

No.

EIGHTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA )

) FROM: GUILFORD COUNTY

) FILE No.s 97CRS 23656,

V.

) 97CRS 39581; 98CRS 23486

) 99CRS 23241-48

THEODORE MEAD KIMBLE )

PETITIONER. )

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PETITION FOR WRIT OF CERTIORARI

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No. \_\_\_\_\_

GUILFORD COUNTY

# NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA	)	"
	)	" FROM: GUILFORD COUNTY
v.	)	" File No.s 97 CRS-23656,
	)	" 97 CRS-39581; 98 CRS-23486;
THEODORE MEAD KIMBLE	)	"
	)	" 99 CRS-23241-48
----- PETITIONER	)	"=====

## PETITION FOR WRIT OF CERTIORARI

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TO: THE HONORABLE COURT OF APPEALS OF  
NORTH CAROLINA

Petitioner Theodore Mead Kimble, Pro-se, Respectfully Petitions this Court to issue it's writ of Certiorari pursuant to rule 21 of the North Carolina Rules of Appellate Procedure to review the order of the Honorable W. Douglas Albright, Presiding Judge Guilford County, Superior Court, N.C. dated November 20, 2003, Denying Petitioner's MOTION FOR APPROPRIATE RELIEF filed Oct. 23, 2003, And in support of this Petition shows the following:

### FACTS

Petitioner Theodore Mead Kimble, is a layman in the LAW and ask for the patience of this Honorable Court as he attempts to represent himself, and the FACTS of his case to the best of his ability.

Pursuant to Judge Albright's M.A.R. summary there is a few "INACCURACIES" the Petitioner would like to point out. (see EXHIBIT A page 1 of 4) Quote: "In the motion, the defendant alleges ineffective assistance of counsel, in that his trial lawyer promised the conspiracy charge would be dismissed pursuant to plea agreement..." (NO-WHERE in the M.A.R. is this allegation made) "... that his lawyer told him the reason the dismissal wasn't in the plea agreement was because the deal was secret, ..." The word is "secretly," and was used one-time in the M.A.R. (see EXHIBIT C M.A.R. page 3 Bottom-line.) The word "secretly" was used in reference to the "supposed" Pre-Arranged 20 year-sentence Counselor Zimmerman spoke of, And NOT the Conspiracy charge. The Prosecutor and Counsel lead Petitioner to believe the Conspiracy charge would be dismissed by only referring to the case number, when in fact there was actually two counts on that charge. (see EXHIBIT C page 10-Bottom, page 11-Top) Mr. Albright FAIL to mention the claim of DOUBLE-JEOPARDY, and the many other claims of Ineffective Assistance of Counsel in the summary.

"A review of the file..." (see EXHIBIT "A" page "2" of 4)

1. "On 7 April 1997, Defendant was indicted ... for first degree murder..."  
"... On 3 November 1997, Defendant was indicted for arson and conspiracy to commit first-degree murder..." (see EXHIBIT C M.A.R. / EXHIBIT N Indictment case #97 CRS 23656.) This indictment was "DEFECTIVE"; titled "Arson of An Unoccupied Dwelling," because the dwelling was occupied and stated so below the charges.  
"... and on 6 July 1998, Defendant was indicted for first-degree arson..." (see EXHIBIT C M.A.R. / EXHIBIT O Indictment case #98 CRS 23486.) The Prosecutor indicted TWICE for the SAME crime, and used the same exact words. The subject of Double-Jeopardy is well covered throughout the M.A.R. (see EXHIBIT C MAR pages -

I. Bottom, pg 8 Top, Page 9 Assignment #2. Cont pages 10-11; Also ESPECIALLY See page 24. Assignment E Cont. pg. 25.) Ineffective Assistance of Counsel is proven under the JACKSON v. LEONARD, both Trial Counsel and Appellate Counsel "FAIL" to raise Double-Jeopardy claim. The act of Double-Jeopardy is clearly a miscarriage of Justice and violates Due Process of Law (See U.S. Const. AM. V, VI and XIV N.C. Const. Art I sec. 18, 19, 23.) also see DICKERSON v. VAUGHN 90 F. 3d. 87 (3rd Cir 1996)

"Misrepresentation of law applicable to Double-Jeopardy issue rendered Guilty Plea INVALID, and required State to grant Petitioner's the Right to file Conditional Appeals NUNC PRO TUNC on Double-Jeopardy issue due to Ineffectiveness of Counsel."

"..., on 28 January 1999, the State filed bills of information charging Defendant with eight counts of solicitation to commit first-degree murder..." Petitioner contends these 8 Counts were to 1 case. The Prosecutor misled the Court in the way he submitted each count as a separate case. The Plea Arrangement stated Counts NOT Cases.

2. "On 25 January 1999, Defendant pled guilty..." It was NOT Jan. 25, It was as the record shows, 28 January 1999. "... Defendant also pled guilty to eight counts of Solicitation to commit first-degree murder..." Petitioner did NOT plead Guilty, He entered an "ALFORD PLEA" (See EXHIBIT "H" Transcript page #4.)

Petitioner ask the Court to NOTE: EACH Judgment and Commitment in counts 99 CRS 23241-48 are MARKED "XX PLED GUILTY TO," in EACH box. (EXHIBIT C.M.A.R. / EXHIBIT D-1 thru 8.) And see Plea Arrangement (EXHIBIT C.M.A.R. / EXHIBIT R.)

Also see Statement Listing Pleas (M.A.R. / EXHIBIT Q.) All of these documents show a "Guilty Plea" on the 8 Counts of "Solicitation..." yet an ALFORD Plea is an ALFORD Plea, NOT an entry of a Guilty Plea. Petitioner has just shown the FACT he "entered" an "ALFORD PLEA" according to the Court Transcript.

(EXHIBIT H.) This makes all papers incorrect, NULL and VOID. To "CORRECT" this "ERROR of the Court," would require an Evidentiary Hearing, "Which I DO ASK FOR." These "ERRORS" are also shown in the Sentencing Transcripts (EXHIBIT J - 1 THUR 6.) Judge Peter McHugh entered judgment under the plea of "GUILTY" in cases (counts!) 99 CRS 23241-48. As Exhibit H shows Petitioner pled ALFORD, NOT Guilty. Counsel's failure to object shows Ineffective Assistance. Counsel did NOT object once!

3. "On 26 February 1999, Defendant filed a pro-se motion to withdraw his guilty pleas..." Petitioner contends Feb. 26, 99 was the second time he tried to file said motion. Petitioner mailed his first motion to withdraw his pleas on January 29, 1999, which "VANISHED!" "... on the grounds he was "pressured into (his) earlier plea." (See EXHIBIT L Lines 11-13.) Petitioner was "THREATEN" by Counsel and coerced to enter a plea. Counsel did not object when Petitioner stated this FACT into the RECORD. "The trial Court subsequently held a hearing on the motion." At this so-called hearing the Petitioner was "DENIED" representation. Counselor Zimmerman and Crumpler told the Defendant "they would sit this one out." Counsel told the Court they would remain "NEUTRAL." (See EXHIBIT C M.A.R./EXHIBIT X) Clearly violated Petitioner's State and Federal Constitutional Rights to Counsel and Due Process violation.

— Continuation under: "A review of the file..." (see EXHIBIT A page 2 of 4)

4. "On 4 March 1999 through 5 March 1999, the trial court held Defendant's sentencing hearing." "... The defendant was sentenced consistently with his plea agreement." Petitioner contends the later statement to be "FALSE" as this Motion will Prove. Counsel had told the Petitioner a 20 year sentence had been Pre-Arranged. The Petitioner was deceived, and lied to.

5. "Defendant thereafter filed a Notice of Appeal. The Court entered appellate entries and appointed the Appellate Defender to represent the defendant." The Ineffectiveness of Appellate Counsel is addressed throughout the Motion For Appropriate Relief. (See EXHIBIT C M.A.R. page 3 assignment #2. cont. pgs 4,5, 10, 16...) Appellate Counsel Carman "ABANDON" important FACTS and ERRORS, and FAIL to file a M.A.R. and represent Petitioner diligently and zealously within the bounds of law, And Petitioner's Appeal was naturally Denied. Because Counselor Carman FAIL to develop the record.

### REASONS WHY WRIT SHOULD ISSUE

In the Court's Order dated Nov. 20, 2003, "Based on the record, the Court concludes..." (see EXHIBIT A-2 of 4)

1. "...See State v. Reynolds, ... he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty." The Petitioner would like to point out his Motion to withdraw his plea on the 4<sup>th</sup> of March, was after and NOT prior to his plea of Guilty. Counsel ABANDON the Defendant. Petitioner was NOT made aware of any Rights. He was DENIED representation. STATE v. Reynolds is NOT applied when "INEFFECTIVE ASSISTANCE OF COUNSEL" is proven. Besides, several of the violations listed took place AFTER the Plea entry. Counsel threaten and coerced the Petitioner to enter a Plea. "Conviction obtained by Plea of Guilty which was unlawfully induced or NOT made voluntary with understanding of the nature of the charge and the consequences of the Plea violates U.S. Const. AM. 5, 6, 14; N.C. Const. ART. I, sec. 19, 23. As Petition pointed out in EXHIBIT C M.A.R. pages #6, 7, how Moore v. U.S. 950 F 2d. 656 (10TH Cir 1991) Coercion by Trial Counsel or the

Prosecutor to induce a Guilty Plea render the Plea involuntary. Also see U.S. v. ELLISON, 798 F2d. 1102 (7TH Cir 1998) and U.S. v. UNGER, 665 F2d. 251 (8TH Cir 1981) clearly (Mirrors) Case at Bar. Also contrary to the Courts Order stating, "The Defendant was aware of all the facts he now claims show prosecutorial misconduct at the time he Pled Guilty based on the documents he provided with his Motion." Apparently the Court didn't read the motion, As it clearly states at the bottom of page #6 (M.A.R.) "It was "LATER" ascertained "JUST RECENTLY," (EMPHASIS SUPPLIED) Upon movement having time to study N.C. Law and Procedures, and study the Court transcripts..." The fact Mr. Zimmerman "WAS" a JUDGE, leaves No-EXCUSE for such a Gross Miscarriage of Justice, Making the Petitioner sign 8 waivers on charges that would be dismissed, if Petitioner did NOT sign! see U.S. v. SANDERSON 595 F2d. 1021 (5TH Cir 1979) also (see M.A.R. pages 17, 18)

Petitioner is always entitled to effective assistance of counsel and a lawful sentence through all stages of any proceedings, before, during, and after entry of any pleas under the Federal Constitution. Petitioner is entitled to protection under the Federal Constitution against misconduct.

Furthermore, "Double-Jeopardy" committed by Prosecutor Panesh is not, "Concerning the alleged defect in the indictment and concerning the Prosecutor's conduct," we are talking about a GRAVE "MISCARRAGE OF JUSTICE." Even a layman can clearly see that indictment #97CRS 23656 "Arson of an Unoccupied Dwelling", with "someone inside the dwelling" had to be dismissed. The Prosecutor broke the LAW and committed Double-Jeopardy by RE Submitting the charge to the Grand Jury on July 6, 1998 as case #98CRS 23486, "First Degree Arson." which is "A Conviction obtained by a violation of the



protection against Double-Jeopardy." Not a simple "Defect" in the indictment!  
See Jackson v. LEONARD 162 F.3d 81 (2nd Cir 1998). (See EXHIBIT C M.A.R. pages 24, 25)

The Prosecutor tried to cover-up the crime of Double-Jeopardy by only referring to the case number in the Plea Arrangement, and FAIL to disclose the information, which constitutes "conviction obtained by the unconstitutional failure of the Prosecution to disclose to the Defendant evidence favorable to the Defendant." Violates U.S. Const. AM. 5, 6, 14; N.C. Const ART I sec 18, 19, 23. Petitioner pointed out in "SEVERAL" ways in EXHIBIT C M.A.R. pages #8 thru #15, Numbers 1-6.

2. "Ridings v. Ridings," cited in court order is NOT controlling. That case did not deal with facts clearly appearing in public records, Abstracts of which were presented to the courts. Additionally Judge McHugh is NOT qualified as a medical professional or qualified in the medical field to make an examination of the defendant, or make a diagnosis that the defendant is competent or NOT! As stated Mr McHugh is a Judge in the field of Law. Furthermore Judge McHugh had doubts in his own judgment as to the competence of the Petitioner. At the withdrawal hearing Judge McHugh pressed a psychologist Dr. William M. Tyson to answer a question he was NOT qualified to answer. (See EXHIBIT K) On lines 13-14 of exhibit "K" the Dr. Tyson stated, "... with the caution that I am NOT a medical Doctor." Dr. William Tyson did a psychology exam of the Defendant near the end of February, which was nearly a month after the Plea entry. By this time the Petitioner had built up a tolerance to the medication and was able to function. Petitioner even stated on record that the "guards" were dispensing medication to him on the Jan. 28. The Petitioner was nearly

drunk on the medication. Counselor Zimmerman knew the condition of his client and even ask the Petitioner to lie. Counsel tried to convince the Petitioner to deny being on medication when asked by the Judge Mc Hugh. Counselor Zimmerman took advantage of the situation. He stood next to the Petitioner at the Plea Hearing and had the Petitioner repeat after him as he whispered the answers to the questions, as the Judge ask them. (See EXHIBIT C M.A.R. page #18.) As for Judge Albright's quote of N.C.G.S. 15A-1001, The psychologist stated on the stand that he was NOT a medical doctor, At that point Petitioner contends the Judge Mc Hugh should have applied N.C.G.S. 15A-1002 (b) and ordered the defendant examined or committed temporarily to determine his mental evaluation on the competent issue, but the court FAIL to do this. (EMPHASIS SUPPLIED.)

3. As for the Courts order, statemen #3 on page #3 (See EXHIBIT A page 3 of 4) The Courts position that the defendant was satisfied with his attorneys when he pled guilty and that he stated under oath that he was satisfied with his attorneys services is explained as follows:

Petitioner at the time was not in a position to contest the irrationous application of law. Furthermore, this does not justify violating Petitioner's Due Process Rights guaranteed by the U.S. Constitution Amendments V, XIV, and North Carolina Constitution, Article I, sections 18, 19, 21, and 23. See NAT. Counsel of resistance to Iran v. Dept. of State, 251 F3d 192 (D.C. Cir. 2001) MATTHEWS v. ELDRIDGE, 424, U.S. 319, 333, 47 L.Ed. 2d. 18, 96 S. Ct. 892 (1976) ARMSTRONG v. MONZO, 380. U.S. 545, 552, 14. L.Ed. 2d. 62, 85 S. Ct. 1187 (1965)

Due Process requires as General Matter opportunity to be heard at

a meaningful time and in a meaningful manner. Citizens must be afforded Due Process before deprivation of life, liberty, or property. No reasonable jurist could conclude that Petitioner is bound by his statement that he was satisfied with his attorneys and their services. That statement was made BEFORE the Petitioner had an opportunity to review court documents and study his case, or study the N.C. Law and procedures and evaluate the record. There is nothing in the record to suggest the Petitioner was aware of or should have known his attorneys were in fact "RAILROADING" him. The Court order (page #3, statement #3.) seems to insinuate that a defendant is required to know in advance that his attorneys assistance will be ineffective. Now see, "... the defendant has already had the opportunity for a hearing on this issue ..." As for this supposed hearing and opportunity, the Defendant was DENIED effective assistance, rather DENIED ANY ASSISTANCE OF COUNSEL! At that Hearing the Defendant's Counsel decided to remain "NEUTRAL" and left Petitioner to defend for himself! Counsel told the Petitioner he was embarrassing them and it was best if... (Quote:) "We'll sit this one out." Petitioner is NOT an attorney and had NO idea of how to raise his issues at that hearing, as a licenced, skilled attorney does. The Petitioner paid \$50,000 to Counselor Zimmerman and Crumpler, yet they REFUSED to represent him at this Hearing, which is a DENIAL of Effective Assistance of Counsel. See the M.A.R page 26, where Counsel remained "NEUTRAL"! Now moving forward see, "Any error in that decision should have been raised on appeal. The defendant's motion does not raise a question of fact and even if it did, it is procedurally barred." Petitioner contends this statement to be "FALSE"!

See CITY OF WEST COVINA v. PERKINS, \_\_\_ U.S. \_\_\_, L.Ed. 2d. \_\_\_, 119 S.Ct. 678 (1999), A primary purpose of the notice required by the Due Process clause is to ensure that the opportunity for a hearing is meaningful in "ALL" cases, The HIGHER Court has the authority to overrule the lower Court's orders, Not the lower Court overrule a higher Court's orders, U.S. v. NAPPI, 243 F3d. 758 (3<sup>rd</sup> Cir 2001) U.S. v. ESCHMAN 227 F3d. 886 (7<sup>th</sup> Cir 2001) Due Process requires that Defendant be sentenced on basis of "Accurate Information." U.S. v. CONTRERAS 249 F3d. 595 (7<sup>th</sup> Cir 2001) Sentencing determination must be based on "Accurate Information." See STRICKLAND v. GREENE, \_\_\_ U.S. \_\_\_, \_\_\_ L.Ed.2d \_\_\_ 119 S.Ct. 1936 (1999) Under BRADY an inadvertent nondisclosure has the same impact on the fairness of the proceeding as DELIBERATE CONCEALMENT. N.C.G.S. 15A-1419(B) Requires the Court to deny the motion under any of the circumstances specified in N.C.G.S. 15A-1419(A) "UNLESS" Defendant can demonstrate good cause and actual prejudice, (or) that failure to consider defendant's claim, or raise a question of fact is "NOT" procedurally barred, If Defendant's claim will result in a fundamental miscarriage of justice. "BOTH" these exceptions were demonstrated in Petitioner's Motion for Appropriate Relief, And requires an Evidentiary Hearing to resolve these claims and issues. However, Petitioner's motion was DENIED without a Hearing.

(A) Denial of Petitioner's Motion without consideration of the merits was inappropriate because good cause and "Question of Fact" existed for excusing any valid grounds listed in the Court's order. Actual prejudice resulted from Petitioner's claim. The Defendant can demonstrate good cause as defined in sec. 15A-1419(c). Petitioner's failure to raise a

Claim was the result of violations of the United States Constitution, including ineffective assistance of Trial and Appellate Counsels. The basis of Petitioner's attempts to raise post Conviction Relief is and has been an ILLEGAL sentence resulting from Conflict of Interest on the part of Mr. Zimmerman being Petitioner's former "Sentencing JUDGE" and failure of Appellate Counsel Carman "ABANDONING" issues, Not reporting Prosecutor misconduct, Vindictive Prosecution, And many more violations of Law; As Petitioner pointed out in his M.A.R. For further information and proof, see EXHIBITS (D) and (E). Motion for Relief from the Judgment, and response to the State's answer. Also see EXHIBITS (F) and (G) Motion in Arrest of Judgment, And response to the States answer.

(B) By the Court's order saying "...it is procedurally barred," results in the refusal of the Superior Court Judge to exercise his discretion in the case, and was an abuse of discretion. Furthermore the Judge Albright obviously didn't exercise a casual perusal of the record, Petitioner pled Guilty and entered ALFORD pleas on Jan 28, 1999, Not Jan 25, as stated in the Court's Order (page #2 statement #2) Or the FACT it was ALFORD Pleas in 3 Counts of Solicitation to Commit First Degree Murder; Not Guilty pleas as stated in the Court's Order (page #2 statement #1). In FACT, NONE of the Court's statements seem to be in accordance of anything shown in the record. The Court didn't even get the right case numbers on page #1, It's 98 CRS 23486 Not 98CRS 23484. This is despite the fact Petitioner's conviction was obtained by use of coerced confession, As Petitioner pointed out in "several" ways in his Motion for Appropriate Relief. See EXHIBIT (C) M.A.R. pages 20 Thru 25. Also see EXHIBIT L

Counsel threaten the Petitioner by telling him his life was in danger.

As for the Court's order statement #3, Page #3 dated Nov. 20, 2003, this further shows how Petitioner's Rights were violated, Denial of Right to Appeal, By Trial Counsel, and Appellate Counsel Carman's Ineffective Assistance of Counsel. For further proof see Motion for Appropriate Relief Exhibit C pages #15 Thru #17.

4. As for the Court's order statement #4, on Page #3 (see EXHIBIT A-3 of 4) Petitioner has shown in this Petition for Writ of Certiorari Page #4, how Petitioner's Plea was NOT voluntary. Also Petitioner pointed out these FACTS in his M.A.R. pages #6, 7, 8, As the Court FAIL to even mention, It is NOT enough for the Court to simply NEGLECT to read the record or the Motions, to make a "BALD ASSERTION" that it contains no issues of fact, which would require an evidentiary hearing to resolve said issues of Material Fact, As the Court quoted factors as "Misunderstanding, duress, misrepresentation by others," Have No comparison to Petitioner's Federal Rights, and his conviction was obtained by violation of privilege against self-incrimination (see EXHIBIT C M.A.R. pages 17, 18, 19, and 20.) Plus as for Misunderstanding, Duress, Misrepresentation, The Due Process Clause giving rise to Petitioner's claims is contained in the Constitution of the United States of America Amendment 14. Petitioner is aware of No published decision in which "ANY" Court has questioned the proposition that the United States Constitution is a "FEDERAL LAW." Yes, the defendant was informed of the applicable maximum sentences and that no promises were made, Because "THE ATTORNEY SAID IT WAS ALL "PRE-ARRANGED" FOR A 20 YEAR SENTENCE TOTAL!" (See EXHIBIT C M.A.R. page #18) The Court quoted STATE V. WILKINS, 131 N.C.

APP. 220 (1998) which does NOT apply in this case at bar. Now see for comparison to STATE v. WILKINS, see TREJO v. U.S. 66 F. SUPP. 2d 1274 (S.D. FLA. 1999) (A YEAR AFTER THE WILKINS CASE) "Counsel's misrepresentation of plea agreement that (1) Cooperation of any on defendant would insure to the benefit to all of them; (2) That this agreement need "NOT" be included in the plea agreement because it had been "ARRANGED" with the Prosecutor; (3) That based on their cooperation, The defendant would receive a sentence as low as five years of imprisonment, but in any case, not more than 10yrs, Required setting aside the Guilty Plea based on Ineffective Assistance of Counsel." In case at bar, Petitioner was promised a 20 year sentence total. Again the Court must have neglected to see EXHIBIT C MAR page #22, or I'm sure the Court wouldn't have bothered to quote the WILKINS case. (EMPHASIS SUPPLIED)!

The Court's Order statement #4 page #3 referring to the "Unambiguous record creates a "formidable barrier," (Nothing more than a "Professional Smoke Screen" concealing the TRUTH!) The quoting BLACKLEDGE v. ALLISON, and CF. UNITED STATES v. CERVANTES, Petitioner contends that he has numerous Proofs and "EXTRAORDINARY" Circumstances. "who can name a case where a JUDGE sends a man to prison, then comes off the bench and becomes the mans Attorney, with the Promise of winning the case. But instead works with the Prosecutor to RAIL-ROAD the man and cause him to be sentenced to over a HUNDRED YEARS!" It's as if Judge Zimmerman didn't get enough of me, when he sentenced me the FIRST-time! So he became my Attorney and had me put away for the rest of my life! (See EXHIBIT C MAR/ EXHIBIT EE-1 thru 3.) IF the Petitioner is given his Constitutional Right

to an Evidentiary Hearing, he will produce MORE than one Affidavit from reliable third parties. Petitioner exhaustively expressed in his M.A.R. several examples of Prosecutor Misconduct. (see EXHIBIT C M.A.R. EXHIBIT S.)

Petitioner presented many issues of Material Fact, And has undisputable proof to show at an Evidentiary Hearing, which he is entitled to under "Color of Law" and the "Ends of Justice".

5. "The Court concludes..." by statement #5 the following. (see EXHIBIT A page 4 of 4.) The case of Strickland v. Washington, "STRICKLAND" establishes a two-prong test for ineffective assistance of counsel: first, that counsel's performance must fall below an objective standard of reasonableness, and second, that the deficient representation must be so serious as to deprive defendant of a fair trial." North Carolina adopted the "Strickland" standard under the case of "State v. Braswell. Judge Albright has stated, "the defendant has failed to raise any issues of material fact about his attorneys' representation or the specific effect of the alleged conflict of interest." The Petitioner contends that Judge Albright did NOT read the M.A.R. In the case at bar, Counsel's performance fell way below an objective standard of reasonableness and as a result the defendant was seriously harmed! It can't possibly be reasonable for Counsel to have had the defendant sign (Bill of Information) waivers on 8 Counts of Solicitation to Commit First-Degree Murder, after the Grand Jury had refused to indict on the charges, And the charges were going to be dismissed! Especially when Counsel knew the defendant was innocent! It can't be reasonable for Counsel to have had the defendant plead Guilty to "First-Degree Arson," when



the case had to be dismissed because the Prosecutor committed Double-Jeopardy! It can't be reasonable for Counsel to sit there and NOT object while the Judge sentences the defendant to 8 consecutive sentences on a single case of Solicitation to Commit First-Degree murder. It can't be reasonable for Counsel to sit there and NOT object when the Judge "ILLEGALLY" sentences the defendant in the "Aggravated Range" on 8 of the 11 sentences, BECAUSE THE DAM CLERK MARKED THE WRONG BOX! IF my case doesn't show "Conflict of Interest" I don't know if such a case exist. Judge Zimmerman sentenced the Petitioner to "PRISON" on Dec. 8, 1999. (see EXHIBIT C M.A.R./ EXHIBIT EE.) while serving that sentence Judge Zimmerman came off the Bench and became Petitioner's lawyer, to provide representation on pending charges. The Petitioner contends that Counselor Zimmerman helped the Prosecutor Rail-Road him! Look at all the UN-REASONABLE things he did. Had Counsel done their Job the Petitioner would NOT be serving a sentence of over a Hundred years!

As for Judge Albright's "SARCASTIC" remark referring to the Petitioner's M.A.R., as he put it, "A laundry list of allegations, they are unsupported by any competent evidence." In the following Assignment (#8) the Petitioner will walk the Court through the CLEAR EVIDENCE PROVEN IN THE RECORD of how the Petitioner was sentenced ILLEGALLY. The BEST is saved for LAST!

Had Judge Albright read the M.A.R. maybe he would have gotten the case numbers, the Plea hearing date, and the ALFORD pleas correct. There is a difference between an ALFORD plea and a Guilty plea.

Allow me to point-out once again as Judge Albright brings it to the attention of the Court, "The defendant stated under oath at the time of his guilty plea that he was satisfied with his attorneys and he has already had a hearing..." Petitioner was on medication at the Plea Hearing and only repeated after Counsel as instructed. Counsel had assured the Petitioner a total sentence of 20 years had been Pre-Arranged. How was the Petitioner to know Counsel had lied to him? How was Petitioner to know what Double-jeopardy was? Or that the Grand-Jury had refused to indict on the 8 counts of Solicitation, and that those charges would be dismissed if he didn't sign the waivers. How could the Petitioner know that Counsel would refuse to represent him at his Motion to withdraw? How could the Petitioner know that Counsel would sit there and NOT object to ANYTHING when the Judge sentenced him ILLEGALLY!

Yes, The Petitioner had a withdraw hearing where he tried to raise issues of FACT, BUT Counsel REFUSED to represent him, And Petitioner was left to fight for himself. Petitioner was DENIED Counsel! The Court has thrown Justice out the window if it's to imply the said hearing was Just and Fair.

6. Judge Albright's statement by assignment #6 (EXHIBIT A page 4 of 4) is a flat out LIE! The Petitioner has shown: (See EXHIBIT C M.A.R. pages #8, #9 and M.A.R./EXHIBIT DD. Transcript pgs. #218-#219.) The Court record clearly shows the P.S.I. Report was NOT available, and the defendant was sentenced WITHOUT the P.S.I. Report. Judge Albright then made the claim it is not a constitutional violation to be sentenced without the P.S.I. Report. See U.S. v. DAVENPORT, 151 F3d 1325 (11th Cir 1998) Pre-Sentence Report must be disclosed to Both defense Counsel and Defendant at least Ten (10) days prior to sentencing as MANDATED by Statute. "Pursuant to N.C.G.S. 15A-1333."

## Availability of "PRESENTENCE REPORT."

(A) Presentence Reports and Sentencing Services information not public records. A written presentence report, the record of an oral presentence report, and information obtained in the preparation of a sentencing plan by a Sentencing Service Program under ARTICLE 61 of Chapter 7A are not public records and may not be made available to any person except as provided in this section.

(B) Access to Reports. The Defendant, His Counsel, The Prosecutor, Or the Court may have access at any reasonable time to a written presentence report or to any record of an oral presentence report. Access to a Sentencing Plan and information obtained in the preparation of a Sentencing Plan shall be in accordance with the comprehensive sentencing service program plans developed pursuant to N.C.G.S. 7A-774

(C.) Expunging Reports. On Motion of the Defendant, the Court in its discretion may order a written presentence report, the record of an oral presentence report, or a Sentencing Plan expunged from the Record. (Chgd. BY 2000-67 § 15.9(C), eff. 7/1/2000.)

## N.C.G.S. § 7A-774. Requirements for a Comprehensive Sentencing Service Program Plan.

Agencies applying for grants shall prepare a comprehensive sentencing service program plan for the development, implementation, operation, and improvement of a sentencing services program for the Superior Court District, As prescribed by the director. The Plan shall be updated annually and shall be submitted to the Senior Resident Superior Court Judge for the Superior Court District for the Judges advice and written endorsement. The plan shall then be forwarded to the director for approval. The Plan shall include:

(1) Goals and Objectives of the Sentencing Service Program.

(2) Specification of the kinds or categories of offenders for whom the Program will provide sentencing information to the courts.

(3) Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in N.C.G.S. 7A-773(i).

(4) Strategies for ensuring that Judges and Court officials who are possible referral sources use the Program's Services in appropriate cases.

(5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and other costs.

(Chgd. BY 1999-306, § 1, eff. 1/1/2000.)

Furthermore, All the above is "MANDATED BY LAW", Pursuant to N.C.G.S. § 7A-770, And cited as the "SENTENCING SERVICES ACT"! The FALSE statement by Judge Albright given in assignment #6 (EXHIBIT A page 4 of 4) makes me ask a lot of questions. Judge Albright is the "RESIDENT SUPERIOR COURT JUDGE" in Guilford County Court House. Surely he knows of the "Sentencing Service Act." Either Judge Albright is lying to COVER for his fellow Judge "FRIENDS", (Judge Peter McHugh and RETIRED Judge H.W. Zimmerman) Or "Someone has possibly "BACK-DATED" a P.S.I. Report to COVER their BACK-SIDE." Either way, I've got a Court-Room FULL of Witnesses who can verify "NO" P.S.I. Report was GIVEN! And Petitioner shows the M.A.R EXHIBIT D.D.

7. As for statement #7, Court's Order page #4 (see EXHIBIT A pages 4 of 4) Petitioner argues the Appellate Counsel has the obligation to pursue what is BEST for her client, And NOT simply what is easiest for her to perform! Appellate Counsel has an obligation to represent Petitioner's Assignments of Errors, and NOT ABANDON issues of an ILLEGAL 70 to 90.4 yrs. Sentence as Counselor Carman did! The Court of Appeals RULING even verified this fact! Counselor Carman FAIL

to raise "Ineffective Assistance" claims, Or "Conflict of Interest," In that Mr. Zimmerman was Petitioner's prior sentencing Judge, Or Prosecutor Miscconduct, Or any other issues of Material Fact Mandated by Law.

\* 8. In closing Judge Albright has chosen to completely over-look (4) Four SERIOUS VIOLATIONS of Petitioner's Rights. Each of the following "Violations" are CLEARLY seen on the Court Transcripts, pages 220-227 of the Sentencing Hearing. (EXHIBITS I & J) Please follow me to the "Ends of Justice." If the Court has fail to agree on any other issue of Material Fact, I pray this Court will REVIEW and ADDRESS each of the following:

\* A) Judge Albright said, "There is nothing in the record to support the defendant's claims that the sentences he received are illegal..." (See EXHIBIT A page 4 of 4, statement #8.)

① Petitioner contends by the State's own words, (See EXHIBIT C MAR./EXHIBIT R.) The Plea Arrangement says "... he will receive consecutive sentences in each of these cases." The Plea Arrangement stated consecutive sentences in each "CASE," NOT each COUNT! The Plea Arrangement states "... and eight counts of Solicitation to Commit First Degree Murder..." There was 8 Counts, BUT ONLY ONE CASE! For "PROOF" see the Bill of Information WAIVERS (EXHIBIT B pages 1 thru 8.) Notice each Waiver states the same "alleged" crime DATE of NOVEMBER 4, 1998. There was only (1) one "ALLEGED" Solicitation. Petitioner contends the State violated it's own Plea Arrangement, And the Court made a SERIOUS ERROR by NOT following the EXACT wording of the Plea Arrangement. Prosecutor Panosh DECEIVED the Court by the way he presented the single (1) case of Solicitation, As if it were 8 separate cases, Instead of 8 counts as shown in the Plea Arrangement. Petitioner was ILLEGALLY sentenced on each Count of a SINGLE CASE. Petitioner had Ineffective Assistance of Counsel as they just sat there and FAIL to object! (See EXHIBIT J pages 1-6.) The Petitioner received 8 consecutive sentences.

② The Petitioner has already shown PROOF on page #3 Assignment #2 in this Motion, how he entered an ALFORD Plea (EXHIBIT H). Now Please look at "EXHIBIT J-1 Thur 6." The Court will see that Judge McHugh pronounced Judgment under a Guilty Plea, instead of an ALFORD plea. This clearly makes the 8 Counts of Solicitation to Commit First Degree Murder an "ILLEGAL-SENTENCE". The Petitioner was NOT found Guilty, Nor did he plead guilty. An ALFORD Plea is an "ALFORD PLEA".

③ The Petitioner was ILLEGALLY sentenced in the Aggravated Range in 6 of the 8 counts of Solicitation to Commit First Degree Murder, in that to justify the Aggravated sentence the Judge used the same ELEMENTS in EACH one, to prove each OTHER. This is only allowed to be done (1) one time, Not 5 additional times. (see EXHIBIT J-1 Thur 6.)

\*B.) Judge Albright said, "The sentences he received are valid and within the ranges allowed by the legislature for the crimes to which the defendant pled guilty." (See EXHIBIT A page 4 of 4 statement #8.)

