

20-5187

No. USCA 4 NO-19-7431

RE: BREUNAW VS Hooks ATT'Y Gen. of NC

IN THE

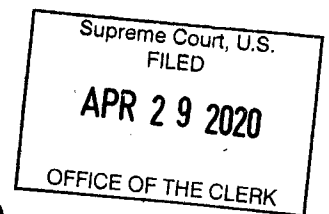
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Thomas Lee Breunaw PETITIONER
(Your Name)

VS.

Hooks ATT'Y Gen. NC. — RESPONDENT(S)



MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

In North Carolina Superior Court, Court of Appeals,
North Carolina Supreme Court

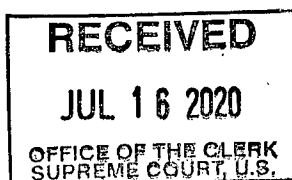
☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

☒ a copy of the order of appointment is appended.



[Signature]
(Signature)

APPOINTMENT OF APPELLATE COUNSEL
BY THE APPELLATE DEFENDER

2017 SEP 29 A 9:41

STATE OF NORTH CAROLINA

HAYWOOD COUNTY, C.S.C.

v.

BY _____

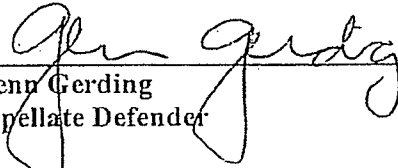
THOMAS LEE BRENNAN
14 CRS 51228; 51230; 1090
Haywood County

The Haywood County Superior Court, having appointed the Office of the Appellate Defender as counsel for the defendant to determine the merit of filing a Petition for a Writ of Certiorari to the North Carolina Court of Appeals, the Appellate Defender appoints the attorney named below, pursuant to Part 3 of the Rules for Providing Legal Representation in Non-Capital Criminal Appeals and Non-Capital Appeals promulgated by the Commission on Indigent Defense Services, effective July 1, 2001. The original of this Appointment Notice has been mailed to the Superior Court Clerk of Court for filing.

Appointed Appellate Counsel:

Katherine Jane Allen
Assistant Appellate Defender
123 West Main Street, Suite 500
Durham, North Carolina 27701
Telephone 919-354-7210
Facsimile 919-354-7211
Email katherine.j.allen@nccourts.org

This the 8th day of September, 2017.


Glenn Gerding
Appellate Defender

The Office of the Appellate Defender has provided a copy of this Appointment Notice to all parties as listed on the Appellate Entries, including the defendant.

ATTENTION CLERK OF COURT: File the original of this Appointment Notice. Please mail a photocopy of the complete court file, including any documentary exhibits, to Ms. Allen.

STATE OF NORTH CAROLINA

HAYWOOD

County

App 492

File No.

14 CRS 51228

Additional File No.(s)

14 CRS 51230 AND 14 CRS 1090

RECEIVED

In The General Court Of Justice

☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

THOMAS LEE BRENNAN

SEP 1

2017

APPELLATE ENTRIES

Date(s) Of Trial

APPELLATE DEFENDER

Rules 7, 9, 11, and 27 of the N.C. Rules of Appellate Procedure

Codefendant(s) If Tried Jointly

DURHAM

Name And Address Of Defendant's Trial Counsel

Name And Address Of Trial Prosecutor

Telephone No.

Email Address

Name And Address Of Defendant's Trial Counsel

Telephone No.

Email Address

Name And Address Of Trial Transcriptionist

Telephone No.

Email Address

Telephone No.

Email Address

Name And Address Of Trial Transcriptionist

Name And Address Of Defendant's Appellate Counsel

☒ The Appellate Defender (919) 354-7210
123 W. Main Street, Suite 500, Durham, NC 27701

NOTE: All indigent appeals are assigned to the Appellate Defender.

☐ Retained Appellate Counsel* APPOINTED FOR THE PURPOSE OF DETERMINING
WHETHER A CERT PETITION IS WARRANTED, AND
IF SO, TO FILE ONE

Telephone No.

Email Address

Telephone No.

Email Address

Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)

Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)

Date(s)

Telephone No.

Date(s)

Telephone No.

