

APPENDIX

APPENDIX

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No. 41P23 SEVENTEEN-A DISTRICT
Supreme Court of North Carolina
STATE OF NORTH CAROLINA

v

MICHAEL PAUL NELSON

From N.C. Court of Appeals

(22-332)

From Rockingham

(20 CRS 50469)

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Defendant on the 25th of January 2023 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the State, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 14th of June 2023."

s/ Allen, J.

For the Court

Upon consideration of the petition filed on the 25th of January 2023 by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Dismissed by order of the Court in conference, this the 14th of June 2023."

s/ Allen, J.

For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 19th of June 2023.

s/ Grant E. Buckner

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. Michael Paul Nelson, For Nelson, Michael Paul -
(By Email)

Mr. Matthew Cockman, Assistant District Attorney,
For State of North Carolina - (By Email)

Mr. Caden W. Hayes, Assistant Attorney General, For
State of North Carolina - (By Email) The
Honorable District Attorney

The Honorable Clerk of Superior Court,
Rockingham County

West Publishing - (By Email)

Lexis-Nexis - (By Email)



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk
Court of Appeals Building
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One West Morgan Street Raleigh, NC 27601
(919) 831-3600
Mailing Address:
P. O. Box 2779, Raleigh, NC 27602
Web: <https://www.nccourts.gov>

No. 22-332

STATE OF NORTH CAROLINA

v.

MICHAEL PAUL NELSON

From Rockingham (20 CRS 50469)

O R D E R

The following order was entered:

The petition filed in this cause on the 9th of May 2022 and designated 'Petition for Writ of Certiorari' is denied. The motion filed in this cause on the 6th of May 2022 and designated 'Motion to Dismiss Appeal' is allowed. Appeal dismissed. Appellant to pay costs.

And it is considered and adjudged further, that the Appellant, do pay the costs of the appeal in this Court incurred, to wit, the sum of Fifty Four and 50/100 Dollars (\$54.50), and execution issue therefor.

By order of the Court this the 13th of January 2023.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 13th day of January 2023.

s/Eugene H. Soar


Clerk, North Carolina Court of Appeals

Copy to:

Mr. Michael Paul Nelson, For Nelson, Michael Paul -
(By Email) Mr. Matthew Cockman, Assistant District
Attorney - (By Email) Ms. Farrah G. Frazier, Deputy
Criminal Superior Clerk - (By Email) Mr. William
Simmons

Mr. Caden W. Hayes, Assistant Attorney General, For
State of North Carolina - (By Email) Hon. J. Mark
Pegram, Clerk of Superior Court



2022 Jan 27 P 2:57
ROCKINGHAM CO., C.S.C
By: 

**STATE OF NORTH CAROLINA
ROCKINGHAM COUNTY
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION**

20 CRS 50469

STATE OF NORTH CAROLINA

v.

MICHAEL PAUL NELSON,

Defendant.

ORDER TO CONTINUE CASE

THIS case came on for trial during the 24 January 2022 session of Rockingham County Superior Court before the undersigned judge presiding. The State was represented in Court by Assistant District Attorney Matt Cockman and Defendant appeared prose.

The Court finds that the relevant procedural history to be as follows:

1. Defendant is charged with resisting a public officer which is alleged to have been committed on or about 21 February 2020.

2. Defendant initially retained attorney Graham Holt to represent him in this case who did represent Defendant at the District Court trial of this case.

3. Defendant was convicted of resisting a public officer on or about 23 October 2020 in District Court and Defendant, by and through his attorney Graham Holt on or about 28 October 2020, entered a written notice of appeal to superior court for a trial de nova.

4. Defendant filed a motion for change of venue which was denied by the Court in a superior court hearing on or about 5 April 2021.

5. Attorney Holt filed a motion to withdraw as Defendant's attorney on or about 3 November 2021 which, after two hearings, was ultimately allowed by the Court in a superior court hearing on or about 11 January 2022 and Defendant was allowed to proceed pro se in that same hearing.

6. This Court again inquired of Defendant's decision to represent himself at a superior court hearing on 24 January 2022. The Court, after having the required colloquy with Defendant, also found that Defendant waived his right to all counsel and allowed Defendant, at his request, to proceed pro se. In the alternative, the Court found that Defendant had forfeited his right to counsel. See waiver of counsel filed on 24 January 2022.

7. Due to the unique history of this case regarding threatening and disruptive behavior and due to the disruptive actions of an unknown person that initially was in court on 24 January 2022 for this trial and in order to maintain control of the courtroom and to ensure to all participants in this case were safe and otherwise in the proper courtroom, the Court ordered (on 24 January 2022) that all persons unknown to any courtroom deputy must provide his or her name and the purpose of attending court.

8. The Court also allowed Defendant, in advance of trial and with his personal assistant, Mr. William Simmons, to have access to all of the State's evidence which included two Google maps that were provided to Defendant and his personal assistant, and approximately 3 hours of video that Defendant and his personal assistant both reviewed in the juror assembly room immediately next to the courtroom (no jurors were present). It is duly noted that Defendant has already had access to the State's evidence during the District Court trial on or about 23 October 2020 where his attorney, Graham Holt, was allowed to cross-examine the State's witnesses and view the videos with Defendant. It is further noted that prior to his District Court trial, on or about 20 July 2020, Defendant with his attorney Graham Holt, were allowed access to the videos the State intends to use at this trial when both were given access to and reviewed said videos at the Madison Police Department.

9. Defendant, due to his stated sight impairment, made several requests of the Court. The Court conferred with appropriate officials at the Administrative Office of the Courts to ensure that all reasonable accommodations were made before ruling on Defendant's requests which are set forth below. This Court's rulings, which were made the week before trial (unless otherwise indicated), are in bold after each numbered request made by Defendant as set forth below.

1. A visual interpreter to interpret and relay all visual information at trial. I am visually impaired and unable to have live access to visual information without an interpreter.

DENIED.

After conferring with the appropriate officials at the Administrative Office of the Courts, there are no certified visual interpreters. The online service proposed by Mr. Nelson for a visual interpreter would fundamentally alter the court proceedings by, among other things, allowing Mr. Nelson to use his iPhone to allow the online "interpreter" to view jurors which could easily intimidate or otherwise influence jurors. The Court would also have no way to prevent a video recording of the jurors which could then be published on the internet or otherwise outside of the courtroom, and thus lose control of the proceedings.

The Court's concern was confirmed in court on 24 January 2022, when Defendant admitted that he is not sure what Google, which Defendant uses through his iPhone, or what his iPhone might publish on the internet or otherwise outside of the courtroom, and seemed to indicate to the Court that he does not have absolute control of what his iPhone might publish on the internet or otherwise outside of the courtroom. Despite the Court's warnings, Defendant did not in any way assure the Court that his iPhone would not publish something on the internet or outside of the courtroom.

A reasonable accommodation has been made by allowing Mr. Nelson, as he requested, to use a personal assistant who can also describe to Mr. Nelson anything that takes place during the trial of this case. Moreover, without any type of certification process, there is no way to determine that any online "interpreter" is in a better position to describe what is taking place in the courtroom than a personal assistant of Mr. Nelson's choosing who is actually present in the courtroom with Mr. Nelson.

The Court also offered to have the jurors and witnesses wear masks at all times to prevent any person from seeing any facial expressions, if there were any. Defendant was allowed to consider this option over the evening recess but never responded to the Court's offer because the case was continued for the reasons set forth below.

See also #6 below.

2. Use of audio recording devices for audio notes. My visual impairment prevents me from taking written notes.

Ultimately ALLOWED (on 24 January 2022) after a more detailed explanation from Defendant but ordered to use only for taking personal notes and not to be used for recording any testimony or any other parts of the trial or anything else in the courtroom.

The Court had initially indicated it would provide Defendant with an audio recording taken by the court reporter of the trial twice per day to allow Defendant to make notes for the trial. However, because of this accommodation, the Court would have stopped providing the audio recording from the court reporter because Defendant would have been making audio notes as he deemed appropriate in real time.

See also #6 below.

3. Use of video recording devices for visual notes. My visual impairment prevents me from taking written notes.

DENIED. See #1 above and #6 below.

4. Only one person speaks at a time. I have brain damage from multiple TBIs and distracting environments with more than one speaker and interruptions can make me unable to track what is occurring.

ALLOWED. As required in all cases.

5. No threats, intimidation, and coercion. I have PTSD and threats, coercion, and intimidation can cause me to shut down and not be able to function and communicate.

ALLOWED. As required in all cases.

6. Use of personal assistant as auxiliary aid in the hearing. This person will be able to communicate to the judge when they notice any time my disabilities are making it difficult to communicate. Also with my brain damage I have memory loss and my auxiliary aid will be able to remind me of what my defense strategy is.

ALLOWED.

7. Documents sent via email in OCR compatible format. Due to my visual impairment I can't read printed materials. I can read electronic materials in OCR compatible formats with my electronic devices.

ALLOWED.

8. All parties will identify prior to speaking. I can't see who is speaking due to my visual impairment.

ALLOWED.

9. Use of iPhone for access to court preparation materials and notes. My phone is my primary assistive device that helps me take notes, and access my court preparation materials.

ALLOWED.

However, except as set forth in #2 above, may not record anything by video or audio.

10. That I can attend without use of a mask. I have a medical exemption from wearing a mask due to my disabilities.

ALLOWED.

11. Bluetooth headsets. This allows me to use my phone without the screen reading software interrupting the court.

ALLOWED.

12. Sunu Band, electronic obstacle detector. Due to visual impairment this device helps me with mobility.

ALLOWED.

13. White Cain. Due to visual impairment this device helps me with mobility.

ALLOWED.

14. Ball Cap. Due to visual impairment this device helps me with mobility and communication.

ALLOWED.