④ Of the (4) Four Violations now comes the MOST SERIOUS ERROR, and VIOLATION of Petitioner's Rights. PLEASE, Look at Pages #220 through #227 of the Sentencing Transcript. (See EXHIBITS I-1 and 2; Also see EXHIBIT J-1 Thur 6.) Note cases 97 CRS 39581, 98 CRS 23486; and 99 CRS 23241, 42, 43, 44, 46, 47. In each of these cases the Petitioner was sentenced in the Aggravated Range "ILLEGALLY." Now look at the "Findings of Aggravating and Mitigating Factors." (see EXHIBIT C M.A.R. / EXHIBIT E, F, G, H, I, J, K, L) On EXHIBITS E & F under "Aggravating Factors" you will see (1) Box Marked (x) by assignment number (20), which means there is one (1) Aggravating Factor in each case. Also see EXHIBITS G, H, I, J, K, L, on each under "Aggravating Factors" you will see

x    20    x

(\*NOTE: SEE N.C.G.S. 15A-1340.16 AGGRAVATING AND MITIGATING FACTORS)

(1) Box Marked (X) by assignment number (5), which means there is one (1) Aggravating Factor in each of these cases. Now in "ALL" of these cases under the "Mitigating Factors" you will see (3) BOXES Marked (X) by assignments # 12, #18, #19, which means there is THREE (3) Mitigating Factors in each of the 8 cases. Now that means there is (1) Aggravating Factor and (3) Mitigating Factors on each of the 8 CASES shown. If this Honorable Court will now look at the "Bottom" of Each EXHIBIT showing "Mitigating Factors," you will find: "THE WRONG BOX HAS BEEN MARKED!" Factors in Mitigation outweigh the factor in Aggravation and that a Mitigated sentence is justified, "SHOULD HAVE BEEN MARKED!" And NOT "Factors in Aggravation outweigh the factors in mitigation and that an aggravated sentence is justified. The Sentencing Transcript pages #220-#227 (EXHIBIT I and J.) show the Judge sentenced the Petitioner "ILLEGALLY" in the Aggravated Range on 8 of the 11 consecutive sentences he received. These FACTS are shown in the Motion For Appropriate Relief on pages #31 and #32, Assignment X through XIII. But Judge Albright FAIL to ADDRESS this claim. Now I ask, "How can Judge Albright say there is nothing in the record to support the defendant's claims?" Or say, "The sentences he received are valid and within the ranges allowed...?" The only way he can say it is to throw Justice out the window. As the record shows in the transcript, the Petitioner was quickly taken from the courtroom the moment the Judge stopped speaking. Counsel Never once OBJECTED to Anything! It was as if the Defendant had No Counsel. Serious HARM was caused by this "ERROR" of the Court. The Petitioner received a number of "YEARS" added to his sentence. "ILLEGALLY." Petitioner ask for an Evidentiary Hearing to resolve this "Material FACT."

## TABLE OF EXHIBITS

- (A) COURT ORDER DATED Nov. 20, 2003 (4 Pages)
- (B) 8 WAIVERS DATED JAN. 28, 1999 (8 Pages)
- (C) MOTION FOR APPROPRIATE RELIEF
- (D) MOTION FOR RELIEF FROM THE JUDGMENT
- (E) PETITIONER'S RESPONSE TO THE STATE RE: {"Motion For Relief From The Judgment."}
- (F) MOTION IN ARREST OF JUDGMENT
- (G) PETITIONER'S RESPONSE TO THE STATE RE: {"Motion In Arrest of Judgment."}
- (H) TRANSCRIPT PAGE #4 ENTRY OF PLEA (ALFORD)
- (I) TRANSCRIPT PAGES #220-221 SENTENCING (2 Pages)
- (J) TRANSCRIPT PAGES #222-#227 SENTENCING (6 Pages)
- (K) TRANSCRIPT PAGE #19 PSYCHOLOGIST DR. WILLIAM M. TYSON
- (L) TRANSCRIPT PAGE #9 THREAT BY COUNSEL



## PRAY FOR RELIEF

Wherefore, The Petitioner respectfully prays this Court issue it's Writ of Certiorari to the Superior Court of Guilford County North Carolina to permit review of the Order above specified, Upon the following issues;

1.) Did Petitioner's Motion for Appropriate Relief set forth Probable Grounds for Appropriate Relief?

2.) Are Defendant's Grounds for Relief BARRED by N.C.G.S. 15A-1419?

3.) Has Petitioner been DENIED Effective Assistance of Trial and Appellate Counsel?

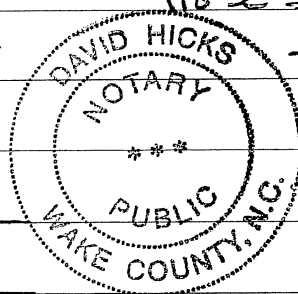
4.) Errors to be assigned in the record on Appeal constitutes in accordance with Rules of Appellate Procedure or such issues as the Court determine; And that Petitioner's case and sentence be set aside and released from prison (or) His case be remanded to the Superior Court of Guilford County North Carolina for an Evidentiary Hearing on all factual issues, see N.C.G.S. 15A-1420 (c)(1); and (4) And appoint Counsel to represent and advise him pursuant to N.C.G.S. 15A-1420(c)(4), 15A-1421, 7A-450 and 7A-451, And to be released from prison upon the posting of a suitable Bond pending Appeal pursuant N.C.G.S. 15A-536, And any other Relief this Court deems just and proper.

Pre-se: Theodore Mead Kimble

Sworn To and Before me This the 12<sup>TH</sup>  
Day of December 2008.

Witness: Nauiff

Date: 12-12-03



THEODORE MEAD KIMBLE  
300 WESTERN BLVD.  
RALEIGH, N.C. 27606

My Commission Expires: My Commission Expires 5-18-2008.

# VERIFICATION

I, Theodore Mead Kimble, Being first Duly Sworn depose and say, I am the Petitioner in the foregoing Petition for Writ of Certiorari, I have drafted and read the same, and the statements contained therein are True, As for any statements made on information and belief, Are made in good faith, And I believe to be True. Signed under penalty of perjury this the 12 day of December 2003.

Pro-se: Theodore Mead Kimble

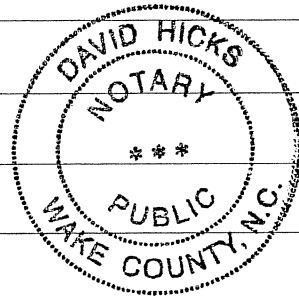
THEODORE MEAD KIMBLE

Sworn To and Before Me This The 12<sup>th</sup> Day of December 2003.

witness: David Hicks

Date: 12-12-03

My Commission Expires: \_\_\_\_\_ My Commission Expires 5-18-2008.



CERTIFICATE OF SERVICE

I, Theodore Mead Kimble, Do hereby Certify

That the foregoing Petitioner's Writ of Certiorari  
copy was Duly Served, By placing in the U.S.  
Mail, Postage pre-paid and addressed as  
follows:

Boy Cooper  
Attorney General  
P.O. Box 629  
Raleigh, N.C. 27602

Pro-se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

Sworn To and Before Me This the 12<sup>th</sup>  
Day of December 2003.

1300 WESTERN BLVD.

BALEIGH, N.C. 27606

Witness: David Hicks

Date: 12-12-03

My Commission Expires: My Commission Expires 5-18-2008.

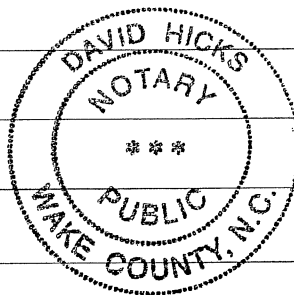


EXHIBIT (A) 1 of 4.

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
97 CrS 23656, 39581  
98 CrS 23484, 99 CrS 23241-48

NOV 25 PM 12:10  
GUILFORD COUNTY, C.S.C.  
Cdf

STATE OF NORTH CAROLINA,

v.

ORDER

THEODORE MEAD KIMBLE,  
Defendant.

This matter is before the Court on a paper writing filed by the Clerk on October 29, 2003. It is captioned "Motion for Appropriate Relief" and is signed by the defendant acting pro se.

In the motion, the defendant alleges ineffective assistance of counsel, in that his trial lawyer promised the conspiracy charge would be dismissed pursuant to plea agreement, that his lawyer told him the reason the dismissal wasn't in the plea agreement was because the deal was secret, that the conspiracy charge was not so dismissed, and that he received an additional sentence for conspiracy; that he was tricked and deceived in unspecified ways by his attorneys into waiving indictment by the grand jury to eight counts of solicitation to commit murder which charges were not supported by any evidence other than the testimony of "a known habitual liar, thief, homosexual"; that his attorneys told him if he did not accept the plea bargain he would get the death penalty "for sure;" that one of his attorneys had a conflict of interest in that the attorney had, while serving as a judge of the Superior Court, earlier sentenced the defendant for an earlier conviction; that defendant's attorney on appeal did not raise all of these various errors before the North Carolina Court of Appeals; that his appellate counsel refused to file a Motion for Appropriate Relief on his behalf; that his attorneys failed and refused to assist him when he filed his pro se motion to withdraw his guilty plea; and that his attorneys failed to get an affidavit from defendant's "star" witness, who then disappeared after defendant's attorneys allowed the District Attorney to threaten the witness.

The defendant further alleges that the sentences imposed were illegal and unauthorized by law in unspecified ways; that the state failed to provide the defendant and the Court with the results of a pre-sentence investigation report in violation of his right to due process; that the new arson charge to which defendant pled guilty violated his right against double jeopardy, having previously been dismissed by the state; that the District Attorney threatened various witnesses for the defendant that if they testified for the defendant they would be prosecuted for other crimes, thus depriving him of key

witnesses; and that the defendant was on unspecified medication on the day he pled guilty and did not know what he was doing.

A review of the file, including the decision by the North Carolina Court of Appeals, shows the following facts of record:

1. On 7 April 1997, Defendant was indicted by a Guilford County grand jury for first-degree murder based on the death of Patricia Gail Kimble (Kimble), Defendant's wife. The indictment alleged Kimble was murdered on 9 October 1995. On 3 November 1997, Defendant was indicted for arson and conspiracy to commit first-degree murder based on the 9 October 1995 incident, and on 6 July 1998, Defendant was indicted for first-degree arson based on the 9 October 1995 incident. Finally, on 28 January 1999, the State filed bills of information charging Defendant with eight counts of solicitation to commit first-degree murder. The eight counts of solicitation to commit first-degree murder related to incidents that occurred after the 9 October 1995 death of Kimble.
2. On 25 January 1999, Defendant pled guilty to second-degree murder, conspiracy to commit first-degree murder, and first-degree arson. Defendant also pled guilty to the eight counts of solicitation to commit first-degree murder. Sentencing was continued.
3. On 26 February 1999, Defendant filed a pro se motion to withdraw his guilty pleas on the ground he was "pressured into [his] earlier plea." The trial court subsequently held a hearing on the motion. At the conclusion of the hearing, the trial court denied Defendant's motion to withdraw his guilty pleas.
4. On 4 March 1999 through 5 March 1999, the trial court held Defendant's sentencing hearing. At the conclusion of the hearing, the trial court found aggravating and mitigating factors existed as to some of the crimes. The defendant was sentenced consistently with his plea agreement.
5. Defendant thereafter filed a Notice of Appeal. The Court entered appellate entries and appointed the Appellate Defender to represent the defendant. The Court of Appeals found no error.

Based on the record, the Court concludes that:

1. A defendant who voluntarily and intelligently enters an unconditional guilty plea waives all non-jurisdictional defects in the proceeding, including constitutional violations that occurred before entry of the plea. See State v. Reynolds, 298 N.C. 380, 395, 259 S.E.2d 843, 852 (1979) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty.") By pleading guilty, defendant has waived his claims concerning the alleged defects in the indictment and concerning the prosecutor's conduct; as to the latter, the defendant was aware of all the facts he now claims show prosecutorial misconduct at the time he pled guilty based on the documents he provided with his motion. Moreover, when a defendant pleads guilty, the state no longer has to prove its case beyond a reasonable doubt. By his plea, the defendant has waived any argument he had that the State's evidence was insufficient.

2. A person is presumed competent. "Everyone is presumed to be sane until the contrary appears." Ridings v. Ridings, 55 N.C.App. 630, 633, 286 S.E.2d 614, 616, disc. rev. denied, 305 N.C. 586 (1982). The judge who accepted defendant's guilty plea had the opportunity to examine the defendant in person, and thereafter found the defendant competent to proceed. Nothing in the defendant's motion and attachments gives rise to any question about his ability to understand the nature and object of the proceedings against him, to comprehend his own situation, or to assist counsel in a rational way. NCGS § 15A-1001. Defendant's unsupported post-conviction assertions that he was incompetent at the time of the guilty plea because he was taking medicine do not overcome the Court's properly entered findings and do not require an evidentiary hearing.

3. The record further shows that the defendant was satisfied with his attorneys when he pled guilty. The defendant at that time stated under oath that he was satisfied with his attorney's services. Moreover, the defendant has already had the opportunity for a hearing on this issue in front of the judge who accepted his guilty plea and who sentenced him, when the matter was raised by the defendant in his motion to set aside the guilty plea. Any error in that decision should have been raised on appeal. The defendant's motion does not raise a question of fact and even if it did, it is procedurally barred.

4. A guilty plea is not voluntary and intelligent unless it is "entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel . . ." Brady v. United States, 397 U.S. 742, 755, 25 L. Ed. 2d 747, 760 (1970) (quoting Shelton v. United States, 246 F.2d 101, 115 (5th Cir. 1957) (Tuttle, J., dissenting)); Bryant v. Cherry, 687 F.2d 48, 49 (4th Cir. 1982), cert. denied, 459 U.S. 1073, 74 L. Ed. 2d 637, and is not "the product of such factors as misunderstanding, duress, or misrepresentation by others." Blackledge v. Allison, 431 U.S. 63, 75, 52 L. Ed. 2d 136, 147-148 (1977); State v. Loye, 56 N.C. App. 501, 289 S.E.2d 870 (1982).

The defendant's claim that his lawyers told him the conspiracy charge would be dismissed is belied by the record, including his own sworn statement and his attorneys' certification. The record unambiguously reveals that the defendant was correctly informed of the applicable maximum sentence and that there was no promise made to him that the conspiracy charge would be dismissed. The defendant swore that no other promises had been made to him, and he signed a plea agreement that did not contain any other promises: State v. Wilkins, 131 N.C. App. 220 (1998) (Defendant knew or should have known that she did not have a plea agreement with the State where the defendant signed a plea transcript which detailed the charge to which she was pleading guilty but contained no plea agreement.) Moreover, he was asked in open court about his plea agreement and he did not inform the Court at that time that he had been guaranteed dismissal of the conspiracy charge and indeed specifically pled guilty to the conspiracy charge and denied that any promises other than those in the plea agreement had been made. This unambiguous record creates a "formidable barrier" to defendant's claim. Blackledge v. Allison, 431 U.S. at 73-74. Only extraordinary circumstances would

entitle defendant to relief. Blackledge v. Allison, 431 U.S. at 80 n.19. There are no such extraordinary circumstances here and absolutely no independent indicia that the defendant's claim has merit. Cf. United States v. Cervantes, 132 F.3d 1106, 1110 (5<sup>th</sup> Cir. 1998)(must be independent indicia of the likely merit of defendant's allegations, such as one or more affidavits from reliable third parties).

5. Every criminal defendant is entitled to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). Strickland establishes a two-prong test for ineffective assistance of counsel: first, that counsel's performance must fall below an objective standard of reasonableness, and second, that the deficient representation must be so serious as to deprive defendant of a fair trial. See State v. Braswell, 312 N.C. 553, 324 S.E.2d 241 (1985) (adopting Strickland standard for ineffective assistance claims). Here, the defendant has failed to raise any issues of material fact about his attorneys' representation or the specific effect of the alleged conflict of interest. While he has made a laundry list of allegations, they are unsupported by any competent evidence. Moreover, there has been no showing that a different result would have obtained had defense counsel handled any one of these matters differently. Finally, as noted above, the defendant stated under oath at the time of his guilty plea that he was satisfied with his attorneys and he has already had a hearing on many of the issues he raises in the Motion for Appropriate Relief when he his motion to withdraw his guilty plea was heard.

6. The sentencing report is on file herein and there is no evidence that it was not available to the trial court and to the defendant before sentencing. Even if it was not, that is not a constitutional violation.

7. An attorney appointed to represent a criminal defendant on appeal has no obligation to file a Motion for Appropriate Relief on behalf of that criminal defendant.

8. There is nothing in the record to support the defendant's claims that the sentences he received are illegal. The sentences he received are valid and within the ranges allowed by the legislature for the crimes to which the defendant pled guilty.

It is therefore ORDERED that:

1. The Defendant's Motion for Appropriate Relief is DENIED.
2. The Clerk shall mail a copy of this Order to the defendant, to the District Attorney for the Eighteenth Judicial District, and to the North Carolina Department of Corrections.

This 20 day of November, 2003.

  
\_\_\_\_\_  
Superior Court Judge Presiding

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23241

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
**FILED**  
JAN 28 1999  
AT 3:50 P.M.  
BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, knowingly solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Rose Gray Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant.  
[Signature]  
Signature of Attorneys for the Defendant  
[Signatures]



STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23242  
EXHIBIT (B)  
2018

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY Film No.  
**FILED**  
JAN 28 1999  
AT 350  
BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Patrick Roy Pardee, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant.  
X Theodore Kimble  
Signature of Attorneys for the Defendant  
[Signatures]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

EXHIBIT (B)  
30FB

File No. 99CRS 23243

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

Film No.

GUILFORD COUNTY  
**FILED**  
JAN 28 1999  
AT 350 U.S. P. M.  
BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Louie Mitchell Widden, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant.  
X Theodore Kimble  
Signature of Attorneys for the Defendant  
[Signatures]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No.

99CRS 23244

EXHIBIT (B)

40F8

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

GUILFORD COUNTY Film No.

FILED

JAN 23 1999

AT 350 P M

BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill David Shane Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature]

Signature of Attorneys for the Defendant

[Signature]  
[Signature]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No.

99CRS. 23245

EXHIBIT (B)  
5078

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

Film No.

v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 23 1999  
350  
BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Gary Paul Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature: R. E. P. D.]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

X Theodore Kimble

Signature of Attorneys for the Defendant

[Signatures of Attorneys]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23246

EXHIBIT (B)  
6088

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

Film No.

v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 28 1999  
AT 350 JULIOR P. M.  
u. [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Cara R. Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant [Signature]  
Signature of Attorneys for the Defendant [Signatures]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

EXHIBIT (B)  
708

File No. 99CRS 23247

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 28 1999  
AT 350 JLL/CK P M.  
BY [Signature] CLERK OF SUPERIOR COURT

Film No.  
**BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Linda Thompson Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant [Signature]  
Signature of Attorneys for the Defendant [Signature]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23248

EXHIBIT (B)  
8078

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 23 1999  
BY [Signature]  
CLERK OF SUPERIOR COURT

Film No.  
**BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Kevin Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant.  
X Theodore Kimble  
Signature of Attorneys for the Defendant  
[Signatures]

STATE OF NORTH CAROLINA  
COUNTY OF **GUILFORD**

FILED  
2003 OCT 27 AM 11: 23

STATE OF NORTH CAROLINA

v.

THEODORE MEAD KIMBLE

DEFENDANT.

{ IN THE GENERAL COURT  
{ OF JUSTICE  
{ SUPERIOR COURT DIVISION  
{ FILE NO.'s 97 CRS 23656  
{ 97 CRS 39581; 98 CRS 23486  
{ 99 CRS 23241-48

# MOTION FOR APPROPRIATE RELIEF

x x x x x x x x x x x x x

NOW COMES, THE DEFENDANT, THEODORE MEAD KIMBLE PRO-SE  
IN THE ABOVE-CAPTIONED CASE'S, AND RESPECTFULLY MOVE THIS HONOR-  
-BABLE COURT, PURSUANT TO N.C.G.S. 15A-1411, ET. SEQ., FOR APPROPRIATE  
RELIEF FROM THE DEFENDANT'S CONVICTION AND SENTENCES IN SAID  
CASES. IN SUPPORT OF THIS MOTION, DEFENDANT SHOWS THE COURT:

## FACTS

1.) I AM ASKING THE COURT TO REVIEW THE LEGALITY OF THE FOLLOWING  
CONVICTIONS WHICH I AM PRESENTLY OBLIGATED TO SERVE: DATE OF CON-  
VICTION WAS MARCH 5, 1999. PRESIDING JUDGE PETER M. McHUGH,  
IT WAS A GUILTY PLEA TO SECOND DEGREE MURDER 97 CRS 39581;  
FIRST DEGREE ARSON 98 CRS 23486; THE CHARGE OF CONSPIRACY TO  
COMMIT FIRST DEGREE MURDER CASE # 97 CRS 23656 WAS "SUPPOSED"  
TO BE "DISMISSED" PER PLEA AGREEMENT UPON PLEA OF GUILTY,



However Petitioner was sentenced to 163-205 months REGARDLESS.

Petitioner took an "ALFORD" plea in cases 99 CRS 23241-48, After being "TRICKED" and "DECEIVED" into signing "WAIVERS" to waive the Findings and the Return of Bills of Indictment, and agreed that the above said cases may be tried upon the above information on the BILL OF INFORMATION SHEETS, by prosecutor RICHARD PANOSH, and attorneys H.W. ZIMMERMAN JR., FRED G. CRUMPLER JR., on January 28, 99 making me believe it was in my best interest, for which Petitioner received a total of a minimum of 840 months and maximum of 1,084 months on those "8" charges alone, which equals 70 to 90.4 years, So by counsel deceiving Petitioner into signing those papers, Petitioner was actually "THROWING HIS LIFE AWAY" without even having the Grand Jury show they be-  
lieved there would be enough evidence to indict on said charges, Solely on the word of a known Jailhouse thief, Homosexual, and habitual liar, which "FOUR" other witnesses testified to those facts, So it's as if counsel was working against Petitioner, which was obviously Ineffective Assistance of Counsel. As if Petitioner had no counsel at all. Petitioner wants to bring out the "FACT" attorney H.W. ZIMMERMAN "WAS" the sentencing JUDGE whom had sentenced Petitioner on December , 1997 to a total of 50-60 months, For B.E./ Larceny charges, and while serving that sentence Mr Zimmerman came off the bench and went into private practice, Petitioner and his family hired F.G. Crumpler Jr. from a law firm in Winston-Salem (N.C.) Mr Zimmerman had just started working at the same law firm. Mr Zimmerman wanted to team-up with Mr Crumpler to represent Petitioner. (Judge) Zimmerman told Petitioner and his family that he could win the case for \$60,000 dollars; That since he had served as a Judge he could "ARRANGE" everything. A month or so after retired Judge Zimmerman took my case and had received full payment, he started asking Petitioner's family for more money, when Mr Zimmerman learned they had no-more money to give, Mr Zimmerman changed his statement from how he could

WIN the case, to how Petitioner must take a "20 year PLEA BARGAIN". IF Petitioner did NOT take the 20 year plea bargain he would be put to death. Petitioner had hired H.W. Zimmerman out of DURESS, after his previous attorneys had told him the same thing. Mr. Zimmerman coerced Petitioner to sign the said WAIVERS. He assured Petitioner everything was ARRANGED, Petitioner was to get 20 years sentence total for "Everything," Although it wasn't shown on the Plea Bargain when signed. As Mr. Zimmerman stated, he had "PULL" with the Judge (Peter McHugh) and Prosecutor (Richard Panosh), as he worked with them when he was a Judge HIMSELF, when sentenced, Petitioner received a total of 1,289 minimum months and 1,651 maximum months on all sentences, which were all ran consecutively. Attorney (Judge) Zimmerman showed prejudice toward Petitioner, his own client. Clearly a Miscarriage of Justice and conflict of interest. <sup>EXHIBIT</sup> (EE)

2). Petitioner's attorney filed Notice of Appeal in the N.C. Court of Appeals on March 12, 1999.

3). On October 7, 1999 Petitioner's appellate counsel assigned, MS. DANIELLE M. CARMAN filed The Proposed Record on Appeal, ON APRIL 20, 2000, Appellate Counsel sent Petitioner a copy of the State's brief. Petitioner had told Appellate Counsel to make sure that she brought it to the Courts attention in her assignment of Errors, The "FACT" that Mr. Zimmerman WAS the sentencing JUDGE who sentenced Petitioner on the unrelated charges (to begin with), and how he had assured Petitioner and his family how he had everything under control, How he would use his INFLUENCE from being a former Judge to ensure that Petitioner won his case, How a WIN changed to a 20 year plea agreement when no more money could be sent. Petitioner would receive a 20 year sentence on ALL charges, how Petitioner was told the reason it couldn't be in the Plea Bargain because it would draw ATTENTION and may arouse SUSPICION that it had all been PRE-ARRANGED secretly, When in FACT, Mr. Zimmerman's only GOAL was to

send Petitioner away for the Rest of HIS LIFE! And get PAID \$50,000 for Doing It!

Yet Appellate Counsel Carman fail to say one word about these FACTS in her ASSIGNMENT of ERRORS! Which shows Ineffective Assistance of Appellate Counsel, and Grave Miscarriage of Justice!

4). The entire time Petitioner's appeal was in the N.C. Court of Appeals, Petitioner repeatedly told Appellate Counsel to file a motion for Appropriate Relief, To bring out FACTS that were NOT able to be put in her brief. Like the FACT Mr. Zimmerman was the previous sentencing JUDGE, and how he TRICKED Petitioner into allowing him to represent Petitioner through FALSE Promises, And at the threat of receiving a DEATH Penalty. Still Appellate Counsel refused to fill a M.A.R., which would be allowed to be filed in the Court of Appeals, Instead of in Superior Court of Guilford County where Petitioner was "SHANGHAIED" and many of his RIGHTS were violated, STATE and CONSTITUTIONAL RIGHTS, and Petitioner was sentenced ILLEGALLY, But Counsel Carman stated she does NOT file Motions for Appropriate Relief. Counsel could have brought out all kinds of facts NOT included in her brief, As Rules state, Pursuant to 15A-1418, which Provides in pertinent parts as FOLLOWS:

A). When a case in the Appellate Division is there for review based upon grounds set out in N.C.G.S. 15A-1415 must be made in the Appellate Division. For the purpose of this section, A case is in the Appellate Division when the jurisdiction of the Trial Court has been divested as provided in G.S. 15A-1418 (OR) when a Petitioner for Writ of Certiorari has been granted. Petitioner seeks Relief upon the following grounds:

The sentence imposed was unauthorized at the time imposed, Contained A type of sentence disposition or A term of imprisonment NOT authorized for the particular class of offense and prior record, and conviction level was ILLEGALLY imposed, or is otherwise invalid as a matter of Law. (N.C.G.S. 15A-1415(B)(9)) Ineffective Assistance of

Trial Counsel North Carolina General Statute 15A-1415 (E). But Counsel Carman **REFUSED** to file a Motion for Appropriate Relief and Petitioner's appeal was **DENIED**.

The Court did **NOT** have an opportunity to review all the State and Federal rules and laws that were **VIOLATED** in Petitioner's case and **ILLEGAL** sentence.

5). Thereafter, Petitioner pleaded with Appellate Counsel Danielle Carman to file a Motion for Appropriate Relief again repetitiously, and Counsel finally said she would, **HOWEVER**, Appellate Counsel did just the **OPPOSITE**, on April 10, 2001 Petitioner was mailed a letter from Appellate Counsel Carman along with a **ORDER** from the N.C. **SUPREME** Court denying a petition she filed for **DISCRETIONARY REVIEW** dated April 6, 2001 **AGAINST MY KNOWLEDGE** and against my will! By Counsel filing a petition for Discretionary Review, the court simply denied my appeal. This did **NOT** enable her to bring out the **FACTS** and **ISSUES** that can be brought out in a **M.A.R.**, As Petitioner constantly instructed her to file. This was a Gross Display of Ineffective Assistance of Appellate Counsel. Ms. Carman never brought it to the Court's attention that Mr. Zimmerman was the previous sentencing **JUDGE**, and what a **GRAVE CONFLICT** of **INTEREST** it was by him representing Petitioner. Ms. Carman stated it would **NOT** do any good to bring up those **FACTS**, and speaking on that issue would only cause trouble for her. She **FEARED REPROCUCTIONS** from all involved if she pointed those facts out!

## **STATEMENT OF FACTS**

6). This Motion comes within N.C. G.S. 15A-1415.

A). My convictions were obtained in violation of Due Process of Law, (U.S. Const. AM. 5, 6, 14; N.C. Const. ART. I, sec 18, 19, 23,) as well as other provisions of the United States and North Carolina Constitutions. G.S. 15A-1415.

B). Even if my convictions were valid, there was a problem **"IN THE WAY"** I was sentenced

and my sentences are INVALID, see N.C.G.S. 15A-1415 (B)(1)(3)(4)(5)(8)(C)(E)(G).

## OTHER CONSTITUTIONAL VIOLATIONS

A). Conviction obtained by Plea of Guilty which was Unlawfully Induced or **NOT** made VOLUNTARY with understanding of the nature of the charge and the consequences of the plea.

U.S. Const. AM 5, 6, 14; NC Const. ART I sec. 19, 23.

1). Movest was represented by and through attorneys H.W. Zimmerman Jr. and Fred G. Cumppler Jr. As such Movest was of the impression and understanding that said attorneys were skilled and trained in the laws of N.C. Movest was advised (**COMPELLED/INDUCED**) to take a Plea Bargain by the forenamed Counsel, They stated that it was in my best interest. Mr. Zimmerman told Petitioner that everything was all **PRE-ARRANGED** for a "20 year sentence", That Mr. Parosh only wanted a **CONVICTION** because of all the **Publ-icity**. If the tax payers had to pay all the unnecessary money to go to trial, the D.A. would make sure I was sentenced to **DEATH** no matter what. see **MOORE v. U.S.**, 950 F2d 656 (10TH CIR 1991) Coercion by Trial Counsel or the Prosecutor to induce A GUILTY plea render the plea INVOLUNTARY. Also see **U.S. v. ELLISON**, 798 F2d 1102 (7TH CIR 1998) and **U.S. v. UNGER**, 665 F2d 251 (8TH CIR 1981) Defendant's assertion that Counsel advised her that if she plead guilty to kidnapping charges, she would be given probation, and that if she went to trial and was found guilty, that she would probably get the Death Penalty, Stated a valid claim of Ineffective Assistance of Counsel, which **"REQUIRED an EVIDENTIARY HEARING."** In this case at bar, Petitioner was told **IF** he plead guilty, he would get a sentence of 20 years. If he went to trial, he would **POSITIVELY** be found Guilty, And get the Death Sentence **FORESURE!** It was later ascertained just recently, upon Movest having time to study N.C. Laws and Procedures, and studying the Court transcript records, That Movest's attorneys

COMPELLED/INDUCED him to sign waivers which would ensure him 70 to 90.4 years on "8" counts alone. The fact Mr. Zimmerman "was" a JUDGE, leaves NO-EXCUSE for such a Gross Miscarriage of Justice! Making Petitioner sign 8 waivers knowing the charges would positively be DISMISSED if Petitioner did NOT sign! This is A conflict of Interest! And it is obvious that Mr. Zimmerman wanted to make absolutely sure that Petitioner would spend the rest of his life in prison. See U.S. v. SANDERSON, 595 F2d 1021 (5TH CIR 1979) (Trial Counsel's misrepresentation of material facts, withholding information, And exerted pressure on Defendant to induce a guilty plea, Constitutes Ineffective Assistance of Counsel and REQUIRES an Evidentiary Hearing to Resolve Claim.) In case at bar, Prosecutor had already tried to have Petitioner "indicted on all (8) counts, But solely on the word of one inmate William Wayne Stewart, And FOUR people saying Stewart was lying, No indictment could ever be considered on such FLIMSEY-HERESY. Mr. Panosh needed a conviction on those 8 counts to give Petitioner 70 to 90.4 years, which was twice as much time at the original charges put together. Mr. Panosh himself had offered a 20 year plea agreement to Petitioner prior to Co-defendant's trial. Petitioner fully believed Counselor Zimmerman when he gave assurance of a 20 year plea agreement, that all charges would be combined, that the state only wanted a conviction! After Counselor Zimmerman had Petitioner sign waivers, he had Petitioner plead Guilty to a charge that was INVALID and DISMISSED, But later (Approx. 8 months) being RE-CHARGED with a different case number (98 CRS 23486) and changed the name of the charge to First Degree Arson, with the same wording as the previous charge from 8 months earlier, which was then case number (97 CRS 23656) Arson of an Unoccupied Building, However as the WORDING states in pertinent parts "Burn or cause to be burned a the Dwelling house INHABITED by PATRICIA KIMBLE." Obviously a charge titled

UNOCCUPIED can't also be INHABITED at the same time, so it naturally had to be dismissed as a matter of Law. However, Counsel had Movant believe that particular charge and "ENTIRE" case #97 CRS 23656 was being dismissed as part of the plea bargain, Counsel FAIL to note the RE-INDICTMENT (DOUBLE-JEOPARDY) for the same offense, Only this time as case #98 CRS 23486 titled "First Degree Arson," with the same exact wording as in previous dismissed case #97 CRS 23656. Which was Ineffective Assistance of Counsel and Due Process of Law, see U.S. v. GIARDINO 797 F.2d 30 (1st Cir 1986) Trial Counsel lied to Defendant to induce a Guilty Plea, Constitutes Ineffective Assistance of Counsel and REQUIRES the plea to be set aside. Case at bar, Counselor Zimmerman lied when he told Petitioner everything had been Arranged for the 20 year plea agreement, that Petitioner should NOT question his authority. Clearly a Conflict of Interest for Mr. Zimmerman was the JUDGE that first sent Petitioner to prison, He can NOT possibly be looking out for Petitioner's best interest, To prove it just look at Petitioner's 107-134 YEAR SENTENCE!

B). Conviction obtained by the Unconstitutional Failure of the State to disclose to the Defendant evidence favorable to the Defendant. U.S. Const. AM. 5, 6, 14;  
N.C. Const. ART. I, sec 18, 19, 23.

1). State "FAIL" to provide the Defendant and the Court with the results of the (PRE-SENTENCE- INVESTIGATION-REPORT), Despite the fact the lady was subpoenaed, By Court records "2" weeks prior to March 5, 99 sentencing! It's a violation of Due Process of law not to be given the chance to have the Judge consider the recommendations of the P.S.I. Report, Defeating the whole purpose of the P.S.I. Rules, And Defendant was sentenced ANYWAY! see U.S. v. DAVENPORT, 151 F3d 1325 (11th Cir. 1998) Pre-Sentence Report must be disclosed to BOTH defense Counsel and Defendant at least TEN (10) Days prior to sentencing as MANDATED by Statute. Also see U.S. v. GORDON 173 F3d

(10TH Cir. 1999) and U.S. v. BARTHOLOMEN 974 F2d (5TH Cir. 1992) Trial Counsel NOT only didn't have a chance to object to any inaccuracies or errors in the P.S.I. Report, "NO P.S.I. Report was ever produced!" A casual perusal of the record shows that Petitioner was denied all his State and Constitutional Rights from "DAY ONE", why start following the Rules at this point, Sentence Petitioner anyway! see WEST v. U.S. 994 F2d 518 (8TH Cir. 1993) Trial Counsel's FAILURE to object to errors in the Pre-Sentence Report can constitute Ineffective Assistance." In case at bar, Trial Counsel did NOT even care that NO Pre-Sentence Report was even produced! No less object to any errors in it! Counselor Zimmerman was a JUDGE, there's "NO" excuse, He just sat there and did NOTHING! Blatantly prejudice and malice toward Petitioner.

