

FILED: December 27, 2021

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 21-7180  
(5:20-hc-02067-BO)

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BRANDON JAMES LEE

Petitioner - Appellant

v.

ERIK A. HOOKS, Secretary, NC Department of Public Safety; DENISE JACKSON, Warden, Central Prison

Respondents - Appellees

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JUDGMENT

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In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 21-7180**

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BRANDON JAMES LEE,

Petitioner - Appellant,

v.

ERIK A. HOOKS, Secretary, NC Department of Public Safety; DENISE JACKSON,  
Warden, Central Prison,

Respondents - Appellees.

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Appeal from the United States District Court for the Eastern District of North Carolina, at  
Raleigh. Terrence W. Boyle, District Judge. (5:20-hc-02067-BO)

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Submitted: December 21, 2021

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Decided: December 27, 2021

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Before KING and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit  
Judge.

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Dismissed by unpublished per curiam opinion.

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Brandon James Lee, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brandon James Lee seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Limiting our review to the issues raised in Lee's informal brief, we conclude that Lee has not made the requisite showing. *See* 4th Cir. R. 34(b); *Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we deny Lee's motion for a certificate of appealability and dismiss the appeal. We deny as unnecessary Lee's motion for leave to use the district court's record. 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.

*DISMISSED*

FILED: March 18, 2022

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 21-7180  
(5:20-hc-02067-BO)

---

BRANDON JAMES LEE

Petitioner - Appellant

v.

ERIK A. HOOKS, Secretary, NC Department of Public Safety; DENISE JACKSON, Warden, Central Prison

Respondents - Appellees

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O R D E R

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The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:20-HC-2067-BO

BRANDON JAMES LEE,	)	
	)	
Petitioner,	)	
	)	
v.	)	ORDER
	)	
ERIK A. HOOKS and DENISE	)	
JACKSON,	)	
	)	
Respondents.	)	

Brandon James Lee (“petitioner”) petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter now comes before the court on respondent’s motion for summary judgment (DE 17) pursuant to Federal Rule of Civil Procedure 56. Also before the court is petitioner’s cross-motion for summary judgment (DE 21). In this posture, the issues raised are ripe for adjudication. For the following reasons, the court grants respondent’s motion and denies petitioner’s motion.

**STATEMENT OF CASE**

On October 3, 2019, petitioner was convicted of two counts of first-degree murder following a jury trial in the Wake County Superior Court. See (DE 19-1). Petitioner then was sentenced to two consecutive terms of life imprisonment without the possibility of parole. (DE 19-2). Petitioner appealed. (DE 19-3). The appeal remains pending.

On October 3, 2019, petitioner filed a pro se motion for appropriate relief (“MAR”) in the Wake County Superior Court within ten days after the jury’s verdict pursuant to N.C. Gen. Stat.

§ 15A-1415. ((DE 1-2), pp. 22-48). The superior court denied the MAR on December 16, 2019. ((DE 1-2), pp. 49-52). On January 2, 2020, petitioner filed a pro se petition for a writ of certiorari in the North Carolina Court of Appeals seeking review of the superior court's denial of his MAR, which also was denied. ((DE 1-2), pp. 64-79). On January 31, 2020, petitioner filed a notice of appeal and petition for discretionary review in the North Carolina Supreme Court, which was dismissed on April 1, 2020. (*Id.* pp. 80-101, 103).

On April 27, 2020, petitioner filed the instant petition for a writ of habeas corpus pursuant to § 2254. Petitioner raised the following claims: (1) his North Carolina State court indictments violated his rights pursuant to the Fifth and Fourteenth Amendments to the United States Constitution; (2) his conviction “was a consequence of a criminal prosecution initiated or carried on in a[n] arbitrary or discriminatory manner and has rendered the entire proceeding fundamentally unfair”; and (3) his conviction violated the Fifth Amendment’s Double Jeopardy Clause. On October 21, 2020, respondent filed a motion for summary judgment pursuant to Rule 56, arguing that petitioner failed to exhaust his state court remedies, and, alternatively, that his § 2254 petition lacks merit. The motion was fully briefed, and petitioner also moved for summary judgment.