15. Dark Sunglasses. Due to visual impairment this device helps me with mobility and communication.

ALLOWED.

16. Batteries and Cables to charge my VA issued prosthetic assistive devices.

ALLOWED for Defendant's iPhone, Bluetooth headsets, obstacle detector and audio recorder (as described in #2 above).

17. Defendant also complained about the lights being too bright on 24 January 2022. Therefore,

the Court ultimately dimmed the lights to Defendant's satisfaction before the trial of the case began.

Defendant was warned that, except as set forth above, he was not allowed to record by audio or video anything that took place in the courtroom. Defendant was also warned that he was not allowed to publish by video or audio anything about the trial. Defendant was also warned that if he did either of these things, he could be held in contempt of court which could then result in him going to jail for up to 30 days and/or fined up to \$500.00. Defendant said he understood the warnings.

10. Pretrial motions began on 24 January 2022. The State's motion to continue was denied.

Without objection from the State, the Court allowed Defendant's motion to sequester (filed on or about 6 January 2022) and denied Defendant's motion to dismiss (filed on or about 24 January 2022). Defendant's final pretrial motion was a motion to suppress (filed on or about 11 January 2022) but due to the rulings and actions set forth above and after ruling on said pretrial motions as well as other unrelated civil matters that were heard by the Court, it was after 5:00 pm and the Court recessed for the day until 25 January 2022 at 9:30 am at which time the motion to suppress would be heard with the trial to start on 26 January 2022.

11. However, on 25 January 2022 before 9:30 am, Defendant communicated to the Court and to Mr. Cockman by email that his personal assistant, Mr. Simmons, had tested positive for coronavirus on the previous night of 24 January 2022. Although Defendant had to resend the communication showing the positive test for Mr. Simmons, such a test was produced by Defendant to Mr. Cockman.

12. Defendant was at the courthouse on 25 January 2022 but was not allowed into the courthouse based on the information Defendant had provided about Mr. Simmons testing positive for the coronavirus and out of concern that, considering how transmissible the omicron variant is, Defendant might have also contracted the coronavirus having been maskless (at his request) and in extremely close physical proximity and directly exposed to Mr. Simmons for numerous hours during the day on 24 January 2022.

13. Therefore, the Court (by and through the courtroom deputy) requested that Defendant submit to a rapid test to determine if Defendant had contracted the coronavirus. Defendant was also informed this test was free, but Defendant nevertheless refused this free rapid test on multiple occasions on 25 January 2022. Defendant also refused to tell the courtroom deputy about his vaccination status.

14. On 25 January 2022, when the session of court opened and resumed sitting for the dispatch of business, no other person associated with this trial in

the courtroom reported any health concerns of any type or description to the Court, and the State was ready to proceed with the motion to suppress and had all necessary witnesses present in the courtroom. The State was also ready to proceed with the trial of this case on 26 January 2022. It should be noted that the only person not wearing a mask in the courtroom on 24 January 2022 was Defendant (again, at his request as set forth above).

15. On 25 January 2022, this Court was also ready to resume with the motion to suppress and the trial on 26 January 2022.

16. Based on the information provided to the Court and to Mr. Cockman by Defendant, it appears that Mr. Simmons, Defendant's personal aid, has in fact tested positive for the coronavirus. Due to Defendant's actions of refusing a free rapid test to determine if Defendant had also contracted the coronavirus and due to Defendant's refusal to reveal his vaccination status, the Court is unable to ensure the health, safety, and well-being of the other participants in this case, including all potential jurors and court personnel.

17. Due to Defendant's actions as set forth above, and due to Defendant's proximity to Mr. Simmons without a mask on 24 January 2022 as set forth above, the Court finds there is a substantial likelihood that Defendant has contracted the coronavirus.

Therefore, based on the findings above and to prevent the spread of the coronavirus and to protect the health, safety, and well-being of the other participants in this case, including all potential jurors and court personnel, the Court finds that the hearing on the motion to suppress and the trial of this case should be continued to a later date and session of court once the District Attorney determines it can be done safely for all parties involved. See court reporter's notes and the file for all dates, hearings and rulings set forth above for more details.

Based on the foregoing findings, **IT IS HEREBY ORDERED** that:

1. The hearing on the motion to suppress and the trial of this case is continued to a later date and session of court once the District Attorney determines it can be done safely for all parties involved; and

2. The Clerk shall transmit a copy of this Order to Defendant and to Assistant District Attorney Matt Cockman.

This the 27th day of January, 2022.

s/ R. Stuart Albright

R. Stuart Albright

SUPERIOR COURT JUDGE PRESIDING

19a

	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 20 CRS 50469 2022 JAN 27 PM 2:57 ROCKINGHAM CO., C.C.C. CV <i>58</i> ORDER-TO CONTINUE CASE
--	--

STATE OF NORTH CAROLINA
ROCKINGHAM COUNTY DISTRICT COURT

SAFEKEEPING ORDER

20 CR 050469

THE STATE OF NORTH CAROLINA

V.

MICHAEL PAUL NELSON

Judge James Grogan, Chief District Court Judge

It appears to the court that the defendant Mr. Nelson is awaiting trial in the above-specified case, which is pending in the Rockingham County District Court. The defendant is unable to post bond [**\$50,000 CASH ONLY**] for his release in the pending trial(s) in the above case.

The Rockingham County Detention Facility request that Mr. Nelson be admitted to The Department of Adult Corrections for care due to his medical condition. Mr. Nelson is blind, he has seizures, light sensitivities, food allergies and he is refusing to eat, the defendant requires safekeeping in the North Carolina Department of Adult Corrections and Juvenile Justice for an initial period not to exceed 30 days unless DACJJ medical staff recommends more than 30 days for his safety and welfare.

It is therefore **ORDERED**, that the defendant be transferred to a unit of the State Department of Adult Corrections designated by the commissioner of Corrections or his authorized representative, there to be held pending the further orders of this Court, in

quarters segregated from those provided for persons already convicted of crimes.

It is further **ORDERED**, that the Sheriff of Rockingham County shall transport the prisoner to the prison unit where he is to be held, and shall return him to the common Jail of Rockingham County at such time as the Court may direct.

It is further **ORDERED**, that the officer in charge of the prison unit designated by the Commissioner of Corrections or his authorized representative shall receive and release the custody of the prisoner in accordance with the terms of this order and any further orders entered in this cause.

This the 7th day of October, 2020.

s/ James A. Grogan .

Filed 7 Octobewr 2020 at 9:00 a.m.

**STATE OF NORTH CAROLINA
ROCKINGHAM COUNTY DISTRICT COURT**

ORDER OF ARREST

20OFA952338

20 CR 050469

FBI NO. 573045EG3

THE STATE OF NORTH CAROLINA

V.

MICHAEL PAUL NELSON

**Judge James Grogan, Chief District Court
Judge**

Date Defendant Failed to Appear: 6 October 2020

Amount of bond: **\$50,000 CASH ONLY**

To any officer with authority and jurisdiction to
serve and Order For Arrest:

The Court finds that:

1. FTA – RELEASE ORDER [G.S. 15A-305(b)(2)]

You are DIRECTED to take the defendant into custody and bring the defendant before a judicial official for the purpose of determining conditions of release, and for commitment if the defendant is unable to comply.

s/ J. Mark Pegram

Clerk of Superior Court

Court Date: 14 October 2020 9:00 a.m.

MAGISTRATE'S ORDER

20CR050469 STATE OF NORTH CAROLINA
ROCKINGHAM COUNTY

In The General Court of Justice
District Court Division

THE STATE OF NORTH CAROLINA
V.
MICHAEL PAUL NELSON

Offense 1 M – RESISTING PUBLIC OFFICER

* * *

Offense Code(s): 15310

In Violation of G.S. : I 14-223

Date of Offense 21 February 2020

Arresting Officer: Keith Benfield,
Madison Police Department

I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because there is probable cause to believe that on or about that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did resist, delay and obstruct **K. Benfield**, a public officer holding the office of PATROL OFFICER, by FAILED TO GIVE ANY IDENTIFICATION WHEN ASKED MANY TIMES TO DO SO. At the time, the officer was discharging and attempting to discharge a duty of his office by INVESTIGATING A SUSPICIOUS VEHICLE SITTING BEHIND A HOUSE AND CHURCH.

24a.

This act was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.

Signature: s/ J L Carter, Magistrate .
Rockingham County Courthouse, WENT
170 HWY 65
Reidsville, NC 27320

Court Date: 1 April 2020
Court Time: 9:00 a.m.

AOC-CR-116, Rev. 4/14

United States Code

01 28 U.S.C. § 1251(b)(2)

* * *

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

* * *

(2) All controversies between the United States and a State;

* * *

02 28 U.S.C. § 1257

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

CODE OF FEDERAL REGULATIONS

01 28 C.F.R. § 35.160(b)

* * *

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

(2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

02 28 C.F.R. § 35.160(c)(1)

* * *

A public entity shall not require an individual with a disability to bring another individual to interpret for him or her.

* * *

NORTH CAROLINA GENERAL STATUTES

01 N.C. Gen. Stat. § 14-223(a) Resisting officers.

(a) If any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge an official duty, the person is guilty of a Class 2 misdemeanor.

02 N.C. Gen. Stat. § 7A-27(b)(3)(a) Appeals of right from the courts of the trial divisions.

* * *

(b) Except as provided in subsection (a) of this section, appeal lies of right directly to the Court of Appeals in any of the following cases:

(3) From any interlocutory order or judgment of a superior court or district court in a ***civil action*** or proceeding that does any of the following:

- a. Affects a substantial right.
- b. In effect determines the action and prevents a judgment from which an appeal might be taken.
- c. Discontinues the action.
- d. Grants or refuses a new trial.
- e. Determines a claim prosecuted under G.S. 50-19.1.
- f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly.

This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action.

