

FILED: March 13, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1018

In re: EGBERT FRANCIS, JR.

Petitioner

J U D G M E N T

In accordance with the decision of this court, the petition for writ of
mandamus is denied.

/s/ PATRICIA S. CONNOR, CLERK

Appendix-A

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-1018

In re: EGBERT FRANCIS, JR.,

Petitioner.

On Petition for Writ of Mandamus.

Submitted: March 10, 2020

Decided: March 13, 2020

Before NIEMEYER and AGEE, Circuit Judges, and SHEDD, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Egbert Francis, Jr., Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Egbert Francis, Jr., petitions for a writ of mandamus seeking an order to compel the state court in Wake County, North Carolina, to enforce an order it issued for a complete recordation of all proceedings and to grant Francis a new trial. We conclude that Francis is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380 (2004); *In re Murphy-Brown, LLC*, 907 F.3d 788, 795 (4th Cir. 2018). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought. *Murphy-Brown*, 907 F.3d at 795. This court does not have jurisdiction to grant mandamus relief against state officials, *Gurley v. Superior Court of Mecklenburg Cty.*, 411 F.2d 586, 587 (4th Cir. 1969), and does not have jurisdiction to review final state court orders, *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983).

The relief sought by Francis is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny the petition for writ of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-HC-2002-D

EGBERT FRANCIS, JR.,

Petitioner,

v.

THE MUNICIPAL COURT OF WAKE
COUNTY, et al.,

Respondents.

ORDER

On January 3, 2019, Egbert Francis, Jr. ("Francis" or "petitioner"), a state inmate proceeding pro se, filed an "application for writ of mandamus" [D.E. 1]. The court grants Francis's motion to proceed in forma pauperis [D.E. 2]. Francis has demonstrated the requisite evidence of his inability to pay the filing fee. As explained below, the court conducts its preliminary review under 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, and dismisses the petition.

In 1994, Francis

was tried noncapitally on proper indictments charging him with two counts of first-degree murder. The State's evidence tended to show that on 19 November 1991, two bodies were found in the bushes near Wake Medical Center in Raleigh. The victims, Ssuraj Ibrahim and Corede Sondunke, had each been shot in the head but with different caliber guns. Blood tracks showed that their bodies had been dragged from a nearby road to the bushes. The police found a slip of paper with [Francis]'s address in one of the victim's pockets. The police eventually went to [Francis]'s address with a search warrant and found several firearms and a large amount of ammunition.

The police were informed that a black sport-utility vehicle had been observed near the crime scene. Subsequent investigations led them to a burned-out black Nissan Pathfinder in Virginia. The Pathfinder was registered to Andrew Robinson. Robinson initially denied any involvement when questioned by the police, but he

later confessed. He testified at trial that the two victims were drug couriers from New York who routinely brought drugs to [Francis]. [Francis] would then give some of the drugs to Robinson for sale. Once the drugs were sold, [Francis] and Robinson would give the couriers part of the proceeds of the sales. The couriers would then return to New York and give the money to a man named Sal.

Robinson testified that a few days before the murders, Ibrahim and Sondunke, who were couriers for Sal, came to Raleigh to collect money for drugs previously delivered. [Francis] had spent some of the money and could not pay them. On a prior occasion when [Francis] could not pay Sal, [Francis]'s hand had been broken. On the night of the murders, [Francis] and Robinson left the couriers at [Francis]'s house and went to a party. When they left the party, they drove back toward [Francis]'s house. During that drive, [Francis] asked Robinson if he would help [Francis] kill the two couriers. [Francis] explained that he was afraid that if the couriers returned to New York without the money, either [Francis] or his mother would be killed. Robinson agreed to help [Francis].

When they arrived at [Francis]'s house, [Francis] went inside while Robinson waited in the Nissan. [Francis] emerged from the house with two guns. He gave one of them to Robinson and went back inside to get the two couriers. The four men then drove until they ended up in a secluded area behind Wake Medical Center. [Francis] and Robinson had previously agreed that [Francis] would signal Robinson by tapping him on the shoulder. On [Francis]'s signal, [Francis] shot Sondunke in the head, and Robinson shot Ibrahim in the head. They then dragged the bodies out of the car and left them in the bushes, where they were eventually found. Before they left, [Francis] went back to the bushes and shot one of the victims again to make sure that he was dead.