## DISCUSSION

### A. Standard of Review

Summary judgment is appropriate when there exists no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, 477 U.S. 242, 247 (1986). The party seeking summary judgment bears the burden of initially coming forward and demonstrating an absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the

nonmoving party then must affirmatively demonstrate that there exists a genuine issue of material fact requiring trial. Matsushita Elec. Industrial Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). There is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. Anderson, 477 U.S. at 250. “When cross-motions for summary judgment are before a court, the court examines each motion separately, employing the familiar standard under Rule 56 of the Federal Rules of Civil Procedure.” Desmond v. PNGI Charles Town Gaming, I.L.C., 630 F.3d 351, 354 (4th Cir. 2011).

Under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), a state prisoner is eligible for federal habeas relief where a state court adjudicated a claim on its merits through one of two avenues. See 28 U.S.C. § 2254(d); Harrington v. Richter, 562 U.S. 86, 98 (2011); Sigmon v. Stirling, 956 F.3d 183, 191 (4th Cir. 2020). First, a federal court can grant federal habeas relief if the state court decision was “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1). Second, a federal court can grant federal habeas relief if the state court decision “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” Id. § 2254(d)(2); see, e.g., Madison v. Alabama, 139 S. Ct. 718, 725 (2019); Shoop v. Hill, 139 S. Ct. 504, 508–09 (2019) (per curiam); Valentino v. Clarke, 972 F.3d 560, 575 (4th Cir. 2020). A state-court decision is “contrary to” Supreme Court precedent if it either “arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law” or “confronts facts that are materially indistinguishable from a relevant Supreme Court precedent” and arrives at an opposite result. Williams v. Taylor, 529 U.S. 362, 405 (2000). A state-court decision involves an “unreasonable application” of Supreme Court precedent “if the state court identifies the

correct governing legal rule from [the Supreme] Court's cases but unreasonably applies it to the facts of the particular state prisoner's case." Id. at 407; see White v. Woodall, 572 U.S. 415, 419-428 (2014). A state court's factual determination is presumed correct, unless rebutted by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); Sharpe v. Bell, 593 F.3d 372, 378 (4th Cir. 2010).

Congress intended the standard in AEDPA to be difficult to meet. See Sigmon, 956 F.3d at 191; Harrington, 562 U.S. at 102 (2011). "Section 2254(d) is part of the basic structure of federal habeas jurisdiction, designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions." Harrington, 562 U.S. at 103. To prevail in an action brought under section 2254(d), a petitioner must show that "there was no reasonable basis for the state court to deny relief." Id. at 98.

## B. Analysis

### I. Exhaustion of State Court Remedies

Generally, before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court. O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999). However, under 28 U.S.C. § 2254(b)(2), this court may disregard the exhaustion requirement and dismiss an application on its merits. Green v. French, 143 F.3d 865, 888 n.8 (4th Cir. 1998), overruled on other grounds by Taylor, 529 U.S. at 374; Brooks v. McCoy, No. 5:11-HC-2222-F, 2012 WL 3629233, at \*4 (E.D.N.C. Aug. 22, 2012). Here, respondent requests that the court rule upon the merits of petitioner's claims. See ((D.E. 20), p. 7). Petitioner has not objected to respondent's request. Therefore, this court will address the merits of petitioner's claims.

## 2. Unconstitutional Indictments

In his first claim, petitioner asserts his two North Carolina State first-degree murder indictments were fraudulent in violation of the Fifth and Fourteenth Amendments. The MAR court adjudicated the claim and denied it on the merits. The MAR court held in pertinent part:

[[ Defendant asserts "Defendant's hypothesis and reasonable belief is that at some point in the past the Wake County 10th Prosecutorial District realised how easy it was to maximize plea agreements, conviction rates, and save time with the issuance of fraudulent misrepresentations of habitual felon true bill of indictments. Once that color of process was considered logical and unsequential it was no great leap to apply the same fraudulent process for other felonious matters pertaining primarily to indigent defendants." Defendant provides six points of contention in support of this assertion.

