

STATE OF NORTH CAROLINA

COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISIONFILE NO. ~~08~~ CRS 16819

2009 MAY 19 P 4:46 20

-----X  
 GASTON COUNTY, C.S.C.  
 STATE OF NORTH CAROLINA )  
 BY \_\_\_\_\_ ORDER  
 v. )  
 )  
 LESTER BARNETT, )  
 )  
 Defendant. )  
 )  
 -----X

THIS CAUSE coming on to be heard and being heard  
 before the undersigned Senior Resident Superior Court Judge  
 for this District, 27A, upon the Motion for Appropriate  
 Relief submitted by the defendant on or about August 16,  
 2007;

AND IT APPEARING that the defendant is present in  
 Open Court with his counsel, Kellum Morris, Chief Public  
 Defender, and the state is present in the person of the  
 elected District Attorney, R. Locke Bell;

AND IT FURTHER APPEARING that this matter  
 originally came on for hearing in late 2008, and that the  
 issue set forth in the Motion for Appropriate Relief, which  
 was argued, is to whether the defendant's sentences which  
 were imposed exceeded the maximum provided by the law  
 existing at that time; and that the Court advised counsel  
 that inasmuch as neither the undersigned, the state, nor the  
 defendant, had access to accurate statutes which were in

effect at the time the defendant was sentenced on February 9th, 1981, that the Court would seek information upon inquiry made to the School of Government in Chapel Hill, North Carolina;

THAT THE COURT subsequently contacted Professor James Marcum from the School of Government at the recommendation of Professor James Drennan; that the Court communicated with Professor Marcum through an email, copies of which were provided to both the District Attorney and the Public Defender's office;

THAT THE COURT set forth the date of the defendant's sentences, the offenses for which he was sentenced, and the offense date for the felonies which the defendant was convicted, which are being challenged, including August 13, 1980, for attempted armed robbery, under GS 14-87; November 17, 1980, for safecracking; as well as December 7, 1978, in violation of GS 14-89.1, and August 13, 1980, for felonious assault, under GS 14-32;

AND IT FURTHER APPEARING that the Court provided to counsel for the state and defendant the December 5th, 2008, email from Professor Marcum setting forth that GS 14-87 (robbery with a dangerous weapon), as it existed when the defendant committed the attempted armed robbery, provided that the appropriate sentence was seven years to life; that the safecracking statute, GS 14-89.1, provided

that the proper sentence for safecracking was 2 to 30 years;  
that the proper sentence for felonious assault at the time  
the defendant was convicted depended on whether attempt to  
kill or whether serious injury was inflicted, and that the  
maximum proper sentence was either 10 or 20 years;  
that because of postponements in the statutory amendments,  
the sentence language in the 1979 version of 14-87, which is  
the seven years to life, controls;

THAT AT THE HEARING in this matter on May 4, 2009,  
the defendant raised an objection that a verbatim transcript  
of the lead proceedings and sentencing was not produced, and  
the Court referred to an order that was entered in this  
matter previously, in which the undersigned denied the  
defendant's request for a stenographic transcript by reason  
of the fact that the stenographic notes taken at the time of  
the defendant's plea of guilty at the sentencing hearing no  
longer exist;

THAT THE DEFENDANT raised an argument at the  
aforesaid hearing regarding modifications in his plea

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transcript, which appear to include different handwriting in  
at least one entry, and deletions without initials appearing  
in conjunction with the same acknowledging those deletions;  
that upon further review of the defendant's Motion for  
Appropriate Relief filed on August 16, 2007, the Court  
observed that the defendant did raise that issue which he

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orally advanced at this hearing.

BASED ON THE FOREGOING, THE COURT HEREBY  
CONCLUDES, AS A MATTER OF LAW, AS FOLLOWS:

1. That the sentences imposed at the date of judgment were within the legal purview of the statutes which were applicable and controlling at that time and did not exceed the maximum provided by law. As such the defendant's Motion for Appropriate Relief based upon receiving illegally excessive sentences should be denied.

2. That the Court will defer to a future hearing the issue raised by the defendant with regard to the alleged modifications on the Transcript of Plea in order to afford the state and the defendant's attorney an opportunity to prepare for same.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED AS FOLLOWS:

1. That the defendant's Motion for Appropriate Relief based upon his allegedly having received illegally excessive sentences be and is hereby denied; the Court

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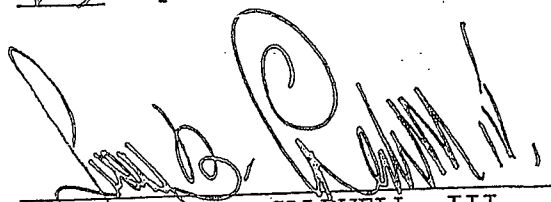
finding that the sentences the defendant received were within the statutory limits imposed by the relevant and controlling law at the time the defendant was sentenced.

2. That the Court will defer for hearing at a later date the issue raised in his Motion for Appropriate Relief regarding whether his transcript was modified without

his permission, based upon the fact that he contends that deletions were made on the transcript without having been initialed, and that a different handwritten appears on at least one entry on the Transcript of Plea.

This cause is retained pending further Orders of the Court.

Entered in Open Court this, the 4th day of May, 2009, and executed this, the 15 day of May, 2009, by the undersigned judge.



HON. JESSE B. CALDWELL, III.  
SUPERIOR COURT JUDGE PRESIDING

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STATE OF NORTH CAROLINA  
COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE,  
SUPERIOR COURT DIVISION  
FILE NO. 80-CRS-16819

RECEIVED

STATE OF NORTH CAROLINA, )

Plaintiff, )

vs. )

LESTER BARNETT, )

Defendant. )

2019 APR 25 P 12:15

MAY 1 2019

APPELLATE DEFENDER  
DURHAM, NC

ORDER ON THE REMAINING ISSUE  
RAISED IN DEFENDANT'S 2007  
MOTION FOR APPROPRIATE RELIEF

THIS CAUSE coming on to be heard and being heard before the undersigned Superior Court Judge for Gaston County; and it appearing that when the matter was called at the March 29th, 2019 Criminal Superior Court term for Gaston County, North Carolina for hearing, Defendant himself was personally present, as was his court-appointed counsel, the Chief Public Defender Kellum Morris; and the State was present and represented by Assistant District Attorney Chad Smith;

AND IT APPEARING that Defendant filed a pro se Motion for Appropriate Relief or about August 16, 2007; and it further appearing that at Defendant's request the Court in a timely fashion appointed counsel for him, Chief Public Defender Kellum Morris; that in 2008, as a result of and in response to the Motion for Appropriate Relief, the Court entered an order granting Defendant Committed Youthful Offender status (CYO), materially and favorably benefiting Defendant by the manner in which his sentence would be served;

AND IT FURTHER APPEARING that on May 19, 2009, the Court conducted a hearing on the aforesaid August 16, 2007 Motion for Appropriate Relief to address the remaining issues raised in the Motion, and that Kellum Morris appeared as attorney for Defendant, who was also personally present in court; that Elected District Attorney R. Locke Bell appeared for the State;

AND IT FURTHER APPEARING that in an order entered in open court on May 4, 2009, executed on May 15, 2009, and filed on May 19, 2009, the Court ruled on and resolved legal challenges and issues raised in the Motion for Appropriate Relief with regard to the maximum applicable statutes at the

time Defendant was sentenced, the legality of Defendant's sentences in the above-captioned matter, and the portion of Defendant's Motion for Appropriate Relief alleging that he had received illegally excessive sentences; that the Court denied these claims for relief. That the Court deferred to future hearing the issue raised by Defendant with regard to the alleged modifications on the Transcript of Plea because Defendant was not prepared to proceed with litigating at that hearing that issue in order to afford the State and Defendant's attorney an opportunity to prepare for the same, and procure and produce any desired witnesses; that a copy of the order filed in this matter resulting from the May 5, 2009 hearing, is attached hereto as Exhibit A;

AND IT FURTHER APPEARING that Defendant wrote the undersigned a letter on March 12, 2014, regarding his Motion for Appropriate Relief, and that on October 3, 2014, the undersigned responded, reminding Defendant that three of the four requests for relief he raised in his letter had been resolved at the May 2009 hearing, and that the Court had deferred to a later date any hearing on the remaining issue in the Motion for Appropriate Relief regarding transcript modifications raised by Defendant; and it further appearing that the Court's letter advised Defendant that if his letter to the Court was a request to have the remaining issue calendared for hearing, he should ask his attorney notify the Court and the District Attorney so that the motion may be scheduled for hearing; that a copy of the aforesaid letter from the Court to Defendant is attached hereto as Exhibit B;

AND IT FURTHER APPEARING that on February 7, 2019, Dan M. Horne, Jr., Clerk of the North Carolina Court of Appeals, forwarded to the undersigned, Defendant individually, the Appellate Defender, and the District Attorney, a copy of an Order in response to a Petition for Writ of Mandamus filed by Defendant pro se on February 4, 2019; and that the aforesaid Order stated, "It appearing that Petitioner filed a Motion for Appropriate Relief in the trial court on August 16, 2007, and that an issue in the motion was deferred for ruling and has not yet been calendared for hearing, the petition for Writ of Mandamus is allowed, and it is hereby ordered that the Superior Court of Gaston County calendar Petitioner's Motion for Appropriate Relief within 60 days of issuance of this order". That Defendant did not send the undersigned a copy of the Petition for Writ of Mandamus;

AND IT FURTHER APPEARING that what was deferred by the Court was not a ruling on a motion but rather a hearing on the remaining matter to be heard, which was raised in the aforesaid motion; and that Defendant has had ten years from 2009 to

prepare for and request his hearing, and that the undersigned never received such a request;

