

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.

STATE OF NORTH CAROLINA,  
  
vs.  
  
\_\_\_\_\_,  
Defendant.

)  
)  
) DEFENDANT'S MOTION  
) FOR IMMEDIATE RELEASE/  
) APPLICATION FOR WRIT  
) OF HABEAS CORPUS  
)

NOW COMES the Defendant, by and through counsel, and hereby respectfully moves this Court for his immediate release pursuant to N.C.G.S. § 15A-1345(c) and N.C.G.S. 17-1 *et seq.* In support of this motion, it is alleged and averred as follows:

1. The Defendant was arrested on June 20, 2011 (a Monday) for alleged violations of probation. The Defendant was given a \$15,000.00 secured bond in this matter. The Defendant is incarcerated in the \_\_\_\_\_ County Detention Facility as a sole result of his arrest and bond for this alleged violation of probation.
2. The presiding magistrate gave the Defendant a court date of July 11, 2011, presumably for the violation hearing.
3. Under N.C.G.S. 15A-1345(c), a preliminary hearing on an alleged probation violation must be held within seven working days of an arrest of a probationer (unless the violation hearing has already occurred or the hearing is waived by the probationer) to determine whether there is probable cause to believe a violation occurred. **This section also directs that a probationer who has not received such a preliminary hearing MUST be released to await the full probation revocation hearing.** (An exception is allowed for probationers that have been expressly denied bail upon being found a danger to the public, based on written findings made by the judicial official at the time of their arrest for the alleged violation. This exception does not apply in this case, as the Defendant was not denied bond by the magistrate at his initial appearance.)
4. The Defendant has not been afforded a preliminary hearing and at least 7 working days from the date of his arrest will have elapsed when this motion is presented to the Court.
5. The Defendant is entitled as a matter of law to his immediate release from custody, to await his probation violation hearing.
6. Should the Court not order the immediate release of the Defendant, then the

Defendant is entitled to the issuance of a Writ of Habeas Corpus for the Court to inquire into the lawfulness of his detention. As noted above, the Defendant is confined at the \_\_\_\_\_ County Detention Facility, under the authority of the Sheriff of \_\_\_\_\_ County, North Carolina. Further, the Defendant incorporates by reference the attached documents into this motion, as if fully set forth herein (the violation report, the release order, and the order appointing the undersigned as the Defendant's counsel). The Defendant notes that the legality of his detention has not previously been challenged or adjudged upon a prior writ of habeas corpus.

**Wherefore, your Defendant prays for relief as follows:**

- 1. That the Court order the Defendant's immediate release from custody, to await his probation violation hearing.**
- 2. In the alternative, the Defendant moves this Court to issue a Writ of Habeas Corpus for the Court to inquire into the lawfulness of his detention.**
- 3. For such further and other relief this Court deems just and proper.**

This the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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Attorney for Defendant

**VERIFICATION**

Rich Costanza, being duly sworn, does depose and say that he has read the foregoing pleading, that the information contained herein is true of his own knowledge, except as to those matters alleged upon information and belief, and as to those matters, he believes them to be true.

This the 28<sup>th</sup> day of June, 2011.

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Rich Costanza/Attorney for Defendant

Sworn to and subscribed before me,

this the 28<sup>th</sup> day of June, 2011.

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Notary Public

My Commission Expires:

**CERTIFICATE OF SERVICE**

This shall certify that the undersigned duly served the foregoing pleading upon the State of North Carolina by hand delivering a copy of the same to an Assistant District Attorney for Prosecutorial District 19-D.

This the 29<sup>th</sup> day of June, 2011.

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