First, Defendant claims "Detective Adam Dismukes was never administered an oath by the alleged grand jury foreman as prescribed in the provision set forth in N.C. Gen. Stat. § 15A-623(B)". Here, the Court finds the Defendant's argument is without merit. N.C. Gen. Stat. § 15A-623(b) provides "[t]he foreman presides over all hearings and has the power to administer oaths or affirmations to all witnesses." Defendant provides no supporting evidence other than his "hypothesis and reasonable belief", and therefore, Defendant's claim must be dismissed.

Second, Defendant asserts "The room was not cleared of all persons except the grand jurors during the deliberations and voting on the bill as prescribed in the provisions set forth in N.C. Gen. Stat. § 15A-623(D)". Again, the Court finds the Defendant has provided no supporting evidence other than his "hypothesis and reasonable belief", and therefore, Defendant's second claim must also be dismissed.

Third, Defendant claims "The alleged grand jury did not find from the alleged evidence probable cause for the charges made as prescribed in the provisions set forth in N.C. Gen. Stat. § 15A-628(A)(1)". A grand jury must return a bill submitted to it by the prosecutor as a true bill of indictment if it finds from the evidence probable cause for the charge made." N.C. Gen. Stat. § 15A-628(a)(1). Here, the Court

finds that the grand jury foreman returned a true bill of indictment in each of the above-captioned matters, both of which were properly signed and dated, identifying the testifying witness and the charges alleged against the Defendant. Here, the Court finds that the record reflects that the grand jury, in fact, based upon the evidence presented before it, returned a true bill of indictment charging Defendant with two counts of first-degree murder on January 5, 2016. Wherefore, Defendant's third claim must be denied.

Next, Defendant alleges "The bill of indictments were not found to be true with the concurrence of at least 12 members of the alleged grand jury as prescribed in the provisions set forth in N.C. Gen. Stat. § 15A-623(A)". Once more, the Court finds the Defendant has provided no supporting evidence other than his "hypothesis and reasonable belief", and therefore, Defendant's fourth claim must also be dismissed.

Fifth, Defendant claims "The alleged bill of indictments were not returned by the alleged foreman of the alleged grand jury to the alleged presiding judge in open court as prescribed in the provisions set forth in N.C. Gen. Stat. § 15A-628(C)". Upon review of court records, the Court finds that the grand jury foreman reported its findings, in open court, on Tuesday, January 5, 2016 before the Honorable Michael J. O'Foghludha, in Wake County Courtroom 701, indicating the return of 103 true bills, 1 not-true bill and 9 bills were returned due to lack of witness(es). Wherefore, the Court finds the Defendant's claim must be denied.

Lastly, Defendant alleges "The true bill of indictments are in fact fraudulent misrepresentations of the charging instrument and the issuance of these false instruments flagrantly violates the Fifth and Fourteenth Amendments of the United States Constitution and Art I §§ 19 and 22 of the North Carolina Constitution." For the reasons previously set forth, the Court finds the Defendant's argument is without merit and therefore must be denied.

((DE 1-2), pp. 49-52).

A claim alleging defects in a state-court indictment is "not ordinarily a basis of federal habeas corpus relief unless the deficiency makes the trial so egregiously unfair as to amount to a deprivation of the defendant's right to due process." Ashford v. Edwards, 780 F.2d 405, 407 (4th Cir. 1985).

“Defects in an indictment do not deprive a court of its power to hear a case.” United States v. Cotton, 535 U.S. 625, 630 (2002). Additionally, the “Fifth Amendment right to ‘presentment or indictment of a Grand Jury’” does not apply in state-court proceedings, and there is no federal constitutional requirement for indictment in a state criminal proceeding. Apprendi v. New Jersey, 530 U.S. 466, 477 n.3 (2000); United States v. Machanik, 475 U.S. 66, 73 (1986); see Dilworth v. Markle, 970 F. Supp. 2d 498, 507 (N.D.W. Va. 2013). Rather, all that is constitutionally required is that the defendant receive adequate notice of the charge in order to allow him to prepare a defense. See Cole v. Arkansas, 333 U.S. 196, 201 (1948); Hartman v. Lee, 283 F.3d 190, 195 n. 5 (4th Cir. 2002), cert. denied, 537 U.S. 1114 (2003).