AND IT FURTHER APPEARING that the Court convened this cause for hearing on March 29, 2019, pursuant to the aforesaid order of the North Carolina Court of Appeals, and the Court afforded both the State and Defendant adequate notice of this hearing, and that this hearing is within the 60-day time limit established by the order of the Court of Appeals;

AND IT FURTHER APPEARING that when this matter was called for hearing Defendant asked to be heard and requested that Kellum Morris, his court-appointed lawyer of the Public Defender's Office, be removed from this case; that Defendant afforded no justifiable basis to terminate Kellum Morris as counsel based upon inadequate or ineffective representation;

AND IT FURTHER APPEARING that the Court questioned Defendant at length about this request, and advised him that if Mr. Morris was removed simply because Defendant wanted him removed, that no other lawyer from the Public Defender's Office, or the local bar, would be appointed to represent him, and that Defendant should clearly understand that if he did not continue with Mr. Morris as his counsel that he would be acting as his own attorney this date at the hearing; and that the Court was not going to continue the hearing in as much as the 60-day limit set by the Court of Appeals would soon lapse;

AND IT FURTHER APPEARING that Defendant stated that he still wanted Mr. Kellum Morris to be removed as counsel of record; that without making any findings with respect to the services of Mr. Morris or the quality of his representation, and in no way intending to diminish the legal services of said attorney, the Court allowed Defendant's motion for the Public Defender to be relieved as counsel of record, and Defendant elected to proceed to represent himself at this hearing;

AND THE COURT having considered the record in this matter, the arguments of the District Attorney, and Defendant acting as his own attorney, as to the relevant and only remaining issue to be heard contained in the Defendant's 2007 Motion for Appropriate Relief, the applicable law, and the record in this matter, and all other relevant factors, the Court hereby makes the following FINDINGS OF FACT:

1. That on February 9, 1981, Defendant was represented by Attorney Jim R. Funderburk, and Defendant executed a Transcript of Plea form in which he pled guilty to armed robbery, safe cracking, (two counts), felonious assault, and one count of misdemeanor larceny, in the above-captioned matter.



2. That the Transcript of Plea in this matter, a copy of which is attached hereto as Exhibit C, reflects a deletion on question 5, following the words "armed robbery", and that it appears that the words "two counts" were marked out; that there appears to be an initialization of this modification, and that the initials appear to be JRF, referring to Jim R. Funderburk, Defendant's attorney.

3. That by reason of the deletions, it is somewhat difficult to discern what words were "marked out". That the handwriting on the transcript is not plainly legible. That question 7 of the Transcript of Plea also reflects a modification by way of a marked out portion of the transcript. Specifically, it appears what was marked out is that Defendant could be imprisoned for a maximum sentence of 208 years or 280 years. That a handwritten addition was made, which appears to be "180" or "182" years, and that this addition is not initialed.

4. That paragraph 7 of the transcript provided that Defendant could be imprisoned for a maximum of what is either 180 or 182 years, and that the mandatory minimum sentence was 7 years.

5. That the plea bargain that Defendant was offered and accepted, and which was accepted by the Court, provided that "all cases will be consolidated for judgment, and the sentence will be not less than 7 years no more than life, to begin at the expiration of a life sentence". The life sentence referred to in the plea bargain was the life sentence Defendant received in Mecklenburg County on December 17, 1980, for first-degree murder, in cases 80-CRS-73195 and 80-CRS-73233. Defendant was already serving this sentence when he entered his plea in the above-captioned matter in Gaston County on February 9, 1981.

6. That the Court inquired of Kellum Morris, Defendant's attorney prior to the Court allowing him to be relieved of his duties of representation of Defendant in this matter, whether he was aware of potential witnesses for Defendant for this hearing. That Mr. Morris stated that when he received the Court of Appeals' order and notice of this hearing, he wrote Defendant asking him for the names and addresses of any witnesses on this issue to be heard so that he could have subpoenas issued for them. That he stated that Defendant never provided him with such information.

7. That there were no witnesses who testified at this hearing on behalf of Defendant. The Court asked Defendant if he had witnesses, and he replied he did not.

8. That Defendant continued to refer to and modifications in a "transcript", and the Court reminded Defendant that the transcript which was the subject matter of this hearing was the Transcript of Plea form, and the allegations he made regarding modifications to the same without his permission or consent, and not a verbatim transcript of the court proceedings of the hearing where Defendant entered his guilty plea in 1981. That Defendant inquired if such a verbatim transcript existed. That the Court stated that although the undersigned was unsure, he suspected one had never been prepared since Defendant's conviction was pursuant to a guilty plea and not a jury trial, and consequently there would have been no reason to prepare a transcript.

9. That during the course of this hearing, Defendant continued to argue that one change in his "transcript", was that the charge of armed robbery, for which he pled guilty, was modified to attempted armed robbery. That the Transcript of Plea does not refer to any such change or modification, and plainly provides that Defendant pled guilty to armed robbery. That the Court showed Defendant his signature on the Transcript of Plea form, and inquired if he was contending that was not his signature. That he stated he did not know if it was his signature or not, despite the fact that it was sworn to by the Clerk of Superior Court in open court.

10. That the commitment in this matter reflects that Defendant entered a plea of guilty to attempted armed robbery, and that this was signed by the Honorable John R. Friday, Superior Court Judge, on February 9, 1991. That Defendant's sentence was a minimum of 7 years and a maximum of life, to begin at the expiration of the life sentence that he was then serving on the Mecklenburg County cases. That pursuant to the Court's Order of 2008, this sentence would be served as a Committed Youthful Offender. That no evidence was presented as to whether Defendant has completed serving his life sentence from the Mecklenburg County cases or not.

11. That Defendant continued to attempt to argue that by reason of being guilty of attempted armed robbery that no life sentence was possible for such sentence. That Defendant made reference to the fact that crimes which are "an attempt" are sentenced at a lower level than a completed crime. That the Court stated it appeared Defendant was referring to the general sentencing provisions of structured sentencing, which was enacted in 1994. That the Court advised Defendant that under current law it is true that in most cases an attempted crime would be sentenced at a lower felony level than that of the completed crime. That the Court noted, however, that under structured sentencing, attempted armed robbery carries with it

the same sentence as a completed armed robbery. That the Court stated to Defendant that not only was Defendant's sentence not imposed as a result of structured sentencing, it was not even imposed under the terms of the Fair Sentencing Act, which was in effect from 1983 until 1994. That Defendant's sentence was imposed under the sentencing law in effect before Fair Sentencing took effect.

12. That the Court reminded Defendant, as he continued to argue at this hearing about the effect of the sentence, that the Court had already ruled on the issue of the legality of his sentence being illegally excessive. That the Court reminded Defendant that since neither the Court, the Defendant, nor the State prior to the 2009 hearing had accurate copies of the relevant sentencing law existing in 1980, the Court had advised both the State and Defendant prior to that hearing that the Court would seek information from the School of Government in Chapel Hill, North Carolina regarding this issue. That the Court further noted at the 2009 hearing that Professor James Markham provided the Court with copies of all the relevant statutes, and that these were disseminated to the District Attorney and the Public Defender. That the Court further reminded Defendant that at the hearing in this matter in May of 2009, the Court, based upon receipt of these laws, which were thoroughly discussed at the aforesaid hearing, that Defendant's claim he received an illegally excessive sentence in the Motion for Appropriate Relief was denied, and that the sentences Defendant received were within the statutory limits imposed by the relevant and controlling law at the time Defendant was sentenced. That despite the Court conveying all this to Defendant in open court at this March 2019 hearing, Defendant continued to argue with the Court about the issue and to contend that the sentences were illegally excessive.

13. That even after Public Defender Kellum Morris had been relieved of his duties, he continued to remain in the courtroom during this hearing as a Friend of the Court. That he reminded the Court and Defendant on the record that the Court modified Defendant's sentence in 2008 to be served as a Committed Youthful Offender (CYO), that this would be a benefit to Defendant with regard to the service of his sentence, and would in essence negate some or possibly all of the arguments that he was raising regarding having received an illegally imposed sentence.

14. That at this hearing, the Court continued to afford Defendant repeated opportunities to be heard on this remaining issue from the 2007 Motion for Appropriate Relief, and Defendant never argued or presented evidence on that issue, insisting

instead on repeating arguments related to previous issues resolved at the May 2009 hearing.

15. That the Court finds that the record in this matter reflects that on February 14, 2019, Defendant filed a pro se Motion for Appropriate Relief, Remand, and Determination or Reconsideration. That he did so without knowledge or consent of his then attorney, Kellum Morris. That to the extent that the said motion relates to reconsideration of the rulings of the Court from the May 5, 2009 hearing, as set forth in the order filed on May 19, 2009, that portion of the Motion for Appropriate Relief filed by Defendant on February 14, 2019, is hereby denied. That the Court at a later time will address any other issues raised in the aforesaid Motion for Appropriate Relief not related to a motion for reconsideration of issues previously adjudged by the Court in 2009.

16. That Defendant contended for the first time at this hearing that he wanted a copy of the Mecklenburg County records be produced by reason of the fact that this would show that he was in custody on the day he is alleged to have committed the safe cracking cases in Gaston County. That Defendant issued no subpoena for such records and did not request the Court to give judicial assistance to obtaining those records.

17. That nevertheless, because the Court knew from previous issues in this case and the hearing in this matter that Defendant continually referred to the Mecklenburg County matter, the Court, on its own volition, procured and reviewed the Mecklenburg County case and made copies of certain documents from those voluminous files prior to this hearing. In open court at the hearing the Court gave both Defendant and the District Attorney a copy of those records from the Mecklenburg County murder file.