2.) State NOT only FAIL to advise the Petitioner that the charge of "ARSON OF AN UNOCCUPIED" Dwelling IND #97CRS 23656 DATED Nov. 3, 1997 had been Dismissed by Law. Because the Dwelling WAS OCCUPIED by Patricia Kimble, The indictment was in fact a mistake, Making it "NULL AND VOID!" Even the words underneath the charge states in pertinent part, "The Dwelling house INHABITED by PATRICIA KIMBLE." Therefore this can't be an "UNOCCUPIED DWELLING!" Yet, Instead of making these facts known, The State made the Petitioner believe Conspiracy to Murder 97CRS 23656 charge would be DISMISSED as part of the plea bargaining, then committed "DOUBLE JEOPARDY" by RE-SUBMITTING the charge to the Grand Jury as case #98CRS 23486 titled "FIRST DEGREE ARSON", this time dated JULY 6, 1998, For further "PROOF" if this was not in fact TRUE then WHY wasn't Petitioner charged with "FIRST DEGREE ARSON" on Nov. 3, 1997, and was instead MISTAKENLY charged with 97CRS 23656 "Arson of an Unoccupied Building"? The "FACTS" speak for themselves in this issue. BOTH Indictments had the same exact wording. Which was also Ineffective Assistance of Counsel for NOT saying anything about it! And Due Process of Law. See JACKSON v. LEONARD 162 F3d 81 (2ND Cir. 1998) Appellate Counsel's failure



to raise Double-Jeopardy claim where it was apparent that Jackson's two charges of First Degree Robbery and Criminal use of a Firearm in the First Degree rested on the same FACTUAL Predicate. Constitutes Ineffective Assistance of Counsel. In case at bar, Not only was Appellate Counsel Ineffective for Not putting it in her Assignment of Errors, But Trial Counsel HAD PETITIONER PLEAD GUILTY TO IT! which calls to mind WILLIAMS V. TURPIN 87 F3d 1204 1211 (11th Cir 1996) Petitioner entitled to Evidentiary Hearing if Petitioner succeeds in demonstrating Ineffective Assistance of Appellate Counsel, then the Evidentiary Hearing maybe considered in court. With the underlying claim of Ineffective Assistance of Trial Counsel. In case at bar, The record and Appellate Counsel's Assignment of Errors show clearly that Petitioner just PROVED the above Ineffectiveness of BOTH Counsel at the same time for a FACT! Appellate counsel Carman has a duty to report any miscarriage of Justice, Not only in her Assignment of Errors, She should also have reported the fact that Mr Zimmerman was the prior sentencing Judge to the State Bar, Plus with all the other obvious misconduct from all parties involved, All the "ILLEGAL" state and Federal law violations that were used to get these convictions, All should have Immediately been reported to the State Bar, NOT only did she FAIL to Report ANYTHING, she did NOT put ANY of these FACTS in her Brief! The Prosecutor CONNED Petitioner into believing the ENTIRE indictment (#97CRS 23656) would in fact be dismissed by his Plea of Guilty. By just referring to case #97CRS 23656 which was the ONE and ONLY indictment that had "2" counts, Out of all the indictments. The State tricked Petitioner with the aid of Counselor Zimmerman, into believing by Pleading Guilty to that charge, it would be DISMISSED, Even in the Jan. 28, 99 transcript of the proceedings Page 11 Lines 18-19 The Court stated, "In Case 97CRS 23656 shall be dismissed by the state upon your plea of guilty." On Jan 28, 99 The only charge in case 97CRS 23656 was in fact "Conspiracy First Degree Murder," so Petitioner naturally figured that was the

charge - the court was talking about, and Mistake or Not the Judge in fact Dismissed

"Conspiracy First Degree Murder." See SCOTT v. WAINWRIGHT 698 F2d 427 429-30 (11th Cir. 1983) Trial

Counsel's FAILURE to learn the facts and familiarize himself with the law in relation to Plea Constitutes Ineffective Assistance of Counsel. HERBING v. ESTELLE, 491 F2d 135 (5th Cir. 1974)

Trial Counsel's FAILURE to familiarize himself with the facts, Law relevant to the case in relation to the guilty plea Constitutes Ineffective Assistance of Counsel and renders

the plea INVOLUNTARILY ENTERED. In case at bar, After plea was entered Petitioner discovered his trial Counsel only possessed 3 of 20 plus volumes covering his co-defendant's trial, Counsel never even recovered much of the notes and information from

Petitioner's previous Counsel. Clearly Trial and Appellate Counsel did NOT read the

\*Indictments or they would have noticed Petitioner was charged TWICE for ARSON.

Petitioner "was" ignorant of the law, but even now with limited knowledge the ERROR

is plain to the eye. The Prosecutor had to have knowledge of these facts as he is the one who used TRICKERY by Re-Submitting the crime charge to begin with, but concealing these facts to make Petitioner believe he was getting some kind of break in a plea deal,

And Counsel went right along with the Prosecutor in this "CONSPIRACY" they committed against Petitioner, As if Petitioner had Counsel acting as the Prosecution working against him, Because Counsel surely didn't do ANYTHING to help Petitioner in ANY, SHAPE, or FORM!

On July 6, 1998 The State ILLEGALLY RE-INDICTED Petitioner on 98CRS 23486 calling it in fact

"First Degree Arson," this time with the same exact wording! See JACKSON v. LEONARD 162 F3d 81

(2ND Cir. 1998) Prosecutor this time committed Double Jeopardy, by using the same case Twice,

to raise the charge, Changing the title, But SAME WORDING, Same FACTUAL PREDICATED!

And PROSECUTOR MISCONDUCT! Petitioner was given 163-205 months for an ILLEGAL RE-INDICTMENT.

The State didn't even type the right charge number correctly on the Judgement and Commitment

paper, listed as "98"CRS 23656 making the paper VOID. (See Judgement and Commitment paper EXHIBIT (B))

3). Petitioner contends that the Prosecutor having Petitioner Plead Guilty to 97CRS39581 "Second Degree Murder" was in fact an "ILLEGAL SENTENCE," Petitioner positively did **NOT** kill Anybody! And Petitioner can't be guilty of 97CRS 23656 Conspiracy First Degree Murder and guilty of Second Degree Murder at the same time, this is despite the fact that charge was DISMISSED upon Plea of Guilty anyway!

4). State and Attorneys TRICKED defendant into signing 8 Bills of Information WAIVERS on Jan. 28, 99 there by "WAIVING the Findings and Return of a Bill of Indictment on case 99CRS-23241-48," knowing for a fact there was **NO** evidence to present said cases to the Grand Jury for consideration of indictment, "Soley" on the word of Inmate William Wayne Stewart, when "FOUR" witnesses all testified the inmate in question bragged of robbing Petitioner, bragged of lying on Petitioner to get out of prison early, was in fact the one who solicited the Defendant, Robbed Petitioner's locker to steal information about his case, Stewart stole legal and personal information to make his PHONY story more believable, when he is in fact a known Habitual Lier, Thief, Homosexual, who claimed to be a "Hit-Man", the only thing he "Hit" was Petitioner's locker to steal his property, to fabricate a WILD STORY so he could be released from prison early, which the "PROSECUTOR" arranged by having a Judge order his release in violation of all State and Federal laws. The Prosecutor made positively sure that William Wayne Stewart was **NOT** in court to testify or face cross examination of his PHONY STORY. Yet his statement was entered in the record against Petitioner. Petitioner was CONNED into an ALFORD-Plea on all (8) counts with "NO Proof what so ever" and Petitioner recieved a total of 840 to 1,084 Months on those charges alone, which is 70 to 90.4 years, on the word of an inmate who FOUR witnesses testified to the fact it was all "LIES"! This should be considered as a BRADY violation, In view of facts.

5). Counsel not only FAIL to take a statement from Patrick Pardee, but also FAIL to take statement from several other witnesses. Mr. Pardee would have testified for the Defense,

but Counsel waited until the D.A. threaten Mr. Pardee with prosecution of several charges, And would fabricate charges if necessary, The D.A. threaten Mr. Pardee with severe prosecution if he didn't make a statement against Petitioner. The D.A. also threaten Robert Nicholes in the same manner. Jeff Roberts and James Ogburn were going to testify for the Defense, but the D.A. threaten them and ran them off! It's Prosecutor MISCONDUCT to threaten a Defendant or witnesses or anyone else with additional or fabricated charges, see U.S. v. ESTRADA, 849 F.2d 1304 (10th Cir 1998) Furthermore, Prosecutor Can't threaten witnesses in ANYWAY, see U.S. v. AGUILAR 90 F.SUPP.2d 1152 (D.Col. 2000) Prosecutor's statement to Defense witness that government might void witness plea agreement and re-instate previously dismissed charges unless he invoked his Fifth Amendment privilege against self-incrimination, \*Deprived defendant of his Right to Due Process and Compulsory Process. In case at bar, The Prosecutor threaten every witness in oneway or another, Destroying all Defense Witnesses, and Counsel went right along with it working hand and hand with the Prosecutor, as if Petitioner had no Counsel at all! Mr. Panosh (D.A.) knew he didn't have to follow any rules or disclose any facts to the Defense or Petitioner, due to the fact Mr. Zimmerman wanted to put his client away for the rest of his natural life, Counsel just let Mr Panosh do anything he wanted, legally or illegally. The main goal with everyone working together was to send Petitioner away for the rest of his life, and they all succeeded as the record shows. Even Appellate Counsel worked against Petitioner, as the brief she filed speaks for itself. Mr. Pardee told Melanie Oxendine 3 days before he signed a statement against Petitioner, that he had No idea of anything about the Kimble case, Then all of a sudden after the Prosecution threaten Pardee, he then signed a statement against Petitioner. This was clearly Vindicative. Prosecution, Plus the fact that this is a violation of Due Process of Law. "Clearly Prosecutor Misconduct!"

6). Jeff Roberts and James Ogburn were BOTH interviewed several times by the

D.A., The Prosecutor **FAIL** to turn over a single statement to the Court and to Petitioner's Counsel. Jeff Roberts could have testified that Robert Nicholes had told him that he knew **NOTHING** about the Kimble case, and that Bob claims to be going down to the D.A.'s office for **COACHING LESSONS** on the Kimble case. James Ogburn could have testified how Ronnie Kimble was in front of him from "3:45 PM. until 4:30 PM, On Oct. 9, 95 the time and day that the Homicide took place. James Ogburn could have testified about the conversations he had with Robert Nicholes, See "Newly Discovered Evidence EXHIBIT(T)" see U.S. v. ESCHMAN 227 F3d 886 (7TH Cir 2000) Due Process **REQUIRES** that Defendant be sentenced on basis of **Accurate Information**. The Prosecutor never turned over those statements to the Court or the Defense, In fact for further information Please (see **"AFFIDAVIT OF THEODORE KIMBLE" EXHIBIT(S)**). This is all in violation of U.S. Const. AM 5, 6, 14; N.C. Const. Art I, Sec 18, 19, 23. The State **FAIL** to supply or provide the Court and Petitioner many various **FACTS and EVIDENCE**, and statements from Pardee, Roberts, Ogburn, and others as stated here in and above. The D.A. **TWISTED** witnesses' testimonys around and threaten them to change their story. And took a **FALSE** statemant from William Stewart, And many other violations. This **ENTIRE** procedure was done in violation of N.C.G.S. 15A-1340.14 and Affirmed by STATE v. RICH, 130 N.C. APP. 113, 502, SE 2d 49 (1998). BOYLE v. MILLION, 201 F3d 711 (6TH Cir 2000) BERGER v. U.S. 295 U.S. 78, 88, 79, L. ed. 1314, 55 S ct. 629 (1935).

While a Prosecutor is clearly authorized to strike hard blows in an earnest and vigorous prosecution, He or She is **NOT** at liberty to strike **"FOUL"** ones. U.S. v. NAPPI, 243 F3d 758 (3RD. 2001) U.S. v. ESCHMAN, 227 F3d. 886 (7TH Cir. 2000) Due Process **REQUIRES** that Defendant be sentenced on basis of **"ACCURATE INFORMATION"**! U.S. v. HERRERA-ROJAS, 243 F3d. 1139 (9TH Cir 2001) If the District Court fails to make the required findings during the Sentencing Hearing, The Sentence must be **VACATED** and the Defendant Re-Sentenced. U.S. v. CONTRERAS, 249 F3d. 595 (7TH Cir. 2001) Sentencing Determination must be based on **RELIABLE** evidence. Point, NO PSI. Report at Sentencing!

U.S. v. DOE, 860 F2d 488 (1st Cir. 1988) "Prosecutor does NOT represent an Entity whose interests include Winning at all cost; Prosecutors client is Society, which seeks Justice NOT Victory." Furthermore, Petitioner would be DENIED Due Process of Law if his Motion for Appropriate Relief is denied without a hearing. (See N.C.G.S. 15A-1420(c)(1) AND (4). ALSO STATE v. HANTON, 140 N.C. App. 689, 540 S.E. 2d 382. was Remanded for Re-Sentencing because he didn't stipulate to the "NATURE" of his SUPPOSED prior Convictions. In this case at bar, Petitioner's Counsel stipulated to level II, Petitioner was never asked at all about his prior convictions, And never was it mentioned or explained to him. Petitioner contend that the prior convictions were never mentioned, because THEN it would be on record in the transcripts that Judge Zimmerman, now attorney Zimmerman for the defense, is the one who in fact sentenced Petitioner, This would clearly show "CAUSE" and "GROSS CONFLICT" of Interest and Ineffective Assistance of Counsel.

7). As Petitioner has demonstrated in his M.A.R. and is prepared to show in his Evidentiary Hearing if granted by this Honorable Court, MANY of the ALLIGATIONS represented as fact to him and the Court were in fact FALSE. As these were also matters of public record, The D.A. must be presumed to have actual knowledge of their FALSITY, Plus the fact he BROKE THE LAW, Twisted testimonies by "BLACKMAIL" of the witnesses. Counsel obviously went along with the D.A. and any information he gave them (LIES), Never verifying anything the D.A. said. Petitioner therefore received Ineffective Assistance of Counsel and an Unlawful Sentence. Furthermore, if Petitioner is Denied this Motion for Appropriate Relief and an Evidentiary Hearing, Petitioner would be denied his Right to introduce evidence to "Refute" the State's "false" Alligations.

### c). DENIAL OF RIGHT TO APPEAL.

1). Petitioner's Counsel said he had no-right of Appeal at Sentencing. They FAIL and Neglected to advise Petitioner of his Rights of Appeal. Not only did Counsel

say I had No Right of Appeal, Counsel also didn't Request Bond or Speak on Petitioner's behalf, or say anything at all, See U.S. v. HAMMONDS, 425 F2d 599 (D.C. 7 Cir 1970) Trial Counsel's FAILURE to Request Bond after Conviction and speak on Defendants behalf after sentencing, Constituted Ineffective Assistance of Counsel. Also see LOZADA v. DEEDS, 488 U.S. 430, 112 L.ed. 2d. 956 111 S.Ct. 860 (1991) Defense Counsel's FAILURE to inform Petitioner of his Right to Appeal Constitutes Ineffective Assistance of Counsel. When Petitioner did Appeal, He instructed Appellate Counsel Danielle Carman repeatedly to file a M.A.R., And add all kinds of FACTS, Establishing the unlawfulness of his sentences to the record, She REFUSED to file a M.A.R., (OR) A Reply Brief!

Petitioner's Appeal was DENIED because many IMPORTANT FACTS establishing the unlawfulness of the sentences were NOT in the record, which should've been done by filing a M.A.R., And raising substantial issues of MATERIAL FACT. Like the fact Judge Zimmerman sentenced Petitioner to Prison to begin with, And then he got a second chance as Petitioner's Counsel, to send Petitioner away for the rest of his life, and that's exactly what Counselor Zimmerman did, Just as if he were sitting on the bench all over again, only this time he got paid \$50,000 for doing it, And he tried to get more money out of Petitioner's parents by promising that Petitioner wouldn't get any time. when he realized he wasn't getting anymore money, the story changed to a 20 year plea! Mr Zimmerman and Mr Panosh TRICKED Petitioner into signing those 8 waivers, on charges that were going to be dismissed, that alone insured 70 to 90+ years! By Appellate Counsel Carman NOT filing a M.A.R. in the Court of Appeals she was unable to bring out issues of Material Fact, For which the Court could Review, Had Counselor Carman filed a M.A.R. as Petitioner INSTRUCTED her to do, The MANY issues of material facts could have been raised, By Counselor Carman's refusal to file a M.A.R. as instructed, Petitioner was actually DEPRIVED of his Right



to Appeal and Effective Assistance of Counsel. See EVITTS v. LUCEY, 469 U.S. 387, 83 Fed. 2d 821, 105 Sct. 830 (1985) Due Process guarantees Defendant the Right to Effective Assistance of Counsel on First Direct Appeal. Also see WALKER v. McCAUGHTRY, 72 Supp 2d 1025 (E.D. WIS. 1999) Denial of Appellate Counsel resulted in Automatic Prejudice and Required Reinstatement of State Appeal.

2). Transcript of proceeding Page # 8 Lines 22-25 the sentencing **JUDGE** said Petitioner would have NO Right of Appeal. See EXHIBIT (V). See PARKUS v. DELE, 33 F3d 933 939-940 (8TH Cir 1994) (Petitioner ENTITLED TO EVIDENTIARY HEARING HAVING SHOWN CAUSE AND PREJUDICE) see TONY v. GAMMON, 79 F3d. 693, 697 (8TH Cir. 1996) (Petitioner entitled to Evidentiary Hearing where Counsel Failed to obtain requested blood test); see WILLIAMS v. TURPIN, 87 F3d. 1204, 1211 (11TH Cir 1996) (Petitioner Entitled to Evidentiary hearing if Petitioner succeeds in demonstrating Ineffective Assistance of Appellate Counsel, then the Evidentiary Hearing may be considered in Court, with the Underlying claim of Ineffective Assistance of Trial Counsel). Furthermore, by the Trial **JUDGE** denying Petitioner's Right to Appeal and forfeit all his Rights, State and Federal, Petitioner submits that advising a Defendant that he has No-Right of Appeal is a Professional Dereliction of the Judge's responsibility and structural ERROR, And should be considered a BRADY violation. See EXHIBIT (V)

D). Conviction Obtained by the VIOLATION of the Privilege Against Self-Incrimination.

1). On Jan. 28, 99 Both Prosecutor and Counsel coerced/Induced Petitioner into signing WAIVERS on (8) cases that never could possibly have brought back Indictments solely on the word of a Jail-house, Petty Thief, and Habitual Lier, There by Petitioner signing away his entire life, Given 70 to 90+ years alone on those charges. see U.S. v. SANDERSON, 595 F2d. 1021 (5TH Cir. 1979) (Trial Counsel's Misrepresenting of Material Facts, Withholding Information, and exerted pressure on Defendant to Induce a Guilty Plea, Constitutes Ineffective Assistance and Requires and Evidentiary Hearing to Resolve Claim.)



In relation to case at hand, Counsel and Prosecutor Misrepresented the facts, that the Grand Jury Refused To Indict on 8 Counts solely on the word of William Stewart; Withholding Information that all 8 Counts would be DISMISSED automatically if I did NOT sign the waivers. Both Counsel and Prosecutor exerted pressure by saying, "Sign and Plead Guilty, or Be Put To Death Infront of Your Parents." Counsel said to Plead Guilty and all Petitioner would get is 20 years under the Plea-Bargain, Counsel further stated the Prosecutor truly wanted to put Petitioner to Death. When the Plea was entered Counselor Zimmerman stood next to Petitioner WHISPERING the words, "JUST SAY IT - SAY YES ..." The whole time Counsel knew Petitioner didn't want to enter a Plea of Guilty, To something he did NOT do. Clearly Prosecutor misconduct and Ineffective Assistance of Counsel. Mr. Zimmerman being a former JUDGE who sentenced Petitioner to prison to begin with, knew by Petitioner saying "Yes", it would seal Petitioner's fate. Counselor Crumpler was acting as a "Puppet", after all what chance did he have to defend his client, with everyone else against Petitioner. Even Petitioner's private detective got mad and walked out after seeing Mr. Zimmerman speaking badly to Petitioner in an attempt to Coerce him. The Private Detective told Petitioner's Parents he couldn't believe Counsel was talking to Petitioner in such a manner. If Petitioner is given his Evidentiary Hearing by this Honorable Court, Petitioner would like to have the private Detective subpoenaed to Court to testify to this and other facts of misconduct by Mr. Zimmerman and Prosecutor Panosh. An Evidentiary Hearing would be required to bring out these vital issues of Material Fact. Petitioner ask what happen to the PRE-ARRANGED 20 year Plea Agreement Counsel promised to he and his parents? Petitioner got 70 to 90.4 years on (8) Fancy counts alone! Each were ran consecutively; On top of everything Petitioner was sentence in the "AGGRIVATED RANGE" on nearly every charge!

See MOORE v. U.S. 950 F.2d. 656 (10TH Cir. 1997) Coercion by Trial Counsel or Prosecutor to INDUCE a Guilty Plea Renders the Plea "INVOLUNTARY." Case at bar, The Private Detective would testify to the coercion he witnessed, and the misconduct of Mr. Zimmerman. All that is needed would be a Evidentiary Hearing to bring out these and many other issues of material fact!

2). Prosecutor's press Conference Portraying Petitioner as a villain or some kind of Monster, "Deprived" Petitioner of any kind of chance for a FAIR Trial, And Petitioner begged the Court to move the trial to Winston-Salem. Extreme Prejudice and Intimidation were pressed upon Petitioner in Greensboro N.C. The Day Petitioner entered his Plea, Jan 28, 1999 Petitioner was escorted to court surrounded by armed guards carrying machine guns and M-16's. Dressed in solid Black, they wore body armor with ski-mask over their faces. At one point Petitioner stumbled over his leg irons and nearly fell, Only to look up and see a "Machine Gun Pointed at His Head." Petitioner feared for his life. Inmates who saw Petitioner being escorted by such a show of force were intimidated. One inmate said, "I don't know what you did, but I'll pray for you." By trial Counsel's FAILURE to aid or speak for Petitioner, To express the need for the trial to be moved, Shows Conflict of Interest, To make Petitioner defend himself, (FAIL TO AID OR SPEAK FOR DEFENDANT). See GARDINER v. U.S. 679 F. SUPP 1143 (D. Me. 1988) Failure to speak in Defendant's behalf at sentencing, may constitute Ineffective Assistance of Counsel.

3). Prosecutor-Threatening the Defense's witnesses with severe prosecution if he didn't change his testimony of how he was with Petitioner on the Day of the murder till at least 5:30PM, And with Ramie Kimble (SR) till 4:30PM. By the Prosecutor destroying all of Petitioner's witnesses, And FAILURE of Counsel to "AID AND DEFEND," And by saying if Petitioner didn't Plead Guilty he would be put to "DEATH" no matter what, Petitioner had No choice but to Plead Guilty, Do to Prosecutor Misconduct, Threatening Defense witnesses with severe prosecution

if they didn't change their statement to say what he wanted. See U.S. v. AGUILAR, 90 F. Supp. 2d 1152 (D. Col. 2000) Prosecutor's statement to Defense witness that the Government might void witness plea agreement and reinstate previously dismissed charges unless he invoke his Fifth Amendment privilege against self-incrimination, **DEPRIVED** defendant of his Right to Due Process, By the Prosecutor threatening a **KEY WITNESS** of the Defense, so he would **NOT** testify to the **"TRUTH"**, Deprived Petitioner of any chance at a fair and just trial. Thereby obtaining a conviction by the violation of the privilege against self incrimination, same as **NOT** allowing Petitioner to move the trial to Winston-Salem, For a chance of a fair trial, and **"NO"** help from Counsel!

4). The Averment and Allegations of (A) Thru (G) of these Constitutional and N.C. violations are incorporated as if more fully set forth here in. Because Petitioner's attorneys **FAIL** to prepare the case for trial and Petitioner was advised that the Plea offer was reasonable, since they were **NOT** the one(s) who would have to spend the rest of their lives in prison for crimes Petitioner did **NOT** even commit. Petitioner was wrongfully coerced into entering a Plea which was clearly contrary to his best interest, And which he would **NOT** have considered but for the **DENIAL** of Effective Assistance of Counsel, And the Prosecutor's Attitude of **"WIN AT ALL COST,"** legally or Illegally does **NOT** matter to him.

#### **E). CONVICTION OBTAINED BY USE OF COERCED CONFESSION.**

1). The Trial Court denying Petitioner's Motion to Withdraw his Pleas and Justifying it by the Court's Findings of Fact and Conclusions of Law, and denying his Right to Withdraw his ALFORD Pleas, despite the **Fact** Petitioner met the requirements in N.C. v. HANDY 326 NC532 quoted by the Court to **TWIST** the requirements around when Petitioner **DID IN FACT ASSERT** his INNOCENCE. Petitioner **DID** send a letter to the Court on Jan 29, 99 and a copy to the Prosecutor, which **"VANISHED"**. This should surprise **NO-ONE**, And Petitioner had to send **ANOTHER** letter to withdraw on Feb. 24, 99. see U.S. v. ALVAREZ-TAUTIMEZ, (60 F3d. 573 (9TH Cir. 1998)) ALSO:

U.S. v. ELLISON, 798 F.2d 1102 (7th Cir. 1986) Ellison filed a Motion to Withdraw his Guilty Plea in the context of a letter form. Ellison claimed his Guilty Pleas were the result of psychological pressure of solitary confinement, the exclusion from family and friends; And on the erroneous advise of his Court appointed attorney, "That an immediate Guilty Plea would place him in better and more humane living conditions and renew contact with family and friends." In case at bar, Petitioner was placed in solitary confinement on Dec. 22, 98 and **DENIED** contact with family and friends, "Prison Records" will show. Court Records were off by 3 weeks, but still it shows Petitioner was on **solitary** confinement.

See EXHIBIT (E.F.) Note: Exhibit states one non-contact weekday visit per week, but Petitioner was **DENIED ALL VISIT!** Petitioner was under psychological pressure of solitary confinement, was "**COERCED**" into a confession for crimes he had **NOTHING** to do with, rather than get sentenced to "**DEATH!**" Counsel **REFUSED** to aid and defend Petitioner on Motion to Withdraw. Counsel was only concerned with getting the case over with! At the Withdraw Hearing Counsel said, "**WE WILL SIT THIS ONE OUT.**"

Counsel feared Petitioner might be successful in withdrawing his Pleas, because they had **NOT** prepared for trial. Counsel never read much of the information on the case, they couldn't have read but so much because they never took the time to go get it!

2). How could Counsel be considered competent having Petitioner sign waivers insuring their client 70 to 90+ years, on these charges alone, Petitioner's Pleas were in fact entered in haste and coerced by counsel telling him the trial would start right away, How could he let himself be put to "**DEATH**" and make his parents suffer for the rest of their lives, Petitioner was told he would get 20 years, His attorneys told him and his parents several times. Petitioner's attorney's asked how he could take a Death Sentence and put his Mother through such pain as to watch her son be put to death. Plus the fact that on this sameday of Jan 28, 99 Petitioner was **SUPPOSED** to be in Court solely for

a "CHANGE OF VENUE," And to make matters worse, his attorneys had him sign a BLANK Plea Bargain and later typed in what they wanted. Clearly Petitioner would have known he was NOT getting the 20 years sentence PROMISED, if the Plea Bargain had been properly filled in. For further information and proof, The only people that could HUMANLY fit into the tight holding-cell area where Petitioner signed the papers were himself, Detective, and attorneys, Yet Christina Dann signed in the box beside Petitioner's name, "SWORN AND SUBSCRIBED TO BEFORE ME," She was no-where around because there was no place for her to stand, "SHE Lied," Note the paper bore No notary stamp whatsoever. Also other names were then added later, like Mr Panosh, and Judge Peter M. McHugh. See EXHIBIT (B). In BORIA v. KEANE 83 F.48 (2ND Cir 1996) Defense Counsel's Failure to advise Defendant the Desirability of accepting offered plea bargain of 1 to 3 years and discuss the strength of the Government and chances of acquittal, Constituted Ineffective Assistance of Counsel. Thus, Prejudice was established where the Defendant received a 20 year sentence as opposed to 1 to 3 years plea bargain offer. The court ordered the Defendant's sentence to be reduced to time served and discharged from prison. In case at bar, Counsel said no-matter what, Petitioner would only get 20 years. Counsel said, "It's all ~~PRE-ARRANGED~~," Yet Petitioner received over 100 years! see TREJO v. U.S. 66 F.SUPP. 2d 1274 (S.D. FLA. 1999) "Counsel's Misrepresentation of plea agreement that (1) Cooperation of any en Defendant would insure to the benefit of all of them; (2) That this agreement need not be included in the plea-agreement because it had been "ARRANGED" with the Prosecutor; (3) That based on their cooperation, the Defendant would receive a sentence as low as five years of imprisonment, but in any case not more than ten years, required setting aside the Guilty Pleas based on Ineffective Assistance of Counsel." In case at bar, Counsel COERCED Petitioner into pleading Guilty! Saying he'd get 20 years total!

3). Petitioner was under the influence of medication which impaired his judgement on Jan 28, 99, Yet the Judge let a psychologist testify who clearly stated on the stand that he was **NOT QUALIFIED**, Yet Court Entered Judgement and Commitment in all cases regardless, on Mar. 5, 99 sentencing. The Grounds that trial Court's statements about the Mandatory minimum and possible maximum punishments were erroneous in Law and Violated N.C.G.S. 15A-1022, and that Petitioner's Pleas were **NOT** voluntary, but were **COERCED** and uninformed, all in Violation of N.C.G.S. 15A-1021 and 15A-1022, Also N.C. Common Law; Petitioner recieved Ineffective Assistance of Counsel at the Motion to Withdraw Hearing. (See TRANSCRIPT PG. #3 Line 17-21 EXHIBIT(X), Counsel remained "**NEUTRAL**", Didn't defend or help Petitioner with his asserted grounds to withdraw Pleas, Clearly a Conflict of Interest and Ineffective Assistance of Counsel.) Counsel remained **NEUTRAL** and did **NOT** aid or defend Petitioner at the Motion to Withdraw Hearing, because Counsel did **NOT** prepare for trial! After a plea was entered Petitioner discovered Counsel did **NOT** have **Most** of the information about the case. Counselor Zimmerman knew Petitioner was on medication the day a plea was entered, Counsel knew Petitioner was in a weaken mental state and took advantage of him. At one point Counsel even suggested Petitioner deny being on any medication if anyone asked, especially the Judge Peter McHugh. Petitioner was incoherent and did **NOT** understand what was going on around him. Counselor Zimmerman placed papers before Petitioner and demanded he sign them. Counsel stated if Petitioner wanted to live he had better sign said papers. Counsel assured Petitioner everything was **ARRANGED** as **PROMISED**, Petitioner must plead Guilty to what charges Judge McHugh said, to recieved the 20 year sentence. Petitioner tried to over come the pressure and stated his innocense to Counsel,

and clearly stated he wanted to go to trial, but Counsel would **NOT** listen. When Petitioner entered his plea Counselor Zimmer stood next to him **WHISPERING** all the answers to the questions Judge Peter McHugh asked. Counselor Zimmerman had told Petitioner prior to entering the Court-room that it would best to simply repeat what ever he said. see UNGER v. COHEN, 718 F.Supp.185(S.D.N.Y.1989)

"Unger characterized the criminal proceedings as "Assembly-line Justice" which certainly was correct. Unger was not allowed to contact the Counsel of his choice. After spending a night in jail, A legal aid attorney met him briefly at the Court house, who advise was to plea Guilty to whatever the Judge said. Counsel waived the reading of the charges, the reading of Unger's Rights; and the allocution on the Guilty Plea. The record did not indicate an admission of factual Guilt on Unger's part. Unger's Counsel merely informed the Court that her client intended to plead Guilty. The Court concluded that Counsel's advice was not within the range of competence demanded of attorneys in criminal cases." In case at bar, Petitioner was **coerced and threaten** with **DEATH** unless he pled Guilty to everything the judge stated, as in the above **UNGER** case. Petitioner recieved over a hundred years at the cost of \$50,000 to his family!... The Court's findings are **NOT** supported by the evidence, the conclusions are **NOT** support by the findings and are erroneous under N.C. Statutory and Common Law, and Violated Petitioners State and Federal Constitutional Rights to the extent this **ERROR** is **NOT** preserved, Petitioner asserts plain error and his counsel did **NOT** defend, diligently and zealously within the bonds of Law.

F). Conviction Obtained by Violation of the Protection Against Double-Jeopardy.

1). Indictment case 97CRS 23656 Dated Nov. 3, 1997 incorrectly listed as **ARSON** of an **UNOCCUPIED DWELLING**, yet statement read in pertinent parts, "The **DWELLING**

HOUSE INHABITED BY PATRICIA KIMBLE," had to be DISMISSED by Law, because an INHABITED house can't be UNOCCUPIED at the same time?! Petitioner was CONNED by both Attorneys working AGAINST him. The Prosecutor (Richard Panosh) made a ERROR, but instead of making it known he broke the law in an attempt to cover-up his ERROR, and RE-INDICTED Petitioner a second time, 8 months later on July 6, 1998, changing the charge to "First Degree Arson," with the same exact wording. Thus charging Petitioner with the same alleged crime TWICE committing DOUBLE JEOPARDY! Yet Counsel had Petitioner plea Guilty to the charge, see JACKSON v. LEONARD 162 F3d. 81 (2nd Cir 1998) Appellate Counsel failure to raise Double-Jeopardy claim where it was apparent that Jackson's two charges of First Degree Robbery and Criminal use of a firearm in the First Degree raised on the same FACTUAL predicated constitutes Ineffective Assistance of Counsel. Case at bar, Applies to Counsel having Petitioner Plead Guilty, Inducing/coerced plea, And clearly Prosecutor MISCONDUCT! Appellate Counsel also FAIL to raise Double-Jeopardy claim, "Clearly Ineffective Assistance."

#### G). Denial Of Effective Assistance Of Counsel.

1). On Jan 29, 1999 Petitioner sent a letter to the Court and a copy to Prosecutor Richard Panosh, Requesting to withdraw his Pleas and go to trial. When Petitioner did NOT hear anything in the following few weeks, he filed a SECOND motion on Feb. 24, 1999. See EXHIBIT (U) Petitioner was represented by Counsel, and thus it was the Counsel's JOB to file a Motion to Withdraw the Guilty Plea. Petitioner told Counsel that he was innocent repeatedly, and that he wanted to go to trial, but Counsel would NOT listen. Counsel coerced Petitioner into entering a Plea. Movent told Counsel he did NOT want to enter a plea, but Counsel continued to attack Petitioner. When Petitioner tried to withdraw his Plea, Counsel REFUSED to aid.



