully moves the Court, pursuant to G.S. 15A-1411, *et seq.*, for appropriate relief from the Defendant's conviction and sentence in said case(s). In support of this Motion, Defendant shows the Court:

1) Defendant is seeking to have the Court review the legality of the following convictions:
Date of conviction(s): _____
Presiding Judge: _____
Plea (guilty or not guilty): _____
Offense(s) convicted of: _____
Sentence(s): _____

2) Here is a brief statement of facts that shows that I am legally entitled to relief from my conviction(s) and/or sentence(s). (Use additional paper if necessary.)

3) The foregoing statement of facts is supported by the court record of this case and by the following affidavits and documents which are attached to this Motion:

1) Affidavit of _____
2) Affidavit of _____
3) Affidavit of _____
4) Documents _____

4) This Motion comes within G.S. 15A-1415 because (place an "X" beside each statement that applies to your case):

(a) ____ My conviction was obtained in violation of due process of law (U.S. Const. Am 5, 6, 14; N.C. Const. Art. I, Sec. 18, 19, 23), as well as other provisions of the United States and North Carolina Constitutions. G.S. 15A-1415(b)(3).

(b) ____ I have discovered new evidence (witness testimony or documents) which has a direct and material bearing upon my guilt or innocence, and which is shown by an affidavit of the witness, or a copy of the document, attached to this Motion. G.S. 15A-1415(c). If the newly-discovered evidence is not proved by an attachment to this Motion, it is described as follows (use additional paper if necessary):

(c) ____ There has been a significant change in the law (either substantive or procedural) which must be retroactively applied to my case. G.S. 15A-1415 (b)(7). (Briefly describe the new law that you want applied to your case, giving a citation to the new statute or court opinion, if possible.)

(d) ____ Even if my conviction was valid, there was a problem in the way I was sentenced, and my sentence is invalid. G.S. 15A-1415(b)(8). (Briefly describe the problem with your sentence.)

(e) ____ Other. (See 15A-1415)

(5) If you allege that your conviction was obtained in violation of your right to due process of law and other constitutional provisions, (part (6)(a) above), state the other constitutional violations that you are alleging (place an "X" beside each statement that applies to your case). NOTE: Each allegation below of a constitutional violation must be supported by specific facts alleged in part (2) above.

- (a) ____ Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with an understanding of the nature of the charges and consequences of the plea. U.S. Const. Am. 5, 6, 14; N.C. Const. Art. I, Sec. 19, 23.
- (b) ____ Conviction obtained by use of coerced or illegally obtained confession. U.S. Const. Am. 5, 6, 15; N.C. Const. Art. I, Sec. 19, 23.

- (c) _____ Conviction obtained by use of evidence gained in an unconstitutional search and seizure. U.S. Const. Am. 4, 14; N.C. Const. Art. I, Sec. 19, 20.
- (d) _____ Conviction obtained by use of evidence obtained pursuant to an unlawful arrest. U.S. Const. Am. 4, 14; N.C. Const. Art. I, Sec. 19, 20.
- (e) _____ Conviction obtained by a violation of the privilege against self-incrimination. U.S. Const. Am. 5, 14; N.C. Const. Art. I, Sec. 19, 23.
- (f) _____ Conviction obtained by the unconstitutional failure of the state to disclose to the Defendant evidence favorable to the Defendant. U.S. Const. Am. 5, 6, 14; N.C. Const. Art. I, Sec. 18, 19, 23.
- (g) _____ Conviction obtained by a violation of the protection against double jeopardy. U.S. Const. Am. 5, 14; N.C. Const. Art. I, Sec. 19, 23.
- (h) _____ Conviction obtained by action of the grand jury that issued the indictment, or the trial jury that entered the guilty verdict, which was unconstitutionally selected, impaneled and constituted. U.S. Const. Am. 5, 14 (due process and equal protection); N.C. Const. Art. I, Sec. 18, 19, 22, 23, 24, 26.
- (i) _____ Conviction obtained by denial of counsel at a critical stage of the proceedings, without knowing, voluntary and valid waiver by Defendant of the right to counsel. U.S. Const. Am. 5, 6, 14; N.C. Const. Art. I, Sec. 19, 23.
- (j) _____ Conviction obtained by denial of Defendant's right to present evidence in his own defense. U.S. Const. Am. 5, 6, 14; N.C. Const. Art. I, Sec. 18, 19, 21, 23.
- (k) _____ Conviction obtained due to the denial of Defendant's right to appeal, without knowing, voluntary and valid waiver by Defendant of his right to appeal. U.S. Const. Am. 5, 6, 14; N.C. Const. Art. I, Sec. 18, 19, 21, 23.
- (l) _____ Conviction obtained due to the ineffectiveness of trial and/or appellate defense counsel. U.S. Const. Am. 5, 6, 14; N.C. Const. Art. I, Sec. 19, 23.
- (m) _____ Other right under the U.S. Constitution: _____
- (n) _____ Other right under the U.S. Constitution: _____
- (o) _____ Other right under the U.S. Constitution: _____