* * *

03 N.C. Gen. Stat. § 15A-305(b)(2). Order for arrest.

* * *

(b) When Issued. - An order for arrest may be issued when:

* * *

(2) A defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required.

* * *

04 N.C. Gen. Stat. § 15A-901 Application of Article.

This Article applies to cases within the original jurisdiction of the superior court.

(Article 48 : Discovery in the Superior Court)

U.S. CONSTITUTIONAL AMENDMENTS

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; *to be confronted with the witnesses against him*; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any state deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the

executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

MOTIONS – NOTICES – OTHER

No. 41P23 17-A JUDICIAL DISTRICT
SUPREME COURT OF NORTH CAROLINA

MICHAEL PAUL)	
NELSON,	)	<u>ROCKINGHAM</u>
Appellant,	)	<u>COUNTY</u>
v.	)	File No.
	)	20CR50469
STATE OF NORTH)	
CAROLINA	)	COA 22-332
Appellee.)	

NOTICE OF APPEAL CONSTITUTIONAL
QUESTION N.C.G.S. §7A-30

And

PETITION FOR DISCRETIONARY REVIEW

N.C.G.S. §7A-31

TO THE HONORABLE SUPREME COURT OF
NORTH CAROLINA:

Appellant, MICHAEL PAUL NELSON
(hereafter “Appellant”), pro se, pursuant to N.C.G.S. §
7A-30 and Rule 14(b)(2) of the North Carolina Rules
of Appellate Procedure, gives Notice of Appeal of the
13 January 2023 Court of Appeal order/decision
dismissing Appellant’s Appeal, to this Court on the
grounds that this case directly involves a substantial

question arising under the Constitution of the United States.

Further, the Appellant, pursuant to N.C.G.S. § 7A-31 and Rule 15 of the North Carolina Rules of Appellate Procedure, respectfully petitions the North Carolina Supreme Court to certify for discretionary review the 13 January 2023 order/decision of the North Carolina Court of Appeals. The grounds supporting such a petition include: (1) the subject matter on appeal presents issues of significant public interest related to the rights of the disabled, (2) this action involves legal principles of major significance of the jurisprudence of the State, and (3) the Court of Appeals order/decision facilitates violations of Congressional mandates and procedures codified in the Americans With Disabilities Act (42 U.S.C. §§ 12101-12213), (“ADA”), facilitates violations of the ADA and associated regulations developed by the United States Department of Justice (DOJ) to ensure state entities do not discriminate against people with disabilities, and facilitates violations of decisions of the United State Supreme Court related to protecting the natural human rights of qualified persons with a disability. Specifically, the issues of major significance invoked by this case include:

(1) Whether a criminal defendant may seek judicial review, as an interlocutory matter, of a criminal court’s order/decision to deny a disabled defendant’s request for reasonable modifications to courtroom procedures and requests for trained auxiliary aids for communications, where such denials materially affect the disabled defendant’s access to the courts and/or his right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings;

(2) the process a public entity, including courts, must follow when addressing a qualified person with a disability request for reasonable modifications to procedures, processes, or statutes for the purposes of providing the disabled with, as close as possible, full and equal participation in services, programs, or activities provided by the public entity.

For the reasons discussed herein, this Court should certify the Court of Appeal's decision for discretionary review and/or retain this matter pursuant to the Appellant's Notice of Appeal based upon a substantial Constitutional question. A copy of the Court of Appeals decision dismissing the Appellant's appeal and a copy of the "State's Motion to Dismiss Appeal" for which the opinion is based, are attached to this petition.

PROCEDURAL HISTORY

On 21 February 2020, Blind Appellant, who has no criminal record and who was peacefully sitting in a car, peacefully refused to identify himself to a police officer requesting identification and was arrested for allegedly violating N.C.G.S. § 14-223 (Resist, Delay, or Obstruct). The magistrate jailed the Appellant overnight and set a \$2500 bond. (R p 4).

On 23 October 2020, a bench trial was held before Judge Freeman, who ruled the Appellant guilty. (R p 31).

On 28 October 2020, the Appellant filed a written notice of appeal to the Superior Court for Rockingham County, and the case was scheduled for trial for the 24 January 2022 Rockingham County Superior Court session with Superior Court Judge R. Stuart Albright presiding. (R p 36).

On 24 January 2022, the court held pretrial hearings, and Judge Albright denied the Appellant's latest requests for reasonable accommodations and modifications to courtroom policies and procedures pursuant to the Americans with Disabilities Act of 1990 ("ADA") and denied the Appellant's ADA-Based Motion to Dismiss based on such denials.

On 27 January 2022, Judge Albright filed an order titled: "ORDER TO CONTINUE CASE" (hereafter ORDER) documenting his reasons for denying the Appellant's ADA-Based requests and his denial of the Appellant's ADA-Based Motion to Dismiss. (R p 111).

On 3 February 2022, the Appellant filed a written Notice of Appeal of Judge Albright's ORDER, appealing the administrative portion (substance) of the court's order, not the form of its title. (R p 123). The Appellant submitted the ORDER was a hybrid interlocutory criminal order continuing the case and a final administrative order addressing administrative ADA issues. The Appellant's appeal was founded on the position that the ORDER violates the Appellant's fundamental natural right to equal access to the courts protected by the Fourteenth Amendment to the United States Constitution and the ADA (R p. 122).

On 6 May 2022, the State filed a motion to dismiss the Appellant's Appeal. (Attachment pp 2-7). The State contended the Court of Appeals did not have jurisdiction to hear the appeal as the ORDER was interlocutory and the case was a criminal case. Thus, the State submitted that the Appellant was required to petition the Court of Appeals for a writ of certiorari requesting a review of the ORDER, which the Appellant had not done.

On 13 January 2023, the Court of Appeals entered an order denying the Appellant's 9 May 2022 "Petition for Writ of Certiorari" and allowing the State's 6 May 2022 Motion to Dismiss Appeal. (Attachment p 1).

FACTUAL SUMMARY

A: BACKGROUND FACTS

The following background facts may be helpful in understanding procedural history. Mr. Nelson ("Appellant") is an honorably discharged military veteran and former member of the United States Army Special Forces known as the Green Berets. The Appellant has multiple disabilities stemming from injuries suffered during combat in service of his country. The Appellant's more "visible" disability is his blindness, evidenced by the use of a white cane and sunglasses. The Appellant has several disabilities which are not readily apparent and may be classified as "invisible disabilities." Some of these invisible disabilities include post-traumatic stress syndrome (P.T.S.D.), multiple traumatic brain injuries (T.B.I.), and cranial cervical instability. The T.B.I.s resulted in the Appellant's blindness and long-term memory loss. The Appellant's visual impairments further cause extreme sensitivity to light such that too much light can cause severe migraines that could render the Appellant unable to respond and communicate with others. To help compensate for such disabilities, the United States Department of Veterans Affairs (V.A.) has issued numerous prosthetic assistive devices, including video recording equipment and associated hardware/software (Appellant's "Prosthetic Eyes").

Such Prosthetic Eyes materially improve the Appellant's life, and he has grown dependent on his Prosthetic Eyes to assist him in moving around his

environment, documenting and remembering people, places, and things he encounters during his day and serves as a measure of protection/eyewitness (so to speak). For example, the Appellant can "live stream" his environment in real-time to an internet site such as YouTube and have a second party watch the video and describe the Appellant's environment to the Appellant in real-time via a cellphone conversation. Further, if the Appellant is attacked, his Prosthetic Eyes can record his attacker's image and save such image on a remote website for later identification.

B: FACTUAL SUMMARY

On Friday, 21 February 2020, the Appellant was sitting in a vehicle driven by his wife, who was parked in a church parking lot around 9:30 pm on a Friday in downtown Madison, North Carolina. Neither the Appellant nor his wife was engaged in criminal activity, and the Appellant has NO criminal history. Police Officer Benfield approached the Appellant and his wife and demanded identification claiming he suspected them of trespassing. The Appellant peacefully refused to identify himself but did offer to leave (and was leaving), and Officer Benfield arrested the Appellant for allegedly violating N.C.G.S. § 14-223 (Resist, Delay, or Obstruct, aka "RDO"). (R p 4).

The arresting officer denied the Appellant's request for an ADA coordinator during the arrest and, as a result, took the Appellant's cane and handcuffed the Appellant behind this back as if he were a flight risk and, thereby subjecting the Appellant to substantially higher risk of falling and suffering yet another head injury. When transferred to the magistrate's office Appellant's request for an ADA coordinator was denied. As a result, the Appellant was jailed overnight

and separated from all his assistive devices, including his cane, sunglasses and hat, thereby subjecting him to a substantially higher risk of falling. The jailer took the Appellant's sunglasses and subjected him to continuous bright lighting, causing him to have a migraine of such intensity that he could not communicate with the jailers, who left him lying on the floor in a jail cell naked and in pain and unable to speak.

A bench trial was scheduled for 6 October 2020. Before such a bench trial, various state agents denied the Appellant's requests pursuant to Title II of the ADA, including a request for reasonable modifications to existing courtroom policies regarding electronic recording equipment, including the use of the Appellant's Prosthetic Eyes during the trial. The appellant's requests for a trained visual interpreter were also denied. The Appellant, through his then-attorney, resubmitted such ADA requests to the court. On 27 July 2020, District Court Judge Chris Freeman denied the Appellant's ADA requests and threatened the Appellant with contempt of court should the Appellant attempt to use his assistive devices at his bench trial. On 29 September 2020, the Appellant e-mailed Judge Freeman requesting clarifications on the Appellant's ADA requests for trial and received no response. (R p 78). On 6 October 2020, the Appellant, with his Prosthetic Eyes, attempted to enter the Rockingham County Courthouse to attend his trial. Sheriff deputies refused the Appellant's entry into the courthouse and then arrested the Appellant on the courthouse steps at the order of Judge Grogan for allegedly failing to appear. (R p 19). Judge Grogan set a \$50,000 cash-only bond with the condition of house arrest, saying that IF the Appellant can make bail, he

will be released (for a misdemeanor charge that cannot result in jail time for a person with NO criminal history). (R p 21). On 7 October 2020, Judge Grogan ordered the Appellant transferred to a maximum-security prison (close custody facility) in Raleigh, North Carolina, for "safekeeping." The Appellant's pleas for an ADA coordinator at the prison were ignored, and he was held ten (10) days in the "Hole" (basically solitary confinement), where he was subjected to continuous bright lights without eye protection, causing debilitating migraines. The safekeeping order noted the Appellant's extreme sensitivity to light. The Appellant was not allowed contact with anyone from the outside (including his attorney) until his wife arranged for a loan to pay the \$50,000 in cash (R p 25 & 29).

