

No. 402PA15-2

JUDICIAL DISTRICT 19C

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From Rowan</u>
)	No. COA15-414-2, 15-414
DONNA HELMS LEDBETTER)	

DEFENDANT-APPELLANT'S NEW BRIEF

INDEX

TABLE OF AUTHORITIES	iii
ISSUE PRESENTED	1
STATEMENT OF THE CASE.....	2
A. Trial Court Proceedings	2
B. 2015 Proceedings in the Court of Appeals	3
C. Proceedings in this Court.....	4
D. 2016 Proceedings in the Court of Appeals	5
STATEMENT OF GROUNDS FOR APPELLATE REVIEW	5
STATEMENT OF THE FACTS	5
STANDARD OF REVIEW	7
ARGUMENT	7
THE COURT OF APPEALS ERRED BY HOLDING THAT IT LACKED THE AUTHORITY TO ISSUE ITS WRIT OF CERTIORARI.	7
A. The Court of Appeals has the authority to review, via writ of certiorari, a <i>Knoll</i> order.....	8
i. The writ of certiorari, Rule 34, and Rule 21.....	9
ii. <i>State v. Stubbs</i>	14
iii. <i>State v. Thomsen</i>	16
iv. Construing Rule 21	18
v. The Court of Appeals has the authority to issue its writ of certiorari here.	21
B. <i>Ledbetter II</i> conflicts with this Court’s precedent in <i>State v. Stubbs</i> and <i>State v. Thomsen</i>	23
i. <i>Ledbetter II</i> grasps at a supposed distinction in order to reach	

the same result as <i>Ledbetter I</i> . The distinction does not bear scrutiny.....	24
ii. <i>Ledbetter II</i> suffers from faulty internal logic.....	27
iii. <i>Ledbetter II</i> lacks adequate legal support.	29
C. This Court should direct the Court of Appeals to allow Ms. Ledbetter’s Petition for Writ of Certiorari.	31
CONCLUSION.....	32
CERTIFICATE OF FILING AND SERVICE	33

TABLE OF AUTHORITIES

Cases

<i>Bailey v. N.C. Dep’t of Revenue</i> , 353 N.C. 142, 540 S.E.2d 313 (2000)	20, 21
<i>Brooks v. Morgan</i> , 27 N.C. 481 (1845)	9, 10, 16, 26
<i>Cannon v. Miller</i> , 313 N.C. 324, 327 S.E.2d 888 (1985).....	8
<i>Ex parte Biggs</i> , 64 N.C. 202 (1870)	9, 10
<i>Rush v. Halcyon Steamboat Co.</i> , 68 N.C. 72 (1873)	10
<i>State v. Ahearn</i> , 307 N.C. 584, 300 S.E.2d 689 (1983)	19
<i>State v. Bolinger</i> , 320 N.C. 596, 359 S.E.2d 459 (1987)	19
<i>State v. Brooks</i> , 337 N.C. 132, 446 S.E.2d 579 (1994).....	7
<i>State v. Chavez</i> , 237 N.C. App. 475, 767 S.E.2d 581 (2014)	3
<i>State v. Hill</i> , 277 N.C. 547, 178 S.E.2d 462 (1971).....	31
<i>State v. Johnson</i> , 298 N.C. 355, 259 S.E.2d 752 (1979)	19
<i>State v. Jones</i> , ___ N.C. App. ___, 802 S.E.2d 518 (2017)	30
<i>State v. Knoll</i> , 322 N.C. 535, 369 S.E.2d 558 (1988)	2, 31
<i>State v. Labinski</i> , 188 N.C. App. 120, 654 S.E.2d 740 (2008).....	3
<i>State v. Ledbetter</i> , ___ N.C. App. ___, 779 S.E.2d 164 (2015) (“ <i>Ledbetter I</i> ”)	3, 27
<i>State v. Ledbetter</i> , ___ N.C. App. ___, 794 S.E.2d 551 (2016) (“ <i>Ledbetter II</i> ”)	passim
<i>State v. Niccum</i> , 293 N.C. 276, 238 S.E.2d 141 (1977)	18
<i>State v. Rogers</i> , ___ N.C. App. ___, ___ S.E.2d ___, 2017 N.C. App. LEXIS 919, No. COA17-271 (N.C. Ct. App. Nov. 7, 2017)	30
<i>State v. Stubbs</i> , 368 N.C. 40, 770 S.E.2d 74 (2015).....	passim
<i>State v. Thomsen</i> , ___ N.C. ___, 789 S.E.2d 639 (2016)	passim

<i>State v. Williams</i> , 362 N.C. 628, 669 S.E.2d 290 (2008)	7
--	---

Statutes

N.C. Gen. Stat. § 15A-101(1)	15
N.C. Gen. Stat. § 15A-1422.....	15
N.C. Gen. Stat. § 15A-1444.....	18
N.C. Gen. Stat. § 15A-1444(e)	22
N.C. Gen. Stat. § 15A-1444(g)	22
N.C. Gen. Stat. § 15A-954.....	22
N.C. Gen. Stat. § 7A-31(c).....	5
N.C. Gen. Stat. § 7A-32(b)	18

Other Authorities

Black's Law Dictionary (7th ed. 1999)	9, 25
Drafting Committee Note to Rule 21, 287 N.C. 729-30 (1975)....	12
Order, <i>State v. Ledbetter</i> , ___ N.C. ___, 793 S.E.2d 216 (N.C. Sept. 22, 2016)	4, 8
<i>State v. Chapman</i> , 366 N.C. 555, 2013 N.C. LEXIS 442 (N.C. March 7, 2013).....	32
<i>State v. Coxton</i> , 368 N.C. 905, 2016 N.C. LEXIS 550 (N.C. June 9, 2016)	32

Rules

N.C. R. App. P. 1(c)	17, 28
N.C. R. App. P. 10(a)(1)	24, 26
N.C. R. App. P. 16(a).....	7

N.C. R. App. P. 21, 287 N.C. 679, 728-29 (1975)	12
N.C. R. App. P. 21(a)(1), 304 N.C. 739, 739 (1981).....	13
N.C. R. App. P. 21(a)(1), 367 N.C. 954 (2015).....	13, 27
N.C. R. App. P. 28(b).....	24, 26
Sup. Ct. R. 34, 254 N.C. 783, 815 (1961)	11
Supplementary Rules, 271 N.C. 744 (1967).....	11