Upon a review of the record, it is apparent that the indictments from the grand jury provided petitioner with adequate notice of his criminal charges, and petitioner has not met his burden to rebut the presumption of regularity attached to grand jury proceedings. See ((DE 1-2), pp. 20-21); United States v. Alvarado, 840 F.3d 184, 189 (4th Cir. 2016). Moreover, as set forth above, the MAR court examined the substance of this claim and concluded that petitioner’s indictments “are not constitutionally invalid.”<sup>1</sup> ((DE 1-2), p. 52) (internal quotations omitted). The MAR court’s determination was not contrary to, and did not involve an unreasonable application of, clearly established federal law. Likewise, the MAR court’s ruling was not based on an unreasonable determination of facts, in light of the evidence presented in the state-court proceeding. See 28 U.S.C.

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<sup>1</sup> The court notes that petitioner has not challenged his indictment on the basis of racial discrimination in either the North Carolina State courts or in the instant federal habeas petition. See ((DE 21), p. 14) (admitting that his petition does not assert a claim for race discrimination in the makeup of the grand jury). Petitioner, however, makes the blanket allegation that he challenged his indictment pursuant to the Fourteenth Amendment’s Equal Protection Clause. (Id. pp. 14-16.) Petitioner has not alleged facts or provided any evidence to support a claim pursuant to the Equal Protection Clause. See Nickerson v. Lee, 971 F.2d 1125, 1136 (4th Cir. 1992) (“Unsupported conclusory allegations do not entitle a habeas petitioner to an evidentiary hearing.”), abrog’n on other grounds recog’d. Yeatts v. Angelone, 166 F.3d 255 (4th Cir. 1999).

§ 2254(d)-(c). Thus, respondent's motion summary judgment is GRANTED as to this claim, and petitioner's motion for summary judgment is DENIED.

### 3. Remaining Claims

In his second and third claims, petitioner contends his "conviction was a consequence of a criminal prosecution initiated or carried out in a[n] arbitrary or discriminatory manner and has rendered the entire proceedings fundamentally unfair" and "resulted in the denial of a right protected by the Double Jeopardy Clause of the Fifth Amendment." ((DE 1), pp. 6-7). The MAR court adjudicated these claims and denied them. The MAR court held in pertinent part:

|| Defendant seems to raise general arguments regarding his constitutional rights to due process and protection against double jeopardy. Here, the Court finds that the Defendant has failed to provide any valid basis in law or fact to support these contentions. While the Court takes notice of the plethora of case law[ ] and statutes cited by Defendant in this Motion, the Court finds that defendant failed to raise any specific argument as to how said law applies in this matter and provided no evidence in support of his contentions.

((DE 1-2), p. 52).

Petitioner has presented no evidence to support either of his remaining claims. He, instead, offers mere speculation and conclusory allegations. This is insufficient to defeat summary judgment. See United States v. Dyess, 730 F.3d 354, 359 (4th Cir. 2013) ("Vague and conclusory allegations ... may be disposed of without further investigation by the [ ] Court."); Jones v. Polk, 401 F.3d 257, 269-270 (4th Cir. 2005); Nickerson v. Lee, 971 F.2d 1125, 1136 (4th Cir. 1992) ("Unsupported conclusory allegations do not entitle a habeas petitioner to an evidentiary hearing."), abrog'd on other grounds recog'd, Ycatts v. Angelone, 166 F.3d 255 (4th Cir. 1999). More fundamentally, petitioner has not shown that the MAR court's ruling on these claims reached a result contrary to, or involved

an unreasonable application of, clearly established federal law. Likewise, the state court's ruling was not based on an unreasonable determination of facts, in light of the evidence presented in the state-court proceeding. See 28 U.S.C. § 2254(d)-(e). Accordingly, petitioner's second and third claims fail. Thus, respondent's motion for summary judgment is GRANTED as to these claims, and petitioner's motion for summary judgment is DENIED.