Counselor Zimmerman instructed Petitioner he was UNPREPARED for Trial, should Petitioner win his Motion to Withdraw Petitioner would surely go to trial and lose, would receive the Death Sentence and be put to DEATH. see U.S. v. ALVAREZ-TAUTIMEZ 160 F3d 593 (9TH Cir. 1998)

2). On March 1, 99 Petitioner's Motion to Withdraw was heard before the Court. Petitioner was forced to represent himself as best he could because Counsel refused to aid him. Petitioner presented SEVERAL reason for his desire to Withdraw his Pleas as follows :

i. First, Withdraw of Pleas Hearing Page #3 Lines 17-21 <sup>\*EXHIBIT(X)</sup> Conflict of Interest and Failure of Counsel to Defend and Represent their Client Diligently and Zealously within the Bonds of Law, Counsel remained "NEUTRAL" and forced Petitioner to defend and Express himself in all his Explanations, As if he had NO Counsel at all. Clearly Ineffective Assistance of Trial Counsel. See EXHIBIT(X) see GARDINER v. U.S 679 F.Supp. 1143 (D. Me. 1988) "Failure to speak in Defendant's behalf at sentencing may constitute Ineffective Ass. of Counsel." see U.S. v. HAMMONDS, 425 F.2d. 597 (D.C. Cir 1970) "Trial Counsel's Failure to request bond after conviction and to speak on Defendants behalf after sentencing, Constitutes Ineffective Assistance of Counsel." In case at bar, Counsel did NOTHING!

ii. Counsel FAILED to get a Sworn Affidavit from a "STAR" witness, James Ogburn could positively SWARE that Petitioner and Ronnie Kimble (brother) were at "Lyle's Building Material standing in front of him at the time of the crime. Thus, impossible for Ronnie to have committed the crime. see COSS v. LACKAWANNA County District ATTORNEY, 204 F3d. 453 (3rd Cir 2000) Defense Counsel's failure to subpoena certain witness and to interview those witness Constituted Ineffective Assistance of Counsel. Also see HART v. GOMEZ 174 F3d 1067 (9TH Cir 1999). Counsel let the Prosecutor pressure James Ogburn Not to testify for the Defense. Mr. Ogburn changed his story after the D.A. threaten

him. see EXHIBIT (A.A.) page #149 Transcript Lines 14-19. Three days before signing a statement against Petitioner, Patrick Pardee told Melanie Oxendine he knew **Nothing** about the Kimble case. Yet Counsel **FAILED** to get a sworn Affidavit before the D.A. (Panosh) had a chance to coach Pardee and threaten him with severe Prosecution on pending charges. Shows **GROSS** Ineffective Assistance of Counsel. See U.S. v. ESTRADA, 849 F2d 1304 (10TH Cir 1988) The Court held that (1) Defendant who alleged that Prosecutor threatened to file Unwarranted charges against him, that Defense Counsel Coerced him to Plead Guilty by threatening to withdraw, and that both Prosecutor and Defense Counsel Promised him light sentence, was entitled to Evidentiary Hearing to Determine Voluntariness of Plea.

iii. See EXHIBIT (A.A.) Transcript page #149 Lines 21-24. Melanie Oxendine testified of the **FACTS** in the statement Patrick Pardee made to her. (Mr. Zimmerman clearly showed the Conflict of Interest between himself and Petitioner, being the former JUDGE that first sent Petitioner to Prison, All he wanted was to help the Prosecutor)

IV. Petitioner's father even got on the stand on Mar. 5, 1999. See Transcripts page #129 Line 12 Thru Page #130 Line 8 EXHIBIT (Z). James Ogburn told him "**2 Weeks**" before Trial, how he was with both sons when the crime was committed, and how the D.A. **THREATEN** Him to change his story, with pressure of pending charges. The **FACT** Counsel had "**MONTHS**", to get a Sworn Affidavit from this "**STAR**" witness, But **REFUSED** to do so. A case of Grave Negligence and **FAILURE** to defend Petitioner, Counsel only cared about A "**Plea Bargain**", Clearly Ineffective Assistance of Counsel. see U.S. v. SCOTT, 625 F2d 633 (5TH Cir 1981) A conviction on a Guilty Plea that is entered solely as a result of faulty legal advice is a miscarriage of Justice. Also see HART v. GOMEZ, 174 F3d. 1067 (9TH Cir 1999). LORD v. WOOD, 184 F3d. 1083 (9TH Cir 1999)

Counsel's failure to investigate evidence, which demonstrated his clients factual innocence, undermines the confidence in the verdict and constitutes Ineffective Assistance of Counsel. See HOLLINES v. ESTELLE, 569 F.Supp.146 (W.D. Tex. 1983) Trial

Counsel's failure to conduct pretrial investigation and interview witnesses; Constitutes Ineffective Assistance of Counsel. See U.S. v. JOHNSON, 995 F.Supp.1259 (D. KAN. 1998) Trial

Counsel's Failure to investigate, and to call "Critical" witnesses required an Evidentiary Hearing to resolve Ineffective Assistance claim.

IV. On Jan 28, 99 Counsel acting (in consent) with Prosecutor "Panosh" all INDUCED / COERCED Petitioner into signing (8) waivers in cases 23241-48 which would SEAL Petitioner's FATE. Both Prosecutor and Counsel knew for a FACT those charges could NOT be presented to the Grand Jury for possible Indictment solely on the word of WILLIAM STEWART, Jailhouse petty thief and habitual liar, as "FOUR" witnesses testified in Court against his testimony, yet Counsel working Hand-in-Hand with the D.A. COERCED / INDUCED Petitioner to sign the (8) waivers, giving the Petitioner another 10 to 15 years onto his sentences to ensure he would positively NEVER get out of prison alive. Which was clearly Gross Ineffective Assistance of Counsel. Trial Counsel should have told his Client NOT TO SIGN waivers that clearly would be Dismissed, As NO Indictments could possibly be returned on such NONSENSE evidence, "Counsel FAIL to even explain what the waivers were." See U.S. v. TAYLOR, 139 F.3d. 924 (D.C. Cir. 1998) "Trial Counsel's failure to advise Defendant of "Advice of Counsel" Defense resulted from a conflict of interest amounting to Ineffective Assistance of Counsel and "Required" an Evidentiary Hearing." In case at Hand, Black's Law Dictionary defines "Advice of Counsel", as ① "The guidance given by lawyers to their clients, ② In a malicious Prosecution lawsuit, a Defendant's complete presentation of facts by the Defendant to his or her Attorney and honest compliance

with the Attorney's advice. ③ A Defence in which a party seeks to avoid liability by claiming that He or She acted reasonably and in good faith on the Attorney's advice." In case at bar, Having his client sign 8 waivers that were about to be dismissed "BY LAW", Can NOT possibly be the result of an attorney looking out for his clients best interest, Sending Him away "FOREVER!"

VI. See Transcript page #150 Lines 5-12 EXHIBIT (A.A.) One day James Ogburn and a fellow employee of Lyles Building Material took a work break. They walked across the street to get a soda at the gas station. While there Rob Nicholes Pulled-up. Rob told James and Mr. Cole Sr. he had talked it over with his wife, and decided NOT testify and lie against Ted (Petitioner) as the D.A. had been pressuring him to do. Rob stated He was on his way down-town for one of his coaching lessons from the D.A., but this time he plan to tell the D.A. he wasn't going through with it (SEE NEWLY DISCOVERED EVIDENCE STATEMENTS EXHIBIT (T) ISA-1415(C)) Counsel didn't care about using this "Vital" evidence against the D.A. to show "VINDICTIVE PROSECUTION", Clearly Ineffective Assistance of Counsel.

VII. As Petitioner pointed out in Transcript Page #165 Lines 3-15 EXHIBIT (B.B.) which is a matter of public record for "Proof," How Pardee and Nichols both signed statements against Petitioner. How they both had pending charges, And the Prosecutor "CUT-DEALS" (Take it or else!) in exchange for their statements ("SELECTIVE PROSECUTION") Against-Petitioner. Violated all laws and Rules, and Guidelines. Even let William Stewart out of prison early by Panosh filing a motion in Court for his EARLY-RELEASE, and Counsel did NOTHING about it. "Ineffective Assist."

VIII. See Transcript Page #176 Lines 15-19 EXHIBIT (C.C.) When questioned by the Prosecutor, Petitioner spoke of the Trailer he owned, how Robert (Rob) Nichols

broke into his business and stole it, took it to the beach and sold it!  
The D.A. refused to do anything about it. The D.A. actually "COVERED-UP" the  
crime by running a Defense Witness (Jeff Roberts) out of Town, who could have  
testified to the "FACTS": see SWORN AFFIDAVIT OF T.M. KIMBLE EXHIBIT(S).

On Page 176 Line #19 (EXHIBIT C.C.) The Prosecutor just went on to the next Question  
as if Petitioner never made that statement! A year later (or less) Petitioner's  
Dad went and reported WHERE the stolen trailer was, After Petitioner saw  
how it was FOR-SALE in the newspaper. Still the D.A. COVERED-UP once again.  
The Appellate Counsel Carman REFUSED to have Prosecutor "REPORTED", for this  
Gross Miscarriage of Justice, Ineffective Assistance of Counsel again and again!  
see FREEMAN v. LANE, 962 F2d 1252 (7TH Cir 1992) Appellate Counsel's failure to raise issue  
of Prosecutorial Misconduct on direct Appeal created a "Procedural Default" that limited  
review of the ERROR and constituted "CAUSE" for failure to raise the claim under  
WAINSWRIGHT v. SYKES. Also see GRAY v. GREER, 800 F2d 644 (7TH Cir 1987) Appellate  
Counsel's Ineffectiveness can constitute "CAUSE" for failure to raise a significant and  
obvious issue. Also see MEDINA v. BARNES, 71 F3d 363 (10TH Cir 1995) Trial Counsel's failure  
to Investigate Prosecution's key witness where key witness lied about his Criminal  
activity with victim at the time he called police constituted "CAUSE" for Procedure  
Default and required an Evidentiary Hearing under the fundamental miscarriage of  
Justice standard to resolve Ineffective Assistance of Counsel claims. Case at bar,  
By Appellate Counsel NOT RAISING the issue that Counselor Zimmerman was  
Petitioner's previous sentencing JUDGE, who put him into prison to begin with,  
constitutes "CAUSE", And Violates Due Process!

IX. See Page #218 Transcripts And Page #219 EXHIBIT (D.D.) Shows how the  
P.S.I. Report was NEVER given to the Court, And Petitioner was sentenced

without it, all in violation of **DUE PROCESS**, Despite the fact the lady was subpoenaed from "Step-one" 2 weeks in advance prior to sentencing, and "Prior" to her getting sick, when she was at home and could have given the report to anyone from Step-one **PSI** Organization to bring to Court. see BYDER v. MORRIS, 752 F.2d 327, 332-33 (8TH Cir 2000) Counsel's failure to object to inaccuracies in P.S.R. amounts to Ineffective Assistance and requires an Evidentiary hearing. In case at Hand, Counsel never even objected to the fact, "NO P.S.I. REPORT WAS EVER TURNED IN!" See SMITH v. U.S., 871 F. Supp. 251, 255 (E.D. VA. 1994) Defense Counsel's failure to lodge objections to clear an indisputable **ERROR** in Presentence Report is not within the wide range of Professional Performance, REMANDED BY THE SIXTH AMENDMENT! The prosecutor could have went and got the Report, but why would he go and get something **FAVORABLE** for the Defense, since he (D.A. Panosh) failed to hand over anything favorable to the Defense through the ENTIRE case! Counselor Zimmerman allowed Mr. Panosh to do anything he wanted, legal or illegal did not matter. Counsel should have at least Postponed sentencing, until the Judge McHugh could read the recommendations. However Counsel said NOTHING as always, why should they start to defend Petitioner's Rights at this point? They were paid \$50,000 to do Nothing! All they wanted was to get it over with, and find New Victims to take their money! What does "DEFEND DILIGENTLY AND ZEALOUSLY HAPPEN"? U.S. v. DAVENPORT, 151 F.3d 1325 (11TH Cir 1998) "Presentence report must be disclosed to both Defense Counsel and Defendant at least Ten (10) days prior to sentencing as mandated by statute."

X. Counsel was Ineffective by NOT objecting to Petitioner being sentenced in the **AGGRAVATING** Range on the **NON-STATUTORY** Aggravating sentence

Factor in case 97 CRS 39581 and Court imposed a Greater-Than-Presumptive sentence, and was supported by the same evidence used to prove an element of the offense violated N.C. statutory and common law and Petitioner's Federal Constitutional Rights. See EXHIBIT (E).

XI. Counsel NOT objecting to the Greater-Than-Presumptive sentence in case 97 CRS 39581 which was NOT supported by any competent record evidence either, which was a NON-STATUTORY Aggravating Sentence-factor also. EXHIBIT (E)

XII. Counsels NOT objecting to the Court's NON-AGGRAVATING sentence factor used in 98 CRS 23486 resulting in Petitioner being sentenced of a Greater-Than-Presumptive range, and the factor was NOT proven adequately in law, NOT supported by element of offense. see EXHIBIT (F).

XIII. Counsel NOT objecting to the Court's findings of both Aggravating sentencing factors 5(A) and 5(B) in case 99 CRS 23241, 23242, 23243, 23244, 23246, and 23247 receiving a Greater-Than-Presumptive sentences, when grounds were NOT adequately proven in law, NOT supported by any competent record evidence, supported by the same evidence used to prove an element of the offense, and used by the "SAME" evidence used to prove "EACH-OTHER" all in violation of N.C. statutory and common law and state/federal constitutional rights, and counsel did NOT object to any of these VIOLATIONS in X thru XIII, all Ineffective Assistance of Counsel. See EXHIBITS (G)(H)(I)(J)(K)(L).

XIV. See Transcript Page #6 Lines 1-4 EXHIBIT (Y). Petitioner HIMSELF had to beg the court to move the trial to Winston-Salem to get a fair trial and possibly a just D.A., when counsel remained "NEUTRAL" which was a FAILURE to defend and represent, counsel got paid, why should they have to do any work?! Ineffective Assistance of Counsel and Procedural Default. Clearly a Conflict of Interest by

Counselor Zimmerman being Petitioner's previous sentencing JUDGE and then his lawyer. A casual perusal of the record at various stages will show nothing but "Vandictiveness" by Mr. Zimmerman, How he FAILED to defend or represent Petitioner. Mr. Zimmerman made sure Petitioner got as much time as possible, which is proven by Petitioner receiving over 100 years in prison.

Movant is NOT a skilled Attorney and as such relied upon Trial Counsel to do a workman-type presentation in court, of the facts of the case, By and through trial Counsel's MANY unprofessional acts and conflicts of interest, and working AGAINST Petitioner. Movant is now being DENIED protection of the Constitution and his Liberty.

### PRAYER FOR RELIEF

WHEREFORE Petitioner respectfully moves this Honorable Court for the following Relief Based on Submitted Motion for Appropriate Relief:

(A) Petitioner be Remanded to the Superior Court of Guilford County for a NEW Sentencing Hearing G.S. 15A-1417(A)(4).

(B) To be Released from Prison upon the Posting of a Suitable BOND pending Appeal pursuant to N.C.G.S. 15A-536.

(C) Any other Appropriate Relief G.S. 15A-1417(A)(4).

Petitioner further respectfully request this Honorable Court to Appoint Counsel to advise and represent Petitioner on this Motion. (See General Statutes 15A-1420(c)(4), 15A-1421, 7A-450-451); and Order an Evidentiary Hearing on all Factual Issues, see G.S. 15A-1420(c)(1) and (4).

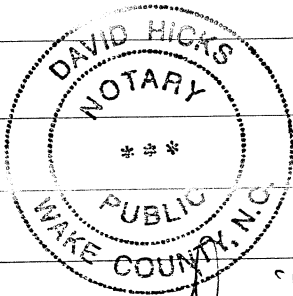
And any other Relief this Court Deems Just and Proper.

(Continued Page 34)



Respectfully Submitted This The 23 Day of  
October 2003.

SEAL:



pro-se: Theodore Mead Kimble

**THEODORE MEAD KIMBLE**

WITNESS: [Signature]

DATE: 10-23-03

MY COMMISSION EXPIRE: My Commission Expires 5-18-2008.

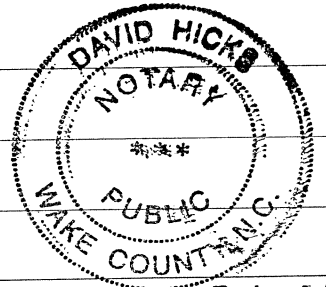
# VERIFICATION

I, THEODORE MEAD KIMBLE, BEING FIRST DULY SWORN  
DEPOSE AND SAY, I AM THE PETITIONER IN THE FOREGOING  
MOTION FOR APPROPRIATE RELIEF,  
I HAVE DRAFTED AND READ THE SAME, AND THE STATEMENTS  
CONTAINED THEREIN ARE TRUE, AS FOR ANY STATEMENTS  
MADE ON INFORMATION AND BELIEF, ARE MADE IN GOOD  
FAITH, AND I BELIEVE TO BE TRUE. SIGNED UNDER  
PENALTY OF PERJURY, THIS THE 23 DAY  
OF OCTOBER 2003.

PRO-SE *Theodore Mead Kimble*

THEODORE MEAD KIMBLE

SWORN TO AND BEFORE ME THIS THE 23 DAY  
OF OCTOBER 2003.



My Commission Expires 5-18-2008.

MY COMMISSION EXPIRES \_\_\_\_\_

*David Hicks*

10-23-03

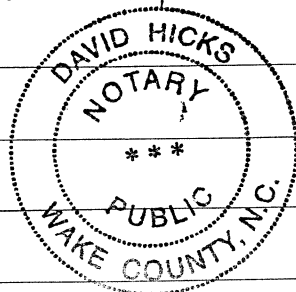
# CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT THE FOREGOING WAS DULY SERVED BY PLACING SAME IN THE U.S. MAIL, POSTAGE PRE-PAID AND ADDRESSED AS FOLLOWS:

MR. ROY COOPER      ATTORNEY GENERAL  
P.O. BOX 629,  
RALEIGH, N.C. 27602

DISTRICT ATTORNEY  
18TH JUDICIAL DISTRICT  
GUILFORD COUNTY SUPERIOR COURT  
P.O. BOX 10769  
GREENSBORO, N.C. 27402

SWORN TO AND BEFORE ME THIS THE 23 DAY  
OF OCTOBER, 2003



PRO-SE Theodore Mead Kimble

**THEODORE MEAD KIMBLE**  
1300 WESTERN BLVD.  
RALEIGH, N.C. 27606

MY COMMISSION EXPIRES

My Commission Expires 5-18-2008.

David Hicks 10-23-03

# LIST OF EXHIBITS IN SUPPORT OF FACTS

- (A) 97 CRS-39581 JUDGMENT AND COMMITMENT
- (B) 97 CRS-23656 JUDGMENT AND COMMITMENT
- (C) 98 CRS-23486 JUDGMENT AND COMMITMENT
- (D) 99 CRS-23241-48 JUDGMENT AND COMMITMENTS
- (E) 97 CRS-39581 AGGRAVATING/MITAGATING FACTORS
- (F) 98 CRS-23486 AGGRAVATING/MITAGATING FACTORS
- (G) 99 CRS-23241 AGGRAVATING/MITAGATING FACTORS
- (H) 99 CRS-23242 AGGRAVATING/MITAGATING FACTORS
- (I) 99 CRS-23243 AGGRAVATING/MITAGATING FACTORS
- (J) 99 CRS-23244 AGGRAVATING/MITAGATING FACTORS
- (K) 99 CRS-23246 AGGRAVATING/MITAGATING FACTORS
- (L) 99 CRS 23247 AGGRAVATING/MITAGATING FACTORS
- (M) N.C. SUPREME COURT ORDER
- (N) 97 CRS-23656 NOV. 3, 97 INDICTMENT (Y) TRANSCRIPT PAGE #6
- (O) 98 CRS-23486 JULY 6, 98 INDICTMENT (Z) TRANSCRIPT PAGES #129 & #130
- (P) DISMISSAL PERSUANT TO PLEA (A.A.) TRANSCRIPT PAGES #149 & #150
- (Q) STATEMENT LISTING OF PLEAS (B.B.) TRANSCRIPT PAGE #165
- (R) PLEA AGREEMENT PAPER (C.C.) TRANSCRIPT PAGE #176
- (S) AFFIDAVIT OF T.M. KIMBLE (D.D.) TRANSCRIPT PAGES #218 & #219
- (T) NEWLY DISCOVERED EVIDENCE (E.E.) 97 CRS 23655 JUDGMENT AND COMMITMENT  
BY H.W. ZIMMERMAN JR. (JUDGE)
- (U) MOTION TO WITHDRAW PLEAS
- (V) TRANSCRIPT PAGE #8 (NOTE: (E.E.) IS ONE EXAMPLE/TOTAL SENTENCE WAS 50-60 MONTHS)
- (W) TRANSCRIPT PAGES #11 & #12 (F.F.) STATEMENT OF CONFINEMENT
- (X) TRANSCRIPT PAGE #3

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI.)

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

1999 MAR -5 11:12:44

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12/08/69

(STRUCTURED SENTENCING) G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Attorney For Defendant Zimmerman/Crumpler

The defendant [X] pled guilty to: [ ] was found guilty by a jury of: [ ] pled no contest to:

Table with columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 97CRS 39581, Second degree murder, 10-09-95, 14-17, F, B.

The Court: [X] 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: [X] II [ ] IV [ ] V [ ] VI

The Court: [ ] 1. makes no written findings because the prison term imposed is: [ ] (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). [ ] (b) for a Class A felony. [ ] (c) for enhanced firearm penalty (G.S. 15A-1340.16A). [ ] (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. [ ] (e) for drug trafficking offenses. [X] 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 204 months for a maximum term of: 254 months in the custody of: [X] N.C. DOC. [ ] Sheriff pursuant to G.S. 15A-1352(b). [ ] Other

The defendant shall be given credit for 381 days spent in confinement prior to the date of this Judgment as a result of this charge(s). [X] The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. [ ] The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

EXHIBIT (B)

STATE OF NORTH CAROLINA

Guilford

County Greensboro

Seat of Court

97CRS 23656

In The General Court Of Justice  
Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DW)

STATE VERSUS

1997-11-2-5

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT  
FELONY

Race

White

Sex

Male

DOB

12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State

Richard Panosh

Def. Found  
Not Indigent

Def. Waived  
Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed  Retained

The defendant  pled guilty to:  was found guilty by a jury of:  pled no contest to:

File No.(s)	Off	Offense Description	Offense Date	G.S. No.	F/M	CL.
98CRS 23656		Conspiracy: First Degree Murder	10-09-95	C.L. & 14-2.4	F	B-

The Court:

PRIOR

I  III  V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL:  II  IV  VI
- 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is:  (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).  (b) for a Class A felony.  (c) for enhanced firearm penalty (G.S. 15A-1340.16A).  (d) for an adjudication as a violent habitual felon. G.S. 14-7.12.  (e) for drug trafficking offenses.
- 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
- 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
- 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
- 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
- 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony  G.S. 90-95(e)(3) (drugs);  G.S. 14-3(c) (race, etc.)
- 7. finds no Extraordinary Mitigation.
- 8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.
- 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: <u>163</u> months	for a maximum term of: <u>205</u> months	in the custody of: <input checked="" type="checkbox"/> N.C. DOC. <input type="checkbox"/> Sheriff pursuant to G.S. 15A-1352(b). <input type="checkbox"/> Other
<input type="checkbox"/> Class A Felony: <input type="checkbox"/> Life Imprisonment Without Parole <input type="checkbox"/> Death (see attached Death Warrant and Certificates)		
<input type="checkbox"/> Class B1 Felony: Life Imprisonment Without Parole <input type="checkbox"/> Violent Habitual Felon: Life Imprisonment Without Parole		

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
- The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.)  
97CRS39581 Criminal Superior Division Guilford County Greensboro 03-05-99

EXHIBIT 10

STATE OF NORTH CAROLINA

No. 98CRS23486

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

1999 MAR 5

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12/08/69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 98CRS 23486, First degree arson, 10-09-95, C.L. & 14-58, F, D

The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 082 months for a maximum term of: 108 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.) 97CRS23656 Criminal Superior Division Guilford County Greensboro 03-05-99

STATE OF NORTH CAROLINA

Guilford

County

Greensboro

Seat of Court

a No.

99CRS 23241

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offenses, and (2) misdemeanor offenses, which are consolidated for judgment with any felony offenses). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Race

White

Sex

Male

DOB

12-08-69

Attorney For State

Richard Panosh

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23241, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR I III V. 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: XI IV VI. 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.). 7. finds no Extraordinary Mitigation. 8. finds the above designated offenses(s) is a reportable conviction involving a minor. G.S. 14-208.6. 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole Sheriff pursuant to G.S. 15A-1352(b). Other

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.) 98CRS 23486 Criminal Superior Division Guilford County Greensboro 03-05-99



EXHIBIT (U) 2018

STATE OF NORTH CAROLINA

Guilford

County Greensboro

Seat of Court

Case No.

99CRS23242

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301, on DWI, ...)

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

Race

White

Sex

Male

DOB

12-08-69

JUDGMENT AND COMMITMENT

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State

Richard Panosh

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23242, Solicitation:First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court:

PRIOR

I III V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II IV VI
2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.)
7. finds no Extraordinary Mitigation.
8. finds the above designated offenses(s) is a reportable conviction involving a minor. G.S. 14-208.6.
9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of:

108

months

for a maximum term of:

139

months

in the custody of:

N.C. DOC.

Sheriff pursuant to G.S. 15A-1352(b).

Other

Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)

Class B1 Felony: Life Imprisonment Without Parole

Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.)

99CRS 23241 Criminal Superior Division Guilford County Greensboro 03-05-99

EXHIBIT(D) 3068

STATE OF NORTH CAROLINA

No. 99CRS 23243

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offenses(s), and (2) misdemeanor offenses(s), which are consolidated for judgment with any felony offenses(s). Use AOC-CR-301 on DWI)

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23243, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.) 99CRS 23242 Criminal Superior Division Guilford County Greensboro 03-05-99

Guilford

County Greensboro

Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Race

White

Sex

Male

DOB

12-08-69

Attorney For State

Richard Panosh

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23244, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court:

PRIOR

I III V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II IV VI
2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.).
7. finds no Extraordinary Mitigation.
8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.
9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC.
Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)
Class B1 Felony: Life Imprisonment Without Parole
Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.)

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING) G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M CL. Row 1: 99CRS 23245, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR RECORD LEVEL: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.). 7. finds no Extraordinary Mitigation. 8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6. 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 096 months for a maximum term of: 125 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole Sheriff pursuant to G.S. 15A-1352(b). Other

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.) 99 CRS 23244 Criminal Superior Division Guilford County Greensboro 03-05-99

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23246, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR RECORD LEVEL: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.) 99CRS 23245 Criminal Superior Division Guilford County Greensboro 03-05-99

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23247, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR I III V II IV VI 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02 . RECORD LEVEL: 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.). 7. finds no Extraordinary Mitigation. 8. finds the above designated offenses(s) is a reportable conviction involving a minor. G.S. 14-208.6. 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole Sheriff pursuant to G.S. 15A-1352(b) Other

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Race White Sex Male DOB 12-08-69

Attorney For State Richard Panosh

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23248, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 96 months for a maximum term of: 125 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:



STATE OF NORTH CAROLINA

Case No. 97CRS39581

Guilford County

EXHIBIT (E) 1 of 2  
FILED

In The General Court Of Justice  
Superior Court Division

STATE VERSUS

1999 MAR 5 PM 12:44

Name Of Defendant

Theodore Mead Kimble

Offense

Second degree murder

FELONY JUDGMENT  
FINDINGS OF AGGRAVATING  
AND MITIGATING FACTORS  
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
  - a. induced others to participate in the commission of the offense.
  - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
  - a. avoiding or preventing a lawful arrest.
  - b. effecting an escape from custody.
- 4. The defendant was:
  - a. hired to commit the offense.
  - b. paid to commit the offense.
- 5. The offense was committed to:
  - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
  - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
  - a. was armed with a deadly weapon at the time of the crime.
  - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
  - a. very young.
  - b. very old.
  - c. mentally infirm.
  - d. physically infirm.
  - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
  - a. an attempted taking of property of great monetary value.
  - b. the actual taking of property of great monetary value.
  - c. damage causing great monetary loss.
  - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:
  - 1. The defendant acted with premeditation and deliberation in committing this offense.
  - 2. The defendant acted for pecuniary gain in committing the offense.

The Court makes no findings of any aggravating factors.



- 1. The defendant committed the offense under:
  - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
  - a. was a passive participant in the commission of the offense.
  - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
  - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
  - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
  - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
  - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
  - a. substantial restitution to the victim.
  - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
  - a. was a voluntary participant in the defendant's conduct.
  - b. consented to the defendant's conduct.
- 7. The defendant:
  - a. aided in the apprehension of another felon.
  - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8.  a. The defendant acted under strong provocation.
  - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
  - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
  - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
  - a. at an early stage of the criminal process.
  - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

**DETERMINATION (NOTE: Check only one)**

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

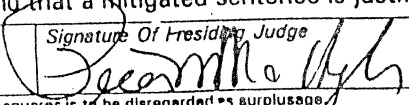
Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
03-05-99	PETER M. MCHUGH	

EXHIBIT (A) 10/2

Guilford County

In The General Court Of Justice  
Superior Court Division

STATE VERSUS

1999 MAR - 5

FELONY JUDGMENT  
FINDINGS OF AGGRAVATING  
AND MITIGATING FACTORS  
(STRUCTURED SENTENCING)

Name Of Defendant

Theodore Mead Kimble

Offense

First degree arson

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
  - a. induced others to participate in the commission of the offense.
  - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
  - 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
  - a. avoiding or preventing a lawful arrest.
  - b. effecting an escape from custody.
- 4. The defendant was:
  - a. hired to commit the offense.
  - b. paid to commit the offense.
- 5. The offense was committed to:
  - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
  - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
  - a. was armed with a deadly weapon at the time of the crime.
  - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
  - a. very young.
  - b. very old.
  - c. mentally infirm.
  - d. physically infirm.
  - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
  - a. an attempted taking of property of great monetary value.
  - b. the actual taking of property of great monetary value.
  - c. damage causing great monetary loss.
  - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:  
This offense was committed for the purpose of avoiding detection in the murder of Patricia Gail Kimble and for the purpose of covering up the murder.

The Court makes no findings of any aggravating factors.

EXHIBIT (F) 9012

- 1. The defendant committed the offense under:
  - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
  - a. was a passive participant in the commission of the offense.
  - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
  - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
  - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
  - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
  - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
  - a. substantial restitution to the victim.
  - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
  - a. was a voluntary participant in the defendant's conduct.
  - b. consented to the defendant's conduct.
- 7. The defendant:
  - a. aided in the apprehension of another felon.
  - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8.  a. The defendant acted under strong provocation.
  - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
  - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
  - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
  - a. at an early stage of the criminal process.
  - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

**DETERMINATION (NOTE: Check only one)**

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date  
03-05-99

Name Of Presiding Judge (Type Or Print)  
PETER M. MCHUGH

Signature Of Presiding Judge  
*Peter M. McHugh*

Guilford ...

County

EXHIBIT (P) 10/2

In The General Court Of Justice  
Superior Court Division

STATE VERSUS

1000-3 10/2/85

Name Of Defendant

Theodore Mead Kimble

FELONY JUDGMENT  
FINDINGS OF AGGRAVATING  
AND MITIGATING FACTORS  
(STRUCTURED SENTENCING)

Offense

Solicitation: first degree murder

COO

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
  - a. induced others to participate in the commission of the offense.
  - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
  - a. avoiding or preventing a lawful arrest.
  - b. effecting an escape from custody.
- 4. The defendant was:
  - a. hired to commit the offense.
  - b. paid to commit the offense.
- 5. The offense was committed to:
  - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
  - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
  - a. was armed with a deadly weapon at the time of the crime.
  - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
  - a. very young.
  - b. very old.
  - c. mentally infirm.
  - d. physically infirm.
  - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
  - a. an attempted taking of property of great monetary value.
  - b. the actual taking of property of great monetary value.
  - c. damage causing great monetary loss.
  - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

EXHIBIT (6) 2012

- 1. The defendant committed the offense under:
  - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
  - a. was a passive participant in the commission of the offense.
  - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
  - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
  - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
  - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
  - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
  - a. substantial restitution to the victim.
  - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
  - a. was a voluntary participant in the defendant's conduct.
  - b. consented to the defendant's conduct.
- 7. The defendant:
  - a. aided in the apprehension of another felon.
  - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8.  a. The defendant acted under strong provocation.
  - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
  - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
  - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
  - a. at an early stage of the criminal process.
  - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.

factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date 03-05-99	Name Of Presiding Judge (Type Or Print) PETER M. MCHUGH	Signature Of Presiding Judge <i>Peter M. McHugh</i>
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STATE OF NORTH CAROLINA

No.

99CRS 23242

Guilford County

In The General Court Of Justice  
Superior Court Division

STATE VERSUS

EXHIBIT (H) 1 of 2  
1999-010-5 11/10/05

Name Of Defendant

Theodore Mead Kimble

FELONY JUDGMENT  
FINDINGS OF AGGRAVATING  
AND MITIGATING FACTORS  
(STRUCTURED SENTENCING)

Offense

Solicitation first degree murder

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
  - a. induced others to participate in the commission of the offense.
  - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
  - a. avoiding or preventing a lawful arrest.
  - b. effecting an escape from custody.
- 4. The defendant was:
  - a. hired to commit the offense.
  - b. paid to commit the offense.
- 5. The offense was committed to:
  - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
  - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
  - a. was armed with a deadly weapon at the time of the crime.
  - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
  - a. very young.
  - b. very old.
  - c. mentally infirm.
  - d. physically infirm.
  - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
  - a. an attempted taking of property of great monetary value.
  - b. the actual taking of property of great monetary value.
  - c. damage causing great monetary loss.
  - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

**MITIGATING FACTORS**

1. The defendant committed the offense under: *EXHIBIT(H) 2 of 2*
- a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
2. The defendant:
- a. was a passive participant in the commission of the offense.
  - b. played a minor role in the commission of the offense.
3. The defendant was suffering from a:
- a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
  - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
4. The defendant's:
- a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
  - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
5. The defendant has made:
- a. substantial restitution to the victim.
  - b. full restitution to the victim.
6. The victim was more than 16 years of age and:
- a. was a voluntary participant in the defendant's conduct.
  - b. consented to the defendant's conduct.
7. The defendant:
- a. aided in the apprehension of another felon.
  - b. testified truthfully on behalf of the state in another prosecution of a felony.
8.  a. The defendant acted under strong provocation.  
 b. The relationship between the defendant and the victim was otherwise extenuating.
9. The defendant:
- a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
  - b. exercised caution to avoid serious bodily harm or fear to other persons.
10. The defendant reasonably believed that the defendant's conduct was legal.
11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
- a. at an early stage of the criminal process.
  - b. prior to arrest.
12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
13. The defendant is a minor and has reliable supervision available.
14. The defendant has been honorably discharged from the United States Armed Services.
15. The defendant has accepted responsibility for the defendant's criminal conduct.
16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
17. The defendant supports the defendant's family.
18. The defendant has a support system in the community.
19. The defendant has a positive employment history or is gainfully employed.
20. The defendant has a good treatment prognosis and a workable treatment plan is available.
21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

**DETERMINATION (NOTE: Check only one)**

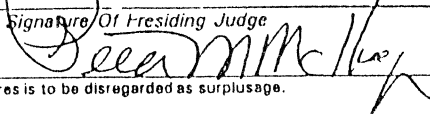
The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date  
03-05-99

Name Of Presiding Judge (Type Or Print)  
PETER M. MCHUGH

Signature Of Presiding Judge



Guilford

County

EXHIBIT (F) 1 of 2

In The General Court Of Justice  
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

FELONY JUDGMENT  
FINDINGS OF AGGRAVATING  
AND MITIGATING FACTORS  
(STRUCTURED SENTENCING)

Offense

Solicitation first degree murder

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
  - a. induced others to participate in the commission of the offense.
  - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
  - 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
  - a. avoiding or preventing a lawful arrest.
  - b. effecting an escape from custody.
- 4. The defendant was:
  - a. hired to commit the offense.
  - b. paid to commit the offense.
- 5. The offense was committed to:
  - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
  - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
  - a. was armed with a deadly weapon at the time of the crime.
  - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
  - a. very young.
  - b. very old.
  - c. mentally infirm.
  - d. physically infirm.
  - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
  - a. an attempted taking of property of great monetary value.
  - b. the actual taking of property of great monetary value.
  - c. damage causing great monetary loss.
  - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.



