STATE OF NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Nos. 93 CRS 15291-15293

STATE OF NORTH CAROLINA

v.

DANIEL ANDRE GREEN
Defendant.

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR POST-CONVICTION DISCOVERY FILED 31 AUGUST 2018

NOW COMES the State of North Carolina, by and through the Honorable Joshua H. Stein, Attorney General of North Carolina, by Special Deputy Attorney General Jonathan P. Babb, [hereinafter the "State"] and requests denial of defendant's MOTION FOR POSTCONVICTION DISCOVERY [hereinafter "Motion"], filed in this Court on or about 31 August 2018. In support thereof, the State shows the following:

PROCEDURAL HISTORY

Defendant was convicted of first degree felony murder, robbery with a firearm, and felonious conspiracy at the 7 November 1995, Criminal Session of

Robeson County Superior Court. Defendant was prosecuted at trial by the District Attorney for the 16-B Prosecutorial District, the Honorable Luther Johnson Britt, III.

On 2 June 1998, the Court of Appeals upheld defendant's convictions, finding no prejudicial error. Judge Horton wrote a dissenting opinion. State v. Green, 129 N.C. App. 539, 500 S.E.2d 452 (1998). On 6 July 1998, defendant filed Notice of Appeal to the North Carolina Supreme Court. On 5 February 1999, the Supreme Court issued a *per curiam* opinion affirming the North Carolina Court of Appeals decision. State v. Green, 350 N.C. 59, 510 S.E.2d 375 (1999). The United States Supreme Court denied defendant's petition for a writ of certiorari. Green v. North Carolina, 528 U.S. 846 (1999).

On 5 May 2000, defendant filed *pro se* a "Motion Requesting Appointment of Counsel" with this Court. On 16 May 2000, the Honorable Gregory Weeks, Superior Court Judge presiding, appointed attorney Carlton M. Mansfield to represent petitioner in the preparation and filing of a Motion for Appropriate Relief ["MAR"]. Subsequently, Mr. Mansfield filed a motion to withdraw as counsel on 21 July 2005. Thereafter, Mr. Mansfield was ordered by Judge Floyd to submit an affidavit with his "ascertainment of the merits of his motion" and "the potential conflict that may have developed as a result of the grievance." In an affidavit dated 1 February 2006, Mr. Mansfield stated

his opinion that after "review of all materials associated with the trial," which he stated included review of 19,000 transcript pages and 1,703 pages of discovery, that "Mr. Green has no meritorious claims that would succeed."

Defendant thereafter filed a *pro se* Motion for Appropriate Relief titled "Amendment to Defendant's Motion for Appropriate Relief and/or Defendant's Motion for Appropriate Relief" on 25 August 2008. In an order dated 2 October 2008, Judge Floyd denied all claims from the *pro se* MAR except as to ineffective assistance of counsel and the State's alleged failure to disclose tape recordings of telephone conversations of Melinda Moore and Deloris Sullivan. In that same order Judge Floyd appointed counsel to "assist the defendant in his motion for appropriate relief" and also held all claims other than ineffective assistance of counsel claims or claims on the tape recordings of Moore and Sullivan to be procedurally barred. On 18 February 2009, Attorney C. Scott Holmes was appointed by the Office of Indigent Services to represent defendant and entered a Notice of Appearance on 18 March 2009.

Defendant, through post-conviction counsel, filed a new motion for appropriate relief, entitled "First Amended Motion for Appropriate Relief" on 6 April 2015. ["AMAR"]. The State filed its answer on 2 December 2015. On or about 30 March 2016, defendant filed his First Supplement to AMAR. The State filed its answer to the First Supplement on or about 19 May 2016.

Defendant subsequently filed his Second, Third, and Fourth Supplements to his AMAR on or about 16 December 2016, 19 June 2017, and 5 July 2017, respectively. On 20 September 2017, the State filed its answer to the Second, Third, and Fourth Supplements.

PRIOR POST-COINVICTION DISCOVERY

During post-conviction review, defendant has filed several discovery motions, and the State has provided, as defendant admits in his latest discovery motion, "considerable" discovery. Pursuant to its statutory discovery obligations in N.C. Gen. Stat. § 15A-1415(f), on 22 May 2014, the District Attorney filed a discovery response stating that the State had provided defendant "the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant." (See State's Post-Conviction Discovery Response dated 22 May 2014, attached as Exhibit A).