To the extent petitioner requests that the court conduct an evidentiary hearing, the court finds no need for an evidentiary hearing. See Rule 8(a), Rules Governing Section 2254 Cases in the United States District Courts; 28 U.S.C. § 2254(c)(2); see also Richardson v. Kornegay, No. 18-6488, 2021 WL 2832893, at \*9 (4th Cir. 2021). To the extent petitioner requests that the court appoint counsel, the request is denied for the reasons set forth in this court's August 11, 2020 and September 9, 2020 orders. See (DE 8, 12).

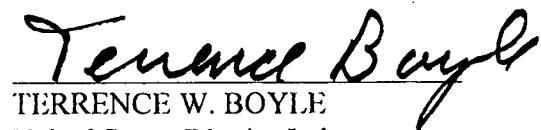
To the extent petitioner requests post-conviction discovery, “[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course.” Bracy v. Gramley, 520 U.S. 899, 904 (1997). “A judge may, for good cause, authorize a party to conduct discovery[.]” Rules Governing § 2254 Cases, Rule 6(a). In this case, petitioner has not established good cause for discovery. Therefore, petitioner's motion for discovery is DENIED.

## CONCLUSION

For the foregoing reasons, respondent's motion for summary judgment (DE 17) is GRANTED, and the petition is DISMISSED. Petitioner's motion for summary judgment (DE 21) is DENIED. 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 of court is DIRECTED to close this case.

SO ORDERED, this the 21 day of July, 2021.

  
TERRENCE W. BOYLE  
United States District Judge



# Supreme Court of North Carolina

AMY L. FUNDERBURK, Clerk  
Justice Building, 2 E. Morgan Street  
Raleigh, NC 27601  
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Web: <https://www.nccourts.gov>

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

From N.C. Court of Appeals  
( P19-785 )  
From Wake  
( 15CR227741-42 )

6 April 2020

Mr. Brandon Lee  
Pro Se  
Central Prison  
#1625202  
4285 Mail Service Center  
Raleigh, NC 27699

**RE: State v Brandon Lee - 356P17-3**

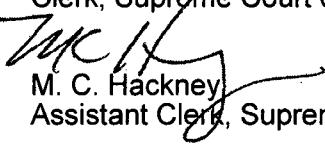
Dear Mr. Lee:

The following order has been entered on the motion filed on the 31st of January 2020 by Defendant for Petition for Discretionary Review:

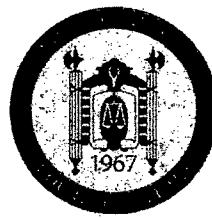
"Motion Dismissed by order of the Court in conference, this the 1st of April 2020."

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

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of April 2020.

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. 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. Frank Blair Williams, Clerk  
West Publishing - (By Email)  
Lexis-Nexis - (By Email)



# North Carolina Court of Appeals

DANIEL M. HORNE JR., Clerk

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Raleigh, NC 27602

**No. P19-785**

**STATE OF NORTH CAROLINA**

**V.**

**BRANDON J. LEE,  
DEFENDANT.**

From Wake  
( 15CRS227741-42 )

## ORDER

The following order was entered:

The petition filed in this cause on the 2nd of January 2020 and designated 'Petition for a Writ of Certiorari' is denied.

By order of the Court this the 13th of January 2020.

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 January 2020.

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

Copy to:  
Attorney General, For State of North Carolina  
Mr. Brandon Lee, For Lee, Brandon J.  
Hon. Frank Blair Williams, Clerk of Superior Court

FILED

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
7019 DEC 16 AM 8:11 SUPERIOR COURT DIVISION  
15CRS227741-42

STATE OF NORTH CAROLINA

WAKE CO. C.S.C.

