

SUPREME COURT OF NORTH CAROLINA

BRANDON LEE

PETITIONER/DEFENDANT

) FROM: WAKE COUNTY

) File no: 15CR227741-42

V.

) PETITION FOR WRIT

STATE OF NORTH CAROLINA) OF MANDAMUS

RESPONDENT

TO THE HONORABLE JUDGE OF THE ABOVE NAMED
APPELLATE COURT:

APPENDIX A - 1 of 13

NOW COMES PETITIONER BRANDON LEE AND
RESPECTFULLY PETITIONS THIS COURT TO ISSUE
ITS WRIT OF MANDAMUS PURSUANT TO G.S 7A-32(b)
AND RULE 22 OF THE N.C. RULES OF APPELLATE
PROCEDURES, TO REVIEW THE ORDER WHEN THE
PETITIONER FILED SIX PRE TRIAL MOTIONS
FOR DISMISSAL TO THE WAKE COUNTY 10TH
JUDICIAL DISTRICT SUPERIOR COURT WITH THE
CLERK OF SUPERIOR COURT JENNIFER KNOX AS WELL
AS COPIES SENT TO THE DISTRICT ATTORNEY
LORRINE FREEMAN, AND A COPY SENT TO THE
SENIOR RESIDENTIAL SUPERIOR COURT JUDGE.
WHILE IN A PRETRIAL SETTING WITH COUNSEL TO
PROTECT HIS CONSTITUTIONAL RIGHTS. IN SUPPORT,
PETITIONER SHOWS THE FOLLOWING MOTIONS WHEN
THE SAID MOTIONS WERE NOT HEARD:

PETITIONER IS INCARCERATED IN THE WAKE COUNTY
DETENTION CENTER ALLEGEDLY CHARGED WITH
THE FOLLOWING CHARGES:

DATE ARRESTED: DECEMBER 20, 2015

PRESIDING JUDGE: MR. DONALD W. STEPHENS AND/OR
MR. PAUL C. RIDGEWAY

PLEA: (GUILTY OR NOT GUILTY) PETITIONER IS
PENDING TRIAL

3 OFFENSES: ALLEGEDLY CHARGED FOR FIRST
2 OF DEGREE MURDER X2

A- THE FOLLOWING FACTORS ARE SET OUT AS FOLLOWS:

APPENDIX A- 1. DEFENDANT STATES THAT ON OR ABOUT FEBRUARY
27, 2017 THE DEFENDANT FILED A MOTION FOR
DISMISSAL N.C.G.S. 15A-954 UNDER SUBDIVISION
(A)(4) ARTICLE 36 THAT THE DEFENDANTS
CONSTITUTIONAL RIGHTS TO INCLUDE HIS SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL AND ON
ARTICLE I, SECTION 18 OF THE N.C. CONSTITUTION
HAVE BEEN FLAGRANTLY VIOLATED AND THERE
IS SUCH IRREPARABLE PREJUDICE TO THE
DEFENDANTS PREPARATION OF HIS CASE THAT
THERE IS NO REMEDY BUT TO DISMISS PROSECUTION.
HEREIN, THE SAID MOTION WAS NOT HEARD WHEN
2 OF 13 THE SAID MOTION WAS RECEIVED BY THE

CLERK OF SUPERIOR COURT AND STAMP FILED ON OR ABOUT MARCH 7, 2017. WHEREAS, THE DEFENDANT REQUESTED AN EVIDENTIARY HEARING, State V. Goldman, 311 NC 338 SE 2d 361 (1984). A COPY OF THE MOTION WAS SERVED UPON THE DISTRICT ATTORNEY LORRIN FREEMAN WITH A NOTICE OF INTENT AND CERTIFICATE OF SERVICE.

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2. DEFENDANT STATES THAT ON OR ABOUT MAY 30, 2017 THE DEFENDANT FILED A MOTION FOR DISMISSAL N.C.G.S. 15A-954 UNDER SUBDIVISION (A)(3) ARTICLE 36 THAT THE WAKE COUNTY 10TH JUDICIAL SUPERIOR COURT DENIED THE DEFENDANTS RIGHT TO A SPEEDY TRIAL PURSUANT TO THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION AND ON ARTICLE I, SECTION 18 OF THE NC CONSTITUTION. HEREIN, THE SAID MOTION WAS NOT HEARD WHEN THE SAID MOTION WAS RECEIVED BY THE CLERK OF SUPERIOR COURT AND STAMP FILED ON OR ABOUT JUNE 9, 2017. WHEREAS THE DEFENDANT REQUESTED AN EVIDENTIARY HEARING, State V. Tindall, 18 N.C. App 388 (1973). A COPY OF THE MOTION WAS SERVED UPON THE DISTRICT ATTORNEY LORRIN FREEMAN WITH A NOTICE OF INTENT AND CERTIFICATE OF SERVICE.