18. That without hearing or commenting on Defendant's new issue apparently raised for the first time in open court regarding the fact that he was in custody on the murder case in Mecklenburg County when the safe cracking cases were alleged to have occurred, the Court observes and notes that the Mecklenburg County murder file is a 1980 case, and that the Court further observes that both of the safe cracking warrants in Mecklenburg County were alleged to have occurred on November 5, 1980.

19. That the Court notes and observes that even if those convictions in the safe cracking cases were to be set aside, this would not appear to invalidate Defendant's current sentence for the remaining charges, including the armed robbery, in as much as all of the sentences for all of the offenses were consolidated into the one judgment.

BASED UPON THE FOREGOING FINDINGS OF FACT THE COURT  
HEREBY CONCLUDES AS A MATTER OF LAW AS FOLLOWS:

1. That the Court has jurisdiction over the parties and the subject matter.
2. That this hearing is being conducted pursuant to the Order of the North Carolina Court of Appeals, entered February 7, 2019, for this remaining issue from his 2007 Motion for Appropriate Relief to be heard. That the Court has complied with the Order of the Court of Appeals and heard this matter within the 60-day time frame allotted by the Court.
3. That Defendant has failed to offer any evidence or showing or relevant legal arguments that any changes or modifications made upon Defendant's Transcript of Plea were inappropriate, prejudicial, or in any way gave rise to a violation of his constitutional rights, subject him to an illegally imposed sentence, or to establish or afford him with any other requested legal or equitable relief.
4. That to the extent that Defendant's February 14, 2019 Motion for Appropriate Relief, Remand, and for Determination or Reconsideration, which was filed pro se at a time when he was represented by counsel, relates to this issue or any issue previously heard by the Court at the May, 2009 hearing. Such request and motion in the February 14, 2019 Motion for Appropriate Relief be and the same is hereby denied. That the Court defers for later consideration any other issues raised in said motion unrelated to reconsideration of what the Court has already ruled on, or which is related to the hearing conducted this date.
5. The Court, on its own initiative, afforded both Defendant and the State certain documents and records from the voluminous Mecklenburg County files regarding Defendant's murder conviction.

WHEREFORE IT IS HEREBY ORDERED ADJUDGED AND DECREED:

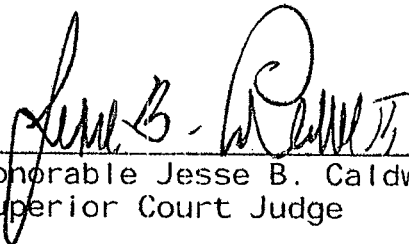
1. That the remaining issue in Defendant's August 16, 2007 Motion for Appropriate Relief is hereby denied. That this order brings to a close the litigation of all issues raised in the August 17, 2007 Motion for Appropriate Relief.
2. That the Court has complied with the Order of the Court of Appeals entered on February 7, 2019, for a hearing to be conducted within 60 days of the issuance of that Order on the remaining issue set forth in the aforesaid 2007 Motion for Appropriate Relief.

3. That to the extent that Defendant's pro se Motion for Appropriate Relief, filed on February 14, 2019, sought reconsideration of issues that were ruled upon by the Court in May of 2009, or were related to the issue litigated this date, those portions of said motion are hereby denied. That the Court defers for later consideration any remaining issues raised in the aforesaid Motion for Appropriate Relief of February 2019.

4. That Defendant's sentence modification by the undersigned in 2008 allows him to serve his Gaston County sentence as a Committed Youthful Offender.

5. That this being the conclusion of the hearing of all issues raised in the aforesaid Motion for Appropriate Relief, Defendant may be transferred back to the Department of Corrections from the Gaston County Jail.

Entered in open court this the 29th day of March, 2019, and executed this the 25 day of April, 2019.

  
\_\_\_\_\_  
Honorable Jesse B. Caldwell, III  
Superior Court Judge

GASTON

County

In The General Court Of Justice  
☐ District ☒ Superior Court Division

NOTE: The AOC-CR-645 (Optional Form For Criminal Judgment (District Court)) and other criminal judgment forms are available for use in district court cases. For superior court cases, other criminal judgment forms are available for use.

## STATE VERSUS

Name Of Defendant

BARNETT, LESTER

Race

B

Sex

M

Date Of Birth

JUDGMENT/ORDER OR  
OTHER DISPOSITION

Attorney For State

CS

☐ Def. Found  
Not Indigent☐ Def. Waived  
Attorney☐ Attorney  
Denied

Attorney For Defendant

K. MORRIS

☒ Appointed☐ Retained

Crt Rptr Initials

JC

Offense(s)

THE DEFENDANT IN OPEN COURT THIS DAY REQUESTED HIS ATTORNEY OF RECORD, KELLUM MORRIS, CHIEF PUBLIC DEFENDER BE REMOVED AS COUNSEL OF RECORD AND ANY CONNECTION OF REPRESENTING HIM ON ANY ISSUE TO BE HEARD ON 2007 MAR. COURT ADVISED DEFENDANT IF COURT RELIEVED MR. MORRIS OF DUTIES OF COUNSEL OF RECORD NO ASSISTANT PUBLIC DEFENDER WOULD BE APPOINTED TO REPRESENT DEFENDANT KNOWING THAT, THE DEFENDANT STILL SAYS HE WANTED MR. MORRIS TO BE ALLOWED TO WITHDRAWAL FROM CASE, BASED ON DEFENDANTS REQUEST AND MAKING NO FINDINGS AS TO REPRESENTATION OF MR. MORRIS AS COUNSEL FOR MR. BARNETT COURT ALLOWS DEFENDANTS MOTION TO RELIEVE PUBLIC DEFENDERS OFFICE OF ITS REMAINING ISSUE OF AUGUST 2007 MAR.

## SIGNATURE OF JUDGE

Date

03/29/2019

Name Of Presiding Judge (type or print)

THE HONORABLE JUDGE JESSE B CALDWELL

Signature Of Presiding Judge

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA  
COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
80CRS 16819-23

FILED

STATE OF NORTH CAROLINA

2022 JUL 15 A 9:45

v.

GASTON CO. C.S.C.

LESTER BARNETT,

Defendant.

) ORDER DENYING  
) DEFENDANT'S MOTION FOR  
) APPROPRIATE RELIEF  
)  
)  
)

THIS CAUSE coming on to be heard and being heard during the July 6, 2022 session of Gaston County Criminal Superior Court before the undersigned Senior Resident Superior Court Judge of Gaston County upon the Defendant's Amended Motion for Appropriate Relief dated June 29, 2020. The Court, having reviewed the pleadings and the record, including the Court's most recent Order dated November 2, 2020, and pursuant to N.C. Gen. Stat. § 15A-20(c)(1), makes the following:

FINDINGS OF FACT

1. That Defendant Lester Barnett appeared before the Court on July 6, 2022 and knowingly and voluntarily waived his right to be represented by counsel. Nonetheless, the Court asked Public Defender Stuart Higdon to be present in the courtroom, and Public Defender Stuart Higdon was present. Mr. Higdon did not assist the Defendant as the Defendant insisted on representing himself.
2. That on or about February 9, 1981, the Defendant pled guilty to one (1) count of attempted armed robbery, one (1) count of misdemeanor larceny, two (2) counts of safecracking, and one (1) count of felonious assault.
3. That at the time of the Defendant's sentencing, the appropriate sentence on a conviction of attempted armed robbery in violation of N.C. Gen. Stat. § 14-87 was seven (7) years to life. (See this Court's Order dated May 19, 2009).
4. That at the time of the Defendant's sentencing, the appropriate sentence on a conviction of safecracking in violation of N.C. Gen. Stat. § 14-89.1 was two (2) years to thirty (30) years. (See this Court's Order dated May 19, 2009).
5. That at the time of the Defendant's sentencing, the appropriate sentence on a conviction of felonious assault depended upon whether there was an attempt to kill or a serious injury was inflicted; however, the maximum proper sentence for such a conviction was ten (10) to twenty (20) years. (See this Court's Order dated May 19, 2009).



6. That the Defendant's February 9, 1981 convictions were consolidated into the attempted armed robbery conviction and sentence, and that the Defendant received one consolidated judgment and sentence of seven (7) years to life imprisonment.
7. That the Defendant is currently serving a sentence of life imprisonment as a result of a December 17, 1980 conviction in Mecklenburg County for first degree murder; the Defendant will not begin serving his sentence for these February 9, 1981 convictions until the expiration of the Defendant's Mecklenburg County life sentence.
8. That the Defendant has alleged ineffective assistance of counsel concerning the dates of offense in the safecracking indictments in 80CRS 16821 and 80CRS 16822.
9. That the Defendant failed to call any witnesses and did not provide the Court with any affidavits to support the contentions in his Motion for Appropriate Relief or Amended Motion for Appropriate Relief.
10. That the Defendant has not been prejudiced by any alleged deficiencies in the safecracking indictments as those convictions were consolidated into the attempted armed robbery judgment, under which the Defendant's sentence was imposed.
11. That all other issues raised in the Defendant's Amended Motion for Appropriate Relief have been addressed in previous Orders of this Court or have otherwise been abandoned by the Defendant as evident in this Court's November 2, 2020 Order.