Constitutional Provisions

N.C. Const. art. I, § 23	31
N.C. Const. art. IV, § 12(1)	26
N.C. Const. art. IV, § 12(2)	14, 16, 21
U.S. Const. amend. VI	31

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From Rowan</u>
)	No. COA15-414-2, 15-414
DONNA HELMS LEDBETTER)	

DEFENDANT-APPELLANT'S NEW BRIEF

ISSUE PRESENTED

**WHETHER THE COURT OF APPEALS ERRED BY
HOLDING THAT IT LACKED THE AUTHORITY TO
ISSUE ITS WRIT OF CERTIORARI?**

STATEMENT OF THE CASE

A. Trial Court Proceedings

On 1 January 2013, Ms. Ledbetter was charged by uniform citation with operating a vehicle while subject to an impairing substance. (R p 2) On 19 November 2013, Ms. Ledbetter was convicted in district court. She was sentenced to six months' imprisonment. The sentence was suspended, and Ms. Ledbetter was placed on supervised probation for a term of 24 months. Ms. Ledbetter appealed to superior court. (R p 3)

On 23 December 2013, she filed a pretrial motion based on *State v. Knoll*, 322 N.C. 535, 369 S.E.2d 558 (1988). (R pp 6-17) The matter came on for a hearing at the 25 August 2014 criminal session of Superior Court, Rowan County, before the Honorable Christopher W. Bragg, Judge presiding. (T p 1)¹ On 16 October 2014, the trial court entered a written order denying her motion. (R pp 18-24)

The matter came on for a plea hearing at the 27 October 2014 criminal session of Superior Court, Rowan County, before the Honorable Jeffrey P. Hunt, Judge presiding. (Plea T p 1) Ms. Ledbetter pled guilty, expressly reserving her right to appeal the denial of her pretrial motion.

Ms. Ledbetter's plea arrangement included the following terms:

¹ The transcript of the 25 August 2014 proceedings is cited as "(T p __)". The transcript of the 27 October 2014 proceedings is cited as "(Plea T p __)".

Ms. Ledbetter expressly retains the right to appeal the court's denial of her motion to dismiss/suppress her driving while impaired charge in this case and her plea of guilty is conditioned based on her right to appeal that decision and she will appeal from entry of judgment after the case is finalized. (R p 27)

The trial court accepted the plea and sentenced Ms. Ledbetter to 2 days' imprisonment. That sentence was suspended, and Ms. Ledbetter was placed on supervised probation for a term of 18 months. (R p 31) Ms. Ledbetter gave notice of appeal in open court. (R p 34)

B. 2015 Proceedings in the Court of Appeals

On appeal, Ms. Ledbetter challenged the trial court's denial of her *Knoll* motion. She cited cases supporting her right to appeal following a judgment entered on a guilty plea: *State v. Chavez*, 237 N.C. App. 475, 767 S.E.2d 581 (2014) and *State v. Labinski*, 188 N.C. App. 120, 654 S.E.2d 740, *disc. review denied*, 362 N.C. 367, 661 S.E.2d 889 (2008). She also petitioned the Court of Appeals for writ of certiorari, citing *State v. Stubbs*, 368 N.C. 40, 770 S.E.2d 74 (2015).

In an opinion filed 3 November 2015, the Court of Appeals dismissed Ms. Ledbetter's appeal and denied her petition. *State v. Ledbetter*, ___ N.C. App. ___, 779 S.E.2d 164 (2015) ("*Ledbetter I*"). The Court of Appeals held that it did not have the authority to review, by writ of certiorari, Ms. Ledbetter's challenge to the denial of her *Knoll* motion because such a challenge was not authorized by Rule 21. *Id.* at ___, 779 S.E.2d at 168. On 10 November 2015, Ms. Ledbetter filed a motion to stay issuance of the

mandate and to withdraw the published opinion. The Court of Appeals denied the motion on 19 November 2015.

C. Proceedings in this Court

On 3 December 2015, Ms. Ledbetter filed a petition for discretionary review with this Court.²

By order dated 22 September 2016, this Court allowed Ms. Ledbetter's petition for discretionary review. This order specifically noted that Section 7A-32(c) "creates a default rule that the Court of Appeals has jurisdiction to review a lower court judgment by writ of certiorari," citing *State v. Thomsen*, ___ N.C. ___, ___, 789 S.E.2d 639, 642 (2016). This Court's order also noted that "Rule 21 of the North Carolina Rules of Appellate Procedure cannot take away jurisdiction given to the Court of Appeals by N.C.G.S. 7A-32(c)," citing *State v. Stubbs*, 368 N.C. 40, 44, 770 S.E.2d 76, 76 (2015). This Court remanded to the Court of Appeals to reconsider its holding in light of *Thomsen* and *Stubbs*. Order, *State v. Ledbetter*, ___ N.C. ___, 793 S.E.2d 216 (N.C. Sept. 22, 2016).

² On 15 December 2015, Ms. Ledbetter filed a motion to hold the petition for discretionary review in abeyance, in light of the pending appeal in *State v. Mark Alan Biddix*, No.19A16. By order dated 13 April 2016, this Court allowed the motion. Seven days before scheduled oral argument, Mr. Biddix withdrew his appeal. On 25 August 2016, Ms. Ledbetter filed a motion to lift the abeyance. By order dated 22 September 2016, this Court allowed the motion.

D. 2016 Proceedings in the Court of Appeals

In a published opinion filed 6 December 2016, the Court of Appeals again dismissed Ms. Ledbetter's appeal and denied her petition for writ of certiorari. *State v. Ledbetter*, ___ N.C. App. ___, 794 S.E.2d 551 (2016) ("*Ledbetter II*"). The Court of Appeals concluded there was "no procedural mechanism" under Rule 21 to issue the writ of certiorari unless it invoked Rule 2. *Id.* at ___, 794 S.E.2d at 555.

STATEMENT OF GROUNDS FOR APPELLATE REVIEW

Review of the Court of Appeals' decision is based on this Court's 2 November 2017 order allowing Ms. Ledbetter's Petition for Discretionary Review under N.C. Gen. Stat. § 7A-31(c).