On 23 October 2020, a bench trial was held before Judge Freeman, and the Appellant appeared without his assistive devices, depriving him of equal access to the court. Judge Freeman ruled the Appellant guilty. (R p 31). On 28 October 2020, the Appellant filed a written notice of appeal to the Superior Court for Rockingham County. Two hours after filing his Notice of Appeal, District Court Judge Freeman held an Appeal Bond Hearing and set/continued the appeal bond for \$50,000 cash with house arrest.

Over a year later, the case was finally scheduled for trial during the 24 January 2022 Rockingham County Superior Court session with Superior Court Judge R. Stuart Albright presiding. (R p 36). On 11 January 2022, the pro se Appellant asked the presiding Judge at a pretrial hearing what accommodations would be approved for the jury trial. The presiding Judge said the trial judge would address those issues. On 11 January 2022, the trial judge relayed through the trial

court coordinator that the court denied the Appellant's use of all his assistive devices. (R p 102). On 11 January 2022, the Appellant submitted another ADA request to the Rockingham County Superior Court for the upcoming trial on 24 January 2022. (R p 104). Judge Albright granted some requests but denied some essential requested accommodations. (R p 104–108). On 21 January 2022, Judge Albright again denied the pro se Appellant's ADA request for a visual interpreter and his request to use his Prosthetic Eyes to make audio and video notes during the trial. The same day, after receiving notice of said denials, the Appellant filed a Motion to Dismiss the charges in case 20 CR 50469 pursuant to N.C.G.S. §15A-954(a)(4), the Fourteenth Amendment to the United States Constitution, and the ADA. This motion was denied during the 24 January 2022 pretrial hearing. (R p 41 and 111).

On 27 January 2022, Judge Albright filed an order titled: "ORDER TO CONTINUE CASE" (hereafter "ORDER") documenting his reasons for denial of the Appellant's ADA requests for reasonable accommodations, including the denial of a visual interpreter and use of the pro se Appellant's Prosthetic Eyes during the trial and continued the trial to a future date. (R p. 118).

On 3 February 2022, the Appellant filed a Notice of Appeal of Judge Albright's ORDER contending the ORDER was a hybrid interlocutory criminal order continuing the case and a final administrative order addressing administrative ADA issues. The Appellant's appeal was founded on the proposition that the ORDER violates the Appellant's fundamental natural right to equal access to the courts protected by the Fourteenth Amendment to the United States

Constitution and the ADA (R p. 122). On 6 May 2022, the State filed a motion to dismiss the Appellant's Appeal. The State contended the Court of Appeals did not have jurisdiction to hear the appeal as the ORDER was interlocutory and the case was a criminal case. Thus, the State submitted the Appellant was required to petition the Court of Appeals for a writ of certiorari requesting a review of the ORDER, which the Appellant had not done.

On 13 January 2023, the Court of Appeals entered an order denying the Appellant's 9 May 2022 "Petition for Writ of Certiorari" and allowing the State's 6 May 2022 Motion to Dismiss Appeal.

The State's "Motion to Dismiss Appeal" and the Court of Appeals' Order are both attached to this document.

**REASONS WHY CERTIFICATION SHOULD
ISSUE**

I. THE COURT OF APPEALS' DECISION ADOPTS THE STATE'S POSITION THAT A CRIMINAL DEFENDANT THAT QUALIFIES AS A PERSON WITH A DISABILITY UNDER THE ADA HAS NO RIGHT TO SEEK JUDICIAL REVIEW OF A CRIMINAL TRIAL COURT'S PRETRIAL DENIAL OF A REASONABLE ACCOMMODATION REQUEST PURSUANT TO THE ADA, AS AN INTERLOCUTORY MATTER BEFORE THE CRIMINAL TRIAL, WHERE SUCH DENIAL AFFECTS THE CRIMINAL DEFENDANT'S FUNDAMENTAL RIGHT TO DUE PROCESS AND TO BE PRESENT AT ALL STAGES OF A TRIAL WHERE HIS ABSENCE FRUSTRATES THE FAIRNESS OF THE PROCEEDING.

The Americans with Disabilities Act of 1990 (ADA) is a federal civil rights law prohibiting discrimination against people with disabilities in everyday activities. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.” See 104 Stat. 337, 42 U. S. C. §§ 12131-12165 at § 12132. The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees a citizen’s right to court access. Indeed, the Due Process Clause and the Confrontation Clause of the Sixth Amendment, as applied to the States via the Fourteenth Amendment, both guarantee to a criminal defendant the “right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings.” *Faretta v. California*, 422 U. S. 806, 819, n. 15 (1975).

Barriers

The evidence before Congress when it enacted Title II “established that physical barriers in government buildings, including courthouses and in the courtrooms themselves, have had the effect of denying disabled people the opportunity to access vital services and to exercise fundamental rights guaranteed by the Due Process Clause.” *Lane v. Tennessee*, 315 F.3d 680 (6th Cir. 2003). Similarly, there are several communication barriers (sight, sound, language, etc.), some of which have the effect of denying a person with a communication disability the opportunity to access vital services and exercise fundamental rights. Further, communication barriers, in substance, can and do prevent a criminal

defendant from being present at all stages of a trial where such absence frustrates the fairness of the proceedings. When a court presents audio evidence at trial, are the deaf genuinely present? When the court presents video evidence at a trial, are the blind truly present at the associated proceeding to exercise fundamental rights guaranteed by the Due Process Clause? A substantial majority of human communications is visual in nature, which means a blind criminal defendant is not truly present for a substantial majority of the time in a courtroom during a criminal trial (some might argue all the time) – without some consideration. And such absence will undoubtedly frustrate the fairness of the proceedings.

Auxiliary Aids

To address such barriers, the ADA implementing regulation imposes on a public entity the duty to provide appropriate auxiliary aids. 28 C.F.R. §35.160. This section establishes the following:

A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity conducted by a public entity.

In this case, the Appellant requested to use his Prosthetic eyes to take visual and audio notes. The Appellant further requested a court-appointed trained visual interpreter and gave the court the name of a service acceptable to the Appellant (a service the Appellant had used in the same case previously). The trial judge denied both requests. Such denials left the pro se criminal defendant / Appellant blind, effectively

denying his presence at trial for at least the vast majority of the time and denying him equal access to the trial court's services.

It is the State's opinion, backed by the State's Attorney General and the Court of Appeals, by adopting the State's position, that a qualified person with a disability has no right to appeal a final NCAOC / trial court's decision, as an interlocutory matter, even where such order/decision has the effect of denying a criminal defendant equal access to the trial court and effectively prevents the criminal Defendant from being present during all aspects of a criminal trial where his absence frustrates the fairness of the trial. The Appellant respectfully submits that the proposition that Congress enacted the ADA where such final decisions would not be reviewable before a criminal trial, is not worthy of belief. The Appellant can find no language in the ADA that supports such a position. Further, equal access to the courts and the right to be present at all trial stages where his absence would frustrate the fairness of the trial are fundamental human rights. Further, such rights will effectively be lost if the associated order/decision is not immediately reviewed before the associated trial.

The Court of Appeals' adoption of the State's position ignores this critical analysis; thus, this Court should grant review to adequately address the issue.

The Administrative ADA Process

Administratively addressing ADA accommodation requests made by qualified persons with a disability is the method that Congress (via passage of the ADA) and the United States Supreme Court (via its decisions, see *Tennessee v. Lane*, 541 U.S. 509 (2004) as one example) have demanded entities, such as

courts, use to address accommodating people with disabilities. The processing of auxiliary aid requests can easily be, and often is, a function performed by court administrators rather than judges. In its enforcement of the ADA, the United States DOJ has seen courts establish system-wide administrative policies and delegate the processing of individual requests to system-wide administrators rather than individual judges.

Concerning North Carolina Courts, it seems the North Carolina Administrative Office of the Courts (NCAOC) has been given the authority to address ADA issues. Notably, all the DAC (Disability Access Coordinators) listed on the NCAOC website have administrative personnel assigned to the DAC positions for the many state courts. Judges are not listed as the DACs, presumably because ADA issues are administrative in nature and not judicial matters. The NCAOC claims that “[i]t is the policy of the [NCAOC] to make every reasonable effort to ensure that individuals with disabilities have equal access to the courts.” To such end, the NCAOC has issued a document explaining the process for addressing ADA grievances: NCAOC, “AMERICANS WITH DISABILITIES ACT POLICY AND PROCEDURE FOR GRIEVANCES” (February 21, 2020). (Attachment pp 7-9). In practice, the NCAOC’s efforts have been found wanting. After filing a grievance for a final ADMINISTRATIVE review, the document is silent on the process for obtaining judicial review of a final NCAOC decision of an ADA request for reasonable modifications related to equal access to the courts (or any decision related to the ADA). Federal lawsuits may be one method of addressing ADA denials in civil matters; however, for criminal

matters, there should be a process for addressing courtroom discrimination before it happens and before a citizen is deprived of liberty and property without due process.

