

35.4 State Habeas Corpus

A. In General

A defendant who is imprisoned in North Carolina for any criminal or supposed criminal matter may challenge the lawfulness of his or her custody by applying for a writ of habeas corpus (ad subjiciendum). See G.S. 17-3. This writ was known as the “great Writ of Right.” See *State v. Herndon*, 107 N.C. 934, 936 (1890); see also *In re Holley*, 154 N.C. 163, 168 (1910) (the writ of habeas corpus is “the most important, perhaps, in our system of government, having its origin long prior to Magna Charta”). The purpose of this ancient writ “is to give a person restrained of his liberty an immediate hearing so that the legality of his detention may be inquired into and determined.” *State v. Lewis*, 274 N.C. 438, 441 (1968) (citation omitted). It is not the purpose of the writ of habeas corpus to determine the guilt or innocence of a prisoner. 39 AM. JUR. 2D *Habeas Corpus and Postconviction Remedies* § 1 (2008).

Habeas corpus is a collateral attack on a judgment of imprisonment and is not a substitute for appeal. *In re Palmer*, 265 N.C. 485 (1965); *In re Burton*, 257 N.C. 534 (1962). A court in a habeas corpus proceeding is not allowed to act as an appeals court and review a conviction for errors—its function is solely to determine whether the applicant is being held unlawfully. See *State v. Cannon*, 244 N.C. 399 (1956). If the defendant is seeking review of errors occurring at trial or sentencing, he or she should appeal the judgment directly, file a petition for a writ of certiorari, or file a motion for appropriate relief. See, e.g., *State v. Hamrick*, 2 N.C. App. 227 (1968) (although defendant entitled his petition “Application for Writ of Habeas Corpus,” it was in substance a motion for appropriate relief since it alleged trial error, and the trial judge should have handled it in that manner).

B. Authority and Procedures for Writ

The writ of habeas corpus is guaranteed by article I, section 21 of the N.C. Constitution [previously article I, sections 18 and 21]. Chapter 17 of the N.C. General Statutes implements the right to habeas corpus, setting out the procedural requirements for the application and enforcement of the writ.

The application for the writ must be made in writing and signed by the applicant. It may be demanded of any one of the justices or judges of the appellate division or of any superior court judge whether or not court is in session. G.S. 17-6; see also 1 NORTH CAROLINA DEFENDER MANUAL § 10.8H (Writ of Habeas Corpus) (Oct. 2010) (discussing authority of individual judges to hear writ). Additional materials on applying for a habeas corpus writ, including form applications and orders, can be found on the website of the N.C. Office of Indigent Defense Services, www.ncids.org. Highlight Training & Resources, click on Training Materials and then Training Materials—Indexed by Subject, and scroll down to Habeas Corpus.

For special procedures pertaining to habeas corpus applications in capital cases, see Rule 25 of the General Rules of Practice for the Superior and District Courts.

C. Scope of Writ

Traditionally, at common law an applicant in a habeas corpus proceeding could be released from imprisonment only if the record disclosed that the court that imprisoned him or her did not have jurisdiction of the offense or of the person of the defendant, or that the judgment was void because it was not authorized by law. *See, e.g., In re Burton*, 257 N.C. 534, 540 (1962) (“The only questions open to inquiry [in a habeas corpus proceeding] are whether on the record the court which imposed the sentence had jurisdiction of the matter or had exceeded its powers.”). However, the scope of the court’s habeas corpus jurisdiction has been expanded and is now much broader. *See Hoffman v. Edwards*, 48 N.C. App. 559 (1980) (noting that G.S. 17-33(2) broadened the scope of habeas corpus to allow a party to be discharged from custody even though the original imprisonment was lawful where some act, omission, or event that took place afterwards causes the party to be entitled to release); *see also In re Imprisonment of Stevens*, 28 N.C. App. 471 (1976) (same).

Pursuant to G.S. 17-33, an applicant must be released from custody if no legal cause is found for the imprisonment or restraint. Additionally, if it appears that the applicant is in custody by process issued by a legally constituted court or by an officer in the course of judicial proceedings authorized by law, he or she may be discharged if:

- the jurisdiction of such court or officer was exceeded, either as to matter, place, sum, or person;
- the original imprisonment was lawful but some subsequent act, omission, or event has caused the applicant to become entitled to be discharged;
- the process was defective causing it to be void;
- the process, although in proper form, was issued in a case not allowed by law;
- the person having custody of the applicant under such process is not the person empowered by law to detain him or her; or
- the process was not authorized by any judgment, order, or decree of any court, nor by any provision of law.

G.S. 17-33(1)–(6).

D. Selected Examples

Reported cases indicate that defendants have applied for writs of habeas corpus in the following circumstances. The list does not exhaust the possible uses of the writ, however. Defendants have applied for habeas corpus writs to:

- Challenge the defendant’s continued imprisonment because the life sentence imposed on him for first-degree murder committed in 1975 was defined by statute as a term of eighty years and the defendant alleged that he had earned sufficient credits to have completed the sentence. *Jones v. Keller*, 364 N.C. 249 (2010).
- Inquire into the legality of the defendant’s continued imprisonment beyond the maximum term set for committed youthful offenders. *State v. Niccum*, 293 N.C. 276 (1977).

- Seek immediate release from custody on the basis that the defendant was not the individual who was indicted for the crime. *State v. Lewis*, 274 N.C. 438 (1968).
- Test the legality of an attorney's imprisonment where a judge found the attorney to be in contempt of court and imprisoned him for ten days. *In re Burton*, 257 N.C. 534 (1962).
- Procure immediate release where the defendant's sentence of imprisonment was for a term in excess of that allowed by law and the defendant had already served the maximum sentence authorized by law. *State v. Austin*, 241 N.C. 548 (1955).
- Contest the defendant's restraint where he was imprisoned for allegedly violating the conditions of a suspended judgment without the opportunity for a hearing on the alleged violation. *State v. Phillips*, 185 N.C. 614 (1923).

See also 1 NORTH CAROLINA DEFENDER MANUAL § 1.8A (Who Hears the Motion) (Aug. 2010) (noting possibility of habeas corpus review of district court pretrial release determination); 1 NORTH CAROLINA DEFENDER MANUAL § 3.2C (Scheduling Requirements) (Nov. 2008) (discussing use of writ to challenge defendant's continued detention in cases in which a probable cause hearing has not been held within statutory time limits).

E. Appeal from Adverse Ruling

The applicant does not have an appeal of right from an order denying a writ of habeas corpus but may petition the appropriate appellate court for a writ of certiorari. *See State v. Niccum*, 293 N.C. 276 (1977); *State v. Wambach*, 136 N.C. App. 842 (2000). *But cf.* N.C. R. APP. P. 21(a) (authorizing appellate courts to grant a writ of certiorari only in the following three situations: (1) where the party lost the right to appeal by failing to take timely action; (2) where the order appealed from is interlocutory and there is no right of appeal; or (3) to review a trial judge's denial of a motion for appropriate relief).

F. Additional Resources

For a further discussion of the law related to state habeas corpus writs, see Jessica Smith *Habeas Corpus* (Jan. 2010), in *THE SURVIVAL GUIDE: SUPERIOR COURT JUDGES' BENCHBOOK*, www.sog.unc.edu/node/2166.