

### 35.3 Motions for Appropriate Relief

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### 35.3 Motions for Appropriate Relief

#### A. In General

A motion for appropriate relief (MAR) is a motion made after verdict (or after sentencing if the defendant pled guilty and there was no verdict) to correct any error occurring before, during, or after a criminal trial or proceeding. *State v. Handy*, 326 N.C. 532 (1990). Article 89 of Chapter 15A addresses motions for appropriate relief and was enacted to provide “a single, unified procedure for raising at the trial level errors which are asserted to have been made during” a defendant’s criminal trial. Ch. 15A, art. 89 Official Commentary. The MAR provided for in Article 89 was intended by the General Assembly “to replace motions in arrest of judgment, motions to set aside the verdict, motions for new trial, post-conviction proceedings, *coram nobis* and all other post-trial motions, but was not intended as a bar to relief by writ of habeas corpus.” *State v. Bush*, 307 N.C. 152, 165–66 (1982) (citing G.S. 15A-1411(c)). Motions for appropriate relief may be made by the defendant, the State, or by the trial judge on his or her own motion. *See* G.S. 15A-1414 (motion by defendant within ten days of verdict); G.S. 15A-1415 (motion by noncapital defendant at any time after verdict); G.S. 15A-1416 (motion by the State); G.S. 15A-1416.1 (motion by defendant who was a victim of human trafficking to vacate his or her nonviolent felony conviction); G.S. 15A-1420(d) (action on judge’s own motion at any time that a defendant would be entitled to relief).

The procedures required by Article 89 are quite detailed and somewhat complicated. A failure to comply with the statutory requirements may result in the dismissal of the motion or the denial of relief. *See, e.g., State v. Jones*, 317 N.C. 487 (1986) (MAR after ten-day time limit for that type of MAR was properly denied by superior court judge on the ground that the superior court no longer had jurisdiction); *State v. Moore*, 185 N.C. App. 257 (2007) (defendant failed to properly present a Sixth Amendment argument to the trial judge in accordance with the rules governing MARs where he filed neither a new MAR nor a written amendment adding this argument either before or after the hearing on his original MAR); *see also State v. Riley*, 137 N.C. App. 403 (2000) (denying defendant’s MAR because, among other things, he was in a position to have raised the issue on a previous appeal and failed to do so). G.S. 15A-1420 is the procedural section that provides for the formalities of making oral and written MARs, notice, and hearing.

## B. Types of Motions for Appropriate Relief by Defendant

**MAR within ten days of judgment.** Article 89 provides for two types of MARs for the defendant. The first is governed by G.S. 15A-1414. Under this statute, a defendant may seek relief for any error that occurred before or during trial. The MAR must be filed within ten days after entry of judgment and may be acted on by the trial court even if notice of appeal has already been given. G.S. 15A-1414(a), (c). The errors that may be asserted under this statute include but are not limited to the following:

- the trial judge erroneously failed to dismiss the charge before trial pursuant to G.S. 15A-954;
- the trial judge ruled contrary to law with regard to motions made before and during trial or with regard to the admission or exclusion of evidence;
- at the close of all the evidence, the trial judge erroneously failed to dismiss the charges based on insufficiency of the evidence (whether or not a motion to dismiss was made before the verdict was rendered);
- the trial judge gave erroneous jury instructions;
- the verdict was contrary to the weight of the evidence (this ground is discussed in more detail *supra* in § 30.3D);
- the sentence imposed was not supported by the evidence introduced at trial and at the sentencing hearing; and
- for any other cause the defendant did not receive a fair and impartial trial.

G.S. 15A-1414(b). The defendant can make this type of motion and the trial judge can act on it even when the defendant has given notice of appeal. G.S. 15A-1414(c).

**MAR at any time after judgment.** The second type of MAR is governed by G.S. 15A-1415 and may be filed by a defendant at any time after verdict in noncapital cases. Capital cases have an outer time limit, and MARs in those cases must be filed in accordance with the requirements of G.S. 15A-1415(a). The defendant may raise the following grounds for relief under G.S. 15A-1415(b):

- at the time the defendant committed the acts charged, they did not amount to a violation of criminal law;
- the trial court did not have personal jurisdiction over the defendant or subject matter jurisdiction;
- the conviction was obtained in violation of the state or federal constitution;
- the statute under which the defendant was convicted or sentenced violated the state or federal constitution;
- the conduct for which the defendant was prosecuted was protected by the state or federal constitution;
- 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;
- 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; and

- the defendant is entitled to be released from confinement because his or her sentence has been fully served.
- the defendant was convicted of a first offense of prostitution and the trial judge did not discharge the defendant and dismiss the charge pursuant to G.S. 14-204(b) or, for offenses committed on or after December 1, 2019, 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, sexual servitude, or the federal Trafficking Victims Protection Act; and the defendant seeks to have the conviction vacated. *See* G.S. 15A-1416.1 (describing procedures applicable to this type of MAR).