The Appellant followed the NCAOC procedure for handling ADA requests. When the judge denied the Appellant's ADA request, the Appellant administratively submitted complaints with the NCAOC DAC in accordance with state policy and federal law. The presiding judge did not wait for the NCAOC DAC to complete the review process and intended to continue the criminal trial. It seems the NCAOC DAC lacks the power and authority to prevent such actions by judges, or the NCAOC DACs have become a "rubber stamp" for whatever a trial judge desires.

Whatever the reason, as it stands today, the trial court is allowed to decide if ITS policies are discriminatory under the ADA, which is clearly a conflict of interest and screams actual bias in making such a decision and, perhaps more importantly - for the interests of the judicial system at large - the appearance of bias in such decisions.

Concerning ADA accommodation requests, removing the important constitutional safeguards of judicial review of lower court decisions, which serves to protect a citizen's fundamental rights from a trial court's unbridled discretion, creates an unreasonable risk of abuse of the very rights that Congress passed the ADA to protect. Such is particularly true for disabled defendants in a criminal setting where the State wishes to take the defendants' liberty and property.

The case at bar presents this Court with a significant opportunity to further define the process for protecting the fundamental rights of the disabled criminal Defendant subject to a criminal trial. Therefore, this Court should grant review and/or certify this Notice of Appeal to properly analyze this critical issue and to better define the scope of the constitutional protections of the fundamental human rights of we the people.

CONCLUSION

For the foregoing reasons, the Appellant respectfully requests that this Court grant this Petition for Discretionary Review and/or certify this Notice of Appeal based upon a substantial Constitutional question.

ISSUES TO BE BRIEFED

In the event the Court allows this Petition for Discretionary Review and/or certifies this Notice of Appeal, the Appellant intends to present the following issue in its brief to the Court:

1. Whether a criminal defendant that qualifies as a person with a disability under the ADA has a right to seek judicial review of a criminal trial court's pretrial denial of a reasonable accommodation request pursuant to the ADA, as an interlocutory matter before the criminal trial, where such pretrial denial affects the criminal Defendant's fundamental right to be present at all stages of a trial where his absence frustrates the fairness of the proceedings; and
2. Whether a criminal defendant that qualifies as a person with a disability under the ADA has a right to seek judicial review, as an interlocutory matter, of a criminal trial court's pretrial denial of a reasonable

accommodation request pursuant to the ADA, where such pretrial denial prevents the criminal Defendant from having equal access to the criminal court due to his disability.

NOTICE OF APPEAL
(CONSTITUTIONAL QUESTION)

The Appellant incorporates by this reference the prior contents of this petition for all that is disclosed for all purposes, including for grounds in support of his appeal by right.

Appellant, pursuant to N.C.G.S. § 7A-30 and Rule 14(b)(2) of the North Carolina Rules of Appellate Procedure, gives Notice of Appeal of the 13 January 2023 Court of Appeal order dismissing Appellant's Appeal, to this Court on the grounds that this case directly involves a substantial question arising under the Constitution of the United States affecting fundamental human rights guaranteed by at least the Sixth and Fourteenth Amendments to the United States Constitution. Further, while the Appellant has already endured and will be forced to endure additional violations of his fundamental rights if the lower court's order is allowed to stand, such violations will effectively become moot (unreviewable) if the lower court's orders are not reviewed prior to the associated criminal trial.

The blind Appellant, a qualified person with a disability under the ADA, enjoys fundamental rights to equal access to a criminal court and to be present at all stages of a criminal trial where his absence frustrates the fairness of the proceedings. Such rights have been violated by the trial court's order/decision

denying the blind Appellant's requests (as a pro se Defendant):

(a) for reasonable modifications to courtroom policies/procedures to allow the pro se Blind Defendant to use his Prosthetic Eyes to take video and audio notes during his trial; and

(b) for a court-appointed trained visual interpreter to provide the pro se Blind Defendant with real-time visual information during the trial. The Court of Appeals' decision denying review of the trial court's order/decision allows the Constitutional violations to stand.

The above issues were timely raised and argued by the Appellant in the trial Court and in the Court of Appeals . The Appellant respectfully submits such issues were determined erroneously by the trial court and the Court of Appeals for the reasons stated herein.

Respectfully submitted, this the 25th day of January 2021.

/s/ Michael Paul Nelson, Pro Se

NO. 41P23 SEVENTEEN-A DISTRICT

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH)	
CAROLINA)	
	)	From
v.	)	Rockingham
)	
MICHAEL PAUL NELSON)	

STATE'S RESPONSE TO PETITIONER'S
PETITION FOR DISCRETIONARY REVIEW
AND
MOTION TO DISMISS PETITIONER'S NOTICE
OF APPEAL

FACTUAL AND PROCEDURAL HISTORY

1. On 21 February 2020, police arrested Michael Paul Nelson ("Petitioner") for resisting an officer. (R pp. 4-5).

2. Petitioner, who is visually impaired, through counsel, filed a request for reasonable accommodations, pursuant to the Americans with Disabilities Act ("ADA"). (R pp. 6-8). Petitioner asked to bring in a series of equipment, including video and audio recording devices. (R pp. 6-8). The court granted the motion in large part, only denying Petitioner's request to bring in recording equipment as such

devices “would fundamentally alter the nature of the court’s proceedings.” (R pp. 9-10, 11).

3. Petitioner pro se filed a new request for reasonable accommodations on 2 September 2020, asking to appear remotely during trial. (R p. 15). The district court denied the request. (R pp. 16-18). However, the district court “agreed to have a special setting” for Petitioner wherein his case would be the only case on the docket and the courtroom would only contain the strictly necessary individuals. (R p. 17).

4. On 23 October 2020, following a bench trial, the court found Petitioner guilty and imposed a suspended sentence of 15 days’ imprisonment. (R pp. 31-32). Four days later, Petitioner tendered notice of de novo appeal to the superior court. (R p. 35).

5. On 11 January 2022, Petitioner fired his attorney. (R p. 41). Petitioner thereafter filed a motion to dismiss, based on alleged violations of the ADA. (R pp. 41-61).

6. On 24 January 2022, the court held a hearing and found that Petitioner “waived his right to all counsel” and permitted Petitioner, at his request, “to proceed pro se.” (R p. 112). The court permitted Petitioner, with his personal assistant, “to have access to all of the State’s evidence” and granted Petitioner some recording devices, so long as they were not used to record testimony, any part of the trial, or the courtroom itself. (R p. 115). The court also provided Petitioner with audio recordings of the court’s events, every day, twice a day. (R p. 115). The court, however, did not grant Petitioner’s request for a “certified

visual interpreter”—as such a position does not exist—or the ability to video record the proceedings. (R p. 115). The court also denied Petitioner’s motion to dismiss and disposed of numerous other pretrial motions. (R pp. 116-17).

7. This matter came for additional pretrial motions on 25 January 2022. (R p. 118). However, before it could begin, the court became aware that Petitioner’s personal aid had tested positive for COVID-19. (R p. 118). Petitioner refused to take a free rapid test to determine whether he had COVID-19 and refused to reveal his vaccination status. (R p. 118). Given this, the court continued the case “to protect the health, safety, and well-being of the other participants in this case.” (R p. 118).

8. On 3 February 2022, Petitioner tendered a notice of appeal as to the denial of his motion to dismiss. (R p. 122).

9. On 6 May 2022, the State filed a motion to dismiss the appeal as interlocutory. (See the Court of Appeals’ docket in No. COA22-332). In response, Petitioner contended the relevant order was immediately appealable or, in the alternative, asked the Court of Appeals to grant certiorari to review the issue. (See the Court of Appeals’ docket in No. COA22-332).

10. Following briefing, the Court of Appeals granted the State’s motion to dismiss the appeal and denied Petitioner’s petition for a writ of certiorari on 13 January 2023. (Pet. App’x at 1).

11. The present petition and notice followed on 25 January 2023. (See this Court's docket in this case).

REASONS WHY THIS COURT SHOULD DENY
PETITIONER'S PETITION FOR DISCRETIONARY
REVIEW AND DISMISS PETITIONER'S NOTICE
OF APPEAL

Petitioner here petitions this Court for discretionary review and, in the alternative, for certification of a notice of appeal as to a "substantial constitutional question." (See generally Pet.). As a point of clarification, under either argument, the question before this Court is whether the Court of Appeals legally erred, not whether the trial court erred. See N.C.G.S. §§ 7A-30; 7A-31 (stating that "the Supreme Court reviews the decision of the Court of Appeals" under a petition for discretionary review). With this posture in mind, Petitioner's arguments are meritless.

I. THE COURT OF APPEALS DID NOT
ABUSE ITS DISCRETION IN DENYING
PETITIONER'S PETITION FOR WRIT OF
CERTIORARI.

A criminal defendant's right to appeal is purely a creation of state statutes. State v. Berryman, 360 N.C. 209, 214, 624 S.E.2d 350, 354 (2006). And such statutes only grant an appeal when "there [is] a

conviction or a guilty plea amounting to a final judgment.” See State v. Pledger, 257 N.C. 634, 638, 127 S.E.2d 337, 340 (1962). Otherwise, the appeal is interlocutory in nature. See State v. Doss, 268 N.C. App. 547, 549-50, 836 S.E.2d 856, 857-58 (2019).

And unlike civil interlocutory appeals, which can be immediately appealed in certain circumstances, see N.C.G.S. § 7A-27(b)(3) (2023), “[i]nterlocutory criminal appeals are reviewable [only] . . . in the event that the defendant files a petition for writ of certiorari,” Doss 268 N.C. at 550, 836 S.E.2d at 858. Accordingly, without certiorari, the Court of Appeals lacked jurisdiction in this case. See Pledger, 257 N.C. at 638, 127 S.E.2d at 340. Given this jurisdictional limitation, Petitioner here must first challenge the Court of Appeals’ denial of his petition for a writ of certiorari before discussing the merits.

