

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

PETITION AND ORDER FOR
DISPOSITION OF BIOLOGICAL EVIDENCE

G.S. 15A-268

NOTE TO PETITIONER: Upon completion of this petition, deliver to the District Attorney to schedule a hearing on the petition. Upon receipt from the District Attorney's office with the hearing scheduled, complete the Certificate of Service on Side Two, serve copies on the appropriate parties, and file the original petition with the Clerk of Superior Court.

PETITION

The undersigned custodial agency (Petitioner), currently in custody of biological evidence collected in the course of investigation or introduced at trial of the above-captioned proceeding, requests of the Court, pursuant to G.S. 15A-268(d), an order authorizing disposition of said evidence prior to the Disposition Date(s) below, and in support of the petition shows that:

1. The defendant was convicted in the above-captioned proceeding(s) of the offense(s) listed below.

Table with 9 columns: File No.(s), Off., Offense Description, G.S. No., Offense Date, Conviction Date, Plea, F/M, Class

2. Petitioner has custody of the following items of evidence which, based on the offense(s) of conviction listed above and pursuant to G.S. 15A-268(a6), Petitioner must retain until the Disposition Date(s) shown below.

Table with 6 columns: Exhibit No., Description And Notes, If Applicable, Collected (check), Offered (check), Admitted (check), Disposition Date

See additional exhibit list, attached.

3. Petitioner gave notice of its intent to dispose of the above-listed evidence prior to the Disposition Date(s) above to the District Attorney on (date) _____.

4. On (date) _____, the District Attorney delivered a copy of Petitioner's notice by first-class mail to the Office of Indigent Defense Services [] and to Defendant's counsel (name) _____.

5. The District Attorney served a copy of Petitioner's notice on the defendant on (date) _____
a. by delivery to the superintendent of the correctional institution where the defendant was incarcerated as of the date of the notice, who certified that personal delivery to the defendant was effected on (date) _____.
b. by first-class mail to Defendant's last known address.

6. Petitioner has received a request for preservation of the evidence, a copy of which is attached, but the request failed to comply with G.S. 15A-268(b)(3)d. in that

- a. it failed to cite a valid reason for retention under G.S. 15A-268(b)(3)d.
b. the cited reason for retention was inaccurate because it asserted that the
- above-captioned case(s) is on appeal, but no appeal is pending.
- above-captioned case(s) is in post-conviction proceedings, but no such proceeding is pending.
- defendant would file a motion for DNA testing, pursuant to G.S. 15A-269, within 180 days of the request, but no such motion has been filed, and no request for extension for the filing of such motion has been [] received. [] agreed to.
- above-captioned case(s) had been referred for review by the N.C. Innocence Inquiry Commission, but
[] no such referral occurred. [] the Commission has concluded and closed its inquiry into the defendant's case(s).

7. Petitioner has received a request for preservation of the evidence, a copy of which is attached and which complies with G.S. 15A-268(b)(3)d., but the evidence is of a size, bulk, or physical character that renders retention by Petitioner impractical.

Date Name Of Petitioner (Type Or Print) Signature Of Petitioner

Petitioner's Agency (If Other Than Clerk) Title (If Other Than Clerk)
[] Police Department
[] County Sheriff's Department
[] Other: Deputy CSC Assistant CSC CSC

NOTICE TO DISTRICT ATTORNEY AND REQUEST FOR HEARING

Petitioner hereby requests that the District Attorney for the above-captioned county calendar this petition for hearing at the next available criminal session that is more than 30 days after the District Attorney's receipt of this petition.

NOTICE OF HEARING

NOTE TO DISTRICT ATTORNEY: Schedule the petition for hearing as requested. After selection of a session, return to Petitioner for service and filing. The undersigned, upon request of the Petitioner, hereby sets a date, time and location of hearing as shown below, and instructs that the Clerk of Superior Court add this hearing to the calendar for the session indicated.

Date Of Hearing	Time Of Hearing	<input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Hearing
Date	Name (Type Or Print)	Signature	<input type="checkbox"/> District Attorney <input type="checkbox"/> Assistant DA

NOTE TO CLERK: Unless applied for on behalf of a defendant incarcerated in your county, do not issue a writ to return the defendant for the hearing.

PETITIONER'S CERTIFICATE OF SERVICE

I certify that on this date, a copy of this Petition For Disposition Of Biological Evidence with the above Notice Of Hearing completed was served on each of the interested parties as shown below by depositing a copy in a postpaid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service to:

1. the defendant at _____ correctional institution.
 the following address: _____
2. the defendant's counsel in the above-captioned proceeding.

Name Of Defense Counsel	Defense Counsel Address
- no counsel, because the defendant was unrepresented in the above-captioned proceeding.
3. the Office of Indigent Defense Services by first-class mail to: 123 W. Main St., Suite 400, Durham, NC 27701.

Date	Name Of Petitioner (Type Or Print)	Signature Of Petitioner
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Title (If Other Than Clerk)

FINDINGS

After notice and hearing, the Court finds by a preponderance of the evidence that:

1. Petitioner, the custodian of evidence listed on Side One of this petition and any attachment(s), filed notice of its intent to dispose of such evidence with the District Attorney, which was was not properly served on the defendant and the Office of Indigent Defense Services and the defendant's counsel. (NOTE: If not served, no further findings required.)
2. A request to preserve the listed item(s) of evidence was not received within 90 days of service of Petitioner's notice on the defendant. received by the Petitioner but failed to state a valid reason for retention under G.S. 15A-268(b)(3)d.
3. The evidence
 - a. has no significant value for biological analysis and should be returned to its rightful owner. destroyed. used for training purposes. otherwise disposed of as provided by law.
 - b. may have value for biological analysis but is of a size, bulk, or physical character as to render retention impractical should be returned to its rightful owner.
 - c. continues to be of value and should be preserved by Petitioner.
4. Other: _____

ORDER

Pursuant to the above Findings, IT IS HEREBY ORDERED:

1. that Petitioner may dispose of the listed evidence, including by destruction, without further action of the Court.
2. that Petitioner may dispose of the following evidence, but shall return the evidence to the collecting agency, if different from Petitioner's agency. The collecting agency shall take reasonable measures to remove or preserve portions of the evidence in a manner consistent with G.S. 15A-268(e).

Exhibit No.	Description And Notes, If Applicable	Portion(s) To Be Preserved

See additional exhibit list, attached.

3. that the following item(s) of evidence be delivered to the recipient(s) indicated, which recipient(s) shall take custody:

Exhibit No.	Description And Notes, If Applicable	Recipient

See additional exhibit list, attached.

4. that Petitioner shall retain the evidence until expiration of the retention period(s) specified in G.S. 15A-268(a6) and appropriate to the defendant's offense(s) of conviction and whether conviction was obtained by plea or verdict of guilty.
5. Other: _____

Date	Name Of Judge (Type Or Print)	Signature Of Judge
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