The jury found [Francis] guilty of both counts of first-degree murder. The trial court entered judgments imposing consecutive life sentences.

State v. Francis, 341 N.C. 156, 157–58, 459 S.E.2d 269, 270 (1995); cf. Pet. [D.E. 1] 7. Francis appealed. On July 28, 1995, the Supreme Court of North Carolina affirmed Francis's conviction. See Francis, 341 N.C. at 162, 459 S.E.2d at 273.

On January 29, 2015, Francis petitioned for a writ of habeas corpus under 28 U.S.C. § 2254. See Francis v. Mitchell, No. 5:15-HC-2007-BO, 2015 WL 12916194, at *1 (E.D.N.C. Oct. 8, 2015) (unpublished). Francis's petition "allege[d] that Superior Court Judge Robert L. Farmer granted petitioner's motion for complete recordation of all proceedings related to his state court trial[.]" and

“that this motion for complete recordation was not followed by the court.” Id. On October 8, 2015, the court dismissed the petition as time-barred and denied a certificate of appealability. See id., 2015 WL 12916194, at *2. On March 2, 2016, the United States Court of Appeals for the Fourth Circuit denied a certificate of appealability and dismissed Francis’s appeal. See Francis v. Mitchell, 635 F. App’x 116, 116–17 (4th Cir. 2016) (per curiam) (unpublished).

In his latest filing, Francis seeks a writ of mandamus “directing the lower Superior Court of Wake County to enforce its Superior Court order for complete recordation of all proceedings by Judge Robert L. Farmer.” Pet. at 2. Francis cites the All Writs Act, 28 U.S.C. § 1651, various state statutes, various provisions of the Constitution, and 18 U.S.C. §§ 241–242.¹

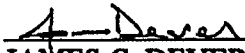
A writ of mandamus is a drastic remedy granted only in extraordinary situations. See Kerr v. U.S. Dist. Court for the N. Dist. of Cal., 426 U.S. 394, 402 (1976); Cumberland Cty. Hosp. Sys., Inc. v. Burwell, 816 F.3d 48, 52 (4th Cir. 2016); United States v. Moussaoui, 333 F.3d 509, 516 (4th Cir. 2003); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). “The party seeking mandamus relief carries the heavy burden of showing that he has ‘no other adequate means to attain the relief he desires’ and that his right to such relief is ‘clear and indisputable.’” In re Beard, 811 F.2d at 826. Francis has failed to make the requisite showing. Moreover, this court lacks jurisdiction to compel state officials to respond to Francis’s records request. See Vela v. Davis, 713 F. App’x 382, 382 (5th Cir. 2018) (per curiam) (unpublished); In re Pettaway, 517 F. App’x 69, 70 (3d Cir. 2013) (per curiam) (unpublished); Bryan v. Nettles, 416 F. App’x 296, 297 (4th Cir. 2011) (per curiam) (unpublished); In re Campbell, 264 F.3d 730, 731–32 (7th Cir. 2001); Gurley v. Superior Court of

¹ Sections 241 and 242 of Title 18 of the United States Code “provide no basis for civil liability.” Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (per curiam); see Huston v. Slanina, No. 12 C 4582, 2012 WL 4464301, at *2 (N.D. Ill. Sept. 24, 2012) (unpublished) (collecting cases). Thus, the court dismisses any claim purportedly brought under those statutes.

Mecklenburg Cty., 411 F.2d 586, 587 (per curiam) (4th Cir. 1969). Thus, the court dismisses Francis's petition.

In sum, the court GRANTS Francis's application to proceed in forma pauperis [D.E. 2] and DISMISSES without prejudice Francis's petition for a writ of mandamus [D.E. 1] for lack of jurisdiction. The court DENIES a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 483–84 (2000). The clerk shall close the case.

SO ORDERED. This 26 day of July 2019.