Certiorari is a “discretionary writ, to be issued only for good and sufficient cause shown.” State v. Grundler, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (emphasis added). As such, this Court reviews the Court of Appeals’ issuance of certiorari or lack thereof under an abuse of discretion standard. See State v. Ricks, 378 N.C. 737, 740, 862 S.E.2d 835, 838 (2021) (“We review the Court of Appeals’ decision to allow a petition for writ of certiorari . . . for an abuse of discretion.”). And an abuse of discretion only “occurs when a ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” State v. Maness, 363 N.C. 261,

279, 677 S.E.2d 796, 808 (2009) (citation and quotation marks omitted). Petitioner has failed to meet this exacting burden.

As a preliminary point, Petitioner only argues here that the trial court violated the ADA. (See generally Pet.). But this argument misses the actual issue. At the Court of Appeals, Petitioner only argued that the trial court erred when denying his motion to dismiss the criminal charges. (See Appellant's Br. at 23 in case no. COA22-332).¹

¹ Petitioner also, albeit briefly, argued below that the trial court's denial order did not contain sufficient findings of fact, citing to N.C.G.S. § 15A-977 (2023). (See Appellant's Br. at 12 in case no. COA22-332). However, § 15A-977 only relates to orders disposing of motions to suppress and is thus irrelevant here. See N.C.G.S. § 15A-977 (2023).

Petitioner did not contend below that he was entitled to an interlocutory appeal directly as to the ADA claims themselves. Accordingly, the issue actually before this Court is whether the Court of Appeals abused its discretion in not permitting Petitioner to obtain an interlocutory appeal as to the denial of his motion to dismiss. See N.C.G.S. § 7A-31 (stating that "the Supreme Court reviews the decision of the Court of Appeals" under a petition for discretionary review); Ricks, 378 N.C. at 740, 862 S.E.2d at 838 ("We review the Court of Appeals' decision to allow a petition for writ of certiorari . . . for an abuse of discretion."). And it did not.

Under N.C.G.S. § 15A-954(a), motions to dismiss may only be granted upon a showing of “flagrant constitutional violations” and “irreparable prejudice.” N.C.G.S. § 15A-954(a) (emphasis added); see State v. Allen, 222 N.C. App. 707, 720, 731 S.E.2d 510, 519 (2012). The ADA, however, is a statutory mandate, not a constitutional one. As such, the Court of Appeals did not err—much less abuse its discretion—here. See Allen, 222 N.C. App. at 720, 731 S.E.2d at 519 (noting that only constitutional violations can support such a motion to dismiss); see also Ricks, 378 N.C. at 740, 862 S.E.2d at 838 (noting that certiorari decisions are reviewed for abuse of discretion and that a successful petition for certiorari must show merit). Accordingly, this Court should deny the present petition. See N.C.G.S. § 7A-31 (2023).

II. PETITIONER HAS FAILED TO SHOW A “SUBSTANTIAL CONSTITUTIONAL QUESTION.”

Pursuant to N.C.G.S. § 7A-30(1), a party has an appeal of right to this Court from the Court of Appeals when the decision below “directly involves a substantial question arising under the Constitution of the United States or of this State.” N.C.G.S. § 7A-30(1). Subsequent precedent established that to qualify for such an appeal, the litigant must “[a]llege and show the involvement of [a substantial constitutional] question or suffer dismissal.” State v.

Colson, 274 N.C. 295, 305, 163 S.E.2d 376, 383 (1968). However, “[t]he question must be real and substantial rather than superficial and frivolous.” Id. “Mere mouthing of constitutional phrases like ‘due process of law’ and ‘equal protection of the law’ will not avoid dismissal.” Id.

The present petition does not satisfy the Colson standard. Petitioner here baldly asserts that this case “involves a substantial question arising under the Constitution of the United States affecting fundamental human rights guaranteed by at least the Sixth and Fourteenth Amendments to the United States Constitution.” (Pet. at 18). Petitioner further asserts that the trial court below violated his rights under the ADA.³ (See generally Pet.). But critically, the ADA is not a constitutional mandate or requirement. As such, Petitioner here is “mere[ly] mouthing [the] constitutional phrases [of] ‘due process of law’ and ‘equal protection of the law’” Colson, 274 N.C. at 305, 163 S.E.2d at 383. Accordingly, this Court should dismiss the notice of appeal. See Id.⁴

³ As with above, Petitioner’s argument misses the issue. Again, Petitioner only asked the Court of Appeals to review the trial court’s denial of his motion to dismiss based on alleged violations of the ADA, not directly rule on whether the trial court violated the ADA. (See Appellant’s Br. in case no. COA22-332). But even embracing the broader ADA argument, it still fails the Colson standard.

⁴ Petitioner additionally argues that immediate review is necessary, as waiting until after trial would “moot” the alleged issue. (Pet. at 18). This argument is misplaced. If a defendant is tried without due process, he can clearly seek appellate review upon entry of final judgment. See, e.g., *State v. Brown*, 306 N.C. 151, 164-65, 293 S.E.2d 569, 578-79 (1982) (reviewing the merits of a defendant’s claim that he was tried without due process). Or, put another way, such a defendant’s claim would not be moot following judgment. See, e.g., *Id.*

CONCLUSION

WHEREFORE, for the aforementioned reasons, the State of North Carolina respectfully requests this Court deny the present petition and dismiss the present notice of appeal.

Electronically submitted this the 7th day of February 2023.

JOSHUA H. STEIN
ATTORNEY GENERAL

Electronically Submitted
Caden William Hayes
Assistant Attorney General

59a

North Carolina Department of Justice
Post Office Box 629
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919-716-6500
State Bar No. 54845
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No. 41P23 District 17A
NORTH CAROLINA SUPREME COURT

STATE OF NORTH)	
CAROLINA)	From
	)	Rockingham County
vs.)	
	)	File No.
MICHAEL PAUL	)	20 CR 50469
NELSON,)	
Petitioner)	

PETITIONER
 REPLY BRIEF

NOW COMES the Petitioner, pro se, and submits his reply to the State's Response (dated: 7 February 2023) to Petitioner's petition for discretionary review and Notice of Appeal in the above-identified case.

State's Motive

Initially, Petitioner admits he is perplexed as to why the State would oppose the Petitioner's petition in this case.

What does the Petitioner stand to "win" should the Supreme Court agree that Petitioner has identified an issue of sufficient importance to merit the Supreme Court investing some of its valuable time to consider? The *pro se* BLIND Petitioner stands to win the right to defend himself at his criminal trial using his VA-issued prosthetic assistive devices (his "Prosthetic Eyes). The Petitioner will also win in that

should the Supreme Court consider the issue and agree with Petitioner, the Supreme Court's decision should become a precedent that will expand the moral enlightenment of the North Carolina legal system, making it easier for similarly situated disabled Americans to assert their natural human rights with regard to equal access to the courts. The State wins and the Petitioner wins.

DECEPTIONS

The Petitioner submits that the State's and Attorney General's Office response submits statements of the FACTUAL AND PROCEDURAL HISTORY that paint a misleading and inaccurate picture of what happened below. One in particular, the Blind Petitioner, sees a need to respond. In paragraph 7, the State submits:

This matter came for additional pretrial motions on 25 January 2022. (R p. 118). However, before it could begin, the court became aware that Petitioner's personal aid had tested positive for COVID-19. (R p. 118).

Petitioner refused to take a free rapid test to determine whether he had COVID-19 and refused to reveal his vaccination status. (R p. 118). Given this the court continued the case "***to protect the health, safety, and well-being*** of the other participants in this case." (R p. 118). (emphasis added).

The picture the above "facts" implicitly paint is one of the Petitioner unreasonably and willingly having no

problem with risking the safety of other participants at the courthouse on 25 January 2022. However, the trial court stepped up and saved the day by continuing the case.

What the State and Attorney General fail to mention is that on 19 January 2022, the Assistant District Attorney (Matthew Cockman) prosecuting the case filed a motion to continue the case (see Attachment) because:

. . . the assigned Assistant District Attorney subsequently tested positive for COVID-19 on January 17, 2022, and is currently under quarantine for a minimum of 5 additional days.

During the pretrial hearing on 24 January 2022, Mr. Cockman was still showing signs (still symptomatic) of a COVID-19 infection. Restated, Mr. Cockman had been or was COVID-19 positive and showing signs of a COVID-19 infection (e.g., coughing and sounding sick). On 24 January 2022, the judge ordered Mr. Cockman, the Blind Petitioner and his “personal aid” to go into a room adjacent to the courtroom and **watch** over 2 hours of video evidence. During such time, Mr. Cockman, the Blind Petitioner and his personal aid were in close proximity with each other. Later the same day, Petitioner’s personal aid tested positive for COVID-19 and could not attend the 25 January 2022 pretrial hearing. In full compliance with the courthouse policy, on the morning of 25 January 2022, the Blind Petitioner informed security that he was exposed to someone who was COVID-19 positive (the

prosecutor) as he had spent hours in the same room with the COVID-19-positive and symptomatic prosecutor. The Petitioner submits he was no more an infection threat “to the other participants in this case” than was the prosecutor, Mr. Cockman, who, upon information and belief, was already in the courtroom and waiting.

The Petitioner submits the picture painted by a more complete set of facts is a materially different picture of the Petitioner than the picture painted by the abbreviated facts presented to this Court by the State and Attorney General’s Office. Petitioner also has similar problems with the facts the State and Attorney General’s Office present in paragraphs 2, 3, 5, and 6 that will not be addressed here.