STATEMENT OF THE FACTS

On 1 January 2013, Ms. Ledbetter was distraught over the end of her marriage of 22 years. After a fight with her husband, she sustained injuries to her face and suffered a black eye. (T pp 20-21) With all of her belongings packed into her car, Ms. Ledbetter had been sitting in the Enochville Food Center parking lot for about 30 minutes, trying to figure out where to go, when Deputy Daniel Myers approached and asked her to perform field sobriety tests. (T pp 20-21)

It was raining and cold that evening. (T p 22) Myers was not satisfied with Ms. Ledbetter's performance on the tests. (T pp 46-48) In addition to injuries she sustained in the fight with her husband, Ms.

Ledbetter also suffered from sciatica and degenerative disc disease. Her sciatica gave her a limp. (T p 54)

The breath test was negative. Ms. Ledbetter blew a “double zero.” (T pp 22; 56) She had taken prescription medication several hours before. (T p 34) She was surprised when Myers arrested her at 7:30 p.m. (T pp 22-23, 61) He took her for a blood test. She was eager to submit because she believed the test would show she was not impaired. (T p 23) That test was administered about 8:45 p.m. (R p 20) The State did not submit the results of the test into evidence. (Plea T p 17)

About 9:00 p.m., Myers took Ms. Ledbetter to the magistrate’s office. (T pp 24, 55) The magistrate failed to record his reasons for setting a secured bond. (T p 75) He did not provide Ms. Ledbetter with AOC-CR-271, an “Implied Consent Offense Notice” form. (T p 76) The magistrate never informed Ms. Ledbetter of her right to call a witness. (T p 26)

Ms. Ledbetter was not aware of her right to have a witness. (T p 28) If she had been aware, she would have called a witness. (T p 26) Myers took Ms. Ledbetter to jail at about 9:30 p.m. (T p 59) When she got there, she called her childhood friend, Kenneth Paxton, to post the secured bond that the magistrate had ordered. (T pp 27, 73)

Ms. Ledbetter was not released from jail until 12:24 a.m., after spending nearly three hours in jail. (Rp 22) By the time Mr. Paxton was able to see her, almost five hours after she had been arrested, he noticed

no signs of impairment in Ms. Ledbetter's speech, movements, or appearance. (T p 10)

STANDARD OF REVIEW

This Court reviews a decision of the Court of Appeals for errors of law. N.C. R. App. P. 16(a); *State v. Brooks*, 337 N.C. 132, 149, 446 S.E.2d 579, 590 (1994). Whether the Court of Appeals has the authority to issue its writ of certiorari is a question of law. Questions of law are reviewed *de novo*. *State v. Thomsen*, ___ N.C. ___, ___, 789 S.E.2d 639, 641 (2016).

“Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (internal quotation marks omitted).

ARGUMENT

THE COURT OF APPEALS ERRED BY HOLDING THAT IT LACKED THE AUTHORITY TO ISSUE ITS WRIT OF CERTIORARI.

In *Ledbetter I*, the Court of Appeals disclaimed its authority to issue its writ of certiorari. In *Ledbetter II*, the Court of Appeals essentially restates its opinion in *Ledbetter I* and claims that its prior mandate remains “undisturbed.” The Court of Appeals incorrectly concludes there is “no procedural mechanism” under Rule 21 to issue its writ of certiorari,

unless it used Rule 2 to suspend the North Carolina Rules of Appellate Procedure. *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 555.

The Court of Appeals reaches this decision despite this Court's order, remanding for reconsideration in light of *State v. Thomsen*, ___ N.C. ___, 789 S.E.2d 639 (2016) and *State v. Stubbs*, 368 N.C. 40, 770 S.E.2d 74 (2015). As this Court noted, *Thomsen* held that N.C. Gen. Stat. § 7A-32(c) "creates a default rule that the Court of Appeals has jurisdiction to review a lower court judgment by writ of certiorari[.]" Order, *State v. Ledbetter*, ___ N.C. ___, 793 S.E.2d 216 (N.C. Sept. 22, 2016).

The Court of Appeals' opinion in *Ledbetter II* concludes as follows: "The prior mandate issued by this court remains undisturbed." *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 555. In light of the fact that this Court allowed Ms. Ledbetter's first petition for discretionary review and remanded for reconsideration, the Court of Appeals' declaration suggests that Court may suffer from a misapprehension of its authority to disregard directives of this Court. See *Cannon v. Miller*, 313 N.C. 324, 327 S.E.2d 888 (1985).

A. The Court of Appeals has the authority to review, via writ of certiorari, a *Knoll* order.

Under Section 7A-32, the Court of Appeals has jurisdiction to issue the prerogative writs, including certiorari. N.C.G.S. § 7A-32(c). "The practice and procedure shall be as provided by statute or rule of the

Supreme Court, or, in the absence of statute or rule, according to the practice and procedure of the common law.” *Id.*

Section 7A-32(c) creates a “default rule” that the Court of Appeals has jurisdiction to review a lower court judgment or order by certiorari. *Thomsen*, ___ N.C. at ___, 789 S.E.2d at 642. Rule 21 does not limit the authority of the Court of Appeals to review a judgment or order by certiorari. *Id.* at ___, 789 S.E.2d at 643; *Stubbs*, 368 N.C. at 43-44, 770 S.E.2d at 76.

i. The writ of certiorari, Rule 34, and Rule 21

In the 19th century, this Court observed that the “writ of *certiorari* is used for two purposes: *One*, as a substitute for an appeal, where the opportunity for bringing up the matter by appeal, is lost without laches.”³ *Ex parte Biggs*, 64 N.C. 202, 204-05 (1870). “[I]n almost every case our law gives an appeal, upon which there is a trial *de novo* or a re-hearing in the appellate Court, and, when deprived of the right of appeal, the party has a right to a certiorari as a substitute for it.” *Brooks v. Morgan*, 27 N.C. 481, 484 (1845).

³ “Laches” refers to unreasonable delay in pursuing a right or claim in a way that prejudices the party against whom relief is sought. Black’s Law Dictionary 879 (7th ed. 1999).

The second purpose is where no appeal is provided. Certiorari “is used where the writ of error proper does not lie.”⁴ *Ex parte Biggs*, 64 N.C. at 205.

[A]t common law it is, as Mr. Chitty observes, 2 Genl. Pr. 374, “a legal maxim that all *judicial* proceedings of justices of the peace, upon which they have decided by conviction or order . . . are of *common right* removable into the King’s Bench by *certiorari*, unless that remedy has been expressly taken away by particular enactment.”

