State Supreme Court on State's Ability to Obtain Review of MAR Rulings

Author : Jeff Welty

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Last month, the Supreme Court of North Carolina decided State v. Stubbs, an important case regarding appellate review of orders granting motions for appropriate relief.

Background. Larry Stubbs pled guilty to burglary in 1973 and was sentenced to life in prison. In 2011, he filed an MAR, arguing that the life sentence violated the Eighth Amendment. A superior court judge concurred and resentenced him to 30 years. The State filed a petition for a writ of certiorari with the court of appeals, which agreed to review the case. A divided court determined that the trial court had erred and reinstated the original judgment, as Jamie discussed in this post. The defendant appealed to the state supreme court.

The issue. The issue before the supreme court was not whether the superior court judge was right or wrong on the merits of the Eighth Amendment claim. Rather, the issue was whether the court of appeals had jurisdiction to review the order granting the defendant's motion for appropriate relief. Stubbs contended that there is no statutory provision or other authority allowing the State to obtain review of such orders, while the State argued that the appellate courts have jurisdiction and that the petition for a writ of certiorari properly invoked it. Whether the State has an avenue for review of MAR orders favoring defendants has been controversial at least since *State v. Starkey*, 177 N.C. App. 264 (2006), which I previously discussed here.

The ruling. The supreme court ruled for the State, based on G.S. 15A-1422(c)(3), which provides that "[t]he court's ruling on a motion for appropriate relief pursuant to G.S. 15A-1415 is subject to review . . . [i]f the time for appeal has expired and no appeal is pending, by writ of certiorari." The court acknowledged that Appellate Rule 21 discusses the use of certiorari to "review . . . an order of the trial court *denying* a motion for appropriate relief," and makes no reference to orders *granting* MARs. But it concluded that court rules cannot limit the jurisdiction conferred by statute, and therefore concluded that the court of appeals had jurisdiction to consider the matter.

What about *Starkey*? In *Starkey*, a superior court judge gave the defendant a long sentence as a habitual felon, then immediately made his own motion for appropriate relief on Eighth Amendment grounds. The judge granted his own motion and resentenced the defendant to a shorter term. The court of appeals ruled that there was no way for the State to seek review of the order. Does the ruling in *Stubbs* effectively overrule *Starkey*?

I don't think that's clear. The supreme court didn't mention *Starkey* at all, much less discuss whether it remains good law.

If I were arguing that *Stubbs* did overrule *Starkey*, I would point out that the general issue in both cases was whether the State may use a writ of certiorari to obtain review of an MAR order favoring a defendant. I would also note that at least two of the three court of appeals judges who ruled on *Stubbs* thought that the case was indistinguishable from *Starkey*, though they differed in the implications they drew from that.

On the other hand, if I were arguing that *Stubbs* did not overrule *Starkey*, I would point out that the court in *Starkey* analyzed the MAR in that case as one filed under G.S. 15A-1414 (regarding MARs filed within 10 days of the entry of

judgment), while the MAR in *Stubbs* was filed under G.S. 15A-1415 (concerning MARs that may be filed on certain grounds at any time after a verdict). The two types of MARs have different appeal provisions. Ten-day MARs are governed by G.S. 15A-1422(b), which allows "appellate review only in an appeal regularly taken," and makes no mention of certiorari, apparently leaving the availability of certiorari to the appellate rules. By contrast, anytime MARs are governed by G.S. 15A-1422(c), which specifically refers to writs of certiorari as noted in *Stubbs*. [Update: a reader informed me that the appellate rules were amended on the day that *Stubbs* was decided. The new version of Rule 21 refers to orders "ruling on" an MAR, rather than to orders "denying" an MAR. This amendment appears to undercut the rationale for *Starkey* even if it is not overruled by *Stubbs*.]

Of course, even if *Stubbs* doesn't overrule *Starkey*, it may be a sign that *Starkey* is at risk. A prosecutor who wanted to invite a ruling on the status of *Starkey* could do so by seeking certiorari review of an order granting a 10-day MAR.

Finally, my sense is that many more MARs are filed under G.S. 15A-1415 than under G.S. 15A-1414. If that is correct, then it is the holding of *Stubbs* itself, not the possible effect on *Starkey*, that is the important outcome of the case.