Petitioner’s Petition

The State submits that the Supreme Court should deny the Petitioner’s petition for discretionary review and Notice of Appeal on the grounds that the issues to be considered should regard whether the Court of Appeals legally erred, not the trial court. Basically, the State and Attorney General submit that Petitioner’s issues are not presented properly, and thus, the petition should be dismissed. The State and AG submit:

Under N.C.G.S. § 15A-954(a), motions to dismiss may only be granted upon a showing of “flagrant constitutional violations” and “irreparable prejudice.” N.C.G.S. § 15A-954(a). (emphasis added); see *State v. Allen*, 222 N.C. App.

707, 720, 731 S.E.2d 510, 519 (2012).

The ADA, however, is a statutory mandate, not a constitutional one.

The Petitioner submits that he has framed the issues properly, and such issues do present at least a substantial constitutional question. The Petitioner did not wish to submit his Brief in the Notice of Appeal so his Notice of Appeal is thinly supported. Thus, the Petitioner will now go into more detail here for the benefit of the State and the Attorney General.

That the ADA is a statutory mandate is clearly noted in the Petitioner's briefs and at the trial court level. The Petitioner has consistently submitted that all humans, including the disabled, have a natural human right to equal access to the courts. For the disabled, the Petitioner has consistently noted that such a human right is "protected by the *Fourteenth Amendment* and the *ADA*." The Due Process Clause requires the States to afford certain *civil* litigants a "meaningful opportunity to be heard" by removing obstacles to their full participation in judicial proceedings. Boddie v. Connecticut, 401 U. S.371, 379 (1971).

With regard to the ADA and criminal trials, a little background is needed. A State agent (i.e., a police officer) approached the Blind Petitioner (an honorably discharged disabled veteran who has no criminal history) while he was sitting in a vehicle doing nothing except peacefully refusing to provide his identification to the police officer. Such a request for identification triggered at least Fourth Amendment protections,

which the Blind Petitioner claims were violated when he was arrested for the same, making the arrest unlawful. The State then demanded the *pro se* Blind Petitioner appear in a criminal court and defend his lawful actions in a criminal court which triggered at least the 14 Amendment's due process clause protections. Further, because Congress had determined that unequal treatment of disabled persons in the administration of judicial services has a long history in this country, it enacted Title II of the ADA as the tool for forcing courts to comply with Fourteenth Amendment protections. Tennessee v. Lane, 541 U.S. 509 (2004). For such reasons, the United States Supreme Court concluded that Title II, as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' §5 authority to enforce the guarantees of the Fourteenth Amendment. Id. Thus, the Petitioner submits that a violation of the ADA with regard to equal access to the courts is necessarily a violation of the protections embodied in the Fourteenth Amendment to the United States Constitution.

THE ADA PROCESS

As described in the Petitioner's petition, the relevant issues regard the process the trial courts must employ to implement the ADA. The ADA requires the entity denying an ADA accommodation request to prove/demonstrate how allowing an ADA accommodation request would fundamentally alter the service or program or how allowing an ADA accommodation request would result in undue financial and administrative burdens. Such a duty to accommodate is perfectly consistent with the well-established due process principle that "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard" in its courts. Boddie v. Connecticut, 401 U. S.371, 379 (1971). The Petitioner submits whatever "prove or demonstrate" means, at a minimum, it requires an entity denying an ADA accommodation request to do more than identify a significant interest in the abstract. It must **demonstrate** the harm or risk of harm identified as supporting a denial is substantial and real, not merely conjectural, symbolic, or theatrical. Such a determination requires a government agent, such as a trial court judge in this case, to evaluate a disabled party's request for the court to make reasonable modifications to one or more court procedures to give the disabled party equal access to the court. Such a determination necessarily occurs **before** a criminal trial. In this case, such a determination was made pursuant to an NCAOC process before the Blind Petitioner's criminal trial.

It is the State's opinion, backed by the State's Attorney General and the Court of Appeals, by adopting the State's position, that a qualified person with a disability has no right to appeal or seek review of an NCAOC final pretrial decision (made by the criminal trial court judge) as an interlocutory matter, even where such pretrial order/decision has the effect of denying a disabled criminal defendant equal access to the trial court and effectively prevents the criminal defendant from being present during all aspects of a criminal trial where his absence frustrates the fairness of the trial. The Petitioner respectfully submits that the proposition that Congress enacted the ADA, where such final decisions would not be reviewable before a criminal trial, is not worthy of belief. The Petitioner can find no language in the ADA that supports such a position. As it stands in North Carolina criminal courts today, a trial judge has unbridled discretion to deny a disabled Defendant's requests for reasonable modifications to courtroom procedures to give the disabled Defendant equal access to the court. Further, equal access to the courts and the right to be present at all trial stages where his absence would frustrate the fairness of the trial are fundamental human rights protected by the United States Constitution. The Petitioner submits that government agent's decisions affecting a citizen's fundamental human rights should not be subject to one person's unbridled discretion, and thus, a review of such a final decision should be available even as an interlocutory matter in a criminal trial as an

ADMINISTRATIVE issue. Such a review does not need to slow down the criminal process, as the ADA request and associated decision could be made well before the trial date, not the week of the criminal trial date, as often happens today.

By certifying Petitioner's petition, the Supreme Court will have an opportunity to correct a logistical oversight in the process of implementing ADA accommodation requests for disabled citizens subject to a criminal trial. The Petitioner respectfully submits that such issues present a substantial constitutional question and are precisely the kind of issues that allow the wisdom and fundamental fairness of the Supreme Court to shine its brightest.

Respectfully submitted on this 13th Day of February 2023.

s/ Michael Paul Nelson

Michael Paul Nelson

Petitioner, Pro Se

NORTH CAROLINA
 ROCKINGHAM COUNTY
 IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 FILE No. 20 CR 50469

STATE OF NORTH)	
CAROLINA	)	NOTICE OF
- v -	)	APPEAL
MICHAEL PAUL NELSON,)	
Defendant.)	

NOW COMES Defendant, pro se, in the above-captioned action pursuant to North Carolina Rules of Appellate Procedure 4(a) and (b), and N.C. Gen. Stat. §15A-1448(b), and respectfully gives notice of appeal to the North Carolina Court of Appeals, from a combination unwritten bench order, stated in open court on 24 January 2022, and written order (filed on 27 January 2022), denying Defendant's Motion to Dismiss but captioned as "ORDER TO CONTINUE CASE," where such order combination affects a substantial right.

In further support of this Notice of Appeal, Defendant shows unto the Court that the above-referenced Motion to Dismiss was heard and denied on 24 January 2022.

This the 3rd day of February, 2022.

/s Michael Nelson

Pro Se Defendant

insightisfree@gmail.com

Americans with Disabilities Act Policy and Procedure for Grievances

It is the policy of the North Carolina Administrative Office of the Courts (NCAOC) to make every reasonable effort to ensure that individuals with disabilities have equal access to the courts.

The NCAOC has a procedure to resolve complaints alleging action by the Judicial Branch that would be prohibited by federal regulations contained in Title II of the Americans with Disabilities Act (ADA). Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

Step 1. Request for Accommodation

An individual with a disability who needs an accommodation should make the request for an accommodation by contacting the appropriate court official or responsible employee. In any matter relating to trial court proceedings, the Office of the Clerk of Superior Court in the relevant county can help an individual with a disability identify the appropriate court official or responsible employee. In addition, the NCAOC’s Disability Access Coordinator may be contacted for assistance in any matter, including help in identifying the responsible employee to contact for any court office or program.

Step 2. Assistance and Review by the NCAOC’s Disability Access Coordinator

Prior to filing a grievance requesting final administrative review under Step 3, an individual must have requested assistance from or presented his or her complaint, orally or in writing, to the:

Administrative Office of the Courts
Court Programs Division
Attn: NCAOC's Disability Access Coordinator
P.O. Box 2448
Raleigh, NC 27602
T 919-890-1200

The NCAOC's Disability Access Coordinator will, as appropriate, conduct an independent investigation and attempt to provide the assistance requested or resolve the complaint. If the complaint is not resolved, then an individual can file a grievance under Step 3.

Step 3. Filing Grievance for Final Administrative Review

Individuals may obtain final administrative review of a grievance against the Judicial Branch under the ADA by mailing or delivering a written complaint to:

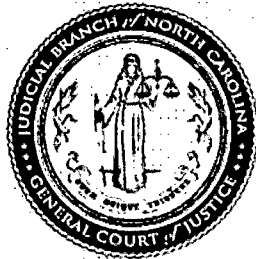
Administrative Office of the Courts
Attn: Deputy Director, Court Programs
Mailing: P.O. Box 2448, Raleigh, NC 27602
Physical: 901 Corporate Center Drive, Raleigh,
NC 27607

If necessary due to the nature of an individual's disability, the complaint may be presented by reasonable means other than writing. To make

arrangements for this purpose, contact the Court Programs Division at 919-890-1200.

The complaint shall contain the name, address, and phone number of the individual filing it and the nature of the complaint, previous denials of requested accommodation, and alleged violations (if any) of the regulations.

Requests for final review must be made within thirty (30) days after receiving notification under Step 2 that the matter has been concluded. Upon timely receipt of a request for review, the Deputy Director has an additional thirty (30) days to respond and this constitutes the final agency decision of the NCAOC.



