

SUPREME COURT OF NORTH CAROLINA

FILED 25 SEPTEMBER 2015

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STATE OF NORTH CAROLINA	)	
	)	
v.	)	
	)	LEE COUNTY
JUAN CARLOS BENITEZ	)	
	)	
	)	

\* \* \* \* \*

*Appellate Defender Staples Hughes, by Assistant Appellate Defender Anne M. Gomez, for defendant.*

*Attorney General Roy Cooper, by Assistant Attorney General Amy Kunstling Irene, for the State.*

\* \* \* \* \*

This case has come before the Court by way of the State's Petition for Discretionary Review pursuant to N.C.G.S. § 7A-31.

Pursuant to N.C.G.S. § 15A-1418, the decision of the Court of Appeals is vacated and this Court now ORDERS this case remanded to the Court of Appeals for remand to the Superior Court, Lee County, for an evidentiary hearing to make findings of fact necessary to determine whether the trial counsel's actions fell below an objective standard of reasonableness, *see State v. McHone*, 348 N.C. 254, 499 S.E.2d 761 (1998) (remanding a motion for appropriate relief to the trial court with instructions to conduct an evidentiary hearing), and, if so, whether defendant was prejudiced by any deficient performance by his trial counsel.

The time periods for perfecting or proceeding with the appeal are tolled. The Superior Court, Lee County, is ordered to transmit its order on the motion for appropriate relief within 120 days so that the Court of Appeals may proceed with the appeal or enter an order terminating the appeal, as appropriate.

By order of the Court in Conference, this 24th day of September, 2015.

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For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 24th day of September, 2015.

CHRISTIE S. CAMERON ROEDER  
Clerk of the Supreme Court

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Assistant Clerk