Brooks, 27 N.C. at 485.

The scope of the writ was deliberately broad in order to allow for the correction of error in lower tribunals. Via the writ of certiorari, a reviewing court exercises its supervisory powers over lower tribunals and preserves the uniformity of decision and the regular administration of law.

The Superior Court, being our highest court of original jurisdiction, has always exercised the superintending control, which the King’s Bench has in England, as far as necessary to the preservation of the common right of the citizen. Such a jurisdiction is indispensable in a free country[.]

Brooks, 27 N.C. at 485.

⁴ Historically, a writ of error was used to obtain review in courts of law, whereas “appeal” was used to obtain review in courts of equity. In North Carolina, the word “appeal” was used indiscriminately to mean appellate review. Thus, “appeal” and “writ of error” mean essentially the same thing. See *Rush v. Halcyon Steamboat Co.*, 68 N.C. 72, 74-75 (1873).

Rule 34 of the Rules of Practice in the Supreme Court of North Carolina, which preceded Appellate Rule 21, read in pertinent part as follows:

(1) *When Applied For*. Generally, the writ of *certiorari*, as a substitute for an appeal, must be applied for at the term of this Court to which the appeal ought to have been taken, or, if no appeal lay, then before or to the term of this Court next after the judgment complained of was entered in the Superior Court. If the writ shall be applied for after that term, sufficient cause for the delay must be shown.

Sup. Ct. R. 34, 254 N.C. 783, 815 (1961).

Thus, Rule 34 noted the two purposes of *certiorari* that were discussed in *Ex parte Biggs*: “as a substitute for an appeal” and “if no appeal lay.” Below the text of Rule 34 were citations to dozens of this Court’s earlier cases on *certiorari*. The presence of these citations emphasizes that, with Rule 34, this Court described and summarized its practices regarding the writ of *certiorari*. The Rule, in other words, is descriptive, not prescriptive.

After the creation of the Court of Appeals of North Carolina in 1967, this Court issued Supplementary Rules to govern the movement of cases from the Court of Appeals to this Court. *See* Supplementary Rules, 271 N.C. 744 (1967).

In 1975, this Court issued the Rules of Appellate Procedure, which superseded its Supplementary Rules. In 1975, Rule 21(a) of the Rules of Appellate Procedure read as follows:

(a) **General.** The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right to appeal from an interlocutory order exists; or by the Supreme Court in appropriate circumstances to permit review of the judgments and orders of the Court of Appeals when the right to prosecute an appeal of right or to petition for discretionary review has been lost by failure to take timely action.

N.C. R. App. P. 21, 287 N.C. 679, 728-29 (1975). Subsections (b) through (d), regarding filing, service, content, and responses to petitions for writ of certiorari, remain largely the same as in the current Rule 21.

This “rule builds upon and attempts to clarify the certiorari writ practice provisions of former Sup. Ct. R. 34.” Drafting Committee Note to Rule 21, 287 N.C. at 729-30. This Note made explicit this Court’s intention to build upon its previous Rule 34, which itself was based on long-established case law governing this Court’s practices regarding the writ of certiorari.

This Appellate Rule 21 continued to note the purposes of the writ that this Court discussed in *Ex parte Biggs*. This Court describes “a substitute for an appeal” and “if no appeal lay” in the 1975 version of Rule 21 as “when the right to prosecute an appeal has been lost by failure to take timely action” and “when no right to appeal from an interlocutory order exists.” Insofar as there exist only final orders, from which a party may generally appeal as of right, and interlocutory orders, from which a party generally may not appeal of right, this description encompasses the

entire field of orders. The scope of the writ continued to be deliberately broad in order to allow for the correction of error in lower tribunals.

In 1981, this Court rewrote Subsection (a) of Rule 21 to read as follows:

(a) *Scope of the Writ.*

(1) *Review of the Judgments and Orders of Trial Tribunals.* The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists, or for review pursuant to G.S. 15A-1422(c)(3) of an order of the trial court denying a motion for appropriate relief.

N.C. R. App. P. 21(a)(1), 304 N.C. 739, 739 (1981).

This Court continued to note examples of the purposes of certiorari that were discussed in *Ex parte Biggs* and in the 1975 version of Rule 21. To its Rule, this Court added orders denying a motion for appropriate relief, to clarify that such orders were indeed reviewable by writ of certiorari. This addition is consistent with this Court's established practice of using the Rule to describe, rather than define, the scope of the writ of certiorari.

When *Stubbs* was filed, this Court amended Rule 21 to replace "an order denying a motion for appropriate relief" with "an order of the trial court ruling on a motion for appropriate relief." N.C. R. App. P. 21(a)(1), 367 N.C. 954 (2015). As before, the Rule continues to note the purposes of

the writ that were discussed in *Ex parte Biggs*. This amendment to Rule 21 is in line with this Court's established practice of describing, rather than defining, the scope of the writ.

The predecessor Rule 34, as well as original Rule 21 and subsequent additions and amendments thereto, show that Rule 21 serves to summarize and describe this Court's case law and practices regarding the writ of certiorari. Rule 21 does not set artificial limitations on the exercise of the writ.

ii. *State v. Stubbs*

Until 2015, Rule 21 specifically listed a trial court's order denying a motion for appropriate relief (MAR). In *Stubbs*, this Court answered the question of whether the Court of Appeals had subject matter jurisdiction to review, via certiorari, a trial court's order granting a defendant's MAR. This Court began its analysis with the rule that "the jurisdiction of the Court of Appeals is established in the North Carolina Constitution[.]" *Stubbs*, 368 N.C. at 42, 770 S.E.2d at 75. "The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe." N.C. Const. art. IV, § 12(2).

This Court then observed that the General Assembly gave the Court of Appeals jurisdiction "to issue the prerogative writs, including mandamus, prohibition, certiorari, and supersedeas[.]" *Stubbs*, 368 N.C. at 42, 770 S.E.2d at 76 (quoting N.C.G.S. § 7A-32(c)). This Court also

observed that the statute providing for appellate review relating to MARs (N.C. Gen. Stat. § 15A-1422) “does not distinguish between an MAR when the State prevails below and an MAR under which the defendant prevails.” *Stubbs*, 368 N.C. at 43, 770 S.E.2d at 76.