(6)

If there are additional arguments, laws or statutes that you want the Court to consider, state them here. _____

WHEREFORE, Defendant respectfully moves the Court for the following relief (place an "X" beside each statement of what you want the Court to do in your case).

- (a) _____ Preparation of a stenographic transcript of my guilty plea hearing. G.S. 15A-1421; 7A-300, 450 and 451; *State v. Dickens*, 299 N.C. 76, 261 S.E.2d 183 (1980).
- (b) _____ Dismissal of a new trial on all or any of my charges. G.S. 15A-1417(a)(1) and (2).

- (c) _____ A new sentencing hearing. G.S. 15A-1417(a)(4).
(d) _____ Other appropriate relief G.S. 15A-1417(a)(4) _____

I further respectfully request the Court to allow me to proceed *in forma pauperis* (see the IFP affidavit submitted herewith), appoint counsel to advise and represent me. G.S. 15A-1420(c)(4); 15A-1421; 7A-450, 451; and grant an evidentiary hearing on all factual issues. G.S. 15A-1420(c)(1) and (4).

Respectfully submitted, this _____ day of _____, 20____.

Defendant's Signature _____

Address _____

STATE OF NORTH CAROLINA
COUNTY OF _____

DEFENDANT'S VERIFICATION
OF APPROPRIATE RELIEF MOTION

I, _____, being first duly sworn, depose and say that I am the Defendant in the above matter, that I have read the foregoing MOTION FOR APPROPRIATE RELIEF and the facts stated therein are true of my own knowledge, except as to those matters stated "upon information and belief," I am informed and believe them to be true.

Defendant's Signature

Sworn and subscribed before me this
____ day of _____, 20____.

Notary Public

My commission expires: _____

CERTIFICATE OF SERVICE

This is to certify that the foregoing MOTION FOR APPROPRIATE RELIEF has been duly served upon the following by placing a copy of same in the United States Mail, postage prepaid, and properly addressed as follows:

District Attorney

This the ____ day of _____, 20____.

Defendant's Signature

AFFIDAVIT

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Signature _____
Address _____

My commission expires: _____

IN FORMA PAUPERIS AFFIDAVIT

(Insert name of Court)

Petitioner/Defendant,

V.

Respondent/State.

AFFIDAVIT IN SUPPORT
OF REQUEST TO PROCEED
IN FORMA PAUPERIS

I, _____, being first duly sworn, depose and say that I am the Petitioner/Defendant in the above-entitled case; that in support of my Motion to proceed without being required to prepay fees, costs, or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or give security therefore; and that I believe I am entitled to relief. I further swear that responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes () No () If the answer is "yes," state the amount of your wages per month and give the name and address of your employer.

If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received then.

2. Within the past twelve (12) months have you received any money from any of the following sources?

- | | | | |
|----|--|---------|--------|
| a. | Business, profession or form of self-employment? | Yes () | No () |
| b. | Rent payments, interest or dividends? | Yes () | No () |
| c. | Pensions, annuities or life insurance payments? | Yes () | No () |
| d. | Gifts of inheritances? | Yes () | No () |
| e. | Any other sources? | Yes () | No () |

If the answer of any of the above is "yes," describe each source of money and state the amount received from each during the past twelve (12) months.