Based upon the foregoing Findings of Fact, the Court makes the following:

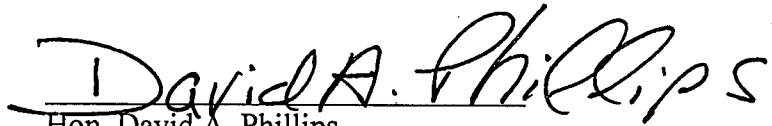
#### CONCLUSIONS OF LAW

1. That the Court has jurisdiction over the parties and subject matter of this action.
2. That Defendant Lester Barnett knowingly and voluntarily waived his right to be represented by counsel.
3. That "any party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing information presented unless the court determines that the motion is without merit." N.C. Gen. Stat. § 15A-1420(c)(1) (2021).
4. That this Court may deny a Motion for Appropriate Relief without a hearing upon grounds that it is without merit when there are disputed facts and the claim must fail as a matter of law even if all disputed facts are resolved in the movant's favor. State v. McHone, 348 N.C. 254, 257-258 (1998).
5. That this Court may deny a Motion for Appropriate Relief when the defendant cannot establish the requisite prejudice even if he can establish the asserted ground for relief. N.C. Gen. Stat. § 15A-1420(c)(6) (2021).

6. That in Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court set forth a two-part test for evaluating attorney error ineffective assistance of counsel claims. Under the test, the Defendant must demonstrate that: (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668 (1984).
7. That even assuming *arguendo* the Defendant's trial counsel provided ineffective assistance of counsel concerning the safecracking indictments, the Defendant cannot demonstrate the ineffective assistance counsel (concerning the safecracking indictments) prejudiced the Defendant, as those convictions and sentences were consolidated into the attempted armed robbery sentence: seven (7) years to life imprisonment.
8. That accordingly, the Defendant's Motion for Appropriate Relief is without merit.
9. That all other issues raised in the Defendant's Amended Motion(s) for Appropriate Relief have been addressed in previous Orders of this Court or have otherwise been abandoned by the Defendant as evident in this Court's November 2, 2020 Order.

WHEREFORE, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant's Amended Motion for Appropriate Relief is hereby DENIED.

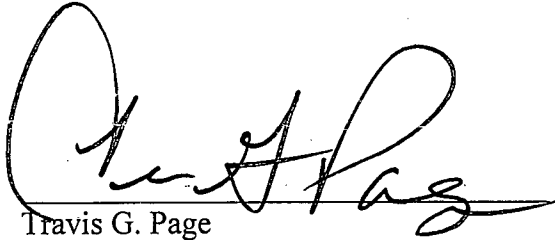
This the 15 day of July, 2022.

  
Hon. David A. Phillips  
Senior Resident Superior Court Judge

Certificate of Service

Certified that on the 15 day of July, 2022, I have served a copy of the foregoing Order Denying Motion for Appropriate Relief, by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail:

Mr. Lester Barnett  
Inmate No. 0020777  
Cartaret Correctional Center  
1084 Orange Street  
Newport, NC 28570

A handwritten signature in black ink, appearing to read 'Travis G. Page', written over a horizontal line.

Travis G. Page  
District Attorney  
Prosecutorial District 38  
325 Dr. Martin Luther King, Jr. Way  
Suite 2003  
Gastonia, NC 28053  
P: (704) 852-3113



## North Carolina Court of Appeals

EUGENE H. SOAR, 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. P22-454**

**LESTER BARNETT**

**V.**

**STATE OF NORTH CAROLINA,  
RESPONDENT.**

From Gaston  
( 80CRS16819-23 )

### ORDER

The following order was entered:

By majority vote, the petition for writ of certiorari filed in this cause by Lester Barnett on 1 September 2022 is denied.

By order of the Court this the 10th of October 2022.

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

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 10th day of October 2022.

Eugene H. Soar  
Clerk, North Carolina Court of Appeals

Copy to:  
Attorney General, For State of North Carolina  
Mr. Lester Barnett, For Barnett, Lester  
Hon. Lawrence N. Brown, Clerk of Superior Court



# North Carolina Court of Appeals

Fax: (919) 831-3615  
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(919) 831-3600

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

No. P19-92

**LESTER BARNETT  
PETITIONER**

**V**

**SENIOR RESIDENT JUDGE  
FOR GASTON COUNTY  
RESPONDENT**

From Gaston  
( 80CRS16819 80CRS16820 80CRS16821 80CRS16822 80CRS16823 )

## ORDER

The following order was entered:

The petition for writ of mandamus filed in this cause by petitioner Lester Barnett on 30 March 2022 is allowed for the purpose of entering the following order: It appearing petitioner filed an amended motion for appropriate relief in the trial court on 5 February 2019, and the court deferred ruling on one or more issues raised in the motion by orders entered 25 April 2019 and 2 November 2020, the Superior Court, Gaston County, shall hear and enter a ruling on petitioner's motion for appropriate relief for hearing within sixty days of this order.

A copy of this order shall be mailed to the Senior Resident Superior Court Judge of Judicial District 27A, the Public Defender of Defender District 27A, and the District Attorney of Prosecutorial District 38.

By order of the Court this the 15th of June 2022.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 15th day of June 2022.

Eugene H. Soar  
Clerk, North Carolina Court of Appeals

Copy to:  
Attorney General, For State of North Carolina  
Mr. Lester Barnett, For Barnett, Lester  
Mr. R. Locke Bell, Attorney at Law  
Mr. Jesse B. Caldwell, III, Senior Resident Judge



# 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. P19-92

**LESTER BARNETT  
PETITIONER**

**V**

**SENIOR RESIDENT JUDGE  
FOR GASTON COUNTY  
RESPONDENT**

From Gaston  
( 80CRS16819 )

## ORDER

The following order was entered:

The petition for writ of mandamus filed in this cause by Lester Barnett on 4 February 2019 is decided as follows: It appearing that petitioner filed a motion for appropriate relief in the trial court on 16 August 2007, and that an issue in the motion was deferred for ruling and has not yet been calendared for hearing, the petition for writ of mandamus is allowed, and it is hereby ordered that the Superior Court of Gaston County calendar petitioner's motion for appropriate relief within sixty days of issuance of this order.

A copy of this order shall be mailed to the senior resident superior court judge of Judicial District 27A, the District Attorney and Public Defender for Judicial District 27A, and Appellate Defender Glenn Gerding.

By order of the Court this the 7th of February 2019.

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

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 7th day of February 2019.

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

Copy to:  
Attorney General, For State of North Carolina  
Mr. Lester Barnett, For Barnett, Lester  
Mr. Glenn Gerding, Appellate Defender  
Mr. R. Locke Bell, Attorney at Law



## North Carolina Court of Appeals

EUGENE H. SOAR, Clerk  
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Raleigh, NC 27602

No. P19-92

**LESTER BARNETT  
PETITIONER**

**V**

**SENIOR RESIDENT JUDGE  
FOR GASTON COUNTY  
RESPONDENT**

From Gaston  
( 80CRS16819 80CRS16820 80CRS16821 80CRS16822 80CRS16823 )

### AMENDED ORDER

The following order was entered:

The petition for writ of mandamus filed in this cause by petitioner Lester Barnett on 30 March 2022 is allowed for the purpose of entering the following order: It appearing petitioner filed an amended motion for appropriate relief in the trial court on 5 February 2019, and the court deferred ruling on one or more issues raised in the motion by orders entered 25 April 2019 and 2 November 2020, the Superior Court, Gaston County, shall hear and enter a ruling on petitioner's motion for appropriate relief for hearing within sixty days of 15 June 2022.

A copy of this order shall be mailed to the Senior Resident Superior Court Judge of Judicial District 27A, the Public Defender of Defender District 27A, and the District Attorney of Prosecutorial District 38.

By order of the Court this the 15th of June 2022.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 27th day of June 2022.

Eugene H. Soar  
Clerk, North Carolina Court of Appeals

Copy to:  
Mr. Lester Barnett, For Barnett, Lester  
Attorney General, For State of North Carolina  
Travis Page, Gaston County District Attorney - (By Email)  
Hon. David A. Phillips, Superior Court Judge - (By Email)  
Mr. Stuart C. Higdon, Public Defender - (By Email)  
Hon. Lawrence N. Brown, Clerk of Superior Court



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No. P19-92

LESTER BARNETT  
PETITIONER

V

SENIOR RESIDENT JUDGE  
FOR GASTON COUNTY  
RESPONDENT

From Gaston  
( 80CRS16819 80CRS16820 80CRS16821 80CRS16822 80CRS16823 )

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A copy of this order shall be mailed to the Senior Resident Superior Court Judge of Judicial District 27A, the Public Defender of Defender District 27A, and the District Attorney of Prosecutorial District 38.

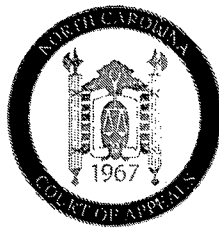
By order of the Court this the 15th of June 2022.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 27th day of June 2022.

Eugene H. Soar  
Clerk, North Carolina Court of Appeals

Copy to:  
Mr. Lester Barnett, For Barnett, Lester  
Attorney General, For State of North Carolina  
Travis Page, Gaston County District Attorney - (By Email)  
Hon. David A. Phillips, Superior Court Judge - (By Email)  
Mr. Stuart C. Higdon, Public Defender - (By Email)  
Hon. Lawrence N. Brown, Clerk of Superior Court





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No. P19-92

LESTER BARNETT  
PETITIONER

V

SENIOR RESIDENT JUDGE  
FOR GASTON COUNTY  
RESPONDENT

From Gaston  
( 80CRS16819 80CRS16820 80CRS16821 80CRS16822 80CRS16823 )

## ORDER

The following order was entered:

The petition for writ of mandamus filed in this cause by petitioner Lester Barnett on 30 March 2022 is allowed for the purpose of entering the following order: It appearing petitioner filed an amended motion for appropriate relief in the trial court on 5 February 2019, and the court deferred ruling on one or more issues raised in the motion by orders entered 25 April 2019 and 2 November 2020, the Superior Court, Gaston County, shall hear and enter a ruling on petitioner's motion for appropriate relief for hearing within sixty days of this order.