Given that our Constitution authorized the General Assembly to define the appellate jurisdiction of the Court of Appeals; given that the General Assembly gave that Court “broad powers” to supervise and control the lower courts in Section 7A-32(c); and given the absence of limiting language in Section 15A-1422(c), this Court concluded that the Court of Appeals “has jurisdiction to hear an appeal by the State of an MAR when the defendant has won relief from the trial court.” *Id.* at 43, 770 S.E.2d at 76.⁵

Where tension seemed to exist between the Appellate Rules and statute, this Court decided that the rule did not limit a valid grant of authority. While “Rule 21 might appear at first glance to limit the jurisdiction of the Court of Appeals, the Rules cannot take away jurisdiction given to that court by the General Assembly in accordance with the North Carolina Constitution.” *Id.* at 44, 770 S.E.2d at 76.

⁵ “When used in a general context, the term ‘appeal’ also includes appellate review upon writ of certiorari.” N.C. Gen. Stat. § 15A-101(1).

iii. *State v. Thomsen*

In *Thomsen*, this Court answered the question of whether the Court of Appeals had subject matter jurisdiction to review, via certiorari, a trial court's order granting its own MAR. Just as in *Stubbs*, this Court began with the rule that the "Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe." *Thomsen*, ___ N.C. at ___, 789 S.E.2d at 641 (quoting N.C. Const. art. IV, § 12(2)).

As in *Stubbs*, this Court noted that the General Assembly gave the Court of Appeals jurisdiction "to issue the prerogative writs, including . . . certiorari, . . . to supervise and control the proceedings of any of the trial courts of the General Court of Justice." *Thomsen*, ___ N.C. at ___, 789 S.E.2d at 641 (quoting N.C.G.S. § 7A-32(c)). This Court also noted that Section 7A-32(c) "empowers the Court of Appeals to review trial court rulings on motions for appropriate relief by writ of certiorari unless some other statute restricts the jurisdiction that subsection 7A-32(c) grants." *Thomsen*, ___ N.C. at ___, 789 S.E.2d at 641.

"Subsection 7A-32(c) thus creates a default rule that the Court of Appeals has jurisdiction to review a lower court judgment by writ of certiorari. The default rule will control unless a more specific statute restricts jurisdiction in the particular class of cases at issue." *Id.* at ___, 789 S.E.2d at 642; *cf. Brooks*, 27 N.C. at 485 ("unless that remedy has been expressly taken away by particular enactment.").

This Court emphasized that, in *Stubbs*, “we were not concerned with whether subsection 15A-1422(c) provided an independent source of jurisdiction for the Court of Appeals to issue the writ. Rather, we focused on the *absence* of language in subsection 15A-1422(c) that would *limit* the court’s review.” *Thomsen*, ___ N.C. at ___, 789 S.E.2d at 642 (internal citation omitted).

It mattered not under which statutory subsection the trial court acted. The Court of Appeals “still has jurisdiction because nothing in the Criminal Procedure Act, or any other statute that defendant has referenced, revokes the jurisdiction in this specific context that subsection 7A-32(c) confers more generally.” *Id.* The absence of limiting language means that the jurisdiction conferred by Section 7A-32(c) “remains unchanged.” *Id.*

As in *Stubbs*, this Court addressed the effect of its Appellate Rules. This Court held “if a valid statute gives the Court of Appeals jurisdiction to issue a writ of certiorari, Rule 21 cannot take it away.” *Id.* at ___, 789 S.E.2d at 643. The Rules of Appellate Procedure “shall not be construed to extend or limit the jurisdiction of the courts of the appellate division as that is established by law.” *Id.* at ___, 789 S.E.2d at 643 (quoting Rule 1(c)).

iv. Construing Rule 21

The fact that Rule 21 does not limit an appellate court's certiorari authority is illustrated in *State v. Niccum*, 293 N.C. 276, 238 S.E.2d 141 (1977). There is no statutory appeal of right from a trial court's order denying a petition for writ of habeas corpus. *See* N.C. Gen. Stat. § 15A-1444. "The remedy, if any, is by petition for certiorari addressed to the sound discretion of the appropriate appellate court." *Niccum*, 293 N.C. at 278, 238 S.E.2d at 143. The question in *Niccum* was whether the appropriate court was the Court of Appeals or this Court. Rule 21 gave no answer. It directed only that a petition be filed in the court to which appeal of right would lie from a final judgment. *Id.* at 279, 238 S.E.2d at 144.

At that time, Sections 7A-27(a) and 15A-180.2 provided that appeal from a sentence of death or life imprisonment lay to this Court. *Niccum*, 293 N.C. at 278-79, 238 S.E.2d at 143-44. The defendant was sentenced to life. Accordingly, rather than concluding Rule 21 prohibited review of an order in a habeas corpus proceeding, this Court held the appropriate court was the Supreme Court. *Id.* For support, this Court cited N.C. Gen. Stat. § 7A-32(b), which recognizes this Court's authority to issue writs "in aid of its own jurisdiction or in exercise of its general power to supervise and control the proceedings of any of the other courts of the General Court of Justice."

Thus, although Rule 21 did not list habeas corpus orders, this Court nevertheless exercised its power to grant the writ of certiorari and review

the habeas corpus order. This Court did not indicate that Rule 2 was involved. The holding in *Niccum* is consistent with *Stubbs* and *Thomsen*. *Niccum* shows that Rule 21 does not function as a limit on the broad authority to review a judgment or order via certiorari.

Similarly, in *State v. Johnson*, 298 N.C. 355, 259 S.E.2d 752 (1979), this Court noted that, if parties were unable to agree on the record on appeal, it is the duty of the trial judge to settle the record. The “action of the trial judge in settling the record is final and will not be reviewed on appeal.” *Id.* at 372, 259 S.E.2d at 763. “Defendant’s remedy, if any, would have been by certiorari.” *Id.*; see also *State v. Bolinger*, 320 N.C. 596, 601, 359 S.E.2d 459, 461-62 (1987) (reviewing, via certiorari, whether the trial court improperly accepted the guilty plea); *State v. Ahearn*, 307 N.C. 584, 605, 300 S.E.2d 689, 702 (1983) (reviewing, via certiorari, whether the plea was supported by a factual basis).