A defendant also may file a MAR alleging newly discovered evidence under this statute; however, this type of motion must be filed "within a reasonable time of its discovery." G.S. 15A-1415(c).

If defendant has given notice of appeal, this type of MAR must be made in the appellate court where the appeal is pending. *See* G.S. 15A-1418(a); *State v. Brock*, 46 N.C. App. 120 (1980) (where defendant had appealed his case from superior court to the N.C. Court of Appeals, the trial judge had no authority to consider defendant's motion under G.S. 15A-1415; defendant's MAR should have been made in the appellate division); *see also* G.S. 15A-1448(a)(3) (with narrow exceptions, jurisdiction of the trial court is divested when notice of appeal is given).

### C. Motion for Appropriate Relief by the State

**MAR within ten days of judgment.** Article 89 provides for two types of MARs by the State. The first is governed by G.S. 15A-1416(a). Under this statute, the State may seek relief for any error which it may assert on appeal. The State's MAR must be filed within ten days after entry of judgment. For a discussion of the errors that the State may assert on appeal, see Jessica Smith, [\*Motions for Appropriate Relief\*](#) (Aug. 2017), NORTH CAROLINA SUPERIOR COURT JUDGES' BENCHBOOK.

**MAR at any time after verdict.** The second type of MAR may be filed by the State at any time after verdict for:

- the imposition of sentence when prayer for judgment has been continued and grounds for the imposition of sentence are asserted; or
- the initiation of any proceeding under Article 82, Probation; Article 83, Imprisonment; and Article 84, Fines, to modify a sentence.

G.S. 15A-1416(b). The State has no right under this statute to move to set aside a judgment based on newly discovered evidence. *See State v. Oakley*, 75 N.C. App. 99 (1985).

#### **D. Motion for Appropriate Relief on Court's Own Motion**

At any time that a defendant would be entitled to relief by MAR, the court may grant such relief on its own motion. G.S. 15A-1420(d); *see also State v. Wilkerson*, 232 N.C. App. 482, 490 (2014) (noting that “the trial court has the authority, in appropriate cases, to grant postconviction relief on its own motion”). The trial court cannot grant relief that would only benefit the State. *State v. Oakley*, 75 N.C. App. 99 (1985) (finding error where, after learning additional information about the case, trial judge sua sponte struck defendant’s guilty plea).

The trial court must give appropriate notice to the parties. G.S. 15A-1420(d); *see also State v. Williams*, 227 N.C. App. 209 (2013) (holding that trial judge gave sufficient notice of his sua sponte MAR where he had announced it in open court, he was the presiding judge, the MAR occurred during the same criminal session of court as the judgment, the judgment had been rendered only the day before, and the judge stated the grounds for the motion and the relief he was granting).

#### **E. “Consent” Motions for Appropriate Relief**

G.S. 15A-1420(e) states that “[n]othing 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.” By enacting (and thereafter retaining) G.S. 15A-1420(e) in 2012, the General Assembly appears to have authorized a trial judge to grant a MAR if the State and defendant consent. *See* John Rubin, *Relief from a Criminal Conviction: [Motions for Appropriate Relief](#)* (2018); Jessica Smith, *[Motions for Appropriate Relief](#)* at 14–15 (Aug. 2017), NORTH CAROLINA SUPERIOR COURT JUDGES’ BENCHBOOK (noting potential impact of change but advising judges to exercise caution in considering “consent” MARs without other grounds); *see also State v. Chevallier*, 264 N.C. App. 204, 212 (2019) (finding that because defendant failed to argue on appeal that he was improperly convicted of two offenses arising from a single transfer of a counterfeit controlled substance, the issue was not properly before the court; “[h]owever, the failure to raise this issue does not preclude Defendant from filing a motion for appropriate relief . . . , does not preclude the trial court from considering a motion for appropriate relief sua sponte . . . , and does not prevent the parties to this action from entering into an agreement for appropriate relief under N.C. Gen. Stat. § 15A-1420(e)”).

#### **F. Grant or Denial of Relief**

Types of relief that are available when a trial judge grants a motion for appropriate relief include:

- new trial;
- dismissal of charges;
- relief sought by the State in an MAR under G.S. 15A-1416;

- referral to the North Carolina Innocence Commission if the defendant is claiming actual innocence; or
- any other appropriate relief.

G.S. 15A-1417(a). Grounds for the denial of relief are detailed in G.S. 15A-1419.

### **G. Additional Resources**

For a resource on the requirements and procedures for making motions for appropriate relief in North Carolina, see Jessica Smith, [\*Motions for Appropriate Relief\*](#) (Aug. 2017), NORTH CAROLINA SUPERIOR COURT JUDGES' BENCHBOOK. *See also* John Rubin, *Relief from a Criminal Conviction: [\*Motions for Appropriate Relief\*](#)* (2018).