MITIGATING FACTORS

EXHIBIT 2 of 2

- 1. The defendant committed the offense under:
  - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
  - a. was a passive participant in the commission of the offense.
  - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
  - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
  - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
  - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
  - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
  - a. substantial restitution to the victim.
  - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
  - a. was a voluntary participant in the defendant's conduct.
  - b. consented to the defendant's conduct.
- 7. The defendant:
  - a. aided in the apprehension of another felon.
  - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8.  a. The defendant acted under strong provocation.
  - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
  - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
  - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
  - a. at an early stage of the criminal process.
  - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date  
03-05-99

Name Of Presiding Judge (Type Or Print)  
PETER M. MCHUGH

Signature Of Presiding Judge

Guilford County

EXHIBIT (D) 10/2

In The General Court Of Justice  
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

1999 MAR -5 PM 12:45

FELONY JUDGMENT  
FINDINGS OF AGGRAVATING  
AND MITIGATING FACTORS  
(STRUCTURED SENTENCING)

Offense

Solicitation first degree murder

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
  - a. induced others to participate in the commission of the offense.
  - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
  - a. avoiding or preventing a lawful arrest.
  - b. effecting an escape from custody.
- 4. The defendant was:
  - a. hired to commit the offense.
  - b. paid to commit the offense.
- 5. The offense was committed to:
  - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
  - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
  - a. was armed with a deadly weapon at the time of the crime.
  - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
  - a. very young.
  - b. very old.
  - c. mentally infirm.
  - d. physically infirm.
  - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
  - a. an attempted taking of property of great monetary value.
  - b. the actual taking of property of great monetary value.
  - c. damage causing great monetary loss.
  - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

1. The defendant committed the offense under: *EXHIBIT (J) 2012*
- a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
2. The defendant:
- a. was a passive participant in the commission of the offense.
  - b. played a minor role in the commission of the offense.
3. The defendant was suffering from a:
- a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
  - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
4. The defendant's:
- a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
  - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
5. The defendant has made:
- a. substantial restitution to the victim.
  - b. full restitution to the victim.
6. The victim was more than 16 years of age and:
- a. was a voluntary participant in the defendant's conduct.
  - b. consented to the defendant's conduct.
7. The defendant:
- a. aided in the apprehension of another felon.
  - b. testified truthfully on behalf of the state in another prosecution of a felony.
8.  a. The defendant acted under strong provocation.
- b. The relationship between the defendant and the victim was otherwise extenuating.
9. The defendant:
- a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
  - b. exercised caution to avoid serious bodily harm or fear to other persons.
10. The defendant reasonably believed that the defendant's conduct was legal.
11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
- a. at an early stage of the criminal process.
  - b. prior to arrest.
12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
13. The defendant is a minor and has reliable supervision available.
14. The defendant has been honorably discharged from the United States Armed Services.
15. The defendant has accepted responsibility for the defendant's criminal conduct.
16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
17. The defendant supports the defendant's family.
18. The defendant has a support system in the community.
19. The defendant has a positive employment history or is gainfully employed.
20. The defendant has a good treatment prognosis and a workable treatment plan is available.
21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date 03-05-99	Name Of Presiding Judge (Type Or Print) PETER M. MCHUGH	Signature Of Presiding Judge <i>Peter M. McHugh</i>
------------------	--	--

Guilford County

EXHIBIT (S) 1 of 2

In The General Court Of Justice  
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

Offense Solicitation first degree murder

FELONY JUDGMENT

FINDINGS OF AGGRAVATING  
AND MITIGATING FACTORS  
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

COJ

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
  - a. induced others to participate in the commission of the offense.
  - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
  - a. avoiding or preventing a lawful arrest.
  - b. effecting an escape from custody.
- 4. The defendant was:
  - a. hired to commit the offense.
  - b. paid to commit the offense.
- 5. The offense was committed to:
  - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
  - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
  - a. was armed with a deadly weapon at the time of the crime.
  - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
  - a. very young.
  - b. very old.
  - c. mentally infirm.
  - d. physically infirm.
  - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
  - a. an attempted taking of property of great monetary value.
  - b. the actual taking of property of great monetary value.
  - c. damage causing great monetary loss.
  - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

EXHIBIT (K) 2 of 2

- 1. The defendant committed the offense under:
  - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
  - a. was a passive participant in the commission of the offense.
  - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
  - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
  - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
  - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
  - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
  - a. substantial restitution to the victim.
  - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
  - a. was a voluntary participant in the defendant's conduct.
  - b. consented to the defendant's conduct.
- 7. The defendant:
  - a. aided in the apprehension of another felon.
  - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8.  a. The defendant acted under strong provocation.
  - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
  - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
  - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
  - a. at an early stage of the criminal process.
  - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

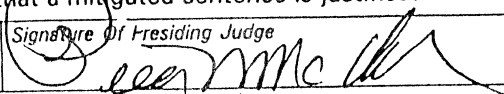
The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date  
03-05-99

Name Of Presiding Judge (Type Or Print)  
PETER M. MCHUGH

Signature Of Presiding Judge



Guilford

County

EXHIBIT (L) 10/2

In The General Court Of Justice  
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

Offense

Solicitation first degree murder

FELONY JUDGMENT  
FINDINGS OF AGGRAVATING  
AND MITIGATING FACTORS  
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
  - a. induced others to participate in the commission of the offense.
  - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
  - a. avoiding or preventing a lawful arrest.
  - b. effecting an escape from custody.
- 4. The defendant was:
  - a. hired to commit the offense.
  - b. paid to commit the offense.
- 5. The offense was committed to:
  - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
  - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
  - a. was armed with a deadly weapon at the time of the crime.
  - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
  - a. very young.
  - b. very old.
  - c. mentally infirm.
  - d. physically infirm.
  - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
  - a. an attempted taking of property of great monetary value.
  - b. the actual taking of property of great monetary value.
  - c. damage causing great monetary loss.
  - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

- 1. The defendant committed the offense under: *Exhibit (L) 2082*
  - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
  - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
  - a. was a passive participant in the commission of the offense.
  - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
  - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
  - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
  - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
  - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
  - a. substantial restitution to the victim.
  - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
  - a. was a voluntary participant in the defendant's conduct.
  - b. consented to the defendant's conduct.
- 7. The defendant:
  - a. aided in the apprehension of another felon.
  - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8.  a. The defendant acted under strong provocation.
  - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
  - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
  - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
  - a. at an early stage of the criminal process.
  - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

**DETERMINATION** (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.

factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date  
03-05-99

Name Of Presiding Judge (Type Or Print)  
PETER M. MCHUGH

Signature Of Presiding Judge

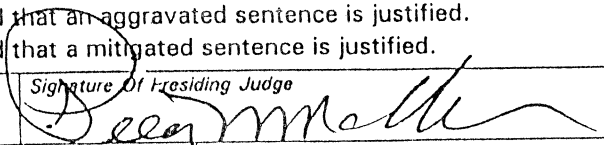


EXHIBIT (M)

**SUPREME COURT OF NORTH CAROLINA**

\*\*\*\*\*

(State v Theodore Mead Kimble)

State of North Carolina  
v  
Theodore Mead Kimble

RECEIVED  
APR 10 2001  
CLERK OF SUPREME COURT

From NC Court of Appeals  
(COA99-1518)  
(97CRS23656)  
(97 CRS 39581)  
(98 CRS 23486)  
(99CRS23241-48)

\*\*\*\*\*

ORDER

Upon consideration of the petition filed by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 5th day of April 2001.

s/ Butterfield, J.  
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of April 2001.

Christie Speir Cameron  
Clerk, Supreme Court of North Carolina

*Carol B. Templeton*

Carol B. Templeton  
Assistant Clerk



Copy to:  
North Carolina Court of Appeals  
Ms. Danielle M. Carman, Assistant Appellate Defender, For Kimble  
Mr. Edwin W. Welch, Special Deputy Attorney General, For State  
Mr. Horace M. Kimel, Jr., District Attorney  
Mr. David Churchill, Clerk of Superior Court  
Mr. Ralph A. White, Appellate Court Reporter  
West Publishing Company  
Lexis-Nexis



EXHIBIT (N)

**STATE OF NORTH CAROLINA**

In the General Court of Justice  
Superior Court Division

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

v.

**THEODORE MEADE KIMBLE**

*Ry*

File No.

**97CRS 23656**

Film No.

**INDICTMENT  
ARSON  
CONSPIRACY TO MURDER**

Date of Offense  
October 9, 1995

Offense in Violation of G.S.  
14-58 and the Common Law

**COUNT I  
ARSON OF AN UNOCCUPIED DWELLING**

**THE JURORS FOR THE STATE OF NORTH CAROLINA**, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC.

**COUNT II  
CONSPIRACY**

**AND THE JURORS FOR THE STATE OF NORTH CAROLINA**, upon their oath do present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, and feloniously that conspire, combine, confederate and agree with Ronnie Lee Kimble to commit the felony of Murder in the First Degree, in that Theodore Mead Kimble did agree with Ronnie Lee Kimble to murder, kill and slay Patricia Kimble in violation of N.C. Gen.Stat. 14-17, and the common law of the State of North Carolina.

Signature of Prosecutor

*[Handwritten Signature]*

**WITNESSES**

J. D. Church  
Guilford County Sheriff's Department  
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

- A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
- NOT A TRUE BILL

Date

**NOV 03 1997**

Signature of Grand Jury Foreman

*Michael Smith*

253

EXHIBIT (0)

20

**STATE OF NORTH CAROLINA**

In the General Court of Justice  
Superior Court Division

FILED

File No. **98CRS 23486**

GUILFORD COUNTY

STATE OF NORTH CAROLINA 1998 JUL -6 PM 3: 58

Film No. **INDICTMENT  
FIRST DEGREE ARSON**

v.

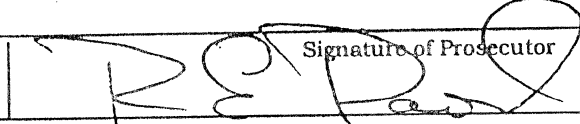
**THEODORE MEAD KIMBLE** GUILFORD COUNTY, N.C.

Date of Offense  
October 9, 1995 BY 

Offense in Violation of G.S.  
14-58 and the Common Law

**FIRST DEGREE ARSON**

**THE JURORS FOR THE STATE OF NORTH CAROLINA**, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC. At the time of the burning Patricia Kimble was in the dwelling.

  
Signature of Prosecutor

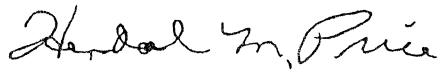
**WITNESSES**

J. D. Church  
Guilford County Sheriff's Department  
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.  
 NOT A TRUE BILL

Date  
JUL 06 1998

Signature of Grand Jury Foreman  






14. (if applicable) The prosecutor and your lawyer have informed the Court that these are all the terms and conditions of your plea: (See attachment for additional plea arrangements, including voluntary dismissals.)

Answers

The State of North Carolina agrees to accept a plea to Second Degree Murder in 97CRS39581. Count 1 of 97CRS23656 shall be dismissed. In return, the Defendant agrees to enter guilty pleas to Second Degree Murder in 97CRS39581, Conspiracy to Commit First Degree Murder in 97CRS23656, First Degree Arson in 98CRS23486, and eight counts of Solicitation to Commit First Degree Murder in Bills of Information which are to be filed this date. The Defendant agrees and understands that he will receive consecutive sentences in each of these cases. Further, the Defendant agrees to return the ashes of Patricia Blakley Kimble to the Blakley family. The State agrees to dismiss any Breaking and Entry or Larceny indictments against Theodore Meade Kimble which are presently pending in Guilford County.

The parties stipulate that the Defendant is a level II offender, and that under the Structured Sentencing Act the maximum sentence he can receive for each B-2 felony is 254 months, for each Class C felony 159 months, and for the Class D felony 108 months.

- (a) Is this correct as being your full plea arrangement? (14a) yes
- (b) Do you now personally accept this arrangement? (14b) yes
- 15. (Other than the plea arrangement between you and the prosecutor) has anyone made any promises or threatened you in any way to cause you to enter this plea against your wishes? (15) no
- 16. Do you enter this plea of your own free will, fully understanding what you are doing? (16) yes
- 17. Do you have any questions about what has just been said to you or about anything else connected with your case? (17) no

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. Neither my lawyer nor anyone else has told me to give false answers in order to have the Court accept my plea in this case. The conditions of the plea as stated above, if any, are accurate.

<b>SWORN AND SUBSCRIBED TO BEFORE ME</b>		Date	1/28/99
Date	1/28/99	Signature	<i>Mustina Davis</i>
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Signature Of Defendant	X <i>Theodore Meade Kimble</i>
		Name Of Defendant (Type Or Print)	Theodore Meade Kimble

**CERTIFICATION BY LAWYER FOR DEFENDANT**

As lawyer for the defendant named above, I hereby certify that the conditions stated above, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charge(s) to which the defendant is pleading.

Date	1/28/99	Name Of Lawyer For Defendant (Type Or Print)	<i>Fred W. Zimmerman, Jr.</i>	Signature Of Lawyer For Defendant	<i>Fred W. Zimmerman, Jr.</i>
------	---------	--	-------------------------------	-----------------------------------	-------------------------------

**CERTIFICATION BY PROSECUTOR**

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated above, if any, are the terms agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charge(s) in this case.

Date	1/28/99	Name Of Prosecutor (Type Or Print)	<i>Richard E. Parosh</i>	Signature Of Prosecutor	<i>Richard E. Parosh</i>
------	---------	------------------------------------	--------------------------	-------------------------	--------------------------

**PLEA ADJUDICATION**

Upon consideration of the record proper, evidence presented, answers of defendant, and statements of the lawyer for the defendant and the District Attorney, the undersigned finds:

1. That there is a factual basis for the entry of the plea.
2. That the defendant is satisfied with his/her lawyer.
3. That the defendant is competent to stand trial and that the plea is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea is hereby accepted by the Court and is ordered recorded.

Date	1/28/99	Name Of Presiding Judge (Type Or Print)	<i>John M. McHugh</i>	Signature Of Presiding Judge	<i>John M. McHugh</i>
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I was at work, Lyle's Building Material Oct. 9, 1995. AT 3:25 P.M. I called Patricia Kimble, who was about to leave work early to go home and cut the grass. Little did I know my wife would be dead by the end of the day. After I hung-up the phone I walked out of the office as my younger brother, Ronnie Kimble<sup>(Jr.)</sup> came driving up (3:45 P.M.). AS I spoke to Ronnie an employee named James Ogburn came walking up. James asked Ronnie about the for-sale sign in the window of his car. While they talked I had to go wait on a customer. After the customer left I went and got the tools Ronnie had asked for. Ronnie left Lyle's Building MTL. around 4:25 P.M. AT 4:45 P.M. Ronnie<sup>(Jr.)</sup> was at his home working when his father-in-law, James STUMP came driving up to help him. The rest of the evening Ronnie spent with his in-laws and wife. Thus all of Ronnie's time was accounted for.

Other than myself James Ogburn was the key witness who could verify Ronnie's location from 3:45 P.M. to 4:25 P.M. Detectives spoke to James Ogburn at least (4) times. But the Prosecutor (Dick Panosh) never turned over a single statement made by James. Two of those interviews were made down-town in the D.A.'s office. The first time James Ogburn gave his statement was at Lyle's Building MTL. in-front of Edna Kimble. James was interviewed by whom is believed to be Detective Sergeant Debarry. Detectives Church and Debarry spoke to James at the company a few times.

Approximately a year after the death of Patricia Kimble, A young man named Robert Nicholes (Rob) came to work at Lyle's Building MTL. At the time no one knew that with Rob came a drug (cocaine) and alcohol problem. In Dec. (96) Rob started selling small amounts of lumber to the company (Lyle's Building MTL.) He claimed

a contractor was giving him the left-over lumber off job-sites. On Jan. 2, 1997, Rob asked for my help to go and pick-up some lumber as soon as the company closed, at 5:30 P.M. I agreed to go and help. Before the company closed a friend at the time named Patrick Pardee came driving up. when asked he also agreed to go and help. I closed up as always and the 3 of us headed across town. when we arrived at the site to get the lumber, we not only loaded what Rob claimed was promised to him, we loaded it all. Thus began a crime spree that lasted for the next 60 days.

By the end of the first week in March, Patrick and I had pretty much stopped stealing. Do to Rob's drug problem he continued stealing in an attempt to support his habit. During the second week of March I realized Rob was now stealing from the company, (which I own), but I didn't know what to do about it. During the same week Rob came - up and stated he and his friend (Jeff Roberts) had spotted a trailer loaded with latters, and asked if I needed anymore? I said, "NO." "Let me ask you Rob, did you tell Jeff what we had done?" Rob said, "NO" and walked off. James Ogburn then walked up and I said, "we're busted because Rob told Jeff. You know how the two of them fight all the time. The next time they fall out, Jeff will call Crime-stoppers for the reward, so he can get more drugs."

On April 1, 1997 I was arrested. A few weeks later I was indicted on 47 felony Breaking/Entering and Larceny charges. When I got the case discovery information I read where Jeff Roberts had called Crime-stoppers just like I said he would. In my absence my father, Ronnie Kimble (Sr.) ran Lyles Building mtl. My younger brother, Ronnie Kimble (Jr.) was also arrested April 1 (97) and indicted for the death of Patricia Kimble. I would be indicted a few months later. While Ronnie (Jr.) sat in the Greensboro Jail of Guilford County, I sat in the High Point Jail.

While I sat in jail there was a break-in at Lyle's Building Mtl. Someone loaded shingles into the company's brand new trailer (\$5,500) and drove off with it. A few months passed and Jeff Roberts started coming into "Lyle's" for business. One day while Jeff spoke to Ronnie (Sr.) he broke-down and started telling Mr Kimble about things he and Rob had done. Jeff stated he and Rob had broke into "Lyle's" and stolen the trailer and shingles. Jeff also said he went to the beach with Rob Nicholes, Rob's wife and daughter. While at the beach Jeff helped Rob do a roofing job with the stolen shingles, then Rob went and sold the trailer. Mr. Kimble (Sr.) called and reported this information to the authorities. A detective came and interviewed Jeff Roberts and took a statement, but the District Attorney's office refused to issue a warrant and arrest Robert Nicholes. The actions or lack thereof by the D.A.'s office should've come as no surprise. Jeff also told Mr. Kimble (Sr.) that Rob stated he didn't know anything about Patricia Kimble's death, because I (T.K.) had never talked to him about it. And that the D.A. (Dick Panosh) was coaching him as what to say. Jeff said Rob would joke about having to go down-town for his coaching lessons.

One day James Ogburn and a co-employee of "Lyle's" ran into Rob. Rob asked that they let Mr. Kimble (Sr.) know, He had talked it over with his wife and decided not to go through with it (lie), and testify against Ted (T.K.). James and the co-employee gave signed statements, which copies are enclosed within the M.A.R. "But once again Rob lied."

Meanwhile Patrick Pardee showed up at Chilly's Restaurant one day for lunch, and spoke to a young woman named Melanie Eyendine. Patrick told Melanie he didn't know anything about Patricia Kimble's death, but the Prosecutor was pressing him to sign a statement against Ted (T.K.) anyway. Three days after this conversation Patrick Pardee signed a statement against me (T.K.).

Maybe a month or so after Jeff Roberts confessed to Mr Kimble (Sr.), Jeff



got arrested and thrown into jail. Jeff wasn't just placed anywhere, The D.A. (Dick Panosh) had Jeff placed at the HighPoint Jail, in the very cell "next to me." Jeff told me he was out attempting to steal some scrap aluminum when his truck got stuck in the mud. During the following week Jeff made several trips to the Greensboro D.A.'s office, where he was interrogated; interviewed, and threaten. Each time Jeff would return to his cell and tell me what was happening. Jeff first stated Dick Panosh (Asst. D.A.) and detective J.D. Church wanted him to try and talk to me about my case. On another visit they wanted Jeff to sign a statement against me, which stated I had confessed to him while he was in the cell next to me. If Jeff didn't sign the statement Mr. Panosh threaten to prosecute him to the max! This was the same way Mr. Panosh got Robert Nicholes and Patrick Pardee to sign statements, which said the same thing. After 3-4 visits to the D.A.'s office Jeff was scared to death, but he held-out. After the final visit Jeff told me that Mr. Panosh had stated he better keep his mouth shut and disappear. If Jeff did as told the pending charges against him would be dropped. Mr. Panosh told Jeff he had better NOT show up at trial to testify against Rob during the "Kimble trial." A day or two after this conversation with Jeff, he got out of jail and was never heard from again. Up until the time Mr. Panosh threaten Jeff, he was going to testify for the defense.

I complained to my lawyer about Jeff being in the cell next to me, and told of what Mr. Panosh was trying to do. But my lawyers did nothing.

I was still in jail awaiting trial when a patrol car arrived at Lyle's Building Material. The police officers arrested James Ogburn and claimed it was for back child-support payments. But when James got downtown he was taken to the D.A.'s office to discuss the "Kimble's case." James said the D.A. told him his life was

at a fork in the road, one path leads to prison for the rest of his life, the other path leads to probation, "Don't show up at the Kimble trial!"

For over two years James Ogburn had stated Ronnie Kimble was in front of him on Oct. 9, 1995 between 3:45-4:30 P.M. Two week before Ronnie Kimble's trial James was at the D.A.'s office again for another pep-talk. Once again the D.A. threaten James and made it clear he had better not testify for the defense.

You have to Remember, James was involved with the 47 plus felony Breaking/Entering and Larceny cases. The D.A. threaten to prosecute James on all of these charges if he didn't change his statement. After James' last visit to the D.A.'s office his statement changed, James said he couldn't remember the exact time anymore, and he refused to testify. In exchange the D.A. didn't prosecute James on a single charge.

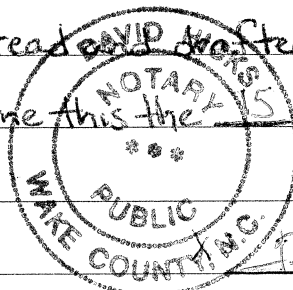
When it came time for (co-defendant) Ronnie Kimble Jr.'s trial, Jeff Roberts and James Ogburn were nowhere in sight. The D.A. had threaten them, and ran them off. Robert Nicholes and Patrick Pardee both marched into court and lied on the stand, saying I had confessed to them, and told them I had hired Ronnie (Jr) to Kill my wife. They lied just as Richard Panosh (D.A.) coached them to do. I NEVER said any such thing to either of them! Ronnie Kimble was standing in front of myself and James Ogburn at the time Patricia Kimble died. It would be impossible for Ronnie to be in two places at the same time! Both Rob and Patrick had plea-agreements with Richard Panosh on pending charges, and neither saw a day in prison. To my knowledge both had prior criminal records, yet both received probation and or the First Offender's Program. It's also my understanding Rob and Patrick were only charged with 2-3 crimes each, while I was charged with 47 felonies in which they were

also involved. If this isn't a case of selective prosecution I don't know what is. The D.A. even got a young lady named Joy Dyers, who was an x-girlfriend, to lie in court. Just as the others she had pending charges in which the D.A. used as leverage to coerce witnesses to lie. After Joy testified to the lies, her pending charges were dismissed.

In mid 99' while sitting in prison, waiting on my direct Appeal to be filed, I picked up the Raleigh newspaper (The News & Observer) and read the classifieds. Low and behold I saw an "Ad" for a "TRAILER" which sounded like the one Rob stole from me. I sent the Ad to my father Ronnie (Sr) who drove half-way across the state and found my trailer. It was a custom-built trailer (\$5,500) so there is NOT another one like it in the World. Finally, I had evidence which could be traced back to Robert Nicholes. Mr Kimble (Sr) reported this information to the authorities, but just as before the District Attorney's office refused to go and get the trailer, They refused to arrest Robert Nicholes. Clearly this was a miscarriage of justice, and Prosecutor Misconduct. Richard Panosh sees himself above the Law he's suppose to represent.

The above Affidavit is written in True Accounts of Events that took place, To the Best of my Knowledge all statements made are TRUE and CORRECT, As for any statement made on information and belief are made in good faith, And I Believe to be TRUE, I have read and drafted the same, I swear under perjury. Sworn to and before me this the 15 Day of October 2003.

WITNESS: *Ram/Chick* 10-15-03



*Theodore M. Kimble*

MY COMMISSION EXPIRES: My Commission Expires 5-18-2008.

THEODORE MEAD KIMBLE

Leaving work, James and I ran into Rob and talked with him in the parking lot of the boat place. He talked about how well he was doing with his new business and the new home he just purchased. He also spoke on Ted and Ron in reference to how they were doing etc. and mentioned that he was not going to testify to that "bull-shit because it wasn't right. He stated that he and his wife had talked about it and he had had a change of heart and realized it was wrong to do so. She had the same feelings. He stated that instead he would take the "contempt of court charge" and do the time at the County farm. He told James that he was telling him this so that he could relay it to Mr. Kimble.

Walter A. Cole Sr.  
8/2/97

EXHIBIT (T) 2 of 3

Time 12:00

4-18-97

Robert informed me that the Police  
was on him concerning Ted and the  
murder <sup>case</sup>. Robert also says that, Ted  
told him some things that he shouldn't have,  
but nothing concerning the murder. Robert  
says he was going to plea guilty to  
all larceny charges.

James Ogden

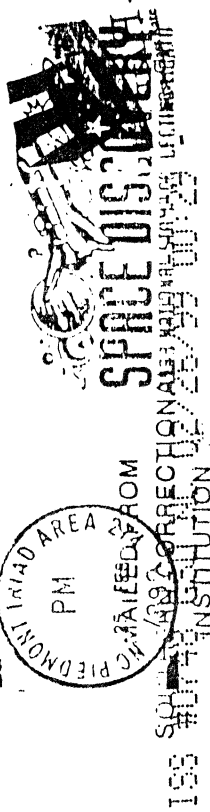
EXHIBIT (5) 3 of 3 7-29-97

On July 22<sup>nd</sup>, I saw Robert Nicklaus in the parking<sup>lot</sup> down from Syler Bld. Materials. He stated to me that he wasn't going to testify against Ted, concerning the murder of his wife. Rob also asked me to inform Mr. Kimble of this matter too. Robert says that he would be in contempt of court, for not testifying, and that he would deal with that. His primary message was for me to inform Mr. K

of his actions concerning this matter.

James Ogden

EXHIBIT (U) 1083

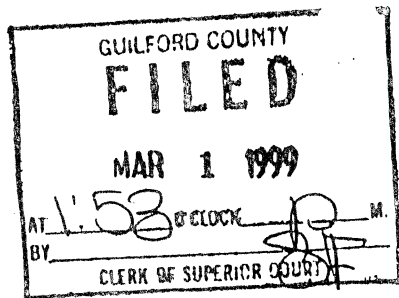


Therese Kimble  
 P.O. Box 786  
 Troy NC 27371

To: Guilford County Court House  
 Superior Court Judge Peter McHugh  
 Greensboro NC 27402

27400/9999

2043  
EXHIBIT (u)



Superior Court Judge  
Peter McHugh

I Theodore M. Kimble would like to withdraw my guilty-plea on all accounts and charges. I request to go before a jury and plead my case. I was pressured into my earlier plea. I'm NOT Guilty and here by withdraw my earlier plea of Guilty.

When you read the Plea Agreement, you asked if I had been threatened in any way to force me to take the agreement? The answer is YES! Mr Zimmerman stood by my side, under his breath saying, "Play it cool." I told him yes before hand and he was afraid I'd tell you. I ask, How can I say "No" when I'm being told if I don't, I'll be killed should I go to trial.

I believe your opinion needs to wait till the evidence is heard. I disapprove of you saying "Good Job" to my lawyers. It sounds as if you had read the newspapers and formed your own opinions. I hope a byist attitude isn't shown during the trial or favoritism to the D.A.

I request a gag order be placed on the D.A. He has done nothing but brain wash the public and potential jurors. Further



03/17

APR 1 1999

EXHIBIT (U) 3043

Do to the D.A.'s press conferences I'd like my trial moved to Winston Salem in Forsyth County.

I've not made my decision known to my attorneys at this point, but am presently doing so. I assure you, I won't allow someone to push me around again. My mind is made up.

Thank you,

Theodore W. Kimble

2-24-99

P.S. What is justice when a D.A. tells an opposing witness, "Your life is at a fork in the road, one goes to prison the other to probation. Don't slow at the Kimble trial."

3/1/99 cc: Parosh  
Zimmerman/Crompler

1 GUILTY TO?

2 DEFENDANT:- YES, SIR.

3 THE COURT:- ARE YOU SATISFIED WITH YOUR ATTORNEYS'  
4 LEGAL SERVICES ON YOUR BEHALF?

5 DEFENDANT:- YES, SIR.

6 THE COURT:- HAVE YOU DISCUSSED ANY POSSIBLE DEFENSES  
7 THAT YOU MAY HAVE AVAILABLE TO ASSERT AGAINST THESE VARIOUS  
8 CHARGES THAT HAVE BEEN FILED AGAINST YOU?

9 DEFENDANT:- YES, SIR.

10 THE COURT:- AND YOU ARE SATISFIED WITH YOUR  
11 ATTORNEYS' SERVICES WITH REGARD TO THEIR CONSULTATION, IS THAT  
12 CORRECT?

13 DEFENDANT:- YES, SIR.

14 THE COURT:- ALL RIGHT. YOU UNDERSTAND YOU HAVE THE  
15 RIGHT TO PLEAD NOT GUILTY TO THESE CHARGES AND TO BE TRIED BY A  
16 JURY UPON A PLEA OF NOT GUILTY?

17 DEFENDANT:- YES, SIR.

18 THE COURT:- DO YOU UNDERSTAND THAT, AT SUCH TRIAL,  
19 YOU WOULD HAVE THE RIGHT TO CONFRONT THE WITNESSES AGAINST YOU  
20 AND TO CROSS EXAMINE THE WITNESSES AGAINST YOU?

21 DEFENDANT:- YES, SIR.

22 THE COURT:- AND DO YOU UNDERSTAND THAT, BY ENTRY OF  
23 THIS PLEA, YOU ARE WAIVING, THAT IS, GIVING UP, THESE AND ALL  
24 OF YOUR OTHER CONSTITUTIONAL RIGHTS RELATING TO BEING TRIED BY  
25 A JURY?

1 GUILTY TO THOSE OFFENSES BECAUSE YOU CONSIDER IT TO BE IN YOUR  
2 BEST INTEREST TO DO SO?

3 DEFENDANT:- YES, SIR.

4 THE COURT:- DO YOU UNDERSTAND THAT WHEN YOU PLEAD  
5 GUILTY TO THOSE OFFENSES UPON THAT CONDITION THAT YOU WILL BE  
6 ADJUDGED GUILTY AND SENTENCED FOR THOSE OFFENSES WHETHER OR NOT  
7 YOU, IN FACT, ADMIT THAT YOU ARE GUILTY OF THEM?

8 DEFENDANT:- YES, SIR.

9 THE COURT:- HAVE YOU AGREED TO TENDER A PLEA OF  
10 GUILTY TO THESE SEVERAL OFFENSES AS PART OF A PLEA ARRANGEMENT  
11 THAT WAS NEGOTIATED ON YOUR BEHALF BY YOUR ATTORNEYS WITH THE  
12 DISTRICT ATTORNEY?

13 DEFENDANT:- YES, SIR.

14 THE COURT:- IS THIS A CORRECT STATEMENT OF WHAT YOU  
15 UNDERSTAND YOUR FULL PLEA ARRANGEMENT TO BE: THE STATE OF  
16 NORTH CAROLINA HAS AGREED, PURSUANT TO THE PLEA ARRANGEMENT, TO  
17 ACCEPT A PLEA OF GUILTY TO SECOND DEGREE MURDER IN CASE  
18 97-CRS-39581. COUNT ONE IN THAT -- IN CASE 97-CRS-23656 SHALL  
19 BE DISMISSED BY THE STATE UPON YOUR PLEA OF GUILTY. IN RETURN,  
20 THE DEFENDANT AGREES TO ENTER PLEAS OF GUILTY TO SECOND DEGREE  
21 MURDER IN CASE 39581, CONSPIRACY TO COMMIT FIRST DEGREE MURDER  
22 IN CASE 97-CRS-23656, AND FIRST DEGREE ARSON IN CASE  
23 98-CRS-23486, AND EIGHT COUNTS OF SOLICITATION TO COMMIT FIRST  
24 DEGREE MURDER PURSUANT TO THE BILLS OF INFORMATION WHICH HAVE  
25 BEEN SUBMITTED TO THE COURT. THE DEFENDANT AGREES PURSUANT TO

1 THAT PLEA ARRANGEMENT AND UNDERSTANDS THAT HE WILL RECEIVE  
2 CONSECUTIVE SENTENCES IN EACH OF THESE CASES. FURTHER, THE  
3 DEFENDANT AGREES TO RETURN THE ASHES OF PATRICIA BLAKLEY KIMBLE  
4 TO THE BLAKLEY FAMILY. THE STATE AGREES PURSUANT TO ITS  
5 COMMITMENT AND THE PLEA ARRANGEMENT TO DISMISS ANY BREAKING AND  
6 ENTERING OR LARCENY INDICTMENTS PENDING AGAINST THEODORE MEAD  
7 KIMBLE WHICH ARE PRESENTLY PENDING IN GUILFORD COUNTY, NORTH  
8 CAROLINA. THE PARTIES STIPULATE, PURSUANT TO THE PLEA  
9 ARRANGEMENT, THAT THE DEFENDANT, THAT IS YOU, IS SUBJECT TO  
10 SENTENCE AS A LEVEL TWO OFFENDER, AND THAT, PURSUANT TO THE  
11 STRUCTURED SENTENCING ACT, THE MAXIMUM SENTENCE THAT THE  
12 DEFENDANT MAY RECEIVE FOR EACH OF THE B2 FELONIES IS 254  
13 MONTHS, FOR EACH CLASS C FELONY, IT'S 159 MONTHS, AND FOR THE  
14 CLASS D FELONY, IT IS 108 MONTHS. IS WHAT I'VE JUST SAID TO  
15 YOU A CORRECT STATEMENT OF WHAT YOU UNDERSTAND YOUR FULL PLEA  
16 ARRANGEMENT TO BE, MR. KIMBLE?