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3. DEFENDANT STATES THAT ON OR ABOUT JULY 26, 2017 THE DEFENDANT FILED A SECOND (II) MOTION FOR DISMISSAL N.C.G.S. 15A-954 UNDER SUBDIVISION (A)(3) ARTICLE 36 THAT THE WAKE COUNTY JOTH JUDICIAL DISTRICT SUPERIOR COURT DENIED THE DEFENDANTS RIGHT TO A SPEEDY TRIAL PURSUANT TO THE SIXTH

AMENDMENT OF THE U.S. CONSTITUTION AND ON ARTICLE I, SECTION 18 OF THE N.C. CONSTITUTION. HEREIN THE SAID MOTION WAS NOT HEARD WHEN THE SAID MOTION WAS RECEIVED BY THE CLERK OF SUPERIOR COURT AND STAMP FILED ON OR ABOUT AUGUST 4, 2017. WHEREAS THE DEFENDANT REQUESTED AN EVIDENTIARY HEARING, State V. Roberts, 18 NC App 388 (1973). A COPY OF THE MOTION WAS SERVED UPON THE DISTRICT ATTORNEY LORRIN FREEMAN WITH A NOTICE OF INTENT AND CERTIFICATE OF SERVICE

4. DEFENDANT STATES THAT ON OR ABOUT AUGUST 16, 2017 THE DEFENDANT FILED A MOTION FOR DISMISSAL, THIRD (III) MOTION FOR DISMISSAL N.C.G.S. 15A-954 UNDER SUBDIVISION (A)(3) ARTICLE 36 THAT THE WAKE COUNTY JOTH JUDICIAL DISTRICT SUPERIOR COURT DENIED THE DEFENDANTS RIGHT TO A SPEEDY TRIAL PURSUANT TO THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION AND ON ARTICLE I, SECTION 18 OF THE N.C. CONSTITUTION.

4. DEFENDANT STATES THAT ON OR ABOUT AUGUST 16, 2017 THE DEFENDANT FILED A MOTION FOR DISMISSAL, THIRD (III) MOTION FOR DISMISSAL N.C.G.S. 15A-954 UNDER SUBDIVISION (A)(3) ARTICLE 36 THAT THE WAKE COUNTY JOTH JUDICIAL DISTRICT SUPERIOR COURT DENIED THE DEFENDANTS RIGHT TO A SPEEDY TRIAL PURSUANT TO THE SIXTH AMENDMENT OF THE

U.S. CONSTITUTION AND ON ARTICLE I, SECTION 18 OF THE N.C. CONSTITUTION. HEREIN THE SAID MOTION WAS NOT HEARD WHEN THE SAID MOTION WAS RECEIVED BY THE CLERK OF SUPERIOR COURT AND STAMP FILED ON OR ABOUT AUGUST 25, 2017. WHEREAS THE DEFENDANT REQUESTED AN EVIDENTIARY HEARING, State v. Roberts, 18 NC App 388 (1973). A COPY OF THE MOTION WAS SERVED UPON THE DISTRICT ATTORNEY LORRIN FREEMAN WITH A NOTICE OF INTENT AND CERTIFICATE OF SERVICE.

5. DEFENDANT STATES THAT ON OR ABOUT AUGUST 16, 2017 THE DEFENDANT FILED A MOTION FOR DISMISSAL N.C.G.S 15A-954 UNDER SUBDIVISION (A)(8) WHEN THE WAKE COUNTY 10TH JUDICIAL DISTRICT SUPERIOR COURT HAS NO JURISDICTION OF THE OFFENSE CHARGED PURSUANT TO THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION AND ON ARTICLE I, SECTION 22 OF THE N.C. CONSTITUTION. WHEREAS, THE WAKE COUNTY 10TH JUDICIAL DISTRICT SUPERIOR COURT HAS OBTAINED JURISDICTION UNLAWFULLY BY MEANS OF AN ILLEGALLY CONSTITUTED AND INVALID INDICTMENT. HEREIN THE SAID MOTION WAS NOT HEARD WHEN THE SAID MOTION WAS RECEIVED BY THE CLERK OF SUPERIOR COURT

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APPENDIX

AND STAMP FILED ON OR ABOUT AUGUST 25, 2017.
WHEREAS THE DEFENDANT REQUESTED AN
EVIDENTIARY HEARING, State V. Mchone, 348 N.C.
254 (1998). A COPY OF THE MOTION WAS SERVED UPON
THE DISTRICT ATTORNEY LORRIN FREEMAN WITH
A NOTICE OF INTENT AND CERTIFICATE OF
SERVICE.