A copy of this order shall be mailed to the Senior Resident Superior Court Judge of Judicial District 27A, the Public Defender of Defender District 27A, and the District Attorney of Prosecutorial District 38.

By order of the Court this the 15th of June 2022.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 15th day of June 2022.

Eugene H. Soar  
Clerk, North Carolina Court of Appeals

Copy to:  
Attorney General, For State of North Carolina  
Mr. Lester Barnett, For Barnett, Lester  
Mr. R. Locke Bell, Attorney at Law  
Mr. Jesse B. Caldwell, III, Senior Resident Judge



## North Carolina Court of Appeals

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Raleigh, NC 27602

**No. P19-92**

**LESTER BARNETT  
PETITIONER**

**V**

**SENIOR RESIDENT JUDGE  
FOR GASTON COUNTY  
RESPONDENT**

From Gaston  
( 80CRS16819 80CRS16820 80CRS16821 80CRS16822 80CRS16823 )

### **AMENDED ORDER**

The following order was entered:

The petition for writ of mandamus filed in this cause by petitioner Lester Barnett on 30 March 2022 is allowed for the purpose of entering the following order: It appearing petitioner filed an amended motion for appropriate relief in the trial court on 5 February 2019, and the court deferred ruling on one or more issues raised in the motion by orders entered 25 April 2019 and 2 November 2020, the Superior Court, Gaston County, shall hear and enter a ruling on petitioner's motion for appropriate relief for hearing within sixty days of 15 June 2022.

A copy of this order shall be mailed to the Senior Resident Superior Court Judge of Judicial District 27A, the Public Defender of Defender District 27A, and the District Attorney of Prosecutorial District 38.

By order of the Court this the 15th of June 2022.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 27th day of June 2022.

Eugene H. Soar  
Clerk, North Carolina Court of Appeals

Copy to:  
Mr. Lester Barnett, For Barnett, Lester  
Attorney General, For State of North Carolina  
Travis Page, Gaston County District Attorney - (By Email)  
Hon. David A. Phillips, Superior Court Judge - (By Email)  
Mr. Stuart C. Higdon, Public Defender - (By Email)  
Hon. Lawrence N. Brown, Clerk of Superior Court

16  
STATE OF NORTH CAROLINACounty of GastonFile # 80-CRS-16822

Film # \_\_\_\_\_

The State of North Carolina  
vs.In The General Court of Justice  
Superior Court Division  
October 6 Session, 1980LESTER BARNETT  
DefendantINDICTMENT  
SAFE CRACKING

THE JURORS FOR THE STATE UPON THEIR OATH PRESENT that on or about the 5th day of November, 1980, in Gaston County, Lester Barnett unlawfully and wilfully did feloniously attempt to open and enter, and did open and enter a safe, which was the property of Piedmont Toyota, Inc., 420 W. Franklin Ave., Gastonia, N. C., a North Carolina corporation, by the following means, to wit: by using a chisel and bolt cutter, in violation of G.S. 14-89.1.

*Larry B. Langer*  
Assistant District Attorney

## WITNESSES:

✓ Gary Queen GPD

The witnesses marked "x" were sworn by the undersigned foreman and examined before the grand jury, and this bill was found to be ☒ a true bill by twelve or more grand jurors ☐ not a true bill.

This 6th day of Oct1980

*Cyrus F. Traylor*  
Grand Jury Foreman

AOC-L Form 206

Rev. 10/75

21061-02  
I-63

File No(s) 80CRS16819-16820-  
16821-16822-  
Film No. 16823  
In the General Court of Justice  
Superior Court Division

STATE OF NORTH CAROLINA

County of Gaston

The State of North Carolina

-vs-

Lester Barnett

Defendant

JUDGMENT AND COMMITMENT

Age 19, Sex Male, Race Black

In open Court, the defendant appeared for trial upon the charge(s) of

**Armed Robbery-two counts, Safecracking-two counts and  
Felonious Assault**

and the defendant (entered a plea of) ~~(was found by jury)~~ guilty of the offense(s) of  
**Attempted**

**Armed Robbery-one count, Misdemeanor Larceny-one count, Safecracking-two  
counts and Felonious Assault**

of the grade(s) of **Felonies and Misdemeanor**  
and in violation of G.S. 14-87; 14-72 (a); 14-3 (a); 14-89-1; 14-32 A

The Court having considered evidence and argument of counsel, and finding that the  
maximum sentence allowed by law for this conviction is **Life**

**All charges are consolidated for purposes of judgment.**

It is ADJUDGED that the defendant is guilty, and that the defendant be imprisoned  
for a maximum term of **LIFE**, and a minimum term of **SEVEN YEARS**  
in the custody of **the Department of Correction. This sentence to begin at  
the expiration of the life sentence the defendant is now serving.**

The defendant is entitled to credit for **-0-** days spent in custody prior to entry  
of this judgment.

As to restitution or reparation as a condition of attaining work release privilege  
or parole, the Court recommends:

It is ORDERED that the Clerk deliver three certified copies of this Judgment and  
Commitment to the Sheriff or other qualified officer and that said officer cause the  
defendant to be delivered, with such copies as commitment authority, to the custody of  
the agency named above, to serve the sentence imposed or until he shall have complied  
with the conditions for release pending appeal.

This 9th day of February, 19 81.

Attorney for Defendant: **Jim Funderburk**

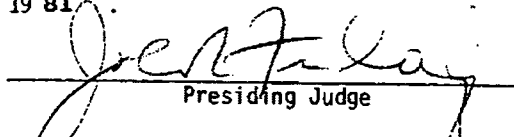
Attorney for the State: **Larry Langson**

Date certified copies of judgment delivered to Sheriff for commitment:

G.S. 15A-1351-55; 15A-1444-53; 148-33.2, 57.1

AOC-L Form 153

Rev. 3/80

  
Presiding Judge  
John R. Friday  
Typed Name of Judge

Adult Correction, Office of Combined  
Records Scanned Document - Original  
Bears Raised Seal of the Court

APPEAL ENTRIES

RECEIVED

The defendant, in open Court, objects and excepts to the rulings and judgment of the Court and gives timely notice of appeal to the Court. Further notice waived.

The defendant is allowed \_\_\_\_\_ days to serve proposed record on appeal, and the State is allowed \_\_\_\_\_ days after such service to serve objections or proposed alternative record on appeal.

Release of defendant pending appeal is \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Judge Presiding

STATUS ON APPEAL

\_\_\_\_\_  
Notice of withdrawal of appeal per G.S. 15A-1450 filed.

\_\_\_\_\_  
Appellate Court opinion finding no error filed.

ORDER OF COMMITMENT

The challenge to the validity of the Judgment by appeal having been resolved as noted.

It is ORDERED that the Judgment herein be executed according to its terms.

It is further ORDERED that if there be need, the Sheriff arrest and recommit the defendant to the custody of the official named in the Judgment and furnish said official two certified copies of said Judgment and this Order as authority for the commitment and detention of said defendant.

This \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Clerk of Superior Court

CERTIFICATION: TRUE COPY - SENTENCE CREDIT

I certify that the foregoing, front and back, is a true and complete copy of the original Judgment and Commitment, and of proceedings relating to appeal, which is on file in this case.

Witness my hand and the Seal of Superior Court, this \_\_\_\_\_ day of \_\_\_\_\_

*February*, 19 *87*.

*Shirley L. Myers*  
\_\_\_\_\_  
Clerk of Superior Court

- (1) Retain the conveyance for official use; or
  - (2) Transfer the conveyance which was forfeited under the provisions of this section to the North Carolina Department of Justice or to the North Carolina Department of Crime Control and Public Safety when, in the discretion of the presiding judge and upon application of the North Carolina Department of Justice or the North Carolina Department of Crime Control and Public Safety, said conveyance may be of official use to the North Carolina Department of Justice or the North Carolina Department of Crime Control and Public Safety; or
  - (3) Upon determination by the director of any law-enforcement agency that a conveyance transferred pursuant to the provisions of this section is of no further use to said agency, such conveyance may be sold as surplus property in the same manner as other conveyances owned by the law-enforcement agency. The proceeds from such sale, after deducting the cost thereof, shall be paid to the school fund of the county in which said conveyance was seized. Any conveyance transferred to any law-enforcement agency under the provisions of this section which has been modified or especially equipped from its original manufactured condition so as to increase its speed shall be used in the performance of official duties only. Such conveyance shall not be resold, transferred or disposed of other than as junk unless the special equipment or modification has been removed and destroyed, and the vehicle restored to its original manufactured condition.
- (e) All conveyances subject to forfeiture under the provisions of this section shall be forfeited pursuant to the procedures for forfeiture of conveyances used to conceal, convey, or transport intoxicating beverages found in G.S. 18A-21. Provided, nothing in this section or G.S. 18A-21 shall be construed to require a conveyance to be sold when it can be used in the performance of official duties of the law-enforcement agency. (1979, c. 592.)

Editor's Note. — Section 18A-21, referred to in subsection (e) of this section, was repealed by Session Laws 1981, c. 412, s. 1, effective Jan. 1, 1982. As to forfeiture of conveyances, see § 18B-504, effective Jan. 1, 1982.

## ARTICLE 17.

### Robbery.

#### § 14-87. Robbery with firearms or other dangerous weapons.

(a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

(b) Repealed by Session Laws 1979, c. 760, s. 5, effective July 1, 1981.