Email Address

Email Address

(Attach additional sheet(s) if necessary)

JUDGE'S INITIAL APPEAL ENTRIES

1. ☒ a. The defendant has given Notice of Appeal to the N.C. Court of Appeals, or
☐ b. This is a capital case appealable as of right to the N.C. Supreme Court.
2. Release of the defendant pursuant to G.S. 15A-536 is ☒ denied. ☐ allowed upon execution of a secured bond in the amount of \$ _____ and compliance with the following additional conditions:
3. Unless indigent, the defendant shall arrange for the transcription of the proceedings as provided in the Rules of Appellate Procedure.
- ☒ 4. (NOTE: Check in all cases where defendant is indigent.) The defendant is indigent and has requested a transcript and the appointment of counsel. It is ORDERED that the defendant is allowed to appeal as an indigent and:
 - a. The Office of Indigent Defense Services shall pay the costs of producing a transcript, and of reproducing the record and the defendant's brief.
 - b. The Appellate Defender is appointed to perfect the defendant's appeal or assign other appellate counsel pursuant to rules issued by the Office of Indigent Defense Services.
 - c. Upon request, the Clerk shall furnish to the Appellate Defender, or to alternate counsel designated by the Appellate Defender, a copy of the complete trial division file in the case and, upon request, any documentary exhibits.
 - d. Unless the parties stipulate that parts of the proceedings shall not be transcribed, the Clerk shall order from the transcriptionist(s) a transcript of all parts of the proceedings except:

Original-File Copy-Transcriptionist(s) Copy-Defendant's Trial Counsel Copy-Defendant's Appellate Counsel (or Defendant if unrepresented) Copy-District Attorney
Material opposite unmarked squares is to be disregarded as surplusage.

AOC-CR-350, Rev. 3/16

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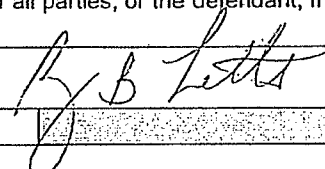
(Over)

JUDGE'S INITIAL APPELLATE ENTRIES (continued)

App. 493

5. If a transcript has been ordered, the defendant in a non-capitally tried case shall serve a proposed record on appeal on the State within 35 days after the reporter's or transcriptionist's certification of delivery of the transcript. If a transcript has been ordered, the defendant in a capitally tried case shall serve a proposed record on appeal on the State within 70 days after the reporter's or transcriptionist's certification of delivery of the transcript. If no transcript has been ordered, the defendant shall serve a proposed record on appeal on the State within 35 days after filing notice of appeal.
6. The State shall serve its amendments, objections or proposed alternative record on appeal on the defendant within 30 days if this is a non-capital case or 35 days if this is a capital case, after service upon it of the defendant's proposed record on appeal.
7. The indigent defendant does not read or speak the English language, but reads and/or speaks his or her native language of _____. The Court therefore authorizes the services of a language translator or interpreter during the pendency of the appeal for the purposes of (1) written translation of attorney-client correspondence, assignments of error in, the settled record on appeal, appellate briefs filed by the defendant and the State, and appellate opinion(s), and/or (2) verbal interpretation of attorney-client communication at each critical stage of the appellate proceedings.

The Court further Orders that a language translator or interpreter with the necessary knowledge, skill, experience, training and education to perform the above services shall be selected and paid by the Administrative Office of the Courts.
8. The Clerk shall deliver a copy of these Appellate Entries to the Appellate Defender, counsel for all parties, or the defendant, if not represented by counsel.

Date 08/24/2017	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge 
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CLERK'S TRANSCRIPT ORDER AND CERTIFICATE

(NOTE: To be completed ONLY when defendant is indigent.)

To The Transcriptionist(s) Named On The Reverse:

Prepare and deliver to the parties a transcript of all portions of the proceedings in the above-captioned case except:
(Specify any portions of the proceedings which need not be transcribed pursuant to a stipulation filed by the parties under Rule 7(a)(2), or pursuant to No. 4.d. on reverse side.)

I certify that I delivered a copy of this Transcript Order to the transcriptionist(s) on the date shown below:

- ☐ personally.
- ☐ by mailing it to the transcriptionist(s) at the address(es) shown on the reverse.