JAMES C. DEVER III
United States District Judge



Supreme Court of North Carolina

AMY L. FUNDERBURK, Clerk
Justice Building, 2 E. Morgan Street
Raleigh, NC 27601
(919) 831-5700

Fax: (919) 831-5720
Web: <https://www.nccourts.gov>

Mailing Address:
P. O. Box 2170
Raleigh, NC 27602

From N.C. Court of Appeals
(P15-255)
From Wake
(91CRS87347 91CRS87348)

6 February 2019

Mr. Egbert Francis
Pro Se
#0135121
Scotland Correctional Institution
22835 McGirts Bridge Road
Laurinburg, NC 28353

RE: Francis v Municipal Court of Wake County, et al. - 305P97-8

Dear Mr. Francis:

The following order has been entered on the motion filed on the 3rd of December 2018 by Petitioner for Civil Contempt:

"Motion Dismissed by order of the Court in conference, this the 30th of January 2019."

**s/ Earls, J.
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of February 2019.

Amy L. Funderburk
Clerk, Supreme Court of North Carolina


M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:
North Carolina Court of Appeals
Mr. Egbert Francis, For Francis, Egbert Jr.
Ms. Mary Carla Babb, Assistant Attorney General, For State of N.C. - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

APPENDIX C



North Carolina Court of Appeals

DANIEL M. HORNE JR., Clerk

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. P19-255

EGBERT FRANCIS, JR.

V

THE MUNICIPAL COURT OF
WAKE COUNTY, ET AL
JANET M. LEGGETT-COURT REPORTER
JOHNIE L. KING III-COURT REPORTER
GEORGE E. KELLY III-ATTORNEY
HOWARD CUMMINGS-ASSIST DISTRICT ATTORNEY
DEFENDANTS

From Wake
(91CRS87347-8)

ORDER

The following order was entered:

The petition filed in this cause on the 9th of May 2019 and designated 'Application for Writ of Mandamus' is denied.

By order of the Court this the 13th of May 2019.

The above order is therefore certified to the Clerk of the Superior Court, Wake County.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 13th day of May 2019.

Daniel M. Horne Jr.
Clerk, North Carolina Court of Appeals

Copy to:
Attorney General, For State of North Carolina
Mr. Egbert Francis, Jr., For Francis, Egbert (Jr.)
Hon. Frank Blair Williams, Clerk of Superior Court

Appendix-D

NORTH CAROLINA

WAKE COUNTY

STATE OF NORTH CAROLINA

vs.

EGBERT FRANCIS, JR.,
Defendant

FILED

93 JUL 21

IN THE GENERAL COURT OF JUSTICE
AM 10:07 SUPERIOR COURT DIVISION

WAKE COUNTY, C.S.C.

91CRS87347-48

ORDER FOR COMPLETE
RECORDATION OF ALL
PROCEEDINGS

THIS MATTER came on for hearing before the undersigned on July 15, 1993 upon written motion of the defendant for an order directing the court reporter to take down and record all hearings on the motions, the arraignment, all bench conferences, all jury voir dire, opening statements, closing arguments and all testimony in each and every proceeding involved in pre-trial and trial in the above stated case.

The Court, after hearing from counsel for the defendant and counsel for the State, hereby orders that the court reporter to take down and record all hearings on the motions, the arraignment, all bench conferences, all jury voir dire, opening statements, closing arguments and all testimony in each and every proceeding involved in pre-trial and trial in the above stated case.

This the 19 day of July, 1993.


Judge Robert L. Farmer
Superior Court Judge Presiding

APPENDIX - E

KELLY & KELLY

ATTORNEYS AT LAW

284-B West Millbrook Road
Raleigh, North Carolina 27609
(919) 846-6919

February 25, 1997

Mr. Egbert Francis
P.O. Box 215
Maury, NC 28554

Re: Trial transcript/letter received 2-24-97

Dear Egbert:

You are requesting a transcript of the jury selections, opening arguments, and "closing argument" portion of the trial.

At present, I do not have any of these. These were not transcribed by the court reporter. I have enclosed a copy of the page where closing arguments would appear. Note that it just says "closing arguments". These were not transcribed. Same was true for the other requested portions.

The court reporter at the beginning of the trial was Janet M. Leggett, Accurate Court Reporting Services, Inc., P.O. Box 17151, Raleigh, NC 27619 and phone is (919) 834-1999.