OB

v.

)

ORDER

BRANDON JAMES LEE  
Defendant.

)  
)

THIS MATTER comes before the Court upon a *pro se* Motion for Appropriate Relief dated October 3, 2019 and received by the Court on October 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 and pursuant to N.C. Gen. Stat. § 15A-1413(b),<sup>1</sup> the Court finds and concludes as a matter of law that it has the requisite jurisdiction to address the matters contained in the 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 October 3, 2019, upon conclusion of evidence presented by the State and Defense during trial, a Wake County Jury found Defendant guilty of two counts of first-degree murder. The Honorable A. Graham Shirley accepted the verdict of the jury and imposed two consecutive sentences of life without the possibility of parole. Defendant gave notice of appeal

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<sup>1</sup> In his Motion, Defendant makes multiple references to his filing of this Motion for Appropriate Relief "within 10 days" of judgment. Here, the Court recognizes that N.C. Gen. Stat. § 15A-1414, "Motion by defendant for appropriate relief made within 10 days after verdict", would be the appropriate authority to support Defendant's Motion and, therefore, the Court will consider it accordingly.

from said conviction in open court, which is currently pending before the North Carolina Court of Appeals.

Defendant files his Motion for Appropriate Relief pursuant to "N.C. Gen Stat 15A-1415(B) under subdivision (3)" and raises three arguments alleging 1) that "unconstitutional indictments" were returned by an unconstitutional grand jury; 2) a violation of his constitutional protection against double jeopardy; and 3) a violation of his constitutional right to due process.

In his Motion, Defendant asserts "Defendant's hypothesis and reasonable belief is that at some point in the past the Wake County 10<sup>th</sup> Prosecutorial District realised how easy it was to maximize plea agreements, conviction rates, and save time with the issuance of fraudulent misrepresentations of habitual felon true bill of indictments. Once that color of process was considered logical and unsequential it was no great leap to apply the same fraudulent process for other felonious matters pertaining primarily to indigent defendants." Defendant provides six points of contention in support of this assertion.

First, Defendant claims "Detective Adam Dismukes was never administered an oath by the alleged grand jury foreman as prescribed in the provision set forth in N.C. Gen Stat § 15A-623(B)". Here, the Court finds the Defendant's argument is without merit. N.C. Gen. Stat. § 15A-623(b) provides "[t]he foreman presides over all hearings and has the power to administer oaths or affirmations to all witnesses." Defendant provides no supporting evidence other than his "hypothesis and reasonable belief", and therefore, Defendant's claim must be dismissed.

Second, Defendant asserts "The room was not cleared of all persons except the grand jurors during the deliberations and voting on the bill as prescribed in the provisions set forth in N.C. Gen Stat § 15A-623(D)". Again, the Court finds the Defendant has provided no

supporting evidence other than his "hypothesis and reasonable belief", and therefore, Defendant's second claim must also be dismissed.

Third, Defendant claims "The alleged grand jury did not find from the alleged evidence probable cause for the charges made as prescribed in the provisions set forth in N.C. Gen Stat § 15A-628(A)(1)". "A grand jury [m]ust return a bill submitted to it by the prosecutor as a true bill of indictment if it finds from the evidence probable cause for the charge made." N.C. Gen. Stat. § 15A-628(a)(1). Here, the Court finds that the grand jury foreman returned a true bill of indictment in each of the above-captioned matters, both of which were properly signed and dated, identifying the testifying witness and the charges alleged against the Defendant. Here, the Court finds that the record reflects that the grand jury, in fact, based upon the evidence presented before it, returned a true bill of indictment charging Defendant with two counts of first-degree murder on January 5, 2016. Wherefore, Defendant's third claim must be denied.

Next, Defendant alleges "The bill of indictments were not found to be true with the concurrence of at least 12 members of the alleged grand jury as prescribed in the provisions set forth in N.C. Gen Stat § 15A-623(A)". Once more, the Court finds the Defendant has provided no supporting evidence other than his "hypothesis and reasonable belief", and therefore, Defendant's fourth claim must also be dismissed.

