

§ 15A-1416.1. Motion by the defendant to vacate a nonviolent offense conviction for human trafficking victim.

(a) A motion for appropriate relief seeking to vacate a conviction for a nonviolent offense based on the grounds set out in G.S. 15A-1415(b)(10) shall be filed in the court where the conviction occurred. The motion may be filed at any time following the entry of a verdict or finding of guilty. Any motion for appropriate relief filed under this section shall state why the facts giving rise to this motion were not presented to the trial court and shall be made with due diligence after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such offenses, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion or for other reasons consistent with the purpose of this section. The motion shall be contemporaneously served upon the district attorney in the prosecutorial district in which the conviction was entered. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the motion.

(b) The court may grant the motion if, in the discretion of the court, the defendant has demonstrated, by the preponderance of the evidence, that the violation was a direct result of the defendant having been a victim of human trafficking or sexual servitude and that the offense would not have been committed but for the defendant having been a victim of human trafficking or sexual servitude. Evidence of such may include any of the following documents listed in subdivisions (1) through (4) of this subsection; alternatively, the court may consider such other evidence as it deems of sufficient credibility and probative value in determining whether the defendant is a trafficking victim:

- (1) Certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a person charged with an offense under G.S. 14-43.11, G.S. 14-43.13, or under 22 U.S.C. Chapter 78.
- (2) Certified records of "approval notices" or "enforcement certifications" generated from federal immigration proceedings available to such victims.
- (3) A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.
- (4) A sworn statement or affidavit from a federal, State, or local law enforcement officer who investigated the violation of G.S. 14-43.11, G.S. 14-43.13, or the federal Trafficking Victims Protection Act, as stated within the defendant's motion.

(c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances.

(d) A previous or subsequent conviction shall not affect a person's eligibility for relief under this section. (2013-368, s. 10; 2019-158, s. 6(a).)