Thus, even though Rule 21 did not expressly list an order settling the record for appeal, this Court nevertheless stated that the defendant’s remedy, if any, would have been by certiorari. *Johnson*, 298 N.C. at 372, 259 S.E.2d at 763. The absence from Rule 21 of this particular order does not prohibit review by certiorari. This Court did not suggest that Rule 2 would have any bearing on the decision to issue the writ. This discussion in *Johnson* is consistent with *Stubbs* and *Thomsen*. Rule 21 does not limit the broad authority to review via certiorari.

In *Bailey v. N.C. Dep't of Revenue*, 353 N.C. 142, 540 S.E.2d 313 (2000), the Attorney General asked this Court to review an order awarding attorneys' fees. The case began as a class action challenging a tax on retirement benefits. *Id.* at 149, 540 S.E.2d at 318. This Court concluded that the Attorney General was "without interest" in the allocation of the attorneys' fees from a settlement fund. Under Rule 3, governing civil appeals, the Attorney General was not a party aggrieved. *Id.* at 156, 540 S.E.2d at 322. Thus, the Attorney General had no right to appeal the order.

The Attorney General petitioned this Court for certiorari. This Court quoted the circumstances the Rule described in 2000. *Id.* at 157, 540 S.E.2d at 322. Because the Attorney General had no right to appeal, there was no interlocutory order, and there was no motion for appropriate relief, this Court concluded that no circumstances existed that would permit the Court to issue a writ of certiorari. *Id.* The Attorney General also asked this Court to review the order via Rule 2. However, because the Attorney General was not a party under Rule 3, a jurisdictional rule, suspension of the appellate rules was not permitted. *Id.* at 157-58, 540 S.E.2d at 323.

To the extent that *Bailey* suggests that Rule 21 limits the writ of certiorari, such a suggestion would be contrary to this Court's precedent. Significantly, the Court did not state that the absence from Rule 21 of the particular order—an award of attorneys' fees—prohibited review by

certiorari. Rather, the fact that the Attorney General was a non-party was dispositive. This fact also distinguishes *Bailey* from the present case. Ms. Ledbetter is the named defendant in the criminal prosecution against her. In the instant case, no non-party seeks the writ of certiorari. It is also important to note that *Bailey* did not describe Rule 21 as jurisdictional. This Court rejected the State's attempt to avoid the requirements of Rule 3 by invoking Rule 2. *Bailey*, 353 N.C. at 157-58, 540 S.E.2d at 323.

v. The Court of Appeals has the authority to issue its writ of certiorari here.

As in *Stubbs* and *Thomsen*, the analysis begins with the rule that the “Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.” N.C. Const. art. IV, § 12(2). The General Assembly gave the Court of Appeals authority “to issue the prerogative writs, including mandamus, prohibition, certiorari, and supersedeas[.]” N.C.G.S. § 7A-32(c). Just as Section 7A-32 empowers the Court of Appeals to review orders on motions for appropriate relief and habeas corpus petitions, Section 7A-32(c) also empowers the Court of Appeals to review orders on *Knoll* motions by writ of certiorari.

This default rule is “that the Court of Appeals has jurisdiction to review a lower court judgment by writ of certiorari. The default rule will control unless a more specific statute restricts jurisdiction in the particular class of cases at issue.” *Thomsen*, ___ N.C. at ___, 789 S.E.2d at 642. An order on a *Knoll* motion is reviewable by certiorari. There is not a

more specific statute that restricts the Court of Appeals' authority to issue its writ of certiorari to review an order on a *Knoll* motion. On the contrary, by statute, a defendant who pled guilty "may petition the appellate division for review by writ of certiorari." N.C.G.S. § 15A-1444(e); *see also id.* at (g).

Section 15A-979(b), permitting review of an order denying a motion to suppress evidence after a guilty plea, does not exclude orders on *Knoll* motions from certiorari review. *Knoll* motions bear similarities to motions to suppress based upon other constitutional violations, appeal from which is expressly allowed by Section 15A-979. There is no language in this section purporting to limit the Court of Appeals' authority to review an order on a *Knoll* motion via writ of certiorari. Similarly, Section 15A-954, setting out grounds for dismissal of criminal charges, does not exclude orders on *Knoll* motions from certiorari review.

As in *Stubbs* and *Thomsen*, nothing in the Criminal Procedure Act "revokes the jurisdiction in this specific context that subsection 7A-32(c) confers more generally." *Thomsen*, ___ N.C. at ___, 789 S.E.2d at 642. The absence of limiting language means that the jurisdiction set out in Section 7A-32(c) "remains unchanged." *Id.* The General Assembly placed no language in the pertinent statutes, Sections 7A-32(c), 15A-979(b), 15A-954(a)(4), or 15A-1444(e), limiting the Court of Appeals' authority to review, via certiorari, a ruling on a *Knoll* motion.

Thus, this Court's analysis in *Stubbs* and *Thomsen* dictates the effect of the Appellate Rules here. If "a valid statute gives the Court of Appeals jurisdiction to issue a writ of certiorari, Rule 21 cannot take it away." *Thomsen*, ___ N.C. at ___, 789 S.E.2d at 643. Section 7A-32(c) is a valid statute that gives the Court of Appeals the authority to issue its writ of certiorari to review an order on a *Knoll* motion. Rule 21 does not take this authority away. Thus, the Court of Appeals has the authority to review an order on a *Knoll* motion by certiorari.

B. Ledbetter II conflicts with this Court's precedent in State v. Stubbs and State v. Thomsen.

In *Ledbetter II*, the Court of Appeals claims that its "initial opinion in this case" did not deny or purport to limit the Court of Appeals' jurisdiction to issue the writ of certiorari. The Court of Appeals claims that the issue presented does not actually concern appellate jurisdiction. *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 554. The Court of Appeals purports to distinguish between jurisdiction and a "govern[ing] procedure' . . . to properly exercise" jurisdiction. *Id.*

The Court of Appeals holds that, because Ms. Ledbetter's petition did not invoke any of the three grounds in Rule 21, the Court of Appeals lacks "a procedural basis" to issue the writ, "without invoking Rule 2 to suspend the Rules." *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 554. The Court of Appeals states that Rules 1, 2, and 21 provide "a procedure and mechanism to guide [the Court of Appeals'] discretion to grant or deny

a petition to issue the writ of certiorari under the jurisdiction [which] the appellate courts are ‘empowered’ to exercise under our Constitution and statutes.” *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 555. The Court points to the amendment to Rule 21 after *Stubbs* as an example of this Court setting “a procedure . . . to permit review[.]” *Id.* at ___, 794 S.E.2d at 554.