Fifth, Defendant claims "The alleged bill of indictments were not returned by the alleged foreman of the alleged grand jury to the alleged presiding judge in open court as prescribed in the provisions set forth in N.C. Gen Stat § 15A-628(C)". Upon review of court records, the Court finds that the grand jury foreman reported its findings, in open court, on Tuesday, January 5, 2016 before the Honorable Michael J. O'Foghludha, in Wake County Courtroom 701, indicating the return of 103 true bills, 1 not-true bill and 9 bills were returned due to lack of witness(es). Wherefore, the Court finds the Defendant's claim must be denied.

Lastly, Defendant alleges "The true bill of indictments are in fact fraudulent misrepresentations of the charging instrument and the issuance of these false instruments flagrantly violates the Fifth and Fourteenth Amendments of the United States Constitution and Art I §§ 19 and 22 of the North Carolina Constitution." For the reasons previously set forth, the Court finds the Defendant's argument is without merit and therefore must be denied.

Additionally, Defendant seems to raise general arguments regarding his constitutional right to due process and protection against double jeopardy. Here, the Court finds that the Defendant has failed to provide any valid basis in law or fact to support these contentions. While the Court takes notice of the plethora of case law<sup>2</sup> and statutes cited by Defendant in his Motion, the Court finds that defendant failed to raise any specific argument as to how said law applies in this matter and provided no evidence in support of his contentions.

For the foregoing reasons, the Court finds that the Defendant has failed to provide any valid basis in law or fact to support his contentions; that the Defendant's constitutional rights were not violated; and that the indictments are not "constitutionally invalid". Wherefore, the Defendant's Motion for Appropriate Relief is DENIED and DISMISSED.

So ORDERED, this 16 day of December, 2019.



A. Graham Shirley, II  
Resident Superior Court Judge

<sup>2</sup> Notably, the majority of case law cited by Defendant are cases from various Federal Courts. While the Court respectfully recognizes the potentially persuasive effect of Federal case law, the Courts at the State level are bound and governed by the law as set forth by the North Carolina General Statutes.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:20-HC-2067-BO

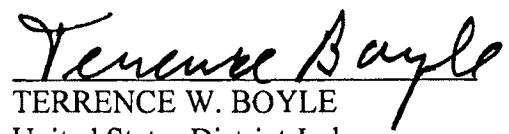
BRANDON JAMES LEE, )  
Petitioner, )  
v. ) ORDER  
ERIK A. HOOKS and DENISE )  
JACKSON, )  
Respondents. )

Brandon James Lee (“petitioner”), a state inmate, petitioned this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 22, 2021, the court granted respondent’s motion for summary judgment pursuant to Federal Rule of Civil Procedure 56(a), and dismissed the petition. Petitioner appealed, and the Fourth Circuit Court of Appeals subsequently dismissed his appeal. See Lee v. Hooks, No. 21-7180 (4th Cir. Dec. 27, 2021). The matter now is before the court on petitioner’s pleading captioned “Motion for the Original Record Made in the United States District Court Without Prepaying Fees or Costs” (DE 37).

The court has assembled and forwarded the electronic record for this case to the Fourth Circuit Court of Appeals on petitioner’s behalf. See Fed. R. App. P. 11(b)(2). Pursuant to United States Supreme Court Rule 12: “The clerk of the court having possession of the record shall keep it until notified by the Clerk of this Court to certify and transmit it.” See Sup. Ct. R. 12(7). Accordingly, it is the responsibility of the Clerk of Court for the Fourth Circuit Court of Appeals to forward the record to the United States Supreme Court upon notification of the Clerk of Court for

the United States Supreme Court. Based upon the foregoing, petitioner's motion (DE 37) is DENIED.

SO ORDERED, this the 21 day of March, 2022.

  
TERRENCE W. BOYLE  
United States District Judge

**Additional material  
from this filing is  
available in the  
Clerk's Office.**