

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES ALLEN MINYARD,
Petitioner,

v.

STATE OF NORTH CAROLINA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF NORTH CAROLINA

**MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

JOHN J. KORZEN
Counsel of Record
WAKE FOREST UNIVERSITY SCHOOL OF LAW
APPELLATE ADVOCACY CLINIC
PO Box 7206
Winston-Salem, NC 27109
(336) 758-5832
korzenjj@wfu.edu

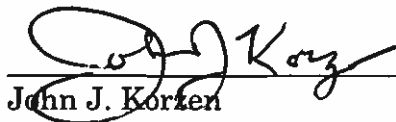
Counsel for Petitioner

Pursuant to Supreme Court Rule 39, Petitioner James Allen Minyard hereby moves for leave to proceed *in forma pauperis*. Petitioner seeks leave to proceed *in forma pauperis* for the purpose of filing the attached Petition for Certiorari and for filing all later documents if his Petition for Certiorari is allowed.

In 2018, the court below appointed counsel for Petitioner as an indigent party. Attached are copies of (1) "Appellate Entries" filed on April 23, 2018, in which the Superior Court of North Carolina (whose order denying relief is the subject of this petition) appointed the state Appellate Defender to represent Petitioner on appeal and found that Petitioner is indigent; and (2) the Appointment of Appellate Counsel by the Appellate Defender filed on May 25, 2018. Since that time, the Appellate Defender has represented Petitioner as an indigent on appeal to North Carolina appellate courts. Petitioner has been continuously imprisoned since August 2012, with a projected release date in November 2013. See N.C. Dep't of Public Safety Offender Public Information, <https://webapps.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=0284625&searchLastName=Minyard&searchFirstName=James&searchDOBRange=0&listurl=pagelistoffendersearchresults&listpage=1>. He remains indigent.

WHEREFORE, for the reasons stated herein, Petitioner respectfully asks the Court to allow his motion to proceed *in forma pauperis*.

Respectfully submitted this 31st day of August 2020.

A handwritten signature in black ink, appearing to read "J. Korzen", is written over a horizontal line.

John J. Korzen

Counsel of Record

WAKE FOREST UNIVERSITY SCHOOL OF LAW

APPELLATE ADVOCACY CLINIC

P.O. Box 7206

Winston-Salem, NC 27109-7206

(336) 758-5832

korzenjj@wfu.edu

Counsel for Petitioner

STATE OF NORTH CAROLINA

BURKE County

File No.

09CRS3910

Additional File No.(s)

09CRS4222

In The General Court Of Justice

☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

JAMES ALLEN MINYARD

Date(s) Of Trial

02/24/2018

Codefendant(s) If Tried Jointly

APPELLATE ENTRIES

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

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

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

Telephone No.

Email Address

Name And Address Of Trial Transcriptionist

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 the transcriptionist(s) a transcript of all parts of the proceedings except:

A TRUE COPY
CLERK OF SUPERIOR COURT
BURKE COUNTY

Michael H. Lowman
Assistant Deputy Clerk Superior Court

Original-File Copy-Transcriptionist(s) Copy-Defendant's Trial Counsel Copy-Defendant's Appellate Counsel (or Defendant if unrepresented) Copy-Defendant's Appellate Counsel (or Defendant if unrepresented) Copy-Defendant's Appellate Counsel (or Defendant if unrepresented)

Material opposite unmarked squares is to be disregarded as surplusage.

(Over)

AOC-CR-350, Rev. 3/16

© 2016 Administrative Office of the Courts

CLERK OF COURT

JUDGE'S INITIAL APPEAL ENTRIES (continued)

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 4-23-18	Name Of Presiding Judge (type or print) HON. ROBERT C ERVIN	Signature Of Presiding Judge 
-----------------	--	--

CLERK'S TRANSCRIPT ORDER AND CERTIFICATE

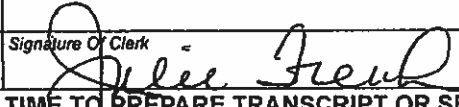
(NOTE: To be completed ONLY when defendant is indigent.)

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(e)(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) Julie French	Signature Of Clerk  <input checked="" 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
------	-------------------------------	--------------------

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
------	--------------------	--

Material opposite unmarked squares is to be disregarded as surplusage.

**APPOINTMENT OF APPELLATE COUNSEL
BY THE APPELLATE DEFENDER**

STATE OF NORTH CAROLINA)

v.)

JAMES ALLEN MINYARD)
09 CRS 3910, 4222)
Burke County)

FILED

2018 MAY 25 A 11: 27

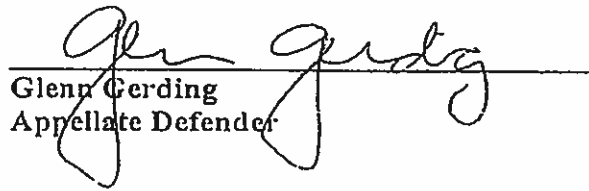
BURKE CO., C.S.C.

BY *MHC*

The Burke 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: **Andrew J. DeSimone**
Assistant Appellate Defender
123 West Main Street, Suite 500
Durham, North Carolina 27701
Telephone 919 354 7210
Facsimile 919 354 7211
Email Andrew.J.DeSimone @nccourts.org

This the 18th day of May, 2018.


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 and court reporter.

ATTENTION CLERK OF COURT: File the original of this Appointment Notice. Please mail a photocopy of the complete court files, including all documentary exhibits, to Mr. DeSimone.