3. Do you own or have money in a checking or savings account (include any funds in inmate accounts?) Yes () No () If "yes," state the total value.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)? Yes () No ()
If "yes," describe the property and state its approximate value.

5. List any persons who are dependent upon you for support. State your relationship to those persons and indicate how much you contribute to their support.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ (date)

Signed _____

(In state Court, this document
must be notarized)

Sworn to and subscribed before me this
____ day of _____, 20____.

Notary Public

My commission expires: _____

CERTIFICATE OF TRUST ACCOUNT BALANCE

I certify that Petitioner/Defendant named above has the sum of \$ _____ on
account in his/her credit at this Institution where he/she is housed. I further certify that
Petitioner/Defendant has the following additional securities on other property to his/her credit,
according to the records of this Institution.

(Authorized officer of Institution/Unit)

(Title)

(Institution/Unit)

JUDICIAL DISTRICT

STATE OF NORTH CAROLINA

V.

))))))

From _____ County _____

No(s). _____

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

_____, Petitioner *pro se*, respectfully petitions this Court to issue its writ of certiorari pursuant to Rule 21 of the Rules of Appellate Procedure to review the order of the Honorable _____, Judge Presiding, Superior Court, _____ County, dated _____, denying Petitioner's motion for appropriate relief, and in support of this petition shows the following:

FACTS

Petitioner is incarcerated in the N.C. Department of Public Safety, Division of Adult Corrections, under active sentence(s) which Petitioner seeks to challenge:

Date of conviction(s): _____

Presiding Judge: _____

Plea (guilty or not guilty): _____

Sentence(s): _____

On _____ (date), the court below entered an order denying the motion for appropriate relief. A copy of the order is attached to this petition.

Petitioner contends that the order is erroneous and that he/she is entitled to the relief sought for the reasons stated in the motion for appropriate relief.

The following are additional facts and arguments that Petitioner submits in support of this petition (attach additional pages, if necessary):

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

ATTACHMENTS

Attached to this petition for consideration by the Court and incorporated by reference herein are the following items (check the ones that are attached):

___ Order denying the motion for appropriate relief (MUST be attached)

___ Motion for appropriate relief (strongly advise that this be attached)

___ Other (specify) _____

___ Other (specify) _____

Petitioner is (check one) ___ indigent, as shown by the attached affidavit in support of request to proceed *in forma pauperis* or ___ encloses the \$10 filing fee.

Petitioner is a layman at law, is unable to retain counsel, and the court below failed to appoint counsel. Petitioner asks that this petition be liberally construed, that Petitioner be appointed counsel to provide representation in further proceedings, and that the relief sought in Petitioner's motion for appropriate relief be granted.

Wherefore, Petitioner respectfully prays that this Court issue its writ of certiorari to the Superior Court, _____ County, to permit review of the order above specified for errors in the denial of the motion for appropriate relief, and that the petitioner have such other relief as to the Court may seem proper.

Respectfully submitted this the ___ day of _____, 20__.

Petitioner: _____

Signature

Address: _____

VERIFICATION

I, _____, being duly sworn, state that I am the
Petitioner, that I have read the foregoing petition for writ of certiorari, and that it is
accurate to the best of my knowledge, information, and belief.

This ____ day of _____, 20____.

NAME

Sworn to and subscribed before me

this ____ day of _____, 20 ____.

Notary Public

My commission expires: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the attached petition for writ
of certiorari has been duly served pursuant to Rule 26 by placing a copy in the
United States Mail, postage prepaid, and properly addressed as follows:

North Carolina Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

This ____ day of _____, 20____.