As the record shows, the State has not only provided full discovery under N.C. Gen. Stat. § 15A-1415(f) but has provided more than what the statute affords pursuant to previous requests and rulings by this Court. As documented in the 30 November 2016 Order of this Court (attached as Exhibit B), the State "has provided a tremendous volume of discovery." In that same order, this Court found that defendant's discovery request for "all reports

alleging potential criminal conduct against former Sheriff Hubert Stone" was not discoverable under N.C. Gen. Stat. § 15A-1415(f). Nevertheless this Court allowed that any records of Sheriff Stone trying to intervene or cover drug activity "may be relevant to this case", and ordered any such statements be turned over for in camera review. (Order pp. 4-5)

In that same order, this Court held that all interviews of Hubert Larry Deese by law enforcement agencies for "other criminal activity" do not constitute "files of the investigation of the crimes committed or the prosecution of Defendant as required by North Carolina General Statutes 15A-1415(f)." Again, in spite of this ruling, this Court allowed discovery of "any statements and drug investigations made by Hubert Larry Deese to the Robeson County Sheriff's Department and the SBI between July 23rd, 1993, the date of James Jordan's death, and March 3rd, 1997." (Order pp. 5-6)

Also, in that order this Court allowed discovery of statements to law enforcement by co-defendant Larry Demery in unrelated criminal cases if the unrelated cases involved drug activity between January 1st, 1990, and August 15th, 1993. (Order p. 6)

On 4 January 2017 this Court, at the State's request, limited the SBI search to its Robeson County files and granted a time limitation within 5 years of defendant's trial. (Attached as Exhibit C.) This Court also conducted in

camera review of documents turned over by the State and released part of those documents in its order of 4 January 2017. (Attached as Exhibit D)

LEGAL ARGUMENT

Defendant states he seeks discovery "pursuant to N.C. Gen. Stat. § 15A-1415(f) and State v. Sexton" (Motion at 1, 5.), but asks for materials that do not fall under N.C. Gen. Stat. § 15A-1415(f) and have been specifically excluded from the statutory discovery requirements of N.C. Gen. Stat. § 15A-1415(f) by the North Carolina Supreme Court in Sexton.

In State v. Sexton, 352 N.C. 336, 532 S.E.2d 179 (2000), a capitally convicted defendant filed a motion for appropriate relief and also filed for post-conviction discovery under N.C. Gen. Stat. § 15A-1415(f), which provides for disclosure, in post-conviction review, of the "complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant." N.C. Gen. Stat. § 15A-1415(f). At that time, N.C. Gen. Stat. § 15A-1415(f) only applied to defendants convicted of capital murder, not defendants seeking post-conviction review of their non-capital convictions. Subsequently, N.C. Gen. Stat. § 15A-1415(f) was expanded to apply to all convicted defendants represented by counsel in post-

conviction proceedings.[1] Under both the prior and current versions of N.C. Gen. Stat. § 15A-1415(f), a defendant who seeks discovery in post-conviction litigation is entitled to "the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant." N.C. Gen. Stat. § 15A-1415(f).

In Sexton, as here, the convicted defendant sought discovery under N.C. Gen. Stat. § 15A-1415(f). The Superior Court granted defendant's motion for discovery. After entry of the Superior Court order allowing post-conviction discovery, Sexton then notified the State that he also wanted to review the Attorney General's files. The State sought review and the North Carolina Supreme Court granted the State's petition to review the Superior Court order on 28 September 1999. Sexton, at 339, 532 S.E.2d at 181. (Opinion attached as Exhibit E.)

Upon review, the Supreme Court of North Carolina upheld the order granting Sexton post-conviction discovery under N.C. Gen. Stat. § 15A-1415(f), but narrowed the scope of that discovery. The Court ruled that the Attorney General's files are not subject to disclosure pursuant to N.C. Gen. Stat. § 15A-

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[1] Compare N.C. Gen. Stat. § 15A-1415(f) (1999) ("In the case of a defendant who has been convicted of a capital offense and sentenced to death,..." with the current N.C. Gen. Stat. § 15A-1415(f) ("In the case of a defendant who is represented by counsel in postconviction proceedings in superior court, . . .).

1415(f) when the Attorney General is not acting in the role of an investigative or prosecutorial agency involved in the investigation or prosecution of the criminal case at trial. Sexton at 341-42, 532 S.E.2d at 182. As the Court acknowledged, in the circumstance in which the Attorney General prosecutes the criminal case, the Attorney General's files would be subject to disclosure as part of the complete files of all prosecutorial and investigative agencies involved in the prosecution and investigation of the case. Sexton, at 341-42, 532 S.E.2d at 182. In such circumstance, in accord with N.C. Gen. Stat. § 114-11.6, the Attorney General assumes the responsibility of the prosecution of a case when requested to do so by a District Attorney and upon the Attorney General's approval. Otherwise, the Attorney General's "role in criminal cases is limited by law to defending the conviction during the appellate and capital postconviction stages of the case" such that the Attorney General's files do not constitute a prosecutorial agency involved in the investigation or prosecution of the case. Sexton, at 341-42, 532 S.E.2d at 182.