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6. DEFENDANT STATES THAT ON OR ABOUT AUGUST 30,
2017 THE DEFENDANT FILED A MOTION FOR
DISMISSAL N.C.G.S 15A-954 UNDER SUBDIVISION
(A)(4) WHEN THE WAKE COUNTY 10TH JUDICIAL
DISTRICT SUPERIOR COURT FLAGRANTLY VIOLATED
THE DEFENDANTS CONSTITUTIONAL RIGHTS TO
INCLUDE HIS FOURTH, FIFTH, AND SIXTH
AMENDMENT OF THE U.S. CONSTITUTION AND
ON ARTICLE I, SECTIONS 18, 19, 21, 22, 23, AND 36
OF THE N.C. CONSTITUTION. WHEREAS THE FLAGRANT
CONSTITUTIONAL RIGHT VIOLATIONS HAS CAUSED
SUCH IRREPARABLE PREJUDICE TO THE DEFENDANTS
PREPARATION OF HIS CASE THAT THERE IS NO
REMEDY BUT TO DISMISS PROSECUTION.
HEREIN THE SAID MOTION WAS NOT HEARD
WHEN THE SAID MOTION WAS RECEIVED BY THE
CLERK OF SUPERIOR COURT AND STAMP FILED
ON OR ABOUT SEPTEMBER 8, 2017. WHEREAS THE
DEFENDANT REQUESTED AN EVIDENTIARY

HEARING, State V. Goldman, 311 NC 338 (1984). A COPY OF THE MOTION WAS SERVED UPON THE DISTRICT ATTORNEY LORRIN FREEMAN WITH A NOTICE OF INTENT AND CERTIFICATE OF SERVICE.

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7. DEFENDANT STATES THAT ON OR ABOUT OCTOBER 4, 2017 THE DEFENDANT FILED A MOTION FOR DEFAULT JUDGEMENT FOR FAILING TO ANSWER A COURT ORDER, AND THUS WAIVED ANY DEFENSE TO THE DEFENDANTS PRETRIAL MOTIONS FOR DISMISSAL SUBMITTED INTO THE WAKE COUNTY 10TH JUDICIAL DISTRICT SUPERIOR COURT. THE SAID MOTION WAS RECEIVED BY THE CLERK OF SUPERIOR COURT AND STAMP FILED ON OR ABOUT OCTOBER 13, 2017. A COPY OF THE MOTION WAS SERVED UPON THE DISTRICT ATTORNEY LORRIN FREEMAN WITH A NOTICE OF INTENT AND CERTIFICATE OF SERVICE.

REASONS WHY THE WRIT SHOULD BE ISSUED

I. PETITIONER ARGUES THAT HE HAS FILED SIX PRETRIAL MOTIONS FOR DISMISSAL AS PRESCRIBED IN N.C.G.S 15A-952 WHILE IN A PRETRIAL SETTING WITH COUNSEL TO PROTECT HIS CONSTITUTIONAL RIGHTS. WHEREAS, THE SAID TRIAL COURT HAS NOT HEARD ANY OF THE

PETITIONERS PRELIMINARY MOTIONS FOR DISMISSAL, HEREIN, THE PETITIONER IS ENTITLED TO A EVIDENTIARY HEARING BECAUSE THE STATE DID NOT PROVIDE A FULL AND FAIR HEARING REGARDING ALL CONTESTED ISSUES OF FACT IN THE SAID MOTIONS FOR DISMISSAL. State V. Roberts, 18 NC App 388 (1973); State V. Tindall, 294 NC 689, 242 SE 2d 806 (1978); State V. Goldman, 311 N.C. 338 (1984); State V. Mchone, 348 N.C. 254 (1998); Robinson V. Howes 663 F3d 819, 824-825 (6 Cir 2011).