(c) Repealed by Session Laws 1979, c. 760, s. 5, effective July 1, 1981.

(d) Notwithstanding any other provision of law, with the exception of persons sentenced as committed youthful offenders, a person convicted of robbery with firearms or other dangerous weapons shall serve a term of not less than seven years in prison, excluding gain time granted under G.S. 148-13. A person convicted of robbery with firearms or other dangerous weapons shall

receive a sentence to credit for good not suspend the sentences impose shall commence a sentenced hereun 6; 1979, c. 760; s.

Cross References.  
maximum punishment  
§ 14-1.1. As to facil  
youthful offenders, see  
148-49.16.

Effect of Amendment  
ment, effective July 1,  
ished as a Class D  
imprisonment for not l  
more than life impi  
prison" at the end of su  
sections (b), relating t  
and subsequent offense  
person convicted unde  
seven years without t  
tion, suspended senten  
or administrative proc  
for good behavior, and  
imposed pursuant to th  
secutively, and added  
amendatory act was on  
July 1, 1980. It was pos  
by Session Laws 1979  
April 15, 1981, by Sessi

I. General Considerations  
A. In General.  
B. Common Law  
C. Attempted Robbery

II. Elements of Crime  
A. In General.  
B. Use or Threat of Force  
C. Taking and Retention

III. Lesser Included Offenses

IV. Indictment.

V. Evidence.

VI. Instructions.

VII. Punishment.

VIII. Double Jeopardy

I. GENERAL COMMENTARY

A. In General

The primary purpose of the legislature in enacting this

time as may be allowed as a result of good behavior. (1929, c. 187, s. 1; 1975, cc. 543, 846; 1977, c. 871, ss. 1, 6.)

**Cross Reference.** — As to facilities and programs for youthful offenders, see § 148-49.10 et seq.

For statute providing the maximum punishment for felonies, effective July 1, 1980, see § 14-1.1.

**Editor's Note.** — The first 1975 amendment, effective Oct. 1, 1975, substituted "not less than five years nor more than life imprisonment in the State's prison" for "not less than five nor more than thirty years" at the end of subsection (a).

The second 1975 amendment, effective Oct. 1, 1975, designated the existing section as subsection (a) and added subsection (b).

The 1977 amendment, effective Oct. 1, 1977, substituted "seven years" for "five years" near the end of subsection (a) and added subsection (c). Session Laws 1977, c. 871, s. 4, provides: "This act shall apply to all offenses committed on or after the effective date of this act."

Session Laws 1977, c. 871, s. 3, provides: "Each business establishment in this State, to which has been issued a retail sales tax license, is authorized to display a cardboard placard not less than 8 inches by 11 inches which shall bear the following inscription in letters not less than three-fourths inch high:

"By Act of the North Carolina General Assembly Any Person Convicted of Armed Robbery Shall Serve a Sentence of No Less Than 7 Years of Imprisonment Without Probation or Parole."

Session Laws 1977, c. 871, s. 5, provides: "This act shall in no manner impair the powers of the Governor under the provisions of Article III, § 6, of the North Carolina Constitution."

Session Laws 1977, c. 871, s. 7, provides: "In the event of any conflict between the provisions of this act and the provisions of Article 3B of Chapter 148, the provisions of Article 3B shall control and remain in full force and effect."

**Amendment Effective July 1, 1980.** — Session Laws 1979, c. 760, s. 5, effective July 1, 1980, will amend this section to read as follows:

"§ 14-87. Robbery with firearms or other dangerous weapons. — (a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a felony and upon conviction thereof shall be punished by

imprisonment for not less than seven years nor more than life imprisonment in the State's prison.

"(b) Repealed by Session Laws 1979, c. 760, s. 5, effective July 1, 1980.

"(c) Repealed by Session Laws 1979, c. 760, s. 5, effective July 1, 1980.

"(d) Notwithstanding any other provision of law, with the exception of persons sentenced as committed youthful offenders, a person convicted of robbery with firearms or other dangerous weapons shall serve a term of not less than seven years in prison, excluding gain time granted under G.S. 148-13. A person convicted of robbery with firearms or other dangerous weapons shall receive a sentence of at least 1 year in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentence imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder."

Session Laws 1979, c. 760, s. 6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

This section creates no new offense. —

In accord with 1st paragraph in original, State v. Bailey, 278 N.C. 80, 178 S.E.2d 809 (1971), cert. denied, 409 U.S. 948, 93 S. Ct. 233, 34 L. Ed. 2d 218 (1972); State v. Osborne, 13 N.C. App. 420, 185 S.E.2d 593 (1972).

In accord with 3rd paragraph in original, State v. Black, 286 N.C. 191, 209 S.E.2d 404 (1974).

In accord with 5th paragraph in original, State v. Council, 6 N.C. App. 397, 169 S.E.2d 9 (1969).

This section creates no new offense, but merely provides for more severe punishment for the commission, or attempt to commit, common-law robbery when that offense is committed or attempted with the use or threatened use of firearms or other dangerous weapons. State v. Barksdale, 16 N.C. App. 8, 192 S.E.2d 659 (1972), cert. denied, 282 N.C. 6, 194 S.E.2d 152 (1973).

This section superadds, etc. —

The critical and essential difference between armed robbery and common-law robbery is that in order for the jury to convict for armed robbery the victim must be endangered or threatened the use or threatened use of a "firearm or other dangerous weapon, implement or means." State v. Bailey, 278 N.C. 80, 178 S.E.2d 809 (1971),

denied, 409 U.S. 948, 93 S. Ct. 293, 34 L. Ed. 218 (1972).

This section requires, among other things, that a robbery be accomplished by the threatened use of a firearm or other dangerous weapon whereby the life of a person is endangered or threatened. State v. Johnson, 255 N.C. 255, 232 S.E.2d 707 (1977).

The essential difference between robbery and common-law robbery is that the former is accomplished by the use or threatened use of a firearm or other dangerous weapon whereby the life of a person is endangered or threatened. State v. Lee, 282 N.C. 1, 233 S.E.2d 705 (1973); State v. Dollar, 292 N.C. 233, 233 S.E.2d 521 (1977); State v. Clemens, 101 N.C. App. 101, 237 S.E.2d 298 (1977).

The essential difference between robbery and common-law robbery is that to prove the former, the State must present evidence sufficient to show that the victim was endangered or threatened by the threatened use of a firearm or other dangerous weapon, implement or means. State v. 295 N.C. 55, 243 S.E.2d 367 (1978).

**Common-Law Robbery Defined.** —

In accord with 1st paragraph in original, State v. Moore, 279 N.C. 455, 183 S.E.2d 593 (1971); State v. Osborne, 13 N.C. App. 420, 185 S.E.2d 593 (1972); State v. Hoover, 14 N.C. App. 164, 187 S.E.2d 453, cert. denied, 281 N.C. 188, 188 S.E.2d 899 (1972); State v. Black, 286 N.C. 191, 209 S.E.2d 458 (1974); State v. Black, 286 N.C. App. 388, 238 S.E.2d 183 (1977).

In accord with 4th paragraph in original, State v. Council, 6 N.C. App. 397, 169 S.E.2d 9 (1969); State v. Hullender, 8 N.C. App. 1, 1 S.E.2d 581 (1970).

In accord with 5th paragraph in original, State v. Council, 6 N.C. App. 397, 169 S.E.2d 9 (1969); State v. Bailey, 278 N.C. 80, 178 S.E.2d 809 (1971), cert. denied, 409 U.S. 948, 93 S. Ct. 233, 34 L. Ed. 2d 218 (1972); State v. York, 101 N.C. App. 101, 191 S.E.2d 369 (1972).

The gist of the offense of robbery is that it is the taking of property by force or putting in fear. State v. Spivey, 185 N.C. 341, 185 S.E.2d 881 (1972).

The word "fear" as used in the definition of "putting him in fear" in the definition of common-law robbery is not confined to the fear of death. State v. Moore, 279 N.C. 455, 183 S.E.2d 546 (1971).

For robbery at common law it is not necessary to prove both violence and putting in fear; proof of either is sufficient. State v. Moore, 279 N.C. 455, 183 S.E.2d 546 (1971); State v. York, 101 N.C. App. 388, 238 S.E.2d 183 (1977).

The use or threatened use of a firearm or other dangerous weapon is not an essential element of common-law robbery. State v. Moore, 279 N.C. 455, 183 S.E.2d 546 (1971).

The definition of robbery necessarily includes within it the concept that the offense can

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ART. 17. ROBBERY

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receive a sentence of at least 14 years in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder. (1929, c. 187, s. 1; 1975, cc. 543, 846; 1977, c. 871, ss. 1, 6; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 12.)

**Cross References.** For statute providing the maximum punishment for felonies, see § 14-1.1. As to facilities and programs for youthful offenders, see §§ 148-49.10 through 148-49.16.

**Effect of Amendments.** — The 1979 amendment, effective July 1, 1981, substituted "punished as a Class D felon" for "punished by imprisonment for not less than seven years nor more than life imprisonment in the State's prison" at the end of subsection (a), deleted subsections (b), relating to punishment for second and subsequent offenses, and (c), requiring a person convicted under subsection (a) to serve seven years without benefit of parole, probation, suspended sentence or any other judicial or administrative procedure except for time off for good behavior, and providing that sentences imposed pursuant to this section shall run consecutively, and added subsection (d). The 1979 amendatory act was originally made effective July 1, 1980. It was postponed to March 1, 1981, by Session Laws 1979, 2nd Sess., c. 1316; to April 15, 1981, by Session Laws 1981, c. 63; and

to July 1, 1981, by Session Laws 1981, c. 179.