17. DEFENDANT:- YES, SIR.

18 THE COURT:- AND DO YOU PERSONALLY ACCEPT THE PLEA  
19 ARRANGEMENT AT THIS TIME?

20 DEFENDANT:- YES, SIR.

21 THE COURT:- OTHER THAN THE CONDITIONS OF THE PLEA  
22 ARRANGEMENT I HAVE JUST RECITED TO YOU, HAS ANYONE THREATENED  
23 YOU OR MADE ANY PROMISES TO YOU TO IN ANY WAY ATTEMPT TO CAUSE  
24 YOU TO ENTER THIS PLEA OF GUILTY AGAINST YOUR WISHES?

25 DEFENDANT:- NO, SIR.

1 (March 4, 1999.)

2 THE COURT: Mr. Panosh, you may proceed.

3 MR. PANOSH: Your Honor, we are before the  
4 Court on the matter of Theodore Mead Kimble, the  
5 remaining case is 97 CRS 39581. I believe that the first  
6 matter is a motion to withdraw filed pro se by the  
7 defendant.

8 Your Honor, the State has filed an Answer to  
9 the motion to withdraw, and I've served counsel with a  
10 copy. I did note that on page 1 when I indicated date of  
11 change of counsel, I have the wrong date there. It  
12 should have been December 3rd, of '98 change of counsel.  
13 And I've made that correction.

14 THE COURT: Thank you. Mr. Crumpler, Mr.  
15 Zimmerman, are you appearing with the defendant at this  
16 time?

17 MR. CRUMPLER: Your Honor, we are appearing  
18 by virtue of the nature of the motion. We have explained  
19 to the defendant actually we will remain neutral because  
20 we may be asked questions, and the defendant understands  
21 that.

22 THE COURT: All right. Thank you. Mr.  
23 Kimble, would you stand up, please?

24 (Defendant stands.)

25 THE COURT: Mr. Kimble, the court records

# EXHIBIT (Y)

6

1 had manipulated the witnesses and myself. I ask my trial  
2 be moved to Winston-Salem because of the publicity around  
3 my case, mainly caused by the D.A. I'm tired of being  
4 scared, used and run over by Guilford County. It's time  
5 I stand up for myself and quit allowing these people to  
6 abuse me. I want the truth known by all, and that's what  
7 everyone is going to get when I take the stand. It's my  
8 life, it should be my choice. Please, Your Honor, set  
9 the plea aside and set a trial date. I don't want to  
10 have to appeal the decision to get the trial I deserve.  
11 This would further delay the inevitable and tie up the  
12 court. I would have to get new court appointed lawyers  
13 and start over. The lawyers I have were paid. Let them  
14 finish what they've started. With all due respect, you  
15 represent justice. I'm willing to die to prove my  
16 innocence. I love my wife, and I want to tell the truth.  
17 The D.A. has done nothing -- everything in his power to  
18 ensure that I not receive a fair trial. Please set  
19 things straight.

20 I might add, Your Honor, being intimidated,  
21 last time I left I was somewhat abused. I was shackled  
22 so tight it left bruises on my wrists and nearly broke  
23 the skin on my ankles, and the driver was running 97 mph  
24 down 220, blowing his horn, flashing his lights at people  
25 to get out of his way. By the time I got back to my

1 A. We probably have 350 on the roll. And on Sunday  
2 morning worship attendance we probably average 150 to 175  
3 altogether.

4 Q. Mr. Kimble, you've heard the witnesses here in  
5 court today. Have you heard your wife's testimony?

6 A. Yes, sir.

7 Q. Keeping in mind that His Honor is going to have to  
8 pass judgment on your son, Ted, at the conclusion of the  
9 hearing, will you relate to the Court things about your  
10 son Ted that you would ask the Court to consider in his  
11 behalf?

12 A. Yes, sir. Your Honor, I've sat through my other  
13 son's trial. There was a question at the end of trial by  
14 Mr. Panosh. I told him I would like to express to you I  
15 believe with all my heart my sons did not do this. I  
16 know I believe it because the time frame, I'd look at it  
17 humanly and the time frame that my other son supposedly  
18 committed the murder for this son, he could not have done  
19 it because he was at the place of business at Lyles  
20 Building Material with my son, and with another witness.  
21 The witness was going to testify that he was at Lyles up  
22 to about 4:30. He told me this on numerous occasions.  
23 And about two weeks before the trial started, the D.A.  
24 called him down here to his office, and they had  
25 mentioned to him about bringing him in on the breaking,

1 entering, larcenies if he didn't cooperate with them. He  
2 come back to the place of business and his story changed  
3 that my son left -- well, last time he saw him was around  
4 3:00. But he told me all the way up to that time that he  
5 would be glad to come to court, be glad to testify that  
6 my son was at that business till about 4:30. But then  
7 when he went to the D.A.'s office, he come back, his  
8 story changed. I know with all my heart that my sons are  
9 not guilty of this. And I'll go to my grave knowing that  
10 because it's just no way. I asked myself could they have  
11 done it. I looked at it from every way possible. It's  
12 no way they could have because they could not have been  
13 there. And my other son, he was working two jobs. His  
14 wife told him that if he would pay off the boat--- He  
15 wanted to buy a motorcycle. That if he would pay off the  
16 boat that he could buy a motorcycle. And then after her  
17 death, he did go buy a motorcycle. But first of all, he  
18 went out and bought the clothes that he needed, the  
19 things that he needed. Then he took little bit of that  
20 money, he went and borrowed money from the bank on a  
21 charge card and he did buy a motorcycle, which I did not  
22 approve of. I owned a couple of motorcycles and they're  
23 dangerous. With all my heart I do not believe either one  
24 of my sons had anything to do with this murder. I know  
25 he took the plea bargain. I know that he did that. But



1 Lyles, did you know these two people, Mr. Pardee and Mr.  
2 Nichols?

3 A. Very well, sir.

4 Q. And, uh, did you ever have any conversation with  
5 Mr. Nichols or Mr. Pardee concerning anything about your  
6 wife or manner in which she was killed or whatever?

7 A. Never. The only conversation, and it was limited,  
8 was with Patrick Pardee, and it was about the crooked  
9 dealings of the D.A.

10 Q. Did Mr. Nichols or Mr. Pardee ever give you any  
11 indication that they would not testify to these facts  
12 that you had told them, that you'd had your wife killed  
13 or words to that effect?

14 A. I've never heard any of the comments they've made.  
15 I do know that Patrick Pardee, three days before signing  
16 a statement against me, told Melanie Oxendine that he had  
17 no idea of any of the facts surrounding my case. That  
18 the D.A. and detectives were pressuring him to lie  
19 against me.

20 Q. All right.

21 A. Three days later he signs a statement against me  
22 and supposedly knows everything there is about my case.  
23 And this is under oath. Melanie Oxendine testified to  
24 it.

25 Q. Now, tell me about what happened on the 9th day of

1 October, the date your wife died. Can you tell me what  
2 time you -- how long you were at work?

3 A. I need to finish what I was saying.

4 Q. Excuse me. Go ahead.

5 A. Rob Nichols told James Ogburn and a fellow inmate  
6 from Lyles Building Material, which I believe you have a  
7 statement written by those two employees of Lyles. They  
8 ran into each other at the gas station across the street,  
9 and he verified to them that he had been being coached by  
10 the D.A. That he was no longer going to testify against  
11 me, quote unquote, "lie" against me, as the D.A. had been  
12 pressuring him to do.

13 Q. All right. Anything else about either one of  
14 them?

15 A. Uh, I would like to mention that Rob Nichols has a  
16 very serious drug problem. Alcohol abuse problem.  
17 Abuses his wife and his child. Uh, the B&E's, he would  
18 take his little girl out on the job sites and have his  
19 little girl stick her arm through the key hole to reach  
20 up and unlock the dead bolt. I mean this is the witness  
21 with the halo around his head the D.A. portrays him as.

22 Q. Now, along those lines about the breaking and  
23 enterings and the thievery or taking of property, were  
24 you engaged in some of that also with them?

25 A. Yes, sir. I'm ashamed to admit it. Under the

1 is a biased opinion. She has never liked me, and told me  
2 to my face.

3 Q. And it's your contention that Mr. Pardee and Mr.  
4 Nichols, who are under indictment for something; is that  
5 correct?

6 A. Yes, sir. They face charges on the B&E's. And  
7 they have both signed plea agreements with the D.A. Per  
8 se cut deals for their testimony to lie against me.

9 Q. All right. So, you're saying, telling us that  
10 there is some sentence consideration on the part of the  
11 State in return for their testimony?

12 A. Shoot yeah. That's the only reason he could get  
13 them to testify against me, was to give them a plea  
14 agreement. Just like the William Stewart guy got out of  
15 prison early.

16 Q. All right. Now that's where I'm headed right now.  
17 Let me ask you this. As to this William Stewart, how  
18 long did you know William Stewart at Southern  
19 Correctional?

20 A. Possibly a month. A month or so.

21 Q. During this month period, did Mr. -- did you  
22 approach Mr. Stewart about having anybody killed?

23 A. No, sir. I did not. He approached me.

24 Q. And what was his -- can you tell us how he brought  
25 it up to or broached the subject to you about killing

1 people off bringing the stuff, selling it to me, and gets  
2 me to helping him, you know---

3 Q. Got you to help him?

4 A. He got me to help him.

5 Q. In fact, you're the one that purchased the two-way  
6 radios, didn't you?

7 A. The walkie talkies?

8 Q. Yes.

9 A. Yes.

10 Q. And the scanner to listen for the police?

11 A. I had a scanner prior to that. My dad's got one  
12 too. Does that make him a criminal?

13 Q. And went out and rented a U-Haul, I mean a lift  
14 and a trailer to go to---

15 A. I own the trailer, sir. I owned the trailer  
16 before Rob Nichols broke in my lot and stole it and took  
17 it to the beach and sold it, and you refused to do  
18 anything about it.

19 Q. You rented a lift, didn't you, to go to---

20 A. Yes, I did. To go to Home Depot to load up  
21 lumber.

22 Q. Lumber by the lift full?

23 A. Exactly. Rob Nichols used to work there and rip  
24 them off all the time. And he instigated it. He knew  
25 the managers. He knew their schedule. He knew

1 right up to the time of her execution. That just shows  
2 you not a mitigating factor, that shows that he's a cold  
3 blooded murderer. He planned this and he had the ability  
4 to hug and kiss his wife knowing that he was about to  
5 kill her to collect the insurance money.

6 This defendant, Your Honor, lives in a world  
7 of bombs and silencers and sniper rifles. He just feels  
8 that anybody who gets in his way, he should be able to  
9 eliminate. We ask you to sentence him remembering that.  
10 Thank you.

11 THE COURT: All right, thank you. Mr.  
12 Zimmerman, are you prepared to tender your sentencing  
13 memorandum?

14 MR. ZIMMERMAN: We don't have it at this  
15 point in time, if Your Honor please. If Your Honor would  
16 be kind enough to consider a short recess, I'll check one  
17 more time and see what the problem is. This witness has  
18 been subpoenaed since two weeks ago. And she was just  
19 deathly ill yesterday. I apologize for having the phone  
20 ringing in the courtroom. That was her calling me  
21 yesterday. She couldn't get out of the bed. It's this  
22 flu going around, and I can understand it because I had  
23 some of that before I had my other problem.

24 MR. PANOSH: May we approach?

25 THE COURT: Yes, sir.

1 MR. ZIMMERMAN: Absolutely satisfactory with  
2 the defendant.

3 (Counsel approach the bench.)

4 THE COURT: Counsel, the Court will provide  
5 you with a recess to attempt to provide that element of  
6 evidence.

7 Court will be in temporary recess, Sheriff.

8 (A recess was taken.)

9 (All parties present.)

10 MR. ZIMMERMAN: If Your Honor pleases, the  
11 defense appreciates Your Honor's thoughtful and serious  
12 consideration of the presentence study, and apologizes  
13 for the delay.

14 THE COURT: That's no need to apologize,  
15 Counsel. In this matter I'm anxious to have all the  
16 evidence that any party wishes to produce.

17 Is there any further evidence at this time  
18 for the State or for the defendant?

19 MR. PANOSH: No, thank you, Your Honor.

20 MR. CRUMPLER: No, Your Honor.

21 THE COURT: Is there any further matters  
22 before the Court enters judgment?

23 MR. PANOSH: No, Your Honor.

24 THE COURT: Judgment of this Court shall be  
25 entered first in case 97 CRS 39581, wherein the defendant

STATE OF NORTH CAROLINA

File No. 97CR 2

EXHIBIT (EE) 10F3

GUILFORD County GREENSBORO Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: [This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI offense(s).]

STATE VERSUS

JUDGMENT AND COMMITMENT

Defendant

THEODORE MEAD KIMBLE

ACTIVE PUNISHMENT FELONY

Race White Sex M DOB 12-08-1969

Attorney For State RICHARD PANOSH

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant ROBERT L. MCCLELLAN

G.S. 15A-1301, 15A-1340.13

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 5 columns: File No(s) And Offense(s), Date Of Offense, G.S. No., F./M., CL. Row 1: 97CRS 23655 POSSESS WEAPON OF MASS DESTRUCTION, 04-01-1997, 14-288.8, F, F

The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be -0- RECORD LEVEL: 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony. G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race). 7. finds no Extraordinary Mitigation.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 015 months for a maximum term of: 018 months in the custody of the: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for 32 days spent in the confinement prior to the date of this Judgment as a result of this charge.

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

12/16/97 BKKP

(check all that apply)

1. The defendant shall pay the costs.  2. The defendant shall pay a fine of \$ \_\_\_\_\_.

**The Court recommends:**

3. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h).  4. Psychiatric and/or psychological counseling.  
 5. Work Release  
 6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the items and amounts set out below.

Fine	Costs	Restitution*	Reimbursement For Atty Fee & Other Expenses	Total Amount Due
			\$1,850.00	\$1,850.00

\*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**The Court further recommends:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**The Court does not recommend:**

1. Restitution as a condition of post release supervision or work release.  2. Work release.

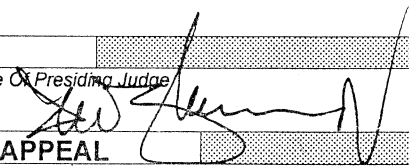
**AWARD OF FEE TO COUNSEL FOR DEFENDANT**

A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

**ORDER OF COMMITMENT/APPEAL ENTRIES**

It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.  
 The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
12-08-1997	H. W. ZIMMERMAN, JR.	

**ORDER OF COMMITMENT AFTER APPEAL**

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

**CERTIFICATION**

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

Appeal Entries (AOC-CR-350)  
 Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)  
 Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)  
 Commitment Information Statement (DC-600)

Date	Signature And Seal
Date Certified Copies Delivered To Sheriff	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
12-16-97	



STATE OF NORTH CAROLINA

FILED

File-No.

See Transcript

Guilford County

DEC 8 1997

In The General Court Of Justice

District Superior Court Division

STATE VERSUS

AT 4:00 O'CLOCK P M

BY NA CLERK OF SUPERIOR COURT

WORKSHEET

PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING (STRUCTURED SENTENCING)

Name And Address Of Defendant

Theodore M. Kimble

Social Security No.

SID No.

NC 0725218A

Race

W

Sex

M

DOB

12/8/69

G.S. 15A-1340.14, 15A-1340.21

NOTE: This worksheet is provided to assist the attorney for the state in calculating and presenting the defendant's prior record level or prior conviction level. Record the defendant's prior record on the reverse side of this form or attach a copy of the defendant's prior record pursuant to G.S. 15A-1340.14(f). If sentencing for a felony, count the number of prior convictions in each offense class and enter those totals in the chart in section I below. For multiple prior convictions at one session of court, see G.S. 15A-1340.14(d). Class 1 misdemeanor offenses under Chapter 20 are not assigned any points for determining prior record level for felony sentencing except misdemeanor death by vehicle [G.S. 20-141.4(a2)]. First Degree Rape and First Degree Sexual offense convictions prior to October 1, 1994, are Class B1 convictions.

I. SCORING PRIOR RECORD/FELONY SENTENCING

Table with 4 columns: NUMBER, TYPE, FACTORS, POINTS. Rows include Prior Felony Class A Conviction (X10), Prior Felony Class B1 Conviction (X 9), Prior Felony Class B2 or C or D Conviction (X 6), Prior Felony Class E or F or G Conviction (X 4), Prior Felony Class H or I Conviction (X 2), Prior Class A1 or 1 Misdemeanor Conviction (see note) (X 1), SUBTOTAL (0), If all the elements of the present offense are included in the prior offense (+ 1), If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape (+ 1), TOTAL (0).

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

FELONY

NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.

NOTE: If sentencing for a felony, locate the prior record level which corresponds to the prior record determined in section I above.

Table with 2 columns: No. Of Prior Convictions, Level. Rows: 0 (I), 1-4 (II), 5+ (III).

PRIOR CONVICTION LEVEL [ ]

Table with 2 columns: Points, Level. Rows: 0 (I), 1 - 4 (II), 5 - 8 (III), 9 - 14 (IV), 15 - 18 (V), 19+ (VI).

PRIOR RECORD LEVEL [ I ]

The Court has determined the number of prior convictions to be \_\_\_\_\_ and the level to be as show above.

The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.

Date 12/12/97

Name Of Presiding Judge (Type Or Print) H.W. Zimmerman, Jr.

Signature Of Presiding Judge [Signature]

## EXHIBIT (F.F)

### STATEMENT CONCERNING DEFENDANT'S CONFINEMENT

Prior to entry of his guilty pleas in the instant cases, defendant was in the custody of the Department of Corrections at Southern Correctional Institution in Troy, North Carolina for unrelated larceny and breaking and entering convictions. On January 12, 1999, defendant was placed on disciplinary segregation. Defendant entered his guilty pleas in the instant cases on January 28, 1999. On February 1, 1999, defendant's control status was changed to administrative segregation. On February 5, 1999, defendant was placed on maximum control and remained there until he was transferred to Caledonia Correctional Institution on February 26, 1999. Pursuant to state-wide policy, all three levels of control require 23-hour-per-day lock-up, with one hour per day for showering and individual recreation. In addition, inmates held at all three control levels are not allowed phone calls and are permitted only one non-contact week-day visit per week.

EXHIBIT (D)

TWENTY SEVEN B DISTRICT

No. \_\_\_\_\_

NORTH CAROLINA COURT OF APPEALS

x x x x x x x x x x x x x x x

STATE OF NORTH CAROLINA

V.

FROM: GUILFORD COUNTY

97CRS23656, 97CRS39581,

98CRS-23486, 99CRS23241-48,

THEODORE MEAD KIMBLE

DEFENDANT.

x  
MOTION FOR RELIEF FROM THE JUDGMENT  
x x

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PROOF OF SERVICE	20

# ARTICLES AND STATUTES

U.S. CONST. AM V, VI, AND XIV,  
N.C. CONST. ART. I, SEC. 18, 19, 23,  
N.C.G.S. 15A-954 (4),  
N.C.G.S. 15A-955 (2),  
N.C.G.S. 15A-1415 (b) (8),  
N.C.G.S. 15A-1415 (e),

## CASES AND AUTHORITIES

- BAKER V. BARBO, 177 F.3d 149 (3<sup>RD</sup>. CIR. 1999)  
COSS V. LACKAWANNA COUNTY DISTRICT ATTORNEY,  
204 F3d 453 (3<sup>RD</sup>. CIR. 2000)  
JACKSON V. LEONARD, 162 F3d 81 (2<sup>ND</sup> CIR. 1998)  
LORD V. WOOD, 184 F.3d (9<sup>TH</sup>. CIR. 1999)  
OSBORN V. STILLINGER, 861 F2d 612 (10<sup>TH</sup>.  
CIR. 1988)  
TRICE V. WARD, 196 F.3d 1151 (10<sup>TH</sup> CIR 1999)  
U.S. V. BARTHOLOMEW, 974 F2d 39 (5<sup>TH</sup>. CIR 1992)  
U.S. V. DAVENPORT, 151 F3d 1325 (11<sup>TH</sup>. CIR 1998)  
U.S. V. ELLISON, 798 F2d 1102 (7<sup>TH</sup>. CIR. 1998)  
U.S. V. GORDON, 172 F3d 753 (10<sup>TH</sup>. CIR. 1999)  
U.S. V. SANDERSON, 595, F2d 1021 (5<sup>TH</sup>. CIR 1979)  
U.S. V. UNGER, 665 F2d 251 (8<sup>TH</sup>. CIR. 1981)  
U.S. V. VAVAGES, 151 F3d 1185 (9<sup>TH</sup>. CIR. 1998)  
WEST. V. U.S. 994 F2d 518 (9<sup>TH</sup>. CIR. 1993)

NO.

GUILFORD COUNTY

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA )  
VS. )  
THEODORE MEAD KIMBLE, )  
DEFENDANT. )

"FROM: GUILFORD COUNTY  
"FILE NO.'S 97CRS 23656,  
"97CRS 39581; 98CRS 23486;  
"99CRS 23241-48, = = = = =

MOTION FOR RELIEF FROM THE JUDGMENT

TO: THE HONORABLE COURT OF APPEALS OF  
NORTH CAROLINA.

PETITIONER THEODORE MEAD KIMBLE, pro-se, respectfully  
PETITIONS THIS COURT PURSUANT TO RULE 21 OF THE NORTH  
CAROLINA RULES OF APPELLATE PROCEDURE TO REVIEW  
THE ORDER OF THE HONORABLE PETER M. Mc HUGH,  
PRESIDING JUDGE, GUILFORD COUNTY SUPERIOR COURT  
N.C. DATED MARCH 5, 1999, DATE OF JUDGMENTS.

IT WAS A COERCED GUILTY PLEA IN CASES 97CRS 23656,  
97CRS 39581; 98CRS 23486, AND ALFORD PLEAS IN  
CASES 99CRS 23241-48. PETITIONER WAS REPRESENTED

BY THE RETIRED JUDGE H.W. ZIMMERMAN, WHO FORMALLY SENTENCED PETITIONER TO PRISON (SEE EXHIBIT (A)) WHILE PETITIONER WAS IN PRISON SERVING THE SENTENCE JUDGE ZIMMERMAN IMPOSED, MR. ZIMMERMAN CAME OFF THE BENCH AND WENT INTO PRIVATE PRACTICE. COUNSELOR ZIMMERMAN TEAMED-UP WITH FRED. G. CRUMPLER JR. TO REPRESENT PETITIONER. MR. CRUMPLER WAS NOT MUCH MORE THAN A "PUPPET", WHILE MR. ZIMMERMAN PULLED HIS STRINGS. IN SUPPORT OF THIS MOTION, PETITIONER SHOWS THE FOLLOWING:

## FACTS

PETITIONER SEEKS RELIEF FROM THE JUDGMENTS UPON THE GROUNDS THAT THE SENTENCES IMPOSED WERE UN-AUTHORIZED AT THE TIME IMPOSED, CONTAINED A TYPE OF SENTENCE DISPOSITION OR A TERM OF IMPRISONMENT NOT AUTHORIZED FOR THE PARTICULAR CLASS OF OFFENCE AND PRIOR RECORD AND CONVICTION LEVEL WAS ILLEGALLY IMPOSED, OR IS OTHERWISE INVALID AS A MATTER OF LAW. (N.C.G.S. 15A-1415 (b) (8) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL NORTH CAROLINA GENERAL STATUTES 15A-1415 (e).



PETITIONER CONTENDS THAT A MOTION FOR RELIEF FROM THE JUDGMENT DEFINED AS:  
A PARTY'S REQUEST THAT THE COURT CORRECT A CLERICAL MISTAKE IN THE JUDGMENT — THAT IS, A MISTAKE THAT RESULTS IN CORRECTLY REFLECTING THE COURT'S INTENTIONS — OR RELIEVE THE PARTY FROM THE JUDGMENT BECAUSE OF SUCH MATTERS AS (1) INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLIGENCE, (2) NEWLY DISCOVERED PIECES OF EVIDENCE THAT COULD NOT HAVE BEEN DISCOVERED THROUGH DILIGENCE IN TIME FOR A MOTION OF A NEW TRIAL, (3) THE JUDGMENT'S BEING THE RESULT OF FRAUD, MISREPRESENTATION, OR MISCONDUCT BY THE OTHER PARTY, OR (4) THE JUDGMENTS BEING VOID OR HAVING BEEN SATISFIED OR RELEASED.

ON THE FIRST ASSERTED GROUND FOR RELIEF, WAS THE MISREPRESENTATION OF CASE # 97CRS 23656 ARSON OF AN UNOCCUPIED DWELLING, INDICTMENT DATED NOV. 3, 1997, WHICH HAD TO BE DISMISSED BY LAW, BECAUSE THE DWELLING WAS IN FACT OCCUPIED BY PATRICIA KIMBLE, HOWEVER, PETITIONER WAS NOT MADE AWARE OF THE ERROR ON THE STATE'S PART. IN FACT THE STATE MADE AN ATTEMPT TO COVER-UP THEIR MISTAKE BY "RE-INDICTING" PETITIONER ON JULY 6, 1998. "CLEARLY PROSECUTOR MISCONDUCT". THE

PROSECUTOR USED THE EXACT SAME "WORDING" OF THE PREVIOUS INDICTMENT (NOV. 3, 97), BUT THIS TIME THE PROSECUTOR UPPED THE CHARGE TO "FIRST DEGREE ARSON", CASE #98CRS 23486, THUS COMMITTED "DOUBLE-JEOPARDY". YET COUNSELOR ZIMMERMAN HAD PETITIONER PLEAD GUILTY TO SAID INDICTMENT. HOW COULD COUNSELOR ZIMMERMAN FAIL TO SEE THAT PETITIONER HAD BEEN INDICTED FOR THE SAME CHARGE TWICE. CLEARLY INEFFECTIVE ASSISTANCE OF COUNSEL. HAD MR. ZIMMERMAN SIMPLY READ THE INDICTMENT, HE WOULD HAVE SEEN THIS ERROR. THIS CLEARLY SHOWS HOW INCOMPTANT AND UNPREPARED FOR TRIAL, SAID ATTORNEYS WERE.

NEXT, PETITIONER WOULD LIKE TO POINT OUT THAT BY COUNSEL HAVING PETITIONER PLEAD GUILTY TO A CHARGE THAT HAD TO BE DISMISSED ANYWAY, AS A MATTER OF LAW, WAS A MISCARriage OF JUSTICE AND VIOLATES DUE PROCESS OF LAW (SEE U.S. CONST. AM. V, VI, AND XIV, N.C. CONST. ART. I, SEC. 18, 19, 23). ALSO SEE JACKSON V. LEONARD, 162 F 3d. 81 (2ND CIR. 1998). APPELLATE COUNSEL'S FAILURE TO RAISE DOUBLE JEOPARDY CLAIM WHERE IT WAS APPARENT THAT JACKSON'S TWO CHARGES OF FIRST DEGREE ROBBERY AND CRIMINAL USE OF A FIRE ARM IN THE FIRST DEGREE RESTED ON THE SAME FACTUAL PREDICATE CONSTITUTES

INEFFECTIVE ASSISTANCE OF COUNSEL.

THEN TO TOP IS ALL OFF, PETITIONER WAS SENTENCED TO 163-205 MONTHS FOR CASE # 97CRS 23656 MNWAK, AND PETITIONER PRAYS FOR RELIEF FROM THAT JUDGMENT BY THIS HONORABLE COURT. PETITIONER'S NEXT ASSERTED GROUND FOR RELIEF FROM JUDGMENT IS IN CASES 99CRS - 23241 - 23248, WHERE PETITIONER WAS CONVICTED INTO AN ALFORD PLEA BY PROSECUTION AND COUNSEL MR. ZIMMERMAN, PETITIONER WAS TRICKED AND DECEIVED INTO SIGNING "WAIVERS" ON THOSE ABOVE CHARGES TO WAIVE THE FINDINGS AND THE RETURN OF BILLS OF INDICTMENT SHEETS, PETITIONER'S COUNSEL AND PROSECUTOR KNEW THAT BY PETITIONER DOING THIS, I'D BE AGREEING THAT THE ABOVE SAID CASES MAY BE TRIED UPON THE ABOVE INFORMATION ON THE BILLS OF INDICTMENT SHEETS, PETITIONER'S COUNSEL AND MR. PANISHA MADE BELIEVE IT WAS IN MY BEST INTEREST, OR PROSECUTOR WOULD MAKE CERTAIN THAT PETITIONER WOULD RECEIVE THE DEATH SENTENCE. see U.S. V. SANDERSON, 595 F.2d 1024 (5th Cir. 1979)! SO ON JAN. 28, 1999 PETITIONER SIGNED 8 WAIVERS AND RECEIVED 70 TO 90.4 YEARS ON THOSE CHARGES ALONE, AND ALL SENTENCES WERE RAN CONSECUTIVELY, SIX OF THEM WERE IN THE AGGRAVATED RANGE, TO JUSTIFY IT THEY USED THE

SAME ELEMENTS IN EACH ONE, TO PROVE EACH OTHER.  
POSITIONED AT THE TIME WAS UNAWARE THAT ALL 8  
CHARGES HAD BEEN PRESENTED TO THE GRAND JURY  
FOR POSSIBLE INDICTMENT, ONLY THE GRAND JURY  
REFUSED TO INDICT ON ALL 8 COUNTS, SOLELY ON  
THE WORD OF A HABITUAL LIAR, WHO SPENT MOST OF  
HIS LIFE IN AND OUT OF PRISON, WHICH (4) OTHER  
WITNESSES TESTIFIED OF HOW WILLIAM WAYNE STEWART  
WAS LYING, AND MAKING THE WHOLE STORY UP. ALL 8  
COUNTS WOULD HAVE BEEN DISMISSED THAT VERY SAME  
DAY, IF THEY COULDN'T CONN PETITIONER INTO  
PLEADING GUILTY TO THEM. THIS WAS FALSE  
REPRESENTATION AND FRAUD, "A GRAVE MISCARriage  
OF JUSTICE". PETITIONER SEEKS THIS HONORABLE  
COURT FOR RELIEF FROM THOSE JUDGMENTS TOO.

BY TRIAL COUNSEL AND PROSECUTOR WORKING HAND  
IN HAND AGAINST PETITIONER TO HAVE HIM PLEAD  
GUILTY AS THEY ADVISED/COERCED/INDUCED, IN  
ALL THE ABOVE SAID CASES, WHICH WOULD HAVE  
HAD TO BE DISMISSED AS A MATTER OF LAW,  
VIOLATED ALL PETITIONERS STATE AND FEDERAL  
RIGHTS, SEE U.S. V. ELLISON, 798 F 2d 1102  
(7th Cir. 1998) AND ALSO U.S. V. UNGER, 665 F 2d  
251 (8th Cir. 1981) DEFENDANTS ASSERTION THAT COUNSEL

ADVISED HER THAT IF SHE PLEAD GUILTY TO KIDNAPPING CHARGES, SHE WOULD BE GIVEN PROBATION, AND THAT IF SHE WENT TO TRIAL AND WAS FOUND GUILTY, THAT SHE WOULD PROBABLY GET THE DEATH PENALTY, STATED A VALID CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHICH REQUIRED AN EVIDENTIARY HEARING! IN CASE AT BAR, PETITIONER WAS TOLD IF HE PLEADED GUILTY TO ALL CHARGES HE WOULD GET A 20 YEAR SENTENCE, AND IF HE WENT TO TRIAL HE WOULD BE FOUND GUILTY AND RECEIVE THE "DEATH PENALTY", ALSO PETITIONER WOULD LIKE TO STRESS THE FACT THAT ALL (8) CASES HAD TO BE DISMISSED AS A MATTER OF LAW, PETITIONER WAS TRICKED INTO SIGNING WAIVERS ON ABOVE CASES. THIS WAS A GRAVE MISCARriage OF JUSTICE, EXHIBIT(C).

### REASON WHY MOTION SHOULD BE GRANTED

PETITIONER WAS ALREADY SERVING 50-60 MONTHS FOR UNRELATED CHARGES, WHEN THE NEW (8) CHARGES WERE BROUGHT AGAINST HIM. THE PREVIOUS SENTENCING JUDGE WAS MR. ZIMMERMAN ON DEC. 8, 1997, SEE EXHIBIT(A) WHILE PETITIONER WAS SERVING THIS SENTENCE JUDGE ZIMMERMAN RETIRED FROM THE BENCH AND BECAME ATTORNEY ZIMMERMAN. COUNSELOR ZIMMERMAN TRICKED PETITIONER INTO BELIEVING HE COULD WIN ALL THE CHARGES AND PETITIONER

WOULD NOT GET ANY TIME. PETITIONER'S FAMILY AND  
COUNSEL \$50,000.<sup>00</sup> AS ASKED FOR, BUT JUST LIKE  
ANY EXTORTIONIST MR. ZIMMERMAN WANTED MORE  
AND MORE MONEY. WHEN MR. ZIMMERMAN REALIZED  
HE HAD TAKEN ALL THEIR WAS TO TAKE AND NO MORE  
MONEY COULD BE GIVEN, HE STATED PETITIONER WOULD  
HAVE TO TAKE A 20 YEAR SENTENCE. PETITIONER TOLD  
COUNSEL HE WAS INNOCENT AND WANTED HIS DAY IN  
COURT, BUT COUNSEL WOULD NOT LISTEN. WHEN  
PETITIONER SHOWED FOR COURT ON JAN. 28, 1999, IT  
WAS FOR "CHANGE OF VENUE HEARING". PETITIONER  
HAD NOT DISCUSSED A PLEA OF ANY KIND UP TO THIS  
POINT WITH COUNSEL. PETITIONER'S DESIRE HAD ALWAYS  
BEEN TO GO TO TRIAL. ON THIS DAY MR. ZIMMERMAN  
STARTED ATTACKING PETITIONER. MR. ZIMMERMAN  
KNEW PETITIONER WAS ON MEDICATION AND TOOK FULL  
ADVANTAGE OF PETITIONER'S INCOHERENT MENTAL STATE  
OF MIND. MR. ZIMMERMAN STATED ALL WAS PRE ARRANGED  
FOR A 20 YEAR PLEA AGREEMENT, AND THAT IT WAS ONLY  
GOOD FOR THAT DAY. THAT PETITIONER MUST PLEAD GUILTY  
TODAY OR HE WOULD SURELY LOSE AT TRIAL AND BE  
PUT TO DEATH! HE FURTHER STATED THE PROSECUTOR  
HAD TO HAVE A CONVICTION BECAUSE OF ALL THE PUBLICITY  
SURROUNDING THE CASE. ACCORDING TO COUNSEL ZIMMERMAN

PETITIONER HAD NO CHOICE IN THE MATTER AND MUST SIGN THE PAPERS PLACED BEFORE HIM. PRIOR TO ENTERING THE COURTROOM MR. ZIMMERMAN STATED PETITIONER SHOULD REPEAT WHAT HE SAYS, WHEN THE PLEAS WERE ENTERED MR. ZIMMERMAN WHISPERED ALL THE ANSWERS TO THE QUESTIONS THAT JUDGE MCAUBH ASKED, AS COUNSELOR WHISPERED THE ANSWERS PETITIONER REPEATED AS TOLD. PETITIONER HAD NO CHOICE. HOWEVER, THE NEXT DAY AFTER PETITIONER REALIZED HE HAD THROWN HIS LIFE AWAY, HE FILED A MOTION TO WITHDRAW HIS PLEAS ON JAN. 29, AND FEB. 24, 1999. THE FIRST MOTION TO WITHDRAW HIS PLEAS AND ALL COPIES VANISHED AND PETITIONER HAD TO FILE SECOND MOTION AND COPIES ON FEB. 24, 1999 AND COUNSEL REFUSED TO DEFEND AND SPEAK FOR DEFENDANT AT WITHDRAWAL HEARING, SAID THEY WOULD REMAIN NEUTRAL AND "SIT THIS ONE OUT", SEE TRANSCRIPT MARCH 4, 1999 PAGE # 3 LINES 17-21 EXHIBIT (B).