The Court of Appeals claims that the appellate rules are “replete” with “circumstances in which [the Court of Appeals] possesses jurisdiction, but the rules procedurally do not allow appellate review without invoking Rule 2.” *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 555. The Court of Appeals points to Rules 10 and 28 as examples: “[T]his Court is also bound by Rules 10 and 28 of the Rules of Appellate Procedure, which generally limits [*sic*] review to a [*sic*] only those issues properly preserved and briefed.” *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 555 (citing N.C. R. App. P. 10(a)(1); N.C. R. App. P. 28(b)).

For several reasons, the Court of Appeals’ distinction between jurisdiction and “governing procedure and processes to exercise jurisdiction” should be rejected.

i. *Ledbetter II* grasps at a supposed distinction in order to reach the same result as *Ledbetter I*. The distinction does not bear scrutiny.

First, *Ledbetter II* fails to show that there is a meaningful distinction between jurisdiction and a procedure to exercise jurisdiction.

As an initial matter, the Court of Appeals does not explain what the difference is between jurisdiction and a procedure to exercise jurisdiction.

Assuming that by “procedure to properly exercise jurisdiction,” *Ledbetter II* means “a specific method or course of action,”⁶ Rule 21 does not provide this in any event. A specific method for exercising jurisdiction might include: how the petition for writ of certiorari is assigned to a panel, how many judges need rule on the petition, within how many days must the court rule, etc. Since Rule 21 does not set forth how the appellate court shall issue its writ of certiorari, *Ledbetter II* must have meant something else.

Instead, the Court of Appeals seems to imply that there is a distinction between possessing the power to issue the writ and deciding *whether* to issue the writ. But, Rule 21 does not provide guidance for deciding whether to issue the writ. As discussed above, Rule 21 summarizes and describes this Court’s case law and practices regarding the writ. Rule 21 does not set artificial limitations on the exercise of the writ. To the contrary, the development of the Rule shows that this Court intended the scope of the writ to be broad.

This Court’s decision not to guide the Court of Appeals’ use of the writ is well-founded. Such guidance would likely be at odds with the role prescribed to the Court of Appeals in Section 7A-32(c): “to supervise and

⁶ Black’s Law Dictionary 1221 (7th ed. 1999).

control the proceedings of any of the trial courts of the General Court of Justice[.]” Indeed, this Court described Section 7A-32(c) as conferring on the Court of Appeals “broad powers[.]” *Stubbs*, 368 N.C. at 43, 770 S.E.2d at 76.

To limit the writ of certiorari could thwart the supervisory power of the Court of Appeals. This Court has the constitutional power to “issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts.” N.C. Const. art. IV, § 12(1). Section 7A-32(c) mirrors this language in our Constitution and grants to the Court of Appeals a similar supervisory role. This supervision, via certiorari, is “essential to the uniformity of decision, and the peaceful and regular administration of the law[.]” *Brooks*, 27 N.C. at 486. To guide the exercise of supervisory power with a restrictive list would require that the guider anticipate every error that could occur in the General Court of Justice.

Ledbetter II claims that the appellate rules are “replete” with “circumstances in which [the Court of Appeals] possesses jurisdiction, but the rules procedurally do not allow appellate review without invoking Rule 2.” *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 555. The Court of Appeals points to only two rules: Rule 10(a)(1) and Rule 28(b). Those rules do not concern a discretionary writ. Rules 10 and 28 provide information on the procedure for certain actions: namely, how to preserve an issue for appeal, and what to include in a brief.

Ledbetter II claims that this Court amended Rule 21 when *Stubbs* was filed in order “to set forth a procedure under the appellate rules” to permit review of all rulings on MARs. *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 554. This is incorrect. Not only does the 2015 amendment to Rule 21 not set a procedure to permit review, this amendment is in line with this Court’s long-established practice of describing, rather than defining, the scope of the writ. Like previous versions of the Rule, the current Rule 21 shows this Court’s intention that the scope of the writ be broad, in order that the Court of Appeals fulfill its supervisory role.

Because *Ledbetter II* conflicts fundamentally with well-established principles from this Court, it appears that the Court of Appeals’ distinction between jurisdiction and a “procedure to exercise jurisdiction” was merely an attempt to distinguish *Stubbs* and *Thomsen* in order to allow the Court of Appeals to reach the same result as in *Ledbetter I*.

ii. *Ledbetter II* suffers from faulty internal logic.

Second, Rule 1(c) presents a grave problem to both *Ledbetter I* and *II*. *Ledbetter I* claimed a lack of authority to grant certiorari under Rule 21, but also claimed that the Court of Appeals could, if it saw fit, use Rule 2 to suspend Rule 21 and grant the writ of certiorari. *Ledbetter I*, ___ N.C. App. at ___, 779 S.E.2d at 170.

However, it is well-established that the Appellate Rules “shall not be construed to extend or limit the jurisdiction” of the appellate courts.

Rule 1(c). In spite of this, the Court of Appeals claimed that it could use Rule 2 to remedy its lack of authority, thereby expanding its jurisdiction. This claim stood in direct contradiction to Rule 1(c).

Ledbetter II suffers from the same incompatibility with Rule 1(c). As discussed above, the attempt in *Ledbetter II* to distinguish between jurisdiction and a “procedure to exercise jurisdiction,” is unsupported by the text and history of Rule 21 and this Court’s precedent. The Court of Appeals’ proposition that Rule 21 guides its discretion in determining whether or not to issue the writ of certiorari is contrary to the practices of this Court, found not only in previous versions of the Rule, but also in the earlier case law from which the Rule derives and in subsequent case law regarding the writ of certiorari. Nevertheless, the Court of Appeals relies upon this supposed distinction to claim again that it can use Rule 2 to remedy its lack of “procedural mechanism.” *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 555.

Ledbetter II assumes incorrectly that this Court has issued guidelines that the Court of Appeals must satisfy in order to grant the writ of certiorari, and also assumes incorrectly that the Court of Appeals is nevertheless free to disregard such guidelines by using Rule 2. *Ledbetter II* seems inadvertent to the fact that a limitation on the exercise of the writ would be a constriction of the Court of Appeals’ jurisdiction, and that shrugging off such limitation by invoking Rule 2 would violate Rule 1.