In Sexton, as in this case, the Attorney General's Office did not assume the responsibility of the prosecution of the case, rather, it only defended the conviction upon appeal and in post-conviction review. The request for discovery in the post-conviction litigation of this case is no different than in Sexton. Just as here, in Sexton, a convicted defendant in post-conviction

moved to review the files of the Attorney General in a case where the Attorney General did not prosecute the case at trial, but solely defended the conviction on appeal and in post-conviction. The North Carolina Supreme Court's opinion was clear and unambiguous that in post-conviction review, a defendant is not entitled to the files of the Attorney General generated in post-conviction unless the Attorney General assumed the role of the prosecution of the case at trial. The Court held:

> ...the Attorney General is subsequently limited by law to defending the conviction during the appellate and, when applicable, the capital postconviction portions of the case. See N.C.G.S. § 114-2(1) (1999). N.C.G.S. § 15A-1415(f) limits the files available to defendants in a postconviction discovery phase to those that relate specifically to the investigation of the crimes committed or to the prosecution of the defendant. N.C.G.S. § 15A-1415(f)....
>
> Because the Attorney General does not generally "prosecute" but instead only defends the State's conviction when on appeal, we conclude that the Attorney General's files do not fall within the purview of N.C.G.S. § 15A-1415(f).

Sexton at 341-42, 532 S.E.2d at 182.

The Attorney General's Office complies with all discovery laws, including N.C. Gen. Stat. § 15A-1415(f). Here, the District Attorney who prosecuted this case has represented that he has provided post-conviction discovery as required by N.C. Gen. Stat. § 15A-1415(f) which includes the complete prosecutorial and investigative files of all prosecutorial and investigative

agencies "involved in the investigation of the crimes committed or the prosecution of the defendant." Id.; State's Post-Conviction Discovery Response dated 22 May 2014, attached as Exhibit A. By contrast, the Attorney General's Office was not involved in the prosecution of this criminal case in 1995, and therefore, N.C. Gen. Stat. § 15A-1415(f) does not apply to the files of the Attorney General's Office. The undersigned communicated this to post-conviction counsel in a letter dated 15 August 2018. (Attached as Exhibit F)

Defendant argues that "[w]hen read in context, the analysis by the Court in Sexton shows that it intended the limitation of the AG's Office's responsibility to extend only when the AG's Office was acting in its traditional role of defending a case on appeal." The plain language of Sexton shows otherwise. Sexton's ruling applies where the Attorney General's Office is "defending the conviction during the appellate and capital postconviction stages of the case." Sexton at 341, 532 S.E.2d at 182 (emphasis added).

The context of the Sexton case is exactly the same as the instant case. There, a convicted defendant, just like defendant, sought discovery pursuant to N.C. Gen. Stat. § 15A-1415(f) arguing that "the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant" included reviewing files from the Attorney General's Office, even though the Attorney General did not

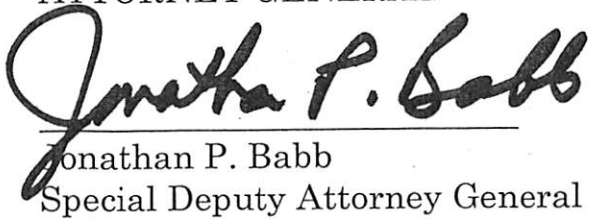
prosecute defendant or investigate the crimes committed. Sexton at 339, 532 S.E.2d at 181. The North Carolina Supreme Court rejected this argument twenty years ago. Defendant makes the exact same argument before this Court. This Court is bound by the North Carolina Supreme Court opinion in Sexton and should deny defendant's latest motion for discovery. Sexton, at 342, 532 S.E.2d at 182. ("..but files belonging to the Attorney General's office are excluded from those discoverable files.")

CONCLUSION

WHEREFORE, as the State has not objected to making available to defendant the complete files of all state prosecutorial and/or investigative agencies that actually investigated and prosecuted defendant's murder of James Jordan, and as the State believes it has fully met its legal and ethical responsibilities regarding post-conviction discovery, the State respectfully requests that this Court deny defendant's latest motion for disclosure of the files of the Attorney General's Office for the reasons outlined above.

Respectfully submitted, this the 13th day of September 2018.

JOSHUA H. STEIN
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon counsel for the defendant by depositing the same in the United States mail, first class postage prepaid, and addressed to:

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Respectfully submitted this the 13th day of September 2018.

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