The reporter for the end of the trial which was at the point that the defendant rested through the verdict and sentencing was Johnie L. King, III, Official Court Reporter, tenth the Judicial District, (919) 755-4118.

Jury selection and opening statements would have occurred during the portion of the trial taken down by Ms. Leggett. Closing arguments by Mr. King.

I note that the jury selection, opening statements and closing arguments are portions of the trial not usually taken down by the court reporters, who frequently leave the court room during those particular portions of the trial.

I do have my own notes from the trial that include notes on those portions you are requesting and I can provide some information. Let me know what particular questions you have and what you think I might be able to answer for you.

Please let me know if you need any further information.

Appendix - F

Mr. Egbert Francis
February 25, 1997
Page 2

I note that I still have in your file the computer disk I received from Ms. Leggett with the transcript on it. I just reviewed it and it is identical to the printed transcript she already provided. It does not include jury selection or opening statements. It begins with the evidence.

Sincerely,

A handwritten signature in dark ink, appearing to read 'G. E. Kelly, III', with a stylized flourish at the end.

George E. Kelly, III

GEK/lk

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

7019 APR 25 AM 8:32

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
91CRS087347-48

STATE OF NORTH CAROLINA CO. S.C.

v.

EGBERT FRANCIS, JR.
Defendant.

ORDER

THIS MATTER comes before the Court upon a *pro se* paper writing of the Defendant filed March 5, 2019 and received by the Court on March 11, 2019 entitled "Motion to Show Cause". The Court infers from the contents of said writing that the Defendant is requesting some sort of relief from the sentences imposed in the above captioned matters.

On May 13, 1994 Defendant was found guilty by a Wake County Jury of two counts of first-degree murder and the Honorable J. Brooks imposed two consecutive sentences of life imprisonment. Defendant gave notice of appeal and the Supreme Court of North Carolina concluded that the Defendant received a fair trial, free of prejudicial error. *State v. Francis*, 341 N.C. 156 (1995).

In his writing, Defendant "moves the Court for an Order directing the above defendant's to appear and Show Cause why they should not be held in [Civil and/or Criminal] contempt for violation of an Order dated July 19, 1993."

Upon review of the Defendant's Motion and the record proper, the Court finds there is no indication or evidence within to support the relief requested by the Defendant. The Court finds the verdict of the jury was properly accepted by a Court of competent jurisdiction and the sentences ordered by the Honorable J. Brooks were lawfully imposed pursuant to N.C. Gen. Stat. §§ 15A-1301 and 15A-1340.13. The Court has previously denied Defendant's Motion for Contempt on three prior occasions: July 6, 2015, August 31, 2018 and November 19, 2018. The Court also has denied Defendant's Motions for Appropriate Relief arising out

APPENDIX-H

of the same allegations on four occasions: November 20, 1998, December 16, 2012, April 11, 2013 and April 23, 2019. Those Orders are incorporated by reference herein.

Finally, the Defendant's writing seeks relief not appropriately sought through a post-conviction motion as defined by N.C. Gen. Stat. §§§ 15A-1414 or 15A-1415, 17-3, and no other basis in law or fact is provided in support of the requested relief. The Court, in declining to consider the relief requested, has considered the fact that the Defendant has made this writing without the benefit of legal counsel, but nonetheless, in considering the substance of Defendant's writing, concludes that no fundamental miscarriage of justice will result by the refusal to consider the relief sought by the Defendant.

For the foregoing reasons, the Court finds that the Defendant's Motion is without merit, and therefore the Defendant's Motion to Show Cause is DENIED and DISMISSED. Additionally, Defendant's request for appointment of counsel has been reviewed and is DENIED.

So ORDERED this, the 24th day of April, 2019.

A handwritten signature in black ink, appearing to read 'Paul C. Ridgeway', is written over a horizontal line.