Further, even assuming *arguendo* that this Court has issued guidelines to the Court of Appeals for the exercise of its discretion which do not constrict the Court of Appeals' jurisdiction and do not contemplate the specific order presented for review, the Court of Appeals is incorrect that it lacks a procedural basis to issue its writ of certiorari. Under Section 7A-32(c), in the "absence of statute or rule," the procedure for issuing the writ shall be as "according to the practice and procedure of the common law." Thus, *Ledbetter II*'s erroneous interpretation of Rule 21 and Rule 2 cannot be reconciled with either Rule 1 or Section 7A-32(c).

iii. *Ledbetter II* lacks adequate legal support.

Third, the only citation provided for *Ledbetter II*'s claim that there is "no procedural mechanism" to issue its writ of certiorari is *State v. Biddix*, ___ N.C. App. ___, 780 S.E.2d 863 (2015), which drew a dissent and was pending in this Court before the appeal was withdrawn.

In *Biddix*, the Court of Appeals incorrectly concluded that it lacked authority to grant certiorari because the petition did not invoke a ground listed in Rule 21. *Id.* at ___, 780 S.E.2d at 866. Significantly, *Biddix* relied on *Ledbetter I*. *Ledbetter II*, in turn, relies on *Biddix*. Thus, the support for the analysis in *Ledbetter II* is ultimately *Ledbetter I*, which this Court remanded for reconsideration.

The circular citations of *Ledbetter I*, *Biddix*, and *Ledbetter II* have sown confusion at the Court of Appeals. Compare *State v. Rogers*, ___ N.C.

App. ___, ___ S.E.2d ___, 2017 N.C. App. LEXIS 919 at *12-14, No. COA17-271 (N.C. Ct. App. Nov. 7, 2017) (dismissing the appeal and denying certiorari, but invoking Rule 2 and hearing the appeal) *with State v. Jones*, ___ N.C. App. ___, 802 S.E.2d 518 (2017) (concluding that *Biddix*, *Ledbetter I*, and *Ledbetter II* fail to follow binding precedent of *Stubbs*). By issuing published opinions in *Ledbetter I* and *II*, the Court of Appeals bound subsequent panels to erroneously limit that Court's authority to issue its writ of certiorari. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989).

There is no meaningful difference between *Ledbetter I*'s holding that it lacked jurisdiction and *Ledbetter II*'s holding that it lacks a "procedural mechanism" to issue the writ. It is a distinction without a difference. The Court of Appeals' published decisions in *Biddix* and *Ledbetter II* are in direct conflict with the decisions and rules of this Court. Consequently, the Court of Appeals' decision in *Ledbetter II* should be reversed and the decision in *Biddix* should be overruled.

Furthermore, this Court should reverse *Ledbetter I*, should this Court deem it necessary, in light of the Court of Appeals' declaration that its mandate "remains undisturbed." *Ledbetter II*, ___ N.C. App. at ___, 794 S.E.2d at 555.

C. This Court should direct the Court of Appeals to allow Ms. Ledbetter's Petition for Writ of Certiorari.

This case involves issues of constitutional consequence, including Ms. Ledbetter's right to secure the attendance of witnesses on her behalf. U.S. Const. amend. VI; N.C. Const. art. I, § 23; *State v. Knoll*, 322 N.C. 535, 369 S.E.2d 558 (1987); *State v. Hill*, 277 N.C. 547, 553, 178 S.E.2d 462, 466 (1971). Ms. Ledbetter's appeal has merit and should be heard.

She blew a "double zero" on the breath test. (T pp 22; 56) She was arrested at 7:30 p.m. A blood test was administered about 8:45 p.m. (R p 20) About 9:00 p.m., Myers took Ms. Ledbetter to the magistrate's office. (T pp 24, 55) The magistrate failed to record his reasons for setting a secured bond. (T p 75) He did not provide Ms. Ledbetter with AOC-CR-271, an "Implied Consent Offense Notice" form. (T p 76; R p 16) The magistrate never informed Ms. Ledbetter of her right to call a witness to view her appearance. (T p 26)

Ms. Ledbetter was not aware of her right to have a witness. (T p 28) If she had been aware, she would have called a witness. (T p 26) About 9:30 p.m., Myers took Ms. Ledbetter to jail. (T p 59) When she got there, she called her childhood friend, Mr. Paxton, to post the secured bond. (T pp 27, 73)

Ms. Ledbetter was not released from jail until 12:24 a.m. (R p 22) By the time Mr. Paxton was able to see her, almost five hours after she was arrested, he noticed no signs of impairment in Ms. Ledbetter's speech,

movements, or appearance. (T p 10) Ms. Ledbetter was denied the right to access witnesses who could view her appearance and testify to her apparent lack of impairment in her defense against this criminal charge.

Due to the three-year pendency of this appeal, this Court should direct the Court of Appeals to issue its writ of certiorari and consider the merits of the appeal, as this Court did in *State v. Coxton*, 368 N.C. 905, 2016 N.C. LEXIS 550 (N.C. June 9, 2016) (vacating the denial of the petition for certiorari and directing that the Court of Appeals allow the petition) and *State v. Chapman*, 366 N.C. 555, 2013 N.C. LEXIS 442 (N.C. March 7, 2013) (“The State’s Petition for Writ of Certiorari is allowed for the limited purpose of remanding this case to the Court of Appeals to allow the State’s Petition for Writ of Certiorari for consideration of the merits.”).

CONCLUSION

For the reasons discussed herein, Ms. Ledbetter respectfully requests that this Court reverse the opinion of the Court of Appeals and grant any and all relief it may deem appropriate.

Respectfully submitted, this the 30th day of November, 2017.

(Electronically Filed)
Meghan Adelle Jones
Attorney for Ms. Ledbetter
State Bar No. 42960
P.O. Box 10004
Raleigh, NC 27605
(919) 355-8263
meghanadelle@gmail.com

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the original New Brief was filed electronically with the Clerk of the Supreme Court of North Carolina, pursuant to N.C. R. App. P. 26.

I further certify that a copy of the above New Brief has been served upon Christopher Brooks, Assistant Attorney General, by sending it electronically to his current email address, cbrooks@ncdoj.gov.

This the 30th day of November, 2017.

(Electronically Filed)

Meghan Adelle Jones

Attorney for Ms. Ledbetter