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II. PETITIONER ARGUES THAT HE FILED A MOTION FOR DEFAULT JUDGEMENT FOR FAILING TO ANSWER A COURT ORDER, REQUESTING AN ORDER STATING THAT THE STATE HAS DEFAULTED AND HAS THUS WAIVED ANY DEFENSE TO THE DEFENDANTS SAID PRETRIAL MOTIONS FOR DISMISSAL. THE PETITIONER IS ENTITLED TO AN EVIDENTIARY HEARING BECAUSE HE DID NOT HAVE AN OPPORTUNITY TO DEVELOP HIS CLAIM IN THE STATE COURT, DESPITE DUE DILIGENCE. Winston V. Pearson, 683 F3d 489, 494-500 (4th Cir 2012) THEREIN, THE PETITIONER CAN ASK A HIGHER COURT TO ISSUE A WRIT, OUTSIDE OF THE USUAL APPEAL PROCESS, TO RECTIFY A CERTAIN WRONG BY THE TRIAL COURT.

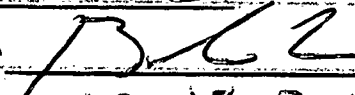
III. PETITIONER ARGUES THAT THE WORD WRIT MEANS AN ORDER WHEN THE MATTER IS URGENT AND ARE CONSIDERED TO BE EXTRA-ORDINARY REMEDIES. THE WRITS ARE HEARD MORE QUICKLY THAN APPEALS, SO IF THE PETITIONER FEELS WRONGED BY THE ACTIONS OF THE TRIAL COURT HE MAY NEED TO TAKE A WRIT TO OBTAIN AN EARLY REVIEW BY A HIGHER COURT, AS IS WHEN A FINAL JUDGEMENT HAS NOT YET BEEN ENTERED IN THE TRIAL COURT, BUT THE PARTY SEEKING THE WRIT NEEDS RELIEF AT ONCE TO PREVENT INJUSTICE, UNNECESSARY EXPENSE, AND FOR UNDULY DELAYED RULING.

IV. PETITIONER ARGUES THAT THE SUPREME COURT HAS GENERAL SUPERVISORY AUTHORITY OVER THE ORDERS, JUDGEMENTS, AND DECREES OF THE SUPERIOR COURTS OF THE STATE, THIS IS A PEROGATIVE WRIT WHICH IN A PROPER CASE, WHEN NECESSARY TO PROMOTE THE EXPEDITIOUS ADMINISTRATION OF JUSTICE, THE SUPREME COURT WILL NOT HESITATE TO EXERCISE. Park Terrance, Inc. v. Phoenix Indem. Co., 243 N.C. 595, 915 SE 2d 554 (1956); Brice v. Robertson House Moving, Wreck + Salvage Co., 249 NC 74, 105 SE 2d 439 (1958); In re Brown Lee, 301 NC 532, 272 SE 2d 861 (1981).

IV PETITIONER ARGUES THAT A WRIT OF MANDAMUS IS AN EXTRAORDINARY COURT ORDER TO ABOARD, CORPORATION, INFERIOR COURT, OFFICER OR PERSON COMMANDING THE PERFORMANCE OF A SPECIFIED OFFICIAL DUTY IMPOSED BY LAW. In re T.H.T 366 NC 446, 454, 665 SE 2d 54, 60 (2008), (Quoting Sutton v. Figgart, 280 NC 89, 93, 185 SE 2d 97, 99 (1971) North Carolina's appellate court may issue writs of Mandamus to supervise and control. Id (Quoting NC Gen Stat 7A-32.

WHEREFORE, THE PETITIONER ASKS THIS COURT TO ISSUE ITS WRIT OF MANDAMUS TO THE SUPERIOR COURT OF SAID COUNTY OF WAKE, THAT IT CORRECTLY ADDRESSES THE PETITIONERS PRETRIAL MOTIONS FOR DISMISSAL AND THAT THE PETITIONER BE GRANTED SUCH OTHER AND FURTHER RELIEF AS APPEARS TO THIS MOST HONORABLE COURT TO BE JUST AND PROPER.