Paul C. Ridgeway
Senior Resident Superior Court Judge

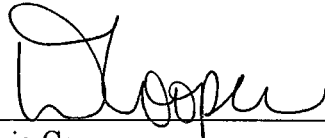
Certificate of Service

THIS IS TO CERTIFY that a copy of the foregoing Order was served upon the following parties and persons by mailing a copy thereof by postage prepaid, first class mail or by otherwise approved delivery addressed as follows:

Egbert Francis, Jr. #0135121
Scotland Correctional Institution
22383 McGirts Bridge Road
Laurinburg, NC 28352
COURIER #14-85-02

Douglas L. Faucette
Assistant District Attorney
10th Prosecutorial District
Post Office Box 31
Raleigh, NC 27602

This, the 25th day of April, 2019.



Davis Cooper
Judicial Assistant
Wake County Superior Court Judges' Office

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
91CRS087347-48

2019 APR 23 PM 1:24

STATE OF NORTH CAROLINA WAKE CO., C.S.C.

v.

BY 88C

ORDER

EGBERT FRANCIS, JR.
Defendant.

)
)
)

THIS MATTER comes before the Court upon a *pro se* paper writing styled "Motion for Appropriate Relief" filed February 22, 2019 and received by the Court on February 25, 2019. Incorporated herein is Defendant's "Amended Motion for Reconsideration of M.A.R." filed February 25, 2019 and received by the Court on March 4, 2019. The Court has reviewed and considered the record proper, including the Defendant's filings and the court files in this case. Based on its consideration of the matters noted above, the Court finds and concludes as a matter of law that it has the requisite jurisdiction to address the matters contained in Defendant's Motion.

As a threshold matter, the Court concludes that the allegations in the Defendant's Motion raise only questions of law, and thus, pursuant to N.C. Gen. Stat. § 15A-1420(c)(2), an evidentiary hearing is not required. Moreover, as is more fully explained below, the Court finds that the Defendant's Motion is without merit and no hearing is required to resolve the issues of law asserted by the Defendant. N.C. Gen. Stat. § 15A-1420(c)(1).

On May 13, 1994 Defendant was found guilty by a Wake County Jury of two counts of first-degree murder and the Honorable J. Brooks imposed two consecutive sentences of life imprisonment. Defendant gave notice of appeal and the Supreme Court of North Carolina concluded that the Defendant received a fair trial, free of prejudicial error. *State v. Francis*, 341 N.C. 156 (1995). On May 14, 1997, Defendant filed a Motion for Appropriate Relief with the Wake County Clerk of Superior Court and pursuant to an Order of the North Carolina

APPENDIX I

Supreme Court granting Defendant's *pro se* Petition for Writ of Certiorari and directing that an evidentiary hearing be held pursuant to N.C. Gen. Stat. § 15A-1420(c) upon said Motion for Appropriate Relief. Upon conclusion of an evidentiary hearing held on May 1, 1998, the "Petition and Motion of Defendant filed herein on May 13, 1997 and the prayers for relief therein are hereby in all respects denied and dismissed." (*See, Order of the Honorable Narley L. Cashwell*, November 20, 1998).

In his Motion, the Defendant contends that he was denied effective assistance of counsel, that the failure to record certain portions of the trial prejudiced the appeal of his convictions, that the trial court erred in allowing defense counsel to waive the recordation of opening statements and closing arguments and that his conviction was obtained in violation of his right to due process of law. Defendant asks to have counsel appointed to represent him with respect to this Motion for Appropriate Relief and further requests a new trial, an evidentiary hearing and an order vacating or setting aside his convictions.

Pursuant to N.C. Gen. Stat. § 15A-1419, where, upon a previous appeal, the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so, the motion for appropriate relief must be denied unless the defendant can demonstrate 1) good cause for excusing the failure to raise the issue on appeal or 2) the failure to consider the defendant's claim will result in a fundamental miscarriage of justice. Here, the Defendant appealed his conviction. *See, State v. Francis*, 341 N.C. 156 (1995). With respect to each of the grounds for relief asserted in Defendant's Motion, the Defendant was in a position to make these same arguments in his appeal of this case and subsequent petitions for writ of certiorari.

Additionally, N.C. Gen. Stat. § 15A-1415(b) lists the sole grounds upon which relief may be sought through a motion for appropriate relief filed more than 10 days after entry of judgment. The failure to perfect or obtain appellate relief is not one of the bases enumerated

in § 15A-1415(b), and hence, Defendant is barred from the relief sought in the Motion at hand.