Date Clerk's Transcript Order Entered And Filed	Date Order Delivered To Transcriptionist(s), If Different	
Name Of Clerk (type or print)	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

EXTENSION OF TIME TO PREPARE TRANSCRIPT OR SERVE RECORD

- ☐ 1. Extension of time to file transcript: Pursuant to Rule 7, N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, the Court finds that this is a criminal case that did not result in a sentence of death and it is ORDERED that the time for preparation of the transcript is extended for 30 days.
- ☐ 2. Extension of time to serve proposed record on appeal: Pursuant to Rules 11 and 27, N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, it is ORDERED that the time for service of the proposed record on appeal is extended for 30 days.

NOTE: The trial court may grant only one extension of time to serve the proposed record on appeal. Any additional motion for an extension of time to serve the proposed record on appeal must be made to the appellate court where the appeal is to be heard. In a case in which a sentence of death was not entered, the trial court may grant one motion for an extension of time to prepare the transcript. Any subsequent motions for an extension of time to prepare the transcript must be made to the appellate court where the appeal is to be heard. In capitally tried cases that resulted in the imposition of the death penalty, motions for an extension of time to prepare the transcript must be made directly to the Supreme Court. Rules 7 and 27, N.C. Rules of Appellate Procedure.

Date	Name Of Judge (type or print)	Signature Of Judge
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CERTIFICATION

I certify this Appellate Entries form is a true and complete copy of the original on file in this case.

Date	Signature And Seal	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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Material opposite unmarked squares is to be disregarded as surplusage.

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, THOMAS LEE DZIENNAW, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Self-employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>+ 60.00</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Child Support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly income:	\$ <u>60.00</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

- | Employer | Address | Dates of Employment | Gross monthly pay |
|-----------|---------|---------------------|-------------------|
| <i>NA</i> | | | \$ |
| | | | \$ |
| | | | \$ |

- | Employer | Address | Dates of Employment | Gross monthly pay |
|----------|---------|---------------------|-------------------|
| N/A | | | \$ |
| | | | \$ |
| | | | \$ |

- | Financial institution | Type of account | Amount you have | Amount your spouse has |
|-----------------------|-----------------|-----------------|------------------------|
| N/A | | \$ | \$ |
| | | \$ | \$ |
| | | \$ | \$ |

- ☐ Home Value

- ☐ Other real estate
Value 0

- ☐ Motor Vehicle #1
Year, make & model _____
Value 0

- ☐ Motor Vehicle #2
Year, make & model _____
Value 0

- ☐ Other assets
- Description _____
- Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or
your spouse money

Amount owed to you

Amount owed to your spouse

W/A

\$ 0

\$ 0

W/A

\$ 0

\$ 0

W/A

\$ 0

\$ 0

7. State the persons who rely on you or your spouse for support.

Name

Relationship

Age

0

0

0

0

0

0

0

0

0

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

You

Your spouse

Rent or home-mortgage payment
(include lot rented for mobile home)

\$ 0

\$ 0

Are real estate taxes included? ☐ Yes ☐ No

Is property insurance included? ☐ Yes ☐ No

Utilities (electricity, heating fuel,
water, sewer, and telephone)

\$ _____

\$ _____

Home maintenance (repairs and upkeep)

\$ _____

\$ _____

Food

\$ 50.00

\$ _____

Clothing

\$ _____

\$ _____

Laundry and dry-cleaning

\$ _____

\$ _____

Medical and dental expenses

\$ 10.00

\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>0</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>0</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u>0</u>
Life	\$ <u>0</u>	\$ <u>0</u>
Health	\$ <u>0</u>	\$ <u>0</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Other: _____	\$ <u>0</u>	\$ <u>0</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>0</u>	\$ <u>0</u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Credit card(s)	\$ <u>0</u>	\$ <u>0</u>
Department store(s)	\$ <u>0</u>	\$ <u>0</u>
Other: _____	\$ <u>0</u>	\$ <u>0</u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>0</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>0</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>
Total monthly expenses:	\$ <u>60.00</u>	\$ <u>0</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I am locked up and disabled with no ability to earn money.

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

Executed on: May - 13th, 2020



(Signature)