SEE MOTION TO WITHDRAW PLEAS (LETTER FORM) DATED FEB. 24, 1999 EXHIBIT (D), SEE OSBORN V. SKILLINGER, 861 F.2d 612 (10TH CIR. 1988)

"DEFENSE COUNSEL'S PERFORMANCE WAS NOT ONLY INEFFECTIVE, BUT COUNSEL ABANDONED THE REQUIRED DUTY OF LOYALTY TO HIS CLIENT; COUNSEL DID NOT

SIMPLY MAKE POOR STRATEGIC OR TACTICAL CHOICES;  
HE ACTED WITH RECKLESS DISREGARD FOR HIS CLIENT'S  
BEST INTEREST, AND APPARENTLY WITH THE INTENTION  
TO WEAKEN HIS CLIENTS CASE". THEY WERE UNPREPARED  
-ED FOR TRIAL, AND ONLY WANTED TO SEND PETITIONER  
AWAY FOR THE REST OF HIS NATURAL LIFE (OR)  
KILL HIM WITH DEATH PENALTY IF HE REFUSED TO  
PLEAD GUILTY! END NOTE.

PETITIONER WOULD LIKE TO BRING TO THE COURTS  
ATTENTION N.C.G.S. 15A-954 (4) STATES "THE  
DEFENDANTS CONSTITUTIONAL RIGHTS HAVE BEEN  
FLAGRANTLY VIOLATED AND THERE IS SUCH  
IRREPARABLE PREJUDICE TO THE DEFENDANTS  
PREPARATION OF HIS CASE THAT THERE IS NO REMEDY  
BUT TO DISMISS THE PROSECUTION"! ALSO SEE

BILL OF INDICTMENT CASE # 97 CAS 23656 WHICH  
WAS CLEARLY MISREPRESENTED DATED NOV. 3, 1997  
WHICH HAD TO BE DISMISSED BY LAW, BUT PETITIONER WAS  
CANNED INTO PLEADING GUILTY TO IT AS PART OF THE PLEA  
BARGAIN EXHIBIT (E) AND THEN TRIED TO COVER-UP  
THEIR MISTAKE BY RE-INDICTING PETITIONER ON  
JULY 6, 1998 EXHIBIT (E) USING THE EXACT SAME  
WORDING ONLY THIS TIME AS CASE # 98 CAS 23486 "FIRST  
DEGREE ARSON" THUS COMMITTED "DOUBLE-JEOPARDY"!



PETITIONER CONTENDS THAT HAVING THE SENTENCING "JUDGE",  
JUDGE ZIMMERMAN, WHO SENT PETITIONER TO PRISON  
FOR 50-60 MONTHS TO BEGIN WITH, THEN RETIRE FROM  
THE BENCH, AND BECOME A LAWYER, AND THEN DEFEND  
THE PERSON HE SENT TO PRISON TO BEGIN WITH, AND TELL  
HIM AND HIS FAMILY THAT BEING A PRIOR JUDGE, HE  
CAN "PULL STRINGS" AND GET PETITIONER OFF  
WITH "NO TIME", FOR \$50,000.<sup>00</sup>, AND WHEN COUNSEL  
COULDN'T GET MORE MONEY CHANGED HIS STORY TO 20  
YEARS, KNOWING POSITIVELY WELL, JUST HAVING PETITION-  
ER SIGN 8 WAIVERS TO ENSURE HIM 70 TO 90.4  
YEARS CLAIMING IT HAD ALL BEEN ARRANGED FOR 20  
YEARS FOR EVERYTHING, YET PETITIONER RECEIVED  
111 YEARS MINIMUM, SHOWS "CAUSE", "MALICIOUS  
PROSECUTION", AND CONFLICT OF INTEREST, AND GRAVE  
MISCARriage OF JUSTICE, AND PETITIONER SHOULD BE  
GRANTED RELIEF FROM JUDGMENTS.

IF THE COURT WILL LOOK AT THE RECORD,  
IT'S OBVIOUS THAT MANY-MANY OF PETITIONER'S OTHER  
RIGHTS, STATE AND FEDERAL WERE ALL VIOLATED, NO  
P.S.I. REPORT WAS EVEN HANDED IN, AND PETITIONER  
WAS SENTENCED ANYWAY, SEE SENTENCING TRANSCRIPTS  
PAGES <sup>#</sup> 218 AND <sup>#</sup> 219 EXHIBIT (G), FAILURE TO DEFEND,  
FAILURE TO INVESTIGATE WITNESSES, COUNSEL DIDN'T EVEN

WANT TO SEE THE STATEMENTS PETITIONERS MOTHER HAD  
GOTTEN FROM WITNESSES, SEE EXHIBIT (H), ALSO FAILURE  
TO RAISE DOUBLE JEOPARDY CLAIM, PROSECUTOR RUNNING  
WITNESSES FOR THE DEFENSE OUT-OF-TOWN DURING TRIAL  
ON ANY COURT PROCEEDINGS AND COUNSEL DIDNT CARE OR  
SAY ANYTHING ABOUT IT, FAILURE TO READ CO-DEFENDANTS  
TRANSCRIPTS OR EVEN OBTAIN THE 20 VOLUMES TO  
BEGIN WITH, AND ONLY POSSESSED (3) VOLUMES AND  
DIDNT EVEN READ THEM, FAILURE TO REPORT MISCONDUCT  
OF PROSECUTOR, WORKING HAND IN HAND WITH PROSECUTOR  
TO MAKE PETITIONER PLEAD GUILTY TO EVERYTHING, EVEN  
CHARGES THAT WOULD HAVE TO BE THROWN OUT BY  
LAW, NOT HELPING OR DEFENDING PETITIONER IN ANY  
SINGLE WAY, SHAPE, OR FORM, AND NEVER OBJECTED  
TO ANYTHING THE PROSECUTOR DID. PETITIONER  
CONTENDS THAT THERE ARE MANY MANY MORE VIOLATIONS,  
ESPECIALLY THE FACT THAT JUDGE ZIMMERMAN RETIRING  
FROM THE BENCH AFTER PUTTING PETITIONER IN PRISON  
FOR 50-60 MONTHS AND THEN MAKING BELIEVE HE  
WAS DEFENDING HIM, AND SENDING PETITIONER AWAY  
THIS TIME, FOR 111 YEARS (FOREVER) SHOULD BE PUT  
IN THE GUINNESS BOOK OF WORLD RECORDS, AS IT'S A  
"FIRST", AND PETITIONERS ENTIRE CASE SHOULD BE  
GRANTED RELIEF FROM JUDGMENT, PETITIONER

CONTENDS THAT HAVING PREVIOUS JUDGE REPRESENT  
PETITIONER AS ATTORNEY, AND GETTING PETITIONER 111  
YEARS AS SUCH A GRASS MISCARriage OF JUSTICE,  
PETITIONER CAN'T FIND ANY CASE SO GRASS FOR COMP-  
-ARISON, OR EVEN CLOSE TO IT. ESPECIALLY WHEN  
COUNSEL AND PROSECUTOR COMPELLED/INDUCED/COERCED/  
THREATEN WITH DEATH SENTENCE FOR PETITIONER TO SIGN  
8 WAIVERS THAT GRAND JURY REFUSED TO INDICT, THAT  
WOULD HAVE BEEN DISMISSED BY LAW, AND PETITIONER  
RECEIVED 70 TO 90.4 YEARS ALONE, WAS VIOLATION OF  
DUE PROCESS, SEE U.S. V. UNGER 665 F.2d 251  
(8TH. CIR. 1981), SEE N.C.S. 15A 955(2) "THE  
REQUISITE NUMBER OF QUALIFIED GRAND JURORS  
DID "NOT" CONCUR IN FINDING THE INDICTMENT".  
AND IT'S WELL KNOWN ESPECIALLY IN THE STATE OF N.C.,  
FOR THE GRAND JURY TO NOT INDICT, THERE MUST BE  
POSITIVELY NO EVIDENCE, BECAUSE IN N.C. THE LAW SEEMS  
TO BE STRICTER THAN ANYWHERE IN THE U.S.A. YET COUNSEL  
AND PROSECUTOR THREATEN PETITIONER TO SIGN WAIVERS  
ANYWAY AND KNOWING POSITIVELY, THE GRAND JURY  
REFUSED TO INDICT ON THE ONLY EVIDENCE OF AN  
INMATE WHO (4) WITNESSES TESTIFIED WAS "ALL LIES",  
HOW WILLIAM WAYNE STEWART TOLD ALL (4) WITNESSES  
IT WAS ALL LIES, YET PETITIONER WAS FORCED TO PLEAD

GUILTY (ALFORD) PLEAS TO ALL 8 CHARGES THAT HE DIDN'T COMMIT, OR RECEIVE DEATH SENTENCE, WAS A GRAVE MISCARriage OF JUSTICE AND VINDICTIVE PROSECUTION. PETITIONER CONTENDS THAT TRIAL COUNSEL NEGLECTED TO EVEN BOTHER INTERVIEWING WITNESSES THAT COULD HAVE GAVE SWORN TESTIMONY THAT PETITIONER OR CO-DEFENDANT COULDN'T HAVE HUMANLY POSSIBLY BEEN AT (TWO) PLACES AT THE SAME TIME, SEE COSS V. LACKAWANNA COUNTY DISTRICT ATTORNEY 204 F3d 453 (3<sup>RD</sup>. CIR. 2000) "DEFENSE COUNSEL'S FAILURE TO SUBP-  
-ORNA CERTAIN WITNESS AND TO INTERVIEW THOSE WITNESS CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL."

LOBO V. WOOD, 184 F. 3<sup>RD</sup>. 1083 (9<sup>TH</sup>. CIR. 1999)

"COUNSEL'S FAILURE TO INVESTIGATE EVIDENCE, WHICH DEMON-  
-STRATED HIS CLIENT'S FACTUAL INNOCENCE, UNDERMINES THE CONFIDENCE IN THE VERDICT AND CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL". AND COUNSEL WAITED SEVERAL MONTHS NEGLECTING TO TAKE STATEMENTS FROM DEFENSE WITNESSES, GIVING PROSECUTOR TIME TO THREATEN AND MAKE ALL WITNESSES CHANGE THEIR MIND AND CHANGE THEIR STORIES AND TESTIFY AGAINST PETITIONER OR FACE SEVERE PROSECUTION ON PENDING CHARGES.  
SEE U.S. V. VAVAGES, 151 F3d 1185 (9<sup>TH</sup>. CIR. 1998)

WHICH STATES THE FOLLOWING IN PERTINENT PARTS:  
"GOVERNMENTAL INTERFERENCE WITH A DEFENSE  
WITNESS' CHOICE WHETHER TO TESTIFY CONSTITUTES  
A VIOLATION OF "DUE PROCESS" AND REQUIRES A  
REVERSAL AND A REMAND", WITH A CASUAL  
PERUSAL OF THE RECORD AND PUBLIC RECORDS  
AND ALL WITNESSES "RESULTS" OF THEIR PENDING  
CHARGES AND CRIMINAL CASES "ALL" RESULTED IN  
DISMISSALS OR PROBATION ON ALL THEIR PENDING  
CHARGES IN "EXCHANGE" FOR THEIR TESTIMONY  
AGAINST PETITIONER AND THE HABITUAL LIES,  
WILLIAM WAYNE STEWART WAS EVEN LET OUT OF  
PRISON EARLY ON A MOTION BY PROSECUTOR TO  
RELEASE HIM EARLY, IN EXCHANGE FOR HIS TESTIMONY  
AGAINST PETITIONER, AND PROSECUTOR PANASHA EVEN  
ADMITTED ON RECORD, HE IN FACT PUT IN THE MOTION  
TO HAVE WILLIAM WAYNE STEWART RELEASED EARLY  
FROM PRISON, AND MADE SURE HE DIDN'T SHOW UP IN  
COURT FOR THE TRUTH TO COME OUT, AND COUNSEL  
SHOULD HAVE SUBPOENA HIM TO COURT, BUT NEVER  
DID, AND PETITIONER CONTINUES TO SERVE THIS  
ILLEGAL SENTENCE. AND PETITIONER WAS SENTENCED ILLEGALLY  
WITHOUT P.S.I. REPORT, AND PRACTICALLY ALL SENTENCES IN ABBOTT-  
-ING RANGE, AND ALL CHARGES CONSECUTIVELY SEE U.S. V.  
DAVENPORT 151 F3d 1325 (11TH CIR. 1998) AND

U.S. V. GARDON, 172 F. 3d 753 (10TH CIR. 1999)  
ALSO U.S. V. BARTOLOMEW 974 F. 2d 39 (5TH CIR. 1992)  
AND WEST V. U.S. 994 F. 2d 518 (9TH CIR. 1993).

IN SUPPORT OF THIS MOTION, PETITIONER PRAYS  
THIS HONORABLE COURT WILL INVESTIGATE THE ENCLOSED  
LIST OF EXHIBITS.

### LIST OF EXHIBITS

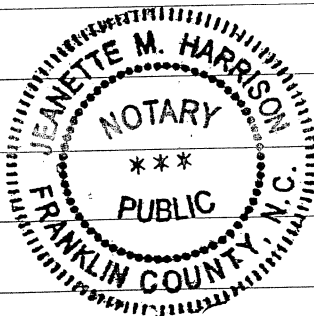
- (A) 3 PAGE JUDGMENT AND COMMITMENT, JUDGE ZIMMERMAN.
- (B) PAGE # 3 WITHDRAWAL OF PLEA HEARING ON MARCH 4, 1999.
- (C) 8 PAGES OF WAIVERS THAT PETITIONER WAS FORCED INTO SIGNING BY COUNSEL ZIMMERMAN AND PROSECUTOR.
- (D) MOTION BY PETITIONER TO WITHDRAW ALL HIS PLEAS (LETTER FORM) 3 PAGES. (FIRST MOTION 1/29/99 VANISHED).
- (E) MISREPRESENTED INDICTMENT DATED NOVEMBER 3, 1997 CASE # 97 CRS 23656.
- (F) RE-SUBMITTED INDICTMENT DATED JULY 6, 1998 CASE # 98 CRS 23486 (DOUBLE-JEOPARDY).
- (G) SENTENCING TRANSCRIPTS PAGES # 218 AND # 219 WHERE PETITIONER WAS SENTENCED NO PST REPORT!
- (H) WITNESS STATEMENTS.

END NOTE : COUNSEL'S OBLIGATION TO CONDUCT  
REASONABLE INVESTIGATION EXTENDS TO  
MATTERS RELATED TO SENTENCING TRICE V. WARD,  
196 F3d 1151 (10<sup>TH</sup> CIR. 1999) AN ATTORNEY  
WHO DOES NOT KNOW THE BASIC SENTENCE FOR AN  
OFFENCE AT THE TIME HIS CLIENT IS CONTEMPLAT-  
-ING ENTERING A PLEA IS INEFFECTIVE. SEE  
BAKER V. BARBO, 177 F.3d 149 (3<sup>RD</sup> CIR  
1999) BY COUNSEL TELLING PETITIONER TO  
SIGN 8 WAIVERS THAT WOULD HAVE HAD TO  
BE DISMISSED BY LAW, AND SAYING THAT IT  
WOULD ALL BE RUN TOGETHER AND THAT ALL  
WAS PRE-ARRANGED FOR A 20 YEAR SENTENCE,  
AND THEN PETITIONER RECEIVING 70 TO 90.4  
YEARS SHOWS COUNSEL "LIED" AND COULDN'T  
HAVE POSSIBLY KNOWN BASIC SENTENCE (OR)  
INTENDED TO SEND PETITIONER AWAY FOR THE  
REST OF HIS LIFE, AND BEING "HIS FORMER  
SENTENCING JUDGE", HE SHOULD KNOW THE LAW  
BETTER THAN ANY ATTORNEY! EITHER WAY,  
IT'S OBVIOUS PETITIONER WAS CLEARLY SENTENCED  
IN VIOLATION OF ALL STATE AND FEDERAL  
LAWS AND WAS CLEARLY RAILROADED!

PRAYER FOR RELIEF

PETITIONER RESPECTFULLY PRAYS THIS HONORABLE COURT REVIEW ALL PETITIONER'S CLAIMS AND THE RECORD, AND IN THE INTEREST OF JUSTICE OF THE "ENDS OF JUSTICE" GRANT PETITIONER'S MOTION AND GRANT RELIEF FROM THE ABOVE JUDGMENTS, AND ANY OTHER RELIEF THIS HONORABLE COURT DEEMS JUST AND PROPER.

RESPECTFULLY SUBMITTED THIS  
THE 22 DAY OF OCTOBER 2003.



Pro-se of ~~Theodore Mead Kimble~~  
THEODORE MEAD KIMBLE  
Jeanette M Harrison  
10-22-03  
My Commission Expires 4-4-2006.

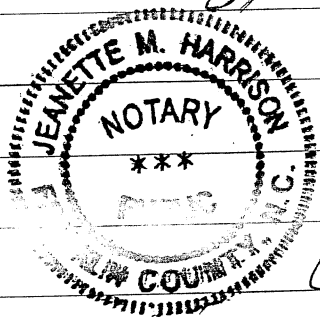


# VERIFICATION

I, Theodore Mead Kimble, BEING FIRST DULY SWORN DEPOSE AND SAY, I AM THE PETITIONER IN THE FOREGOING MOTION FOR RELIEF FROM JUDGMENT, I HAVE READ THE SAME, AND THE STATEMENTS CONTAINED THEREIN ARE TRUE, AS FOR ANY STATEMENTS MADE ON INFORMATION AND BELIEF, ARE MADE IN GOOD FAITH, AND I BELIEVE TO BE TRUE. SIGNED UNDER PENALTY OF PERJURY THIS THE 22 DAY OF OCTOBER 2003.

Pro-se Theodore Mead Kimble  
THEODORE MEAD KIMBLE

SWORN TO AND BEFORE ME THIS THE 22 DAY OF OCTOBER 2003.



MY COMMISSION EXPIRES

My Commission Expires 4-4-2008.

Jeanette M Harrison

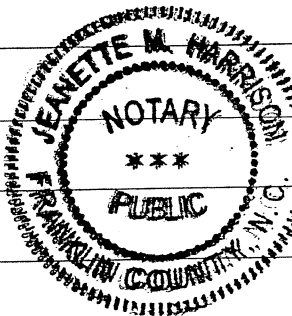
# PROOF OF SERVICE

I DO HEREBY CERTIFY THAT A COPY OF  
THE FOREGOING MOTION FOR RELIEF FROM  
THE JUDGMENTS WAS DULY SERVED BY  
PLACING THE SAME IN THE U.S. MAIL,  
POSTAGE PRE-PAID AND ADDRESSED AS  
FOLLOWS:

MR. ROY COOPER  
ATTORNEY GENERAL  
P.O. BOX 629,  
RALEIGH, N.C. 27602

THIS THE 22 DAY OF OCTOBER 2003.

*J* Theodore Mead Kimble  
THEODORE MEAD KIMBLE  
1300 WESTERN BLVD.  
RALEIGH, N.C. 27606



*Jeanette M Harrison*  
10-22-03  
My Commission Expires 4-4-2006.

STATE OF NORTH CAROLINA

GUILFORD County GREENSBORO Seat of Court

File No. 97CR-2

EXHIBIT A 1 of 3

In The General Court Of Justice Superior Court Division

NOTE: [This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI offense(s).]

STATE VERSUS

JUDGMENT AND COMMITMENT

Defendant THEODORE MEAD KIMBLE

ACTIVE PUNISHMENT FELONY

Race White Sex M DOB 12-08-1969

CLERK OF SUPERIOR COURT

STRUCTURED SENTENCING

G.S. 15A-1301, 15A-1340.13

Attorney For State RICHARD PANOSH

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant ROBERT L. MCCLELLAN

Appointed Retained

The defendant [X] pled guilty to: [ ] was found guilty by a jury of: [ ] pled no contest to:

Table with 5 columns: File No(s) And Offense(s), Date Of Offense, G.S. No., F./M., CL. Row 1: 97CRS 23655 POSSESS WEAPON OF MASS DESTRUCTION, 04-01-1997, 14-288.8, F, F

The Court: [X] 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be -0- RECORD LEVEL: [X] I [ ] III [ ] V [ ] 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: [X] 1. makes no written findings because the prison term imposed is: [X] (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). [ ] (b) for a Class A felony. [ ] (c) for enhanced firearm penalty (G.S. 15A-1340.16A). [ ] (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. [ ] (e) for drug trafficking offenses. [ ] 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. [ ] 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. [ ] 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). [ ] 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. [ ] 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony. [ ] G.S. 90-95(e)(3) (drugs); [ ] G.S. 14-3(c) (race). [ ] 7. finds no Extraordinary Mitigation.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 015 months for a maximum term of: 018 months in the custody of the: [X] N.C. DOC. [ ] Sheriff pursuant to G.S. 15A-1352(b). [ ] Other [ ] Class A Felony: [ ] Life Imprisonment Without Parole [ ] Death (see attached Death Warrant and Certificates) [ ] Class B1 Felony: Life Imprisonment Without Parole [ ] Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for 32 days spent in the confinement prior to the date of this Judgment as a result of this charge.

[ ] The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. [ ] The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

(check all that apply)

1. The defendant shall pay the costs.  2. The defendant shall pay a fine of \$ \_\_\_\_\_.

The Court recommends:

3. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h).  4. Psychiatric and/or psychological counseling.  
 5. Work Release  
 6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the items and amounts set out below.

Fine	Costs	Restitution*	Reimbursement For Atty Fee & Other Expenses	Total Amount Due
			\$1,850.00	\$1,850.00

\*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The Court further recommends:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The Court does not recommend:

1. Restitution as a condition of post release supervision or work release.  2. Work release.

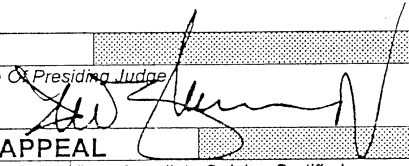
**AWARD OF FEE TO COUNSEL FOR DEFENDANT**

A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

**ORDER OF COMMITMENT/APEAL ENTRIES**

- It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.  
 The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

Date 12-08-1997	Name Of Presiding Judge (Type Or Print) H. W. ZIMMERMAN, JR.	Signature Of Presiding Judge 
--------------------	---	--

**ORDER OF COMMITMENT AFTER APPEAL**

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified
_____	_____	_____

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court.
_____	_____	

**CERTIFICATION**

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

Appeal Entries (AOC-CR-350)  
 Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)  
 Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)  
 Commitment Information Statement (DC-600)

Date	Signature And Seal
Date Certified Copies Delivered To Sheriff 12-16-97	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

STATE OF NORTH CAROLINA  
Guilford County  
 STATE VERSUS  
 Name And Address Of Defendant  
Theodore M. Kimble

GUILFORD COUNTY  
**FILED**  
 DEC 8 1997

File No. See Transcript  
 In The General Court Of Justice  
 District  Superior Court Division

AT 4:00 O'CLOCK P M  
 BY na  
 CLERK OF SUPERIOR COURT

Social Security No. NC 0725218A  
 Race W Sex M DOB 12/8/69

**WORKSHEET  
 PRIOR RECORD LEVEL FOR  
 FELONY SENTENCING AND  
 PRIOR CONVICTION LEVEL FOR  
 MISDEMEANOR SENTENCING  
 (STRUCTURED SENTENCING)**

G.S. 15A-1340.14, 15A-1340.21

**NOTE:** This worksheet is provided to assist the attorney for the state in calculating and presenting the defendant's prior record level or prior conviction level. Record the defendant's prior record on the reverse side of this form or attach a copy of the defendant's prior record pursuant to G.S. 15A-1340.14(f). If sentencing for a felony, count the number of prior convictions in each offense class and enter those totals in the chart in section I below. For multiple prior convictions at one session of court, see G.S. 15A-1340.14(d). Class 1 misdemeanor offenses under Chapter 20 are not assigned any points for determining prior record level for felony sentencing except misdemeanor death by vehicle [G.S. 20-141.4(a2)]. First Degree Rape and First Degree Sexual offense convictions prior to October 1, 1994, are Class B1 convictions.

I. SCORING PRIOR RECORD/FELONY SENTENCING			
NUMBER	TYPE	FACTORS	POINTS
	Prior Felony Class A Conviction	X 10	
	Prior Felony Class B1 Conviction	X 9	
	Prior Felony Class B2 or C or D Conviction	X 6	
	Prior Felony Class E or F or G Conviction	X 4	
	Prior Felony Class H or I Conviction	X 2	
	Prior Class A1 or 1 Misdemeanor Conviction (see note)	X 1	
		<b>SUBTOTAL</b>	<u>0</u>
If all the elements of the present offense are included in the prior offense		+ 1	
If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape		+ 1	
		<b>TOTAL</b>	<u>0</u>

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL																							
MISDEMEANOR	FELONY																						
<p><b>NOTE:</b> If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.</p> <table border="1"> <tr> <th>No. Of Prior Convictions</th> <th>Level</th> </tr> <tr> <td>0</td> <td>I</td> </tr> <tr> <td>1-4</td> <td>II</td> </tr> <tr> <td>5+</td> <td>III</td> </tr> </table> <p>PRIOR CONVICTION LEVEL <u>    </u></p>	No. Of Prior Convictions	Level	0	I	1-4	II	5+	III	<p><b>NOTE:</b> If sentencing for a felony, locate the prior record level which corresponds to the prior record determined in section I above.</p> <table border="1"> <tr> <th>Points</th> <th>Level</th> </tr> <tr> <td>0</td> <td>I</td> </tr> <tr> <td>1 - 4</td> <td>II</td> </tr> <tr> <td>5 - 8</td> <td>III</td> </tr> <tr> <td>9 - 14</td> <td>IV</td> </tr> <tr> <td>15 - 18</td> <td>V</td> </tr> <tr> <td>19+</td> <td>VI</td> </tr> </table> <p>PRIOR RECORD LEVEL <u>I</u></p>	Points	Level	0	I	1 - 4	II	5 - 8	III	9 - 14	IV	15 - 18	V	19+	VI
No. Of Prior Convictions	Level																						
0	I																						
1-4	II																						
5+	III																						
Points	Level																						
0	I																						
1 - 4	II																						
5 - 8	III																						
9 - 14	IV																						
15 - 18	V																						
19+	VI																						
<input type="checkbox"/> The Court has determined the number of prior convictions to be _____ and the level to be as show above.	<input type="checkbox"/> The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.																						

Date 12/12/97 Name Of Presiding Judge (Type Or Print) H.W. Zimmerman, Jr. Signature Of Presiding Judge [Signature]

1 (March 4, 1999.)

2 THE COURT: Mr. Panosh, you may proceed.

3 MR. PANOSH: Your Honor, we are before the  
4 Court on the matter of Theodore Mead Kimble, the  
5 remaining case is 97 CRS 39581. I believe that the first  
6 matter is a motion to withdraw filed pro se by the  
7 defendant.

8 Your Honor, the State has filed an Answer to  
9 the motion to withdraw, and I've served counsel with a  
10 copy. I did note that on page 1 when I indicated date of  
11 change of counsel, I have the wrong date there. It  
12 should have been December 3rd, of '98 change of counsel.  
13 And I've made that correction.

14 THE COURT: Thank you. Mr. Crumpler, Mr.  
15 Zimmerman, are you appearing with the defendant at this  
16 time?

17 MR. CRUMPLER: Your Honor, we are appearing  
18 by virtue of the nature of the motion. We have explained  
19 to the defendant actually we will remain neutral because  
20 we may be asked questions, and the defendant understands  
21 that.

22 THE COURT: All right. Thank you. Mr.  
23 Kimble, would you stand up, please?

24 (Defendant stands.)

25 THE COURT: Mr. Kimble, the court records

EXHIBIT C 1068

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No.

99CRS 23241

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

Film No.

v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
**FILED**  
JAN 23 1999  
AT 3:50 P.M.  
BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Rose Gray Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature]

Signature of Attorneys for the Defendant

[Signature]  
[Signature]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23242

EXHIBIT C  
2018

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

GUILFORD COUNTY Film No.  
**FILED**  
JAN 28 1999  
350  
BY [Signature]  
CLERK OF SUPERIOR COURT

v.  
THEODORE MEAD KIMBLE

**BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Patrick Roy Pardee, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant  
X Theodore Kimble  
Signature of Attorneys for the Defendant  
[Signatures]



STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

EXHIBIT C  
3 OF 8

File No. 99CRS 23243

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

Film No.

v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
**FILED**  
JAN 28 1999  
AT 3:50 U.S. P.M.  
BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Louie Mitchell Widden, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant  
X Theodore Kimble  
Signature of Attorneys for the Defendant  
[Signatures]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

EXHIBIT C  
4068

File No. 99CRS 23244

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

GUILFORD COUNTY Film No.  
FILED  
JAN 23 1999  
AT 350 P.M.  
BY [Signature]  
CLERK OF SUPERIOR COURT

BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder

v.  
THEODORE MEAD KIMBLE

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill David Shane Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant  
[Signature]  
Signature of Attorneys for the Defendant  
[Signatures]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

EXHIBIT C  
50FB

File No. 99CRS 23245

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

GUILFORD COUNTY  
FILED  
JAN 23 1999  
CLERK OF SUPERIOR COURT

Film No.  
**BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder**

v.  
**THEODORE MEAD KIMBLE**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Gary Paul Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
*R. E. P. O.*

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date  
1/28/99

Signature of the Defendant.  
*Theodore Kimble*

Signature of Attorneys for the Defendant  
*Frank B. Campbell*  
*AW [unclear]*

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23246

EXHIBIT  
6018

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

Film No.

v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 28 1999  
AT 3:50 U.S. COURT P.M.  
U.S. CLERK OF SUPERIOR COURT

BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Cara R. Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

REP

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

Theodore Kimble

Signature of Attorneys for the Defendant

Fred H. Crumpler  
AW

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

EXHIBIT  
708

File No. 99CRS 23247

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 28 1999  
AT 350 JULLY P M.  
BY [Signature]  
CLERK OF SUPERIOR COURT

Film No.

BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Linda Thompson Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant [Signature]  
Signature of Attorneys for the Defendant [Signature]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

EXHIBIT  
8078

File No. 99CRS 23248

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 23 1999  
BY [Signature]  
CLERK OF SUPERIOR COURT

Film No.

BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Kevin Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

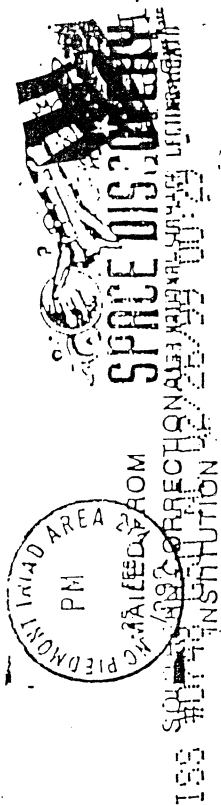
[Signature]

Signature of Attorneys for the Defendant

[Signature]

EXHIBIT (D)

1 of 3

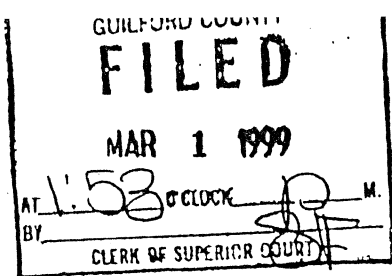


Therese Limbke  
 P.O. Box 786  
 Troy NC 27371

To: Guilford County Court #1  
 Superior Court Judge Peter McHenry  
 Greensboro NC 27402

27400/9999

EXHIBIT D) 2 of 3



Superior Court Judge  
Peter McHugh

I Theodor M. Kimble would like to withdraw my guilty-plea on all accounts and charges. I request to go before a jury and plead my case. I was pressured into my earlier plea. I'm NOT Guilty and here by withdraw my earlier plea of Guilty.

When you read the Plea Agreement, you asked if I had been threatened in any way to force me to take the agreement? The answer is Yes! Mr Zimmerman stood by my side, under his breath saying, "Play it cool." I told him yes before hand and he was afraid I'd tell you. I ask, How can I say "No" when I'm being told if I don't, I'll be killed should I go to trial.

I believe your opinion needs to wait till the evidence is heard. I disapprove of you saying "Good Job" to my lawyers. It sounds as if you had read the newspapers and formed your own opinions. I hope a byist attitude isn't shown during the trial or favoritism to the D.A.

I request a gag order be placed on the D.A. He has done nothing but brain wash the public and potential jurors. Further



03:17

APR 1 1999

Do to the D.A.'s press conferences I'd like my trial moved to Winston Salem in Forsyth County.

I've not made my decision known to my attorneys at this point, but am presently doing so. I assure you, I will not allow someone to push me around again. My mind is made up.

Thank you,

Theodore W. Kimble

2-24-99

P.S. What is justice when a D.A. tells an opposing witness, "Your life is at a fork in the road, one goes to prison the other to probation. Don't slide at the Kimble trial."

3/1/99 cc: Parosh  
Zimmerman/Crompter

EXHIBIT (E)

**STATE OF NORTH CAROLINA**

In the General Court of Justice  
Superior Court Division

GUILFORD COUNTY

STATE OF NORTH CAROLINA

v.

**THEODORE MEADE KIMBLE**

File No.

**97CRS 23656**

Film No.

**INDICTMENT  
ARSON  
CONSPIRACY TO MURDER**

Date of Offense  
October 9, 1995

Offense in Violation of G.S.  
14-58 and the Common Law

**COUNT I  
ARSON OF AN UNOCCUPIED DWELLING**

**THE JURORS FOR THE STATE OF NORTH CAROLINA**, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC.

**COUNT II  
CONSPIRACY**

**AND THE JURORS FOR THE STATE OF NORTH CAROLINA**, upon their oath do present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, and feloniously that conspire, combine, confederate and agree with Ronnie Lee Kimble to commit the felony of Murder in the First Degree, in that Theodore Mead Kimble did agree with Ronnie Lee Kimble to murder, kill and slay Patricia Kimble in violation of N.C. Gen.Stat. 14-17, and the common law of the State of North Carolina.

Signature of Prosecutor

**WITNESSES**

J. D. Church  
Guilford County Sheriff's Department  
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.  
 NOT A TRUE BILL

Date

**NOV 03 1997**

Signature of Grand Jury Foreman

253

EXHIBIT (F)

20

**STATE OF NORTH CAROLINA**

In the General Court of Justice  
Superior Court Division

FILED

GUILFORD COUNTY

STATE OF NORTH CAROLINA 1998 JUL -6 PM 3: 58

v.