Session Laws 1979, c. 760, s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; and 1981, c. 179, s. 14, provides: "This act shall become effective on July 1, 1981, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

The 1979, 2nd Sess., amendment, effective July 1, 1981, and applicable to offenses committed on or after that date, substituted "Class D felony" for "punished as a Class D felon" at the end of subsection (a). The 1979, 2nd Sess., amendatory act was originally made effective March 1, 1981. It was postponed to April 15, 1981, by Session Laws 1981, c. 63; and to July 1, 1981, by Session Laws 1981, c. 179.

**Legal Periodicals.** — For a note on lesser included offenses, see 2 Campbell L. Rev. 145 (1980).

For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

#### CASE NOTES

##### I. General Consideration.

- A. In General.
- B. Common Law Robbery.
- C. Attempted Robbery.

##### II. Elements of Crime.

- A. In General.
- B. Use or Threatened Use of Dangerous Weapons.
- C. Taking and Intent.

##### III. Lesser Included Offenses

##### IV. Indictment.

##### V. Evidence.

##### VI. Instructions.

##### VII. Punishment.

##### VIII. Double Jeopardy.

##### I. GENERAL CONSIDERATION.

###### A. In General.

The primary purpose and intent of the legislature in enacting this section, was to

provide for more severe punishment for the commission of robbery when such offense is committed or attempted with the use or threatened use of firearms or other dangerous weapons. It does not add to or subtract from the



ROLINA

§ 14-89

14-89

1979 CUMULATIVE SUPPLEMENT

§ 14-89.1

## § 14-89. Attempted train robbery.

Cross Reference. — For statute providing the maximum punishment for felonies, effective July 1, 1980, see § 14-1.1.

Amendment Effective July 1, 1980. — Session Laws 1979, c. 760, s. 5, effective July 1, 1980, will amend this section to read as follows:

"§ 14-89. Attempted train robbery. — If any person shall stop, or cause to be stopped, or impede, or cause to be impeded, or conspire with others for that purpose, any locomotive engine or car on any railroad in this State, by intimidation of those in charge thereof or by

force, threats or otherwise, for the purpose of taking therefrom or causing to be delivered up to such person so forcing, threatening or intimidating, anything of value, to be appropriated to his own use, he shall be guilty of attempting train robbery, and, on conviction thereof, shall be punished as a Class F felon."

Session Laws 1979, c. 760, s. 6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

§ 14-89.1. Safecracking. — (a) A person is guilty of safecracking if he unlawfully opens, enters, or attempts to open or enter a safe or vault:

- (1) By the use of explosives, drills, or tools; or
- (2) Through the use of a stolen combination, key, electronic device, or other fraudulently acquired implement or means; or
- (3) Through the use of a master key, duplicate key or device made or obtained in an unauthorized manner, stethoscope or other listening device, electronic device used for unauthorized entry in a safe or vault, or other surreptitious means; or
- (4) By the use of any other safecracking implement or means.

(b) A person is also guilty of safecracking if he unlawfully removes from its premises a safe or vault for the purpose of stealing, tampering with, or ascertaining its contents.

(c) Safecracking is a felony punishable by imprisonment for a term of not less than two nor more than 30 years. (1961, c. 653; 1973, c. 235, s. 1; 1977, c. 1106.)

Cross Reference. — For statute providing the maximum punishment for felonies, effective July 1, 1980, see § 14-1.1.

Editor's Note. —

The 1973 amendment deleted "other" preceding "tools" and substituted "of not less than two years nor more than 30 years" for "from ten years to life imprisonment."

The 1977 amendment, effective Oct. 1, 1977, rewrote this section.

Session Laws 1973, c. 235, s. 2, provides: "This act shall apply to all offenses committed after its ratification and shall become effective upon ratification." The act was ratified April 19, 1973.

For survey of 1976 case law on criminal law, see 55 N.C.L. Rev. 976 (1977).

For survey of 1977 criminal law, see 56 N.C.L. Rev. 965 (1978).

Amendment Effective July 1, 1980. — Session Laws 1979, c. 760, s. 5, effective July 1, 1980, rewrites subsection (c) to read as follows:

"(c) Safecracking shall be punishable as a Class H felony."

Session Laws 1979, c. 760, s. 6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

Effect and Application of 1973 Amendment.

— The 1973 amendment did not repeal this section. The main thrust of the amendment was directed to the punishment provisions, and the amending statute expressly provided that the act should apply to all offenses committed after its ratification. This amendment clearly manifests a legislative intent that the reduction in punishment should apply only to acts committed after April 19, 1973. State v. Cameron, 284 N.C. 165, 200 S.E.2d 186 (1973), cert. denied, 418 U.S. 905, 94 S. Ct. 3195, 41 L. Ed. 2d 1153 (1974).

Session Laws 1973, c. 235, reducing the punishment for safecracking and setting it at two to 30 years imprisonment, applies to all offenses committed after its ratification and became effective upon ratification. Where the crime was committed in 1971, before Chapter 235 was ratified, defendant can be punished under the old statute. State v. Martin, 20 N.C. App. 477, 201 S.E.2d 540 (1974).

Where the acts for which defendant was prosecuted occurred prior to April 19, 1973, the trial judge properly imposed sentence according to the provision of this section as it existed before the 1973 amendment. State v. Cameron, 284 N.C. 165, 200 S.E.2d 186 (1973), cert. denied,

- (4) Where two or more consecutive sentences are imposed, the P.E. date is determined by computing the eligibility date on each sentence and adding them together.

NOTE: Jail and other pre-sentence credits awarded by the courts are applicable to the parole eligibility date.

- d) Inmates convicted of felony crimes committed on or after July 1, 1981, and prior to October 1, 1994 and sentenced to a term of 18 months or longer will be granted re-entry parole 90 days before the expiration of their sentence(s), provided the inmate was not sentenced as a Committed Youthful Offender or as a misdemeanor. Effective July 1, 1981, inmates eligible for parole will be given good time towards the parole eligibility date. Community Service Parole may be considered.

No. \_\_\_\_\_

District \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
STATE OF NORTH CAROLINA  
APPELLATE DIVISION

1  
SEP 2 5b  
CLERK COURT OF APPEALS  
OF NORTH CAROLINA

Court of Appeals

(Select "Court of Appeals" or "Supreme Court")

Lester Barnett

Petitioner,

v.

STATE OF NORTH CAROLINA,  
Respondent

From GASTON County

File No. 80 CRS 16819-23

PETITION FOR WRIT  
OF CERTIORARI

To the Honorable Judges of the above-named Appellate Court:

Now comes Lester Barnett, Petitioner *pro se*, and respectfully petitions this Court to issue its Writ of Certiorari pursuant to G.S. 7A-32(c), 15A-1442 *et seq.*, and Rule 21 of the N.C. Rules of Appellate Procedure, to review the Order of the Honorable

Superior Court Judge David A Phillips, dated June 15, 2022 denying Petitioner's Motion for Appropriate Relief. In support, Petitioner shows the following:

(1)

Petitioner is incarcerated in the N.C. Department of Correction under active sentence(s) which Petitioner seeks to challenge. The conviction sought to be challenged is:

Date of conviction(s): February 9, 1981

Presiding Judge: Late Honorable: John R. Friday

Plea (guilty or not guilty): guilty

Offense(s) convicted of: Attempted robbery, safe cracking  
Assault, Misdemeanor Larceny

Sentence(s): Life

December 4, 2019 (2)

On June 29, 2020 (date), Petitioner mailed a Motion for Appropriate Relief to the Clerk of said county court, alleging errors in the criminal proceedings against him/her, and a right to relief from his/her conviction and/or sentence(s).

(3)

On July 15, 2022 (date), the Court below entered an Order denying the Motion for Appropriate Relief. A copy of the Order is attached to this petition. Petitioner contends that the Order is in error and Petitioner is entitled to the relief sought for the reasons stated in the Motion for Appropriate Relief.

(4)

Attached to this petition and incorporated by references herein are the following items (check the ones that are attached):

- ☒ Order denying the Motion for Appropriate Relief (MUST be attached)
- ☒ Motion for Appropriate Relief (strongly advise that this be attached)
- ☒ Other (specify) Sentencing guideline for CYO sentencing
- ☒ Other (specify) Judgement AND commitment

(5)

The following are additional facts and arguments that Petitioner submits in support of this petition (attach additional pages, if necessary):

ON April 25, 2019 The Honorable: Jesse B. Caldwell III ruled in his Order: That the defendant was confine At the mecklenburg County Jail on November 5, 1980. and had been there four months AND could NOT have committed the November 5, 1980 safecracking. Sec: paragraph 16, and 18 of Jesse B. Caldwell April 25, 2019 Order: The Judge defer for later consideration, All charges was consolidated for one Judgement on February 9, 1981. ON December 4, 2019 the defendant filed an Amended motion For Appropriate Relief to have the Committed Youthful Offender Sentence corrected by inclosing the Sentencing guideline for CYO sentencing which clearly show that the maxium sentence that he could recieve - cont

#2

for Attempt robbery as a committed Youthful Offender is 14 years. Sentence guideline enclosed with this petition Article 17. G.S. 14-87(d) G.S. 148-33.2, 57.1 was not included for the CYO Sentence as a C.Y.O but modified to Just 14-87 the proper statute for CYO Sentence is 14-87 (d) This statute was removed and changed from 14-87 (d) to Just 14-87 which is Arm Robbery my conviction on February 9, 1981 was Attempt robbery, safe cracking I was sentence under committed Youthful Offender statute G.S. 148-33, 2, 57.1 see: Judgement and committment at the bottom, that is attatch to this petition.