NAME: _____

Petition for Relief From a Conviction or Sentence
By a Person in State Custody

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

Instructions

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. You must pay a fee of \$5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds \$_____, you must pay the filing fee.
7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for _____
Address _____
City, State Zip Code _____
9. **CAUTION:** You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court	District
Name (under which you were convicted):	Docket or Case No.:
Place of Confinement:	Prisoner No.:
Petitioner (<u>include</u> the name under which you were convicted) Respondent (authorized person having custody of petitioner)	
v.	
The Attorney General of the State of	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____

 (b) Criminal docket or case number (if you know): _____
2. (a) Date of the judgment of conviction (if you know): _____
 (b) Date of sentencing: _____
3. Length of sentence: _____
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☐
5. Identify all crimes of which you were convicted and sentenced in this case: _____

6. (a) What was your plea? (Check one)

(1) Not guilty ☐
 (2) Guilty ☐

(3) Nolo contendere (no contest) ☐
 (4) Insanity plea ☐

 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a posttrial hearing?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☐

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? Yes ☐ No ☐

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: _____

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (b) If you did not exhaust your state remedies on Ground One, explain why: _____

- (c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: _____

- (d) Post Conviction Proceedings:

- (1) Did you raise this issue through a post conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post Conviction Proceedings:

(1) Did you raise this issue through a post conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

- (e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: _____

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

- (b) If you did not exhaust your state remedies on Ground Three, explain why: _____

- (c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post Conviction Proceedings:

(1) Did you raise this issue through a post conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post conviction proceeding: _____

(g) On appeal from any ruling against you in a post conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that

(1) A one year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

Therefore, petitioner asks that the Court grant the following relief: _____

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).

Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

(Insert appropriate court)

* * * * *

File No. _____

OBJECTIONS TO THE
RECOMMENDATION OF THE
U.S. MAGISTRATE JUDGE

Respondent(s).

Petitioner now comes and lodges objection to all of the Findings and Recommendations entered by the Magistrate Judge that are unfavorable to the Petitioner. Petitioner's objections are more fully explained in ___ additional sheet(s), which are attached and incorporated by reference. Petitioner is a layman of law, unable to secure legal counsel, and was not appointed counsel by the U.S. Magistrate Judge. Petitioner therefore requests that these objections be liberally construed, and that the District Court Judge review the Findings and Recommendations for the errors specified herein and any others that may be found to have occurred, and further, that Petitioner be appointed counsel to represent him/her in further proceedings, and that the relief sought in this habeas corpus petition is granted.

Respectfully submitted, this _____ day of _____, 20_____

Petitioner's Signature

This is to certify that the foregoing OBJECTIONS TO THE RECOMMENDATIONS OF THE MAGISTRATE JUDGE (with attached pages, if any), was duly served upon the following by placing a copy of same in the United States Mail, postage prepaid, and properly addressed as follows:

Office of the Attorney General
P.O. Box 629
Raleigh, NC 27602

This _____ day of _____, 20_____

Petitioner's Signature

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH CAROLINA

File No. _____

Petitioner,

v.

Respondent(s).

NOTICE OF APPEAL

Petitioner now comes and gives notice of appeal to the United States Court of Appeals
for the Fourth Circuit from the final order of the Honorable

_____, U.S. District Court Judge, dated

_____, denying the relief sought in this habeas corpus
proceeding

Respectfully submitted, this ____ day of _____, 20__.

Petitioner's Signature

CERTIFICATE OF SERVICE

This is to certify that the foregoing NOTICE OF APPEAL has been duly by placing a
copy of same in the United States Mail, postage prepaid, and properly addressed as follows:

Office of the Attorney General
P.O. Box 629
Raleigh, NC 27602

This ____ day of _____, 20__.

Petitioner's Signature

File No. _____

V.

REQUEST FOR A CERTIFICATE OF APPEALABILITY

Respectfully submitted, this _____ day of _____, 20_____.

Petitioner's Signature

CERTIFICATE OF SERVICE

This is to certify that the foregoing REQUEST FOR CERTIFICATE OF APPEALABILITY has been duly served by placing a copy of same in the United States Mail, postage prepaid, and properly addressed as follows:

Office of the Attorney General
P.O. Box 629
Raleigh, NC 27602

This ____ day of _____, 20__.

Petitioner's Signature