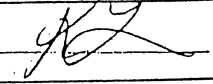
**THEODORE MEAD KIMBLE** GUILFORD COUNTY, N.C.

File No: **98CRS 23486**

Film No.

**INDICTMENT  
FIRST DEGREE ARSON**

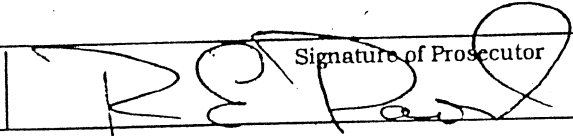
Date of Offense  
October 9, 1995

BY 

Offense in Violation of G.S.  
14-58 and the Common Law

**FIRST DEGREE ARSON**

**THE JURORS FOR THE STATE OF NORTH CAROLINA**, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC. At the time of the burning Patricia Kimble was in the dwelling.

  
Signature of Prosecutor

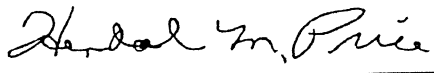
**WITNESSES**

J. D. Church  
Guilford County Sheriff's Department  
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

- A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
- NOT A TRUE BILL

Date  
**JUL 06 1998**

Signature of Grand Jury Foreman  


1 right up to the time of her execution. That just shows  
2 you not a mitigating factor, that shows that he's a cold  
3 blooded murderer. He planned this and he had the ability  
4 to hug and kiss his wife knowing that he was about to  
5 kill her to collect the insurance money.

6 This defendant, Your Honor, lives in a world  
7 of bombs and silencers and sniper rifles. He just feels  
8 that anybody who gets in his way, he should be able to  
9 eliminate. We ask you to sentence him remembering that.  
10 Thank you.

11 THE COURT: All right, thank you. Mr.  
12 Zimmerman, are you prepared to tender your sentencing  
13 memorandum?

14 MR. ZIMMERMAN: We don't have it at this  
15 point in time, if Your Honor please. If Your Honor would  
16 be kind enough to consider a short recess, I'll check one  
17 more time and see what the problem is. This witness has  
18 been subpoenaed since two weeks ago. And she was just  
19 deathly ill yesterday. I apologize for having the phone  
20 ringing in the courtroom. That was her calling me  
21 yesterday. She couldn't get out of the bed. It's this  
22 flu going around, and I can understand it because I had  
23 some of that before I had my other problem.

24 MR. PANOSH: May we approach?

25 THE COURT: Yes, sir.

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MR. ZIMMERMAN: Absolutely satisfactory with the defendant.

(Counsel approach the bench.)

THE COURT: Counsel, the Court will provide you with a recess to attempt to provide that element of evidence.

Court will be in temporary recess, Sheriff.

(A recess was taken.)

(All parties present.)

MR. ZIMMERMAN: If Your Honor pleases, the defense appreciates Your Honor's thoughtful and serious consideration of the presentence study, and apologizes for the delay.

THE COURT: That's no need to apologize, Counsel. In this matter I'm anxious to have all the evidence that any party wishes to produce.

Is there any further evidence at this time for the State or for the defendant?

MR. PANOSH: No, thank you, Your Honor.

MR. CRUMPLER: No, Your Honor.

THE COURT: Is there any further matters before the Court enters judgment?

MR. PANOSH: No, Your Honor.

THE COURT: Judgment of this Court shall be entered first in case 97 CRS 39581, wherein the defendant

Leaving work, James and I ran into Rob and talked with him in the parking lot of the boat place. He talked about how well he was doing with his new business and the new home he just purchased. He also spoke on Ted and Ron in reference to how they were doing etc. and mentioned that he was not going to testify to that "bull-shit because it wasn't right. He stated that he and his wife had talked about it and he had had a change of heart and realized it was wrong to do so. She had the same feelings. He stated that instead he would take the "contempt of court charge" and do the time at the County farm. He told James that he was telling him this so that he could relay it to Mr. Kimble.

Walter A. Cole  
8/2/97

EXHIBIT A 2 of 3

Time 12:00  
4-18-97

Robert informed me that the Police  
was on him concerning Ted and the  
murder <sup>case</sup>. Robert also says that, Ted  
told him some things that he shouldn't have,  
but nothing concerning the murder. Robert  
says he was going to plea guilty to  
all larceny charges.

James Ogden

EXHIBIT H 3043

7-29-97

On July 22<sup>nd</sup>, I saw Robert Nickdown in the parking<sup>lot</sup> down from Sykes Bld. Materials. He stated to me that he wasn't going to testify against Ted, concerning the murder of his wife. Rob also asked me to inform Mr. Kimble of this matter too. Robert says that he would be in contempt of court, for not testifying, and that he would deal with that. His primary message was for me to inform Mr. K

of his actions concerning this matter.

James Ogden



No. COAP03-956

North Carolina Court of Appeals

\*\*\*\*\*

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

\*\*\*\*\*

From Guilford  
(97CRS23656, 97CRS39581, 98CRS23486,  
99CRS23241-48)

081109 24 PM 3:35  
OFFICE OF THE CLERK  
OF THE NORTH CAROLINA  
COURT OF APPEALS

ORDER

The following order was entered:

The motion filed in this cause on the 27th day of October 2003 and designated "Motion For Relief From The Judgment" is dismissed.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell  
Clerk of North Carolina Court of Appeals

CSC Orig  
cc:  
Mr. Theodore Kimble  
Ms. Kathleen U. Baldwin

EXHIBIT (E)

NO. P03-956

EIGHTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

THEODORE MEAD KIMBLE } PETITIONER, ) V. ) STATE OF NORTH CAROLINA, ) RESPONDENT. )	RE: "MOTION FOR RELIEF FROM JUDGMENT" " NO. P03-956 " FROM: GUILFORD COUNTY " FILE NO.'S 97CAS-23656, " 97CAS-39581, 98CAS-23486; " 99CAS-23241-48, = = =
--	--

PETITIONER'S RESPONSE TO THE STATES ANSWER

NOW COMES THE PETITIONER, THEODORE MEAD KIMBLE, AND SAYS:

D. AS PETITIONER STATED IN HIS RESPONSE TO THE STATES ANSWER IN HIS MOTION FOR WRIT OF MANDAMUS COMPLAINT, AND WILL RESPOND IN THE MOTION IN ARREST OF JUDGMENT, DIFFERENT ISSUES, AS THEY ARE IN FACT (3) SEPERATE MOTIONS, UNLIKE THE "CARBON COPY" RESPONSE FROM STATES ATTORNEY KATHLEEN U. BALDWIN, AS IF SHE DIDNT OR NEGLECTED TO EVEN READ SAID MOTIONS, HER PROCEDURAL HISTORY STATEMENTS ARE FALSE AS THE

RECORD CLEARLY SHOWS.

(A) PETITIONER "DID NOT" PLEAD GUILTY TO 8 COUNTS OF SOLICITATION TO COMMIT FIRST DEGREE MURDER. IT WAS "ALFORD" PLEAS, AND SINCE THE STATE'S ATTORNEY DECIDED TO TURN THEM INTO GUILTY PLEAS, THE PETITIONER MUST BRING OUT THE FACT THAT AS MANDATED BY LAW AND IS WORDED AS FOLLOWS:

"AN "ALFORD" PLEA ALLOWS A DEFENDANT TO VOLUNTARILY, KNOWINGLY, AND UNDERSTANDINGLY CONSENT TO THE IMPOSITION OF "A" PRISON SENTENCE EVEN IF HE IS UNWILLING OR UNABLE TO ADMIT HIS PARTICIPATION IN THE ACTS CONSTITUTING THE CRIME."

(B) PETITIONER PLEADED GUILTY TO ALL OTHER CHARGES BUT "NOT" 99CRS-23241-48, PLUS THE "FACT" IT WAS "ONE" CHARGE FOR 8 COUNTS, MEANING PETITIONER COULD ONLY HAVE RECEIVED "ONE" SENTENCE BY LAW AND DUE PROCESS, NOT 8 CONSECUTIVE SENTENCES. IN AN EXAMPLE (OR) ILLUSTRATION, "IF" A PERSON WALKS INTO A HUGE DEPARTMENT STORE WITH 500 PEOPLE INSIDE, AND THEN SOLICITS SOMEONE TO KILL "EVERYONE" IN THE STORE, IT WOULD BE ONE ("1") CHARGE OF CONSPIRACY TO COMMIT FIRST DEGREE MURDER WITH 500 COUNTS; THE PERSON COULD ONLY RECEIVE ONE ("1") SENTENCE IF HE PLEADED ALFORD, NOT 500 SENTENCES

"RUN CONSECUTIVELY"! PETITIONER WAS SENTENCED ON A SINGLE DAY. PETITIONER RECEIVED 8 CONSECUTIVE SENTENCES TOTALING TO TO 90.4 YEARS, AN ENTIRE LIFETIME. IN CASE AT BAR, SUCH A SENTENCE IS NOT LEGAL BY NO MEANS, SEE N.C.G.S. 15A-1340.14(d) IF THE DEFENDANT WAS CONVICTED OF MORE THAN ONE OFFENSE IN A SINGLE SUPERIOR COURT DURING ONE CALENDAR WEEK, ONLY THE CONVICTION WITH THE HIGHEST POINTS TOTAL IS COUNTED. IF THE DEFENDANT WAS CONVICTED OF MORE THAN ONE OFFENSE DURING A SINGLE SESSION (I.E., DAY) OF DISTRICT COURT ONLY THE MOST SERIOUS CONVICTION IS COUNTED, N.C.G.S. 15A-1051-1054 MAKE IT POSSIBLE FOR THE COURT OR PROSECUTOR TO GIVE A PERSON IMMUNITY IN EXCHANGE FOR THAT PERSONS AGREEMENT TO PLEAD GUILTY TO AN OFFENSE. WHEN THIS KIND OF IMMUNITY HAS BEEN GRANTED, THE PERSON MAY NOT BE PROSECUTED FOR THAT OFFENSE OR OFFENCES REGARDLESS OF THE EVIDENCE AGAINST HIM OR HER, THIS IS A CASE OF DOUBLE-JEOPARDY WHICH IS IN VIOLATION OF THE 5<sup>TH</sup> AMENDMENT OF THE UNITED STATES CONSTITUTION, BUT THE GREAT STATE OF NORTH CAROLINA IS FAMOUS FOR THIS TYPE OF BEHAVIOR AND CONDUCT ANYWAY, AS IS WELL KNOWN.

(C) RULE 11(e) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE GOVERNS THE CONDUCT OF THE GOVERNMENT AND THE DEFENDANT, DURING PLEA NEGOTIATIONS see U.S. v. KNIGHT, 867 F.2d 1285, 1288, (11th Cir. 1998); see e.g. U.S. v. WATKINS, 85 F.3d 498, 500 (10th Cir. 1996)

RULE 11(e)(1) AUTHORIZES PLEA AGREEMENTS WE KNOW, WHEN A DEFENDANT PLEAS GUILTY TO THE CHARGED OFFENCE OR TO A LESSER RELATED OFFENCE WITH MORE THAN ONE SENTENCE UNLESS THE SENTENCES ARE CONSOLIDATED FOR JUDGMENT.

(STILL "ONE" SENTENCE)! IN CASE AT BAR, PETITIONER WAS TOLD HE WOULD RECEIVE "ONE" SENTENCE OF 20 YEARS ON ALL COUNTS! THAT IT HAD ALL BEEN PRE-ARRANGED WITH PROSECUTOR.

see Fed. R. Crim. P. 11(e)(2); see e.g. U.S. v. Romero - TAMAYO, 212 F.3d 729, 731 (2d Cir. 2000) UNDER SUCH AGREEMENT, THE PROSECUTOR MAY MOVE FOR A DISMISSAL OF OTHER CHARGES see Fed. R. Crim. P. 11(e)(1)(A)

A DEFENDANT WHO ALLEGES THAT THE GOVERNMENT BREACHED A PLEA AGREEMENT MAY BE ENTITLED TO AN EVIDENTIARY HEARING OR AT THE COURT'S DISCRETION EXPANSION OF THE

RECORD. SEE BLACKLEDGE V. WATSON, 431 U.S.  
63, 75-76, 80-82, (1977) SEE EG. U.S. V.  
WATSON, 988 F.2d. 544, 551-52 (5TH CIR. 1992);  
PEAVY V. U.S., 31 F.3d. 1341, 1346 (6TH CIR. 1994)

IF THE DEFENDANT DEMONSTRATES THAT THE  
GOVERNMENT DID BREACH THE COURT, MAY ALLOW  
WITHDRAWAL OF THE PLEA, FILE A MOTION FOR  
RELIEF FROM THE JUDGMENT TO HIGHER COURT,  
(WHICH PETITIONER IN FACT "DID" IN CASE AT BAR)  
ALTER THE SENTENCE, VACATE THE SENTENCE, ORDER  
SPECIFIC PERFORMANCE OF THE AGREEMENT. SEE  
U.S. V. LEZINE, 166 F.3d. 895, 901 (7TH CIR. 1999);  
QUOTING U.S. V. HARVEY, 791 F.2d. 294, 300,  
(4TH CIR. 1986), SEE ALSO U.S. V. TAYLOR, 77 F.3d  
368, 372, (11TH CIR. 1996) IF THE FEDERAL COURT  
FINDS THE STATE PROSECUTORS HAVE BREACHED A  
PLEA AGREEMENT, IT SHOULD REMAND THE CASE SO  
THAT A STATE COURT CAN DEVISE THE PROPER  
REMEDY OR VACATE SENTENCE ALTOGETHER! SEE  
SANTA BELLO V. NEW YORK, 404, U.S. 257,  
262-63 (1971).

②. AS FOR THE STATES BRIEF PAGE #2  
NUMBERS 3, 4, 5, AGAIN AS THE STATES  
ATTORNEY SAID THE EXACT SAME THING IN ALL

(Three) (3) STATE'S RESPONSES TO EACH "SEPARATE"  
MOTION FILED BY PETITIONER, WHICH WERE FILED  
SEPARATELY AS EACH SEPARATE MOTION IS FOR  
SEPARATE CIRCUMSTANCES, SO THE STATE'S  
ATTORNEY COULDN'T REFUTE ANYTHING IN  
PETITIONER'S (3) SEPARATE VARIOUS CONTENTIONS,  
EXCEPT HOW SHE (LEFT-OUT) MOST "RELEVANT"  
FACTS, LIKE HOW PETITIONER'S STATE AND FEDERAL  
CONSTITUTIONAL RIGHTS WERE VIOLATED AT WITHDRAWAL  
HEARING, BY COUNSEL REFUSING TO DEFEND OR  
REPRESENT PETITIONER, NOT SURPRISING BECAUSE  
COUNSEL ZIMMERMAN WAS PETITIONER'S FORMER SENTENCING  
JUDGE IN THE, WHICH SPANS "GROSS" AND "GROSS"  
CONFLICT OF INTEREST, AND THE STATE'S ATTORNEY  
AS IN ALL 3 "IDENTICAL" RESPONSES LEFT OUT HOW  
APPELLATE COUNSEL CARMIN FAILED TO BRING UP  
PERTINENT ISSUES ON APPEAL, FAIL TO PERSUASIVE  
PERTINENT ISSUES, "ABANDON" PERTINENT ISSUES,  
FAIL TO REPORT PROSECUTOR MISCONDUCT, FAIL  
TO REPORT CONFLICT OF INTEREST OF COUNSEL  
ZIMMERMAN BEING PETITIONER'S FORMER SENTENCING  
JUDGE, FAIL TO REPORT AVE PROCESS (NO  
P.S.T. REPORT) SENTENCED IN THE, FAIL TO  
REPORT DOUBLE-JEOPARDY BY PROSECUTOR, AND

AND ON AND ON, AS THE STATE'S ATTORNEY  
POINSED OUT IN BRIEF FOR THE STATE PAGE #2  
"5. PETITIONER SUBSEQUENTLY FILED IN THIS  
COURT THE INSTANT MOTION FOR RELIEF FROM THE  
JUDGMENT, ALONG WITH A MOTION IN ARREST OF  
JUDGMENT AND A PETITION FOR WRITS OF HABEAS,  
THE FILES ARE SET UP SEPARATELY AND THE  
STATE WILL RESPOND INDIVIDUALLY TO EACH FILING".

YES, THE STATE RESPONDED "INDIVIDUALLY" TO  
EACH FILING, (WITH THE SAME EXACT RESPONSE) AND  
DID NOT DENY ANY OF PETITIONER'S ISSUES IN  
"ANY" OF PETITIONER'S MOTIONS, SO IN REALITY  
THIS COURT SHOULD TAKE AS "ADMITTED" EACH  
OF PETITIONER'S PROOFS, ALLEGATIONS, AND PRAYERS  
FOR RELIEF, IN EACH SEPARATE MOTION,

3) PETITIONER READILY ADMITS, HE  
COULD HAVE FILED ALL (3) MOTIONS IN THE  
SENTENCING COURT, BUT PETITIONER IS AWARE  
OF NO "MANDATORY" RULES OR "POSITIVE"  
WARDING SAYING THE ABOVE (3) MOTIONS MUST  
BE FILED IN THE SENTENCING COURT, ALSO A  
MOTION FOR APPOINTMENT RELIEF PER "NOT"  
NECESSARILY HAVE TO BE FILED ONLY IN THE  
SUPERIOR COURT, FOR THAT MATTER. IN FACT,



WHEN AN APPEAL OR PETITION IS PENDING IN THE COURT OF APPEALS, A MOTION FOR APPOINTMENT RELIEF MUST BE FILED IN THE COURT OF APPEALS, NOT SENTENCING COURT. ALSO, PETITIONER IS A RESIDENT OF WAKE COUNTY, N.C. COURT OF APPEALS IS LOCATED IN WAKE COUNTY, PETITIONER IS ALLOWED BY LAW TO FILE MOTIONS IN WAKE COUNTY COURTS, PLUS THE FACTS SURROUNDING ALL THE VIOLATIONS, AND PROSECUTOR MISCONDUCT WHICH HAD OCCURRED IN GUILFORD COUNTY, AND ALL THE ILLEGAL SENTENCES PETITIONER RECEIVED IN GUILFORD COUNTY; PETITIONER CONTENDS HE HAS NO POSSIBLE CHANCE FOR ANY FORM OF JUSTICE WHATSOEVER IN A COURT THAT VIOLATED EACH AND EVERY SINGLE STATE AND FEDERAL CONSTITUTIONAL RIGHTS WHEN PETITIONER WAS SENTENCED, AND PETITIONER SEEKS "RELIEF FROM JUDGMENTS" WHICH WAS IMPOSED ILLEGALLY IN THE SENTENCING COURT, AND THIS HONORABLE COURT OF APPEALS HAS THE POWER TO CORRECT AND ALTER OR VACATE SAID ILLEGAL SENTENCES.

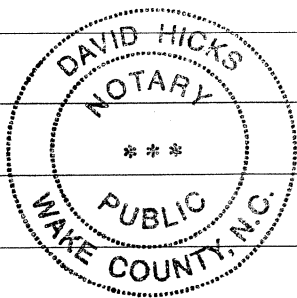
4). PETITIONER IS ALSO COUNIOUS AS TO WHY STATE'S ATTORNEY BALDWIN DID "NOT" ENTER ON EITHER RESPONSE'S TO MOTION FOR RELIEF FROM JUDGMENT OR RESPONSE TO MOTION FOR

ARREST OF JUDGMENT, AS SHE MADE SUCH A  
POINT OF IT IN HER RESPONSE TO WRIT OF  
MANDAMUS HOW PETITIONERS FILING PRO-SE  
MOTIONS ALL ACROSS THE STATE, WHICH SEEMED  
TO BE "SARCASTIC" THAT INMATES SEEK JUSTICE.

WHEREFORE, PETITIONER RESPECTFULLY PRAYS  
THIS HONORABLE COURT REVIEW ALL PETITIONERS  
CLAIMS AND THE RECORD, AND IN THE INTEREST OF  
JUSTICE OF THE "ENDS OF JUSTICE" GRANT PETITIONERS  
MOTION FOR RELIEF FROM JUDGMENT AND ANY  
OTHER RELIEF THIS HONORABLE COURT DEEMS  
JUST AND PROPER.

RESPECTFULLY SUBMITTED THIS THE  
24 DAY OF NOVEMBER 2003.

PRO-SE Theodore Mead Kimble  
THEODORE MEAD KIMBLE



My Commission Expires 5-18-2008.

David Hicks  
11-24-03

# VERIFICATION

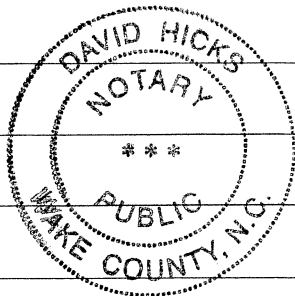
I, THEODORE MEAD KIMBLE, BEING FIRST DULY SWORN  
DEPOSE AND SAY, I AM THE PETITIONER IN THE  
FOREGOING PETITIONERS RESPONSE TO THE STATES  
ANSWER, I HAVE READ THE SAME, AND THE  
STATEMENTS CONTAINED THEREIN ARE TRUE, AS FOR  
MY STATEMENTS MADE ON INFORMATION AND BELIEF,  
ARE MADE IN GOOD FAITH, AND I BELIEVE TO  
BE TRUE, SIGNED UNDER PENALTY OF PERJURY  
THIS THE 24 DAY OF NOVEMBER 2003,

pro-se Theodore Mead Kimble  
THEODORE MEAD KIMBLE

SWORN TO AND BEFORE ME THIS THE 24<sup>th</sup> DAY OF  
NOVEMBER 2003.

My Commission Expires 5-18-2008.

MY COMMISSION EXPIRES



David Hicks  
11-24-03

PROOF OF SERVICE

I DO HEREBY CERTIFY THAT A COPY OF THE  
FOREGOING RESPONSE TO THE STATES ANSWER WAS  
FULLY SERVED BY PLACING THE SAME IN THE  
U.S. MAIL, POSTAGE PRE PAID AND ADDRESSES AS  
FOLLOWS:

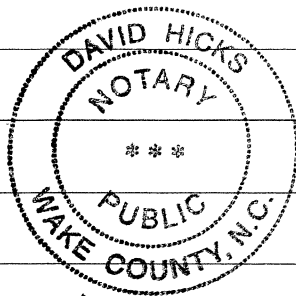
MR. RAY COOPER  
ATTORNEY GENERAL  
P.O. BOX 629,  
RAVENNA, N.C. 27602

THIS THE 24<sup>th</sup> DAY OF NOVEMBER 2003,

§ Theodore Mead Kiddle  
THEODORE MEAD KIDDLE  
1300 WESTERN BLDG,  
RAVENNA, N.C. 27606

My Commission Expires 5-18-2008.

My Commission Expires



David Hicks  
11-24-03

x // x

# EXHIBIT (F)

## STATE OF NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA	)	{ FROM: GUILFORD COUNTY
VS.	)	{ FILE NO'S. 97CRS 23656
THEODORE MEAD KIMBLE	)	{ 97CRS 39581; 98CRS 23486;
DEFENDANT.	)	{ 99CRS-23241-48
.....	)	{ .....

### MOTION IN ARREST OF JUDGMENT

Now comes Petitioner, Theodore Mead Kimble, Pro-Se pursuant to North Carolina General Statutes 15A-1422 and says:

- 1.) Plaintiff is a resident of Wake County, North Carolina, His address is 1300 Western Blvd. Raleigh, N.C. 27606.
- 2.) On or about March 5, 1999 Petitioner was sentenced to a total of 107.5<sup>5</sup> minimum years, And Maximum of 137.7 years for the above alleged crimes, Presiding Judge Peter M. McHugh, Petitioner was sentenced ILLEGALLY as a matter of law.

3.) A Motion In Arrest of Judgment is defined as:

① A Defendant's Motion claiming that a substantial Error appearing on the face of the Record Violated the whole Proceeding and the Judgment.

② A Post Judgment Motion in a Criminal Case claiming that the Indictment is Insufficient to sustain a Judgment or that the Verdict is somehow Insufficient.

4.) In support of this MOTION IN ARREST OF JUDGMENT, Petitioner shows the following:

## FACTS

Persuant to N.C.G.S. 15A-1422, Grounds for Correction of Error by Appellate Division.

The following constitutes grounds for Correction by the Appellate Division.

(1) Lack of Jurisdiction.

A. The Trial Court lacked Jurisdiction over the offense.

B. The Trial Court did NOT have Jurisdiction over the person of the Defendant.

(2) Error in the Criminal Proceeding. Failure to charge A crime in that:

A. The Criminal Pleading charged acts which at the time they were committed did NOT constitute a violation of Criminal Law; or

B. The Pleading fails to state essential elements of an alleged violation as required by G.S. 15A-924(a)(5).

(3) Insufficiency of the Evidence. The Evidence was Insufficient as a matter of Law.

(4) Errors in Procedure.

A. There has been a Denial of Pre-trial Motions or Relief to which the Defendant is Entitled, so as to affect the Defendant's preparation or presentation of his defense, to his Prejudice

B. There has been a Denial of a Trial Motion or Relief to which the Defendant is Entitled, to his Prejudice

C. There has been Error in the Admission or Exclusion of Evidence, to the Prejudice of the Defendant.

D. There has been Error in the Judge's Instructions to the Jury,

to the Prejudice of the Defendant.

E. There has been a Denial of a Post-Trial Motion or Relief to which the Defendant is Entitled; To his Prejudice. This Provision is Subject to Provisions of G.S. 15A-1422.

(5) Constitutionally Invalid Procedure or Statute, Prosecution for Constitutionally Protected Conduct.

A. The Conviction was obtained by a Violation of the Constitution of the United States or of the Constitution of North Carolina.

B. The Defendant was convicted under a Statute that is in Violation of the Constitution of the United States or the Constitution of North Carolina.

C. The Conduct for which the Defendant was prosecuted was Protected by the Constitution of the United States or the Constitution of North Carolina.

(5 A) Insufficient Basis for Sentence. The Sentence imposed on the Defendant is NOT supported by Evidence introduced at Trial and Sentencing Hearing.

(5 B) Violation of Sentencing Structure. The Sentence Imposed;

A. Results from an incorrect finding of the Defendant's Prior Record level under G.S. 15A-1340.14 or the Defendant's Prior Conviction level under G.S. 15A-1340.21;

B. Contains a type of Sentence disposition that is NOT authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 For the Defendant's Class of Offense and Prior Record or Conviction level or;

C. Contains a Term of Imprisonment that is for a Duration NOT authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 For the Defendant's Class or \*Offense and Prior Record or Conviction level.

\*Probably should be "Class, offense".

(6.) Other Errors of Law, Any other Errors of Law was Committed by the Trial Court to the Prejudice of the Defendant.

In Reference to N.C.G.S. 15A-1443. Existence and Showing of Prejudice

(A) A Defendant is Prejudiced by Error Relating to Rights arising other than under the Constitution of the United States when there is a reasonable possibility that, Had the Error in Question Not been Committed, A different result would have been Reached at the trial out of which the Appeal arises. The Burden of showing such prejudice under this subsection is upon the Defendant. Prejudice also exists in any instance in which it is deemed Reversible Per Se.

(B) A violation of the Defendant's Rights under the Constitution of the United States is Prejudicial unless the Appellate Court finds that it was Harmless beyond a Reasonable Doubt. The Burden is upon the State to Demonstrate beyond a Reasonable Doubt, that the Error was Harmless.

(C) A Defendant is Not Prejudiced by the Granting of Relief which he has sought or by Error resulting from his own Conduct.

Petitioner contends that several of his Rights and Rules were Grossly Violated in both N.C.G.S. 15A-1442. and N.C.G.S. 15A-1443. And several Due Process and State and Federal Rights were Violated as if Petitioner was Sentenced in a "KANGAROO COURT"; where NOBODY defended Petitioner EXCEPT Petitioner Himself, at "ALL" stages of the Proceedings, and Counsel worked Diligently and Zealously constantly with the Prosecutor "AGAINST" Petitioner. In Support of all these Allegations Petitioner shows the following:



## FACTS IN SUPPORT OF

1.) Petitioner contends that having His "FORMER" sentencing Judge H.W. Zimmerman represent Petitioner as his Counsel, who retired from the Bench while Petitioner was still serving the 50-60 months sentence given to Petitioner by Zimmerman on unrelated charges, Is a Violation of Due Process of Law and A Conflict of Interest. See EXHIBIT(A) (3) Page Sentencing Papers Dated 12/8/97  
Judge H.W. Zimmerman Presiding.

2.)(A) By Counselor Zimmerman and the Prosecutor forcing Petitioner to sign 8 waivers in cases 99 CRS 23241-48, which were in FACT rejected by the Grand Jury for possible Indictment and would have been DISMISSED, was a Violation of Law and Due Process. To THREATEN Petitioner by saying if he didn't sign, The Prosecutor would make sure he recieved the DEATH Sentence, And by saying it was "ALL" PRE-ARRANGED, The charges would all be consolidated into one sentence. And Petitioner would receive a 20 year Sentence for "ALL" charges, when in fact Petitioner recieved all CONSECUTIVE sentences in all charges, and recieved 70 to 90.4 years on 8 waivers alone is a Miscarriage of Justice and Due Process, See U.S. v. SANDERSON 595 F2d 1021 (5TH Cir 1979) (Trial Counsels misrepresentation of material facts, withholding information, and exerted pressure on Defendant to induce a Guilty Plea, Constituted Ineffective Assistance of Counsel and required an Evidentiary Hearing to resolve claim).

(B) In case at bar, Petitioner would like to point out that the

Supreme Court in HILL v. LOCKHART, 474 U.S. 52 L.Ed. 2d 203, 106 S.Ct. 336 (1985), Held that the two part STRICKLAND v. WASHINGTON, 446 U.S. 668, 687-88, 694, 104 S.Ct. 2052, 2064-74, 80 L.Ed. 2d 674 (1984)

Test Applies to Challenges to Guilty Pleas based on Ineffective Assistance of Counsel. The HILL Court found in the Plea Bargaining context, A Petitioner seeking to establish Ineffective Assistance of Counsel must demonstrate that:

① Counsel's advice and performance fall below an objective standard of reasonableness; and ② The Petitioner must show that there is a reasonable probability that, but for Counsel's Errors, He would Not have Plead Guilty and would have insisted on going to trial. Id. AT (474 U.S. 59) (EMPHASIS ADDED).

③ Petitioner contends that by Counsel and Prosecutor forcing/coercing Petitioner to Plead Guilty to 8 cases that would be Dismissed by Law, and receiving 70 to 90+ years proves Both Parts of the Two Part test Automatically; And the FACT Petitioner spent \$50,000 to obtain Private Attorneys only a few months prior (Under Duress), Shows Petitioner's intent to go to trial, Clearly proves Part (2); Plus vindictive Prosecution and Due Process violations all rolled into one at the same time, the Record speaks for itself, See EXHIBIT (B) 8 WAIVERS SIGNED.

3.) Petitioner contends that having Petitioner Plead Guilty to an INVALID Indictment Charge in case # 97 CRS 23656 "Arson of an Unoccupied Building" Nov. 3, 97' EXHIBIT (C) which was DISMISSED when approx 8 months later being RE-CHARGED with a different case number 98 CRS 23486

"First Degree Arson" July 6, 98' EXHIBIT(D), But with the same exact wording which is in fact DOUBLE-JEOPARDY and violation of Due Process of Law. See JACKSON v. LEONARD 162 F3d, 81 (2nd Cir 1998). Appellate Counsel's failure to raise Double-Jeopardy claim where it was apparent that Jackson's two charges of "First Degree Robbery" and Criminal Use of A Firearm in the First Degree" rested on the same Factual predicate constitutes Ineffective Ass. of Counsel.

4) The Prosecutor CONNED Petitioner into believing the entire Indictment 97CRS 23656 EXHIBIT(C) would in fact be DISMISSED by his Plea of Guilty, by just referring to case 97CRS 23656, which was the only Indictment that had "2" Counts, Out of ALL the Indictments. The state TRICKED Petitioner with the AID of Counselor Zimmerman, into believing by Pleading Guilty to that charge, it would be Dismissed, Even in Jan 28, 99 Transcript of proceedings Page #11 Lines 18-19 EXHIBIT(E). The Court stated "In case 97CRS 23656 shall be dismissed by the state upon your Plea of Guilty." When the D.A. illegally RE-INDICTED Petitioner on July 6, 98' (case #98 CRS 23486 EXHIBIT(D)), Committing DOUBLE-JEOPARDY, Count One of case 97CRS 23656 EXHIBIT(C) was automatically dismissed. Therefore on Jan. 28, 1999 the only charge left was "Conspiracy First Degree Murder," and Mistake or Not the Judge in FACT DISMISSED "Conspiracy First Degree Murder." The paper-work (Record) speaks for itself.

5) Petitioner contends that Trial Courts denying Petitioner's Motion to Withdraw his Pleas and Justifying it by the Court's Findings OF, FACT AND CONCLUSIONS OF LAW, And denying his Right to Withdraw his Alford Pleas despite the "Fact" Petitioner met the requirements in N.C. v. HANDY 326 N.C. 532, and the "Fact" that

Petitioner sent a Motion to Withdraw his Pleas (letter form) on Jan. 29, 99; the day after his Pleas were entered, which letter Disappeared, And Petitioner filed a second Motion to Withdraw his Pleas Feb. 24, 99'

EXHIBIT (F) see U.S. v. ALVAREZ-TAUTIMEZ, 160 F.3d. 573 (9TH Cir 1998) Also see U.S. v. ELLISON, 798 F.2d. 1102 (9TH Cir 1986) Ellison filled a Motion to withdraw his Guilty Plea in the context of a letter form. Ellison claimed his Guilty Pleas were the result of psychological pressure of Solitary Confinement, The exclusion from family and friends; and on the erroneous advice of his Court appointed Attorney, "That an immediate Guilty Plea would place him in a better and more humane living conditions and renew contact with family and friends." In case at bar, Petitioner was placed in Solitary Confinement on Dec. 22, 98 and DENIED contact with family and friends, "Prison Records" will show. Court Records were off by 3 weeks, but still it shows Petitioner was in Solitary Confinement. See EXHIBIT (G)

Note: Exhibit states one Non-contact weekly visit per week, but Petitioner was DENIED ALL visits.

6.) Petitioner was DENIED Counsel Representation at Withdrawal Hearing, Counsel REFUSED to defend Petitioner saying, "We'll sit this one out." Petitioner had to represent Himself, leaving him without Counsel. Counsel stated, "We will remain NEUTRAL because we maybe asked questions." See EXHIBIT (H) Page #3 Lines 19-21. Counsel NEVER discussed anything with Petitioner. This is a Violation of U.S. Const. AM 5, 6, 14; N.C. Const ART. I, sec 18, 19, 23. As well as other provisions in both Constitutions and Due Process.

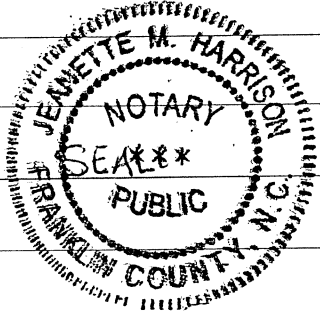
7) Petitioner contends that NO