On the D.P.S web site they changed my Attempt robbery conviction to Arm Robbery, and the November 5, 1980 Safe cracking they removed the file number and date of the crime and replaced it with File Number 00000000.

#3

At the July 6, 2022 hearing the courts fail to dismiss the November 5, 1980 safecracking after I read the Order: of Jesse B. Caldwell paragraph 16 & 18 showing that I was confine at the mecklenburg County Jail on the same day that the crime was committed. The court erred by not imposing the committed Youthful Offender Sentence of 7 years or 14 years under G.S. 14-87(d).

It is impossible to fully evaluate defendant claim because the City of Gastonia fail to preserve the record of the Judicial proceeding in violation of 15A-1026 and Federal Rule 11(g).

My conviction was obtained in violation of due process of law, United States Constitution Amendment, 5, 6, 14; N.C. constitution Article 1 Section 18, 19, 23). As well as other provisions of the United States and North Carolina Constitution G.S. 15A-1415(b)(3).

# 4

IN the present case for the purpose of the issue raised are pertinent facts are largely undisputable. The November 5, 1980 Safe-cracking where I was confined at Mecklenburg County Jail and had been there four months.

The defendant contend that the sentence imposed is grossly disproportionate to the offense. The sentence constitute cruel and unusual punishment in violation of Article I, section 19 and 27 of the North Carolina Constitution and the eight and fourteenth Amendment of the United State Constitution.

The constitution is guaranteed by the Declaration of right and the Bill of Rights of our constitution(s) the individual and rights entitled to protection against state action.

(6)

Petitioner (check one) \_\_\_\_\_ encloses the \$10.00 filing fee. ☒ is indigent, as shown by the attached Affidavit in Support of Request to Proceed *In Forma Pauperis*.

(7)

Petitioner is a layman at law, is unable to retain counsel, and the Court below failed to appoint counsel. Petitioner asks that this petition be liberally construed, that Petitioner be appointed counsel to provide representation in further proceedings, and that the relief sought in Petitioner's Motion for Appropriate Relief be granted.

WHEREFORE, Petitioner asks that this Court issue its Writ of Certiorari to the Superior Court of said county, that said Order be reversed or modified in Petitioner's favor, and that Petitioner be granted such other and further relief as appears to this Honorable Court to be just and proper.

Respectfully submitted, this 10 day of August, 2022.

Petitioner

Lester Barnett  
Signature

Address

P.O. Box 220  
New Port  
N.C. 28570



# NORTH CAROLINA COURT OF APPEALS

Lester BARNETT  
Petitioner

V

Senior Resident Judge  
For GASTON County  
Respondent

To: The Honorable, Judge AND Associates Judges  
of The North Carolina Court of Appeals.

Now comes petitioner Lester BARNETT pursuant  
to General Statute 7A-32 Hereby petition for A  
Writ OF MANDAMUS to issue in which to  
gain a ruling upon A Motion For Appropriate  
Relief AN petitioner show the following.

That petitioner WAS convicted on February 9, 1981  
AND has moved for post conviction relief (Via)  
Motion For Appropriate Relief filed in the Court  
of Gaston County August 16, 2007.

Why the Writ should issue Petitioner is secured by both General Statute AND North Carolina Constitution to seek post conviction upon the Charges the state is bound under the North Carolina AND United States due process clause of the Constitution to hear AND rule on the Motion For Appropriate Relief without untimely delay.

Furthermore General Statute 15A-1420 (B) (1) states that A Motion For Appropriate Relief shall be brought to the immediate attention of the senior Resident Judge upon filing, Therefore legal duty is owed, Sitton V. Figgitt 185 SE, 2d 97 at 99 1971).

However the respondent has failed to Afford the petitioner Due Process Wherefore petitioner request MANDAMUS to issue upon the respondent

ON April 25, 2019 Judge Jesse B Caldwell on his own volition, procured and reviewed the records in Mecklenburg County and discovered that the safecracking in Gaston county that occurred on November 5, 1980 was committed by someone other than the petitioner. The Honorable: Judge found out that the petitioner was confined at the Mecklenburg county Jail and had been there since August 14, 1980.

Enclosed is the Order from Judge Jesse B. Caldwell from the April 25, 2019 order page 7, paragraph 16, 17, 18 shows that the petitioner is innocent of the November 5, 1980 Safecracking in Gaston county.

The Honorable: Judge fail to correct the wrongful conviction for the November 5, 1980 safecracking but, deferred for later ruling.

Due to the procedure posture of the case I am unable to move forward.

To address this situation, the Supreme court held in Heck v. Humphrey, 512 U.S. 477 (1994), that: to recover damages for... harm caused by action whose unlawfulness would render a conviction or sentence invalid, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court issuance of a Writ of habeas corpus... the claim must be brought by a claimant who is currently in custody. Heck, 512 U.S. at 487, and (2).

15 years have pass since filing the Motion For Appropriate Relief of August 16, 2007 The Honorable Judge continue to defer the Motion. He again deferred on November 2, 2020.

The petitioner respectfully request that this Court issue your Writ of Mandamus compelling the Gaston county Superior court to calendar a hearing for the issue raised by petitioner in the Motion for Appropriate Relief, the issue which was deferred by Order of Judge Jesse B. Caldwell November 2, 2020.

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

Date March 27 2022

Lester Barnett

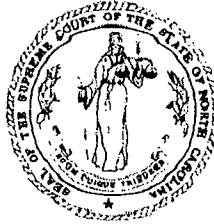
Lester Barnett

Respectfully Submitted

This 27 day of March 2022

Lester Barnett

Lester Barnett



# Supreme Court of North Carolina

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

GRANT E. BUCKNER, Clerk  
Justice Building, 2 E. Morgan Street  
Raleigh, NC 27601  
(919) 831-5700

Mailing Address  
P. O Box 217C  
Raleigh, NC 27602

From N.C. Court of Appeals  
( P22-454 )  
From Gaston  
( 80CRS16819 80CRS16820 80CRS16821 80CRS16822 80CRS16823 )

20 December 2022

Mr. Lester Barnett  
Pro Se  
Carteret Correctional Center  
#0020777  
P.O. Box 220  
Newport, NC 28570

**RE: State v Lester Barnett - 325P22-1**

Dear Mr. Barnett:

The following order has been entered on the motion filed on the 28th of October 2022 by Defendant for Notice of Appeal:

"Motion Dismissed by order of the Court in conference, this the 13th of December 2022."

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

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of December 2022.

Grant E. Buckner  
Clerk, Supreme Court of North Carolina

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

Copy to:  
North Carolina Court of Appeals  
Mr. Daniel P. O'Brien, Special Deputy Attorney General, For State of North Carolina - (By Email)  
Mr. Lester Barnett, For Barnett, Lester  
Hon. Locke Bell, District Attorney  
Hon. Lawrence N. Brown, Clerk  
West Publishing - (By Email)  
Lexis-Nexis - (By Email)

The date of the November 5, SafeCracking  
 has been removed And replaced  
 with File Number 00000000.

Exhibit B

Sentence Number: BA-002 Conviction Date: 02/09/1981 Service Status: FUTURE Sentence Status: ACTIVE Punishment Type: PRE-FAIR Sentence Type 1: DEPT OF CORR DIV OF PRISONS Sentence Type 2: LIFE SENTENCE Minimum Term: 7 YEARS		Commitment Type: INMATE County Of Conviction: GASTON Sentence Begin Date: 01/02/9999 Actual Release Date: Projected Release Date: LIFE Maximum Term: LIFE	
CONSECUTIV TO SENTENCE NUMBER BA*001	80016819	ARMED ROBBERY (PRINCIPAL)	08/13/1980
CONSOLIDATED FOR JUDGMENT	00000000	SAFE CRACKING/SAFE ROBBERY (PRINCIPAL)	FELON FELONS (PREFAIR)

December 7, 2020

Dear Sirs

I am writing you in reference to a civil rights complaint, my letter was dated July 7, 2016. On August 26, 2016 The mail Referral Unit assigned ID number 3653151.

On August 5, 2019 U.S. Department of Justice Civil Rights Division wrote me back.

JFF: ap:rc

DJ 144-54-0

Now that I have compile all the data to pursue my civil rights complaint. I have enclosed the October 6, 1980 indictment, to show my claim.

The True Bill Indictment dated October 6, 1980. More than 40 years ago I was charged and convicted of a November 5, 1980 crime.

The problem here is I was indicted on October 6, 1980, for a November 5, 1980 crime. I was convicted and given a Life sentence. as a (committed Youthful Offender) I have



December 7, 2020

been going back and forth to court for the 2007 MAR and the amended MAR of 2019.

On November 2, 2020 I appeared in open court in front of Honorable: Jesse B. Caldwell III to have the 40 year old matter resolve. The judge asked me do I want and attorney to represent me I said "no" and signed a waiver indicating the same. The judge ripped the waiver up in the courtroom then stated that he was not going to honor the waiver. Then stated to me: do you want 30 days for contempt of court to go behind the life sentence that you are already serving.

I objected to him ripping up the waiver on November 2, 2020 which was put off to January 2021. I am requesting video footage from the November 2, 2020 hearing.

I am respectfully requesting for the FBI to be present at the hearing from the Charlotte, North Carolina Bureau I am afraid that he will continue

3

December 7, 2020

to violate my civil rights.

I wrote the Office of the clerk, Court of Appeals of North Carolina for help. The clerk: Mr Daniel M. Horne Jr stated that he do not have the authority to remove a trial court judge from a case.

I am respectfully requesting that my Federal agent be present at the January 2021 hearing in Gastonia, North Carolina, presiding judge Jesse B. Caldwell III

truly,

Lester Barnett  
0020 777