THIS IS AN IMPORTANT RECORD
 CERTIFICATE OF RELEASE OR DISCHARGE
 FROM ACTIVE DUTY

1	NAME	NELSON, MICHAEL PAUL
2	DEPARTMENT, COMPONENT AND BRANCH	ARMY / RA
4a	GRADE, RATE OR RANK	SFC
4b	PAY GRADE	E07
5	DATE OF BIRTH	19831115
6	RESERVE OBLIGATION TERMINATION DATE	00000000
7a	PLACE OF ENTRY	CHARLOTTE, NC
7b	HOME OF RECORD AT TIME OF ENTRY	2146 RIVERMEADE DRIVE, HIGH POINT, N.C. 27265
8a	LAST DUTY ASSIGNMENT	030005SFCO B ABN SF SP
8b	STATION WHERE SEPARATED	FORT CAMPBELL TC, KY 42223

9	COMMAND TO WHICH TRANSFERRED	N/A
10	SGLI COVERAGE	
11	PRIMARY SPECIALTY	
	18D40 SF MEDICAL SERGEANT 5 YRS 11 MOS 11C30 INDIRECT FIRE INFANTRY 10 Y 7 MOS	
12	RECORD OF SERVICE	
	a. DATE ENTERED	2002-08-15
	b. SEP DATE	2013-06-24
	c. NET ACTIVE	10-Y 10-M 10-D
	d. TOTAL PRIOR ACTIVE	0
	e. TOTAL PRIOR INACTIVE	0
	f. FOREIGN SERV	2-Y 11-M 22-D
	g. SEA SERVICE	0
	h. INITIAL TRAIN	0-Y 3-M 17-D
	i. EFF. DATE. PAY	2011-06-01
13	DECORATIONS, MEDATLS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARD OR AUTHORIZED	

**AFGHANISTAN CAMPAIGN MEDAL W/
CAMPAIGN STAR**

**IRAQ CAMPAIGN MEDAL W/ TWO
CAMPAIGN STARS**

BRONZE STAR MEDAL (2ND AWARD)

**ARMY COMMENDATION MEDAL W/ V
DEVICE**

**ARMY ACHIEVEMENT MEDAL (3RD
AWARD)**

**ARMY GOOD CONDUCT METAL (3RD
AWARD)**

**NATIONAL DEFENSE SERVICE
MEDAL**

**GLOBAL WAR ON TERRORISM
EXPEDITIONARY MEDAL**

**GLOBAL WAR ON TERRORISM
SERVICE MEDAL**

**NON COMMISSIONED OFFICER
PROFESSIONAL DEVELOPMENT
RIBBON (3RD AWARD)**

ARMY SERVICE RIBBON

**OVERSEAS SERVICE RIBBON (3RD
AWARD)**

NATO MEDAL

COMBAT INFANTRYMAN BADGE

SPECIAL FORCES TAB

**BASIC MILITARY FREEFALL
PARACHUTIST BADGE**

	PARACHUTIST BADGE ADVANCED URBAN COMBAT COURSE SPECIAL FORCES MEDICAL SERGEANT 60 COMBAT MEDICAL SKILLS SUSTAINMENT COURSE IMMEDIATE REENLISTMENTS THIS PERIOD 20070925 20130624 PERIOD OF DELAYED ENTRY PROGRAM: 20020126-20020814 SERVICE IN IRAQ 20030403-20040329 SERVICE IN AFGHANISTAN 20120108- 20121003
14	MILITARY EDUCATION
	ADVANCED CARDIAC LIFE SUPPORT COURSE, 3 WEEKS, 2006 ADVANCED LEADER CURSE (ALC), 2 WEEKS, 2008 COMBAT LIFE SAVER COURSE, 1 WEEK, 2004

	EMERGENCY MEDICAL TECHNICIAN – AMBULANCE COURSE, 3 WEEKS, 2006 SENIOR LEADER COURSE (SLC), 3 WEEKS, 2011 SPECIAL FORCES SURVIVAL, EVASION, RESISTANCE AND ESCAPE (SERE) (HIGH RISK) COURSE	
15a	COMMISSIONED THROUGH SERVICE ACADEMY	YES
15b	COMMISSIONED THROUGH ROTC SCHOLARSHIP	YES
15c	ENLISTED UNDER LOAN REPAYMENT PROGRAM	YES
16	DAYS ACCRUED LEAVE PAID	0
17	MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION	NO
19a	MAILING ADDRESS AFTER SEPARATION	3824-E COTSWOLD AVENUE, GREENSBORO, NC 24741

19b	NEAREST RELATIVE	CHRISTINA NELSON
21	MEMBER SIGNATURE	NELSON, MICHAEL PAUL 1093766136
21b	DATE	20130130
22a	OFFICIAL AUTHORIZED TO SIGN	FAULKNER, THEODORE WAREN, GS11, CHIEF TRANSITION
22b	DATE	20130107
23	TYPE OF SEPARATION	DISCHARGE
24	CHARACTER OF SERVICE	HONORABLE
25	SEPARATION AUTHORITY	AR 635-200, CHAP 4
26	SEPARATION CODE	KBK
27	REENTRY CODE	1
28	NARRATIVE REASON FOR SEPARATION	COMPLETION OF REQUIRED ACTIVE SERVICE

79a

29	DATES OF TIME LOST DURING THIS PERIOD	0
30	MEMBER REQUEST COPY 4	MPN

DD FORM 214C, AUG 2009



DEPARTMENT OF VETERANS AFFAIRS
Gulf Coast Veterans Health Care System 400
Veterans Avenue
Biloxi, MS 39531

20 May 2022

To whom it may concern:

This provider is writing this letter as requested by Mr. Michael P. Nelson. This Veteran is currently engaged in psychotherapy services with this provider through the Blind Rehabilitation Center Biloxi, MS, VA Medical Center. This provider has been working with Mr. Nelson since he was referred for treatment in February of this year (2022). Prior to our meeting, Mr. Nelson was previously diagnosed with Post-Traumatic Stress Disorder (PTSD) with Depressive Features and Traumatic Brain Injury with Cognitive Deficits. These injuries are a direct result from the Veteran's military/combat experiences.

Mr. Nelson was referred to treatment for symptoms and issues related to Legal Abuse Syndrome. I concur fully, that Mr. Nelson suffers from this disorder. In the historical sense, legal abuse often refers to unfair or improper legal action initiated with selfish or malicious intentions. Mental health providers have found that psychiatric injury can result from, or be caused by, legal authorities failing to uphold their responsibilities to provide a fair venue for justice. This syndrome is often characterized as

being a form of PTSD. Similar treatment models can be used for both combat-related PTSD and Legal Abuse Syndrome. However, due to the ongoing nature of the trauma associated with this disorder, individuals are consistently re-traumatized by their involvement in the legal system. This makes the trauma, and the symptoms resulting from the trauma, more deeply entrenched and more difficult to treat. In essence, the trauma he is currently suffering at the hands of the legal system is exacerbating his already significant symptoms. This trauma continues to happen on a daily basis because his current legal situation remains unresolved. Until the situation resolves, the Veteran will be subject to continued and continual anxiety-provoking triggers. In my professional opinion, this is causing irreparable damage to Mr. Nelson.

Mr. Nelson experiences traumatic stress reactions related to his trauma throughout a typical month. Mr. Nelson's reported symptoms of PTSD include: poor sleep/nightmares, withdrawal from others, emotional numbing, irritability, avoidance of crowded areas, flashbacks, and hypervigilance. The Veteran reports a history of panic attacks/symptoms caused by hypervigilance. Mr. Nelson says he consistently feels "numb ", while also frequently feeling "on guard" and "on edge". He reported difficulties in multiple interpersonal relationships as a result of his symptoms. In particular, it is a marked challenge for him to trust others and to "get close to" others.

He is challenged by re-experiencing of his trauma as manifested by intrusive thoughts, recollections, and memories. The Veteran engages in avoidance of stimuli associated with his traumatic experience or stimuli that are associated with the activation of

traumatic stress reactions and social withdrawal. Because he is acting as his own legal counsel, Mr. Nelson will have to try to cope with intrusions on his mental and emotional functioning. Co-occurring with, and related to his symptoms of traumatic stress, he also experiences episodes of notable sad mood.

In reviewing Mr. Nelson's records, these records indicate that the Veteran suffered multiple head/brain injuries while in the military. Follow-up assessments related to his cognitive-functioning have shown that the Veteran has deficits in areas related to his working memory, abstraction, vigilance and delayed recognition and recall.

As previously mentioned, Mr. Nelson also suffers from noted depressive symptoms that limit his abilities to interact with others on a daily basis and prevent him from being reliably productive on a day-to-day basis.

Taken as a whole, these symptoms are significantly impairing across multiple domains of functioning. As a result of these symptoms, Mr. Nelson experiences constraint of his quality of life and overall sense of well-being. This provider believes that the Veteran's current symptoms are severely disabling and are worsening over time. Additionally, he has been trying to cope with mental/emotional health adjustment issues resulting from his vision loss and this will also contribute to limitations in the Veteran's emotional functioning.

Through concerted effort, Mr. Nelson has been able to draw on his individual strengths and emotional reserves to cope with his circumstances. In general, he appears to be a very intelligent and resourceful individual. Additionally, through his military

training, the Veteran was exposed to stress inoculation exercises. During this training, he received extensive instruction and training that bolstered his resiliency and abilities to function under adverse conditions. This has likely produced a hormetic effect where Mr. Nelson does not seem to be as negatively impacted as others might appear in similar circumstances.

Even though Mr. Nelson is currently able to cope with his situation, this does not take away from the apparent fact that he has been traumatized by the legal system as a whole as well as by several members in the profession. He has incurred trauma through the actions and inactions of members of this same system. This trauma is real and he has been forced to deal with it through no fault of his own. The undue stress from his circumstances is a weight he should not have to carry.

It is this provider's opinion that the Veteran will require consistent outpatient follow-up for the foreseeable future to address his symptoms. Mr. Nelson should be encouraged to live an active lifestyle, but additional undue stress may only exacerbate his already prominent symptoms. Anything that can be done to alleviate Mr. Nelson's anxiety resulting from his current circumstances is anticipated and appreciated.

Thank you for your time.

With best regards,

s/ Desmon C. Mitchell, Ph.D.
Licensed Clinical Psychologist
Blind Rehabilitation Services

84a

Biloxi VA Medical Center
Biloxi, MS 39531
228-385-6702