Furthermore, the Defendant has filed three previous Motions for Appropriate Relief, pursuant to N.C. Gen. Stat. Ch. 15A, Article 88, at which times he was likewise in a position to adequately raise the ground or issue underlying this present motion. All of the Defendant's prior Motions for Appropriate Relief relate to the same issue(s) raised again in the Motion at hand and all of which were denied. (*See Order of Hon. Narley L. Cashwell*, November 20, 1998; *Order of Hon. Narley L. Cashwell*, December 16, 2012; *Order of Hon. Paul C. Ridgeway*, April 11, 2013). The Court further finds that no fundamental miscarriage of justice will result by the denial of the relief sought by the Defendant for the reasons stated above.

As such, the Court denies the relief sought by the Defendant pursuant to N.C. Gen. Stat. § 15A-1419(a)(1) and N.C. Gen. Stat. § 15A-1419(a)(3) and, moreover, the Court finds the Defendant's Motions without merit and therefore the relief sought by the Defendant shall be DENIED and DISMISSED. Additionally, Defendant's request for appointment of counsel has been reviewed and is DENIED.

So ORDERED this, the 23 day of April, 2019.

A handwritten signature in black ink, appearing to read 'Paul C. Ridgeway', is written over a horizontal line.

Paul C. Ridgeway
Senior Resident Superior Court Judge

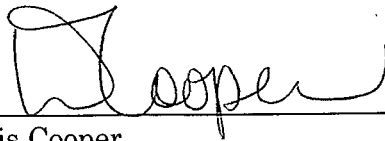
Certificate of Service

THIS IS TO CERTIFY that a copy of the foregoing Order was served upon the following parties and persons by mailing a copy thereof by postage prepaid, first class mail or by otherwise approved delivery addressed as follows:

Egbert Francis, Jr. #0135121
Scotland Correctional Institution
22383 McGirts Bridge Road
Laurinburg, NC 28352
COURIER #14-85-02

Douglas L. Faucette
Assistant District Attorney
10th Prosecutorial District
Post Office Box 31
Raleigh, NC 27602

This, the 23rd day of April, 2019.

A handwritten signature in black ink, appearing to read "Davis Cooper", written over a horizontal line.

Davis Cooper
Judicial Assistant
Wake County Superior Court Judges' Office

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2019 MAY -6 PM 2:05

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
91CRS087347-48

WAKE CO., C.S.C.

STATE OF NORTH CAROLINA

v.

EGBERT FRANCIS, JR.
Defendant.

ORDER

THIS MATTER comes before the Court upon a *pro se* paper writing of the Defendant filed May 3, 2019 and received by the Court on May 6, 2019 entitled "Motion for an Order Compelling County Clerk to provide Missing portions of transcript". Because the writing fails to conform with the requirements of a Motion for Appropriate Relief or other appropriate post-conviction petition, the Court declines to consider the relief requested. In particular, the writing fails to conform with N.C. Gen. Stat. § 15A-1411 et seq. in that the Defendant's writing seeks relief not appropriately sought through a post-conviction motion as defined by N.C. Gen. Stat. § 15A-1414 or 15A-1415, 17-3, and no other legal basis is provided in support of the writing.

The Court, in declining to consider the relief requested, has considered the fact that the Defendant has made this writing without the benefit of legal counsel, but nonetheless, in considering the substance of Defendant's writing, concludes that no fundamental miscarriage of justice will result by the refusal to consider the relief sought by the Defendant.

APPENDIX - J

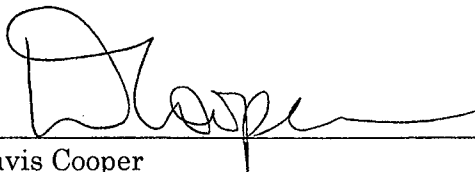
Certificate of Service

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Egbert Francis, Jr. #0135121
Scotland Correctional Institution
22383 McGirts Bridge Road
Laurinburg, NC 28352
COURIER #14-85-02

Douglas L. Faucette
Assistant District Attorney
10th Prosecutorial District
Post Office Box 31
Raleigh, NC 27602

This, the 6th day of May, 2019.



Davis Cooper
Judicial Assistant
Wake County Superior Court Judges' Office