RESPECTFULLY SUBMITTED
BY: BRANDON LEE

Signature: 

Date: 10-18-2017

ATTACHED TO THIS PETITION AND INCORPORATED
BY REFERENCES HEREIN ARE THE FOLLOWING ITEMS:

✓ MOTION FOR DISMISSAL N.C.G.S 15A-954
UNDER SUBDIVISION(A)(4) ARTICLE 36 (See Exhibit A)

✓ MOTION FOR DISMISSAL N.C.G.S 15A-954
UNDER SUBDIVISION(A)(3) ARTICLE 36 (See Exhibit B)

✓ SECOND(II) MOTION FOR DISMISSAL N.C.G.S
15A-954 UNDER SUBDIVISION(A)(3) ARTICLE 36 (See Exhibit C)

✓ THIRD(III) MOTION FOR DISMISSAL N.C.G.S 15A-954
UNDER SUBDIVISION(A)(3) ARTICLE 36 (See Exhibit D)

✓ MOTION FOR DISMISSAL N.C.G.S 15A-954
UNDER SUBDIVISION(A)(8) (See Exhibit F)

✓ MOTION FOR DISMISSAL N.C.G.S 15A-954
UNDER SUBDIVISION(A)(4) (See Exhibit G)

✓ MOTION FOR DEFAULT JUDGEMENT FOR
FAILING TO ANSWER A COURT ORDER (See Exhibit H)

✓ AFFIDAVIT THAT SUPPORTS STATEMENTS AND
FACTS IN THIS WRIT OF MANDAMUS (See Exhibit I)

✓ AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED
IN FORMA PAUPERIS (See Exhibit J)

✓ WRIT OF MANDAMUS ADDRESSES OF THE TRIAL
COURT JUDGE AND OTHER PARTIES (See Exhibit K)

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AFFIDAVIT IN SUPPORT OF THIS PETITION FOR WRIT
OF MANDAMUS. THE UNDERSIGNED, HAS BEEN DULY SWORN
BY A NOTARY PUBLIC, HEREBY SWEAR OR AFFIRM THAT I
AM THE PETITIONER IN THE HERE WITHIN ACTION, THAT
I HAVE READ THE FOREGOING AND KNOW THE CONTENTS
THEREOF, THAT THE SAME ARE BASED ON FACTS, KNOWLEDGE,
AND BELIEF. AS SUCH, UNDER PENALTY OF PERJURY, ALL
MATTERS HEREWITHIN SHOULD BE RECEIVED AS FACT.

BY: BRANDON LEE

Signature: [Signature]

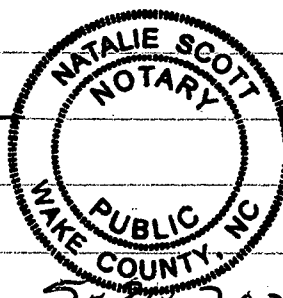
Date: 10-18-2017

Wake County, North Carolina

Sworn and Subscribed before
me this 18 day
of October, 2017

Natalie Scott

Notary Public



12 of 13 My Commission Expires: 5-31-2022

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THE FOREGOING
PETITION FOR WRIT OF MANDAMUS WAS DULY SERVED
UPON THE FOLLOWING BY PLACING A COPY OF THE SAME
IN THE UNITED STATES MAIL POSTAGE PREPAID,
AND PROPERLY ADDRESSED AS FOLLOWS:

SUPREME COURT OF NORTH CAROLINA
ATTN: J. BRYAN BOYD, CLERK
P.O. BOX 2170
RALEIGH, NC 27602

ATTORNEY GENERAL OFFICE
ATTN: JOSH STEIN, ATTORNEY GENERAL
P.O. BOX 629
RALEIGH, NC 27602

BY: BRANDON LEE

Signature: B. Lee

Date: 10-18-2017

WAKE COUNTY DETENTION CENTER
P.O. BOX 2479
RALEIGH, NC 27602

Supreme Court of North Carolina

STATE OF NORTH CAROLINA

v

BRANDON LEE

From Wake
(15CR227741-42)

ORDER

Upon consideration of the petition filed by Defendant on the 23rd of October 2017 in this matter for a writ of mandamus, the following order was entered and is hereby certified to the Superior Court, Wake County:

"Dismissed by order of the Court in conference, this the 1st of March 2018."

s/ Morgan, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of March 2018.



Amy L. Funderburk
Clerk, Supreme Court of North Carolina
[Signature]
M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

Mr. Brandon Lee, For Lee, Brandon
Mr. Daniel P. O'Brien, Special Deputy Attorney General, For State of N.C. - (By Email)
Ms. N. Lorrin Freeman, District Attorney
Hon. Jennifer Knox, Clerk
West Publishing - (By Email)
Lexis-Nexis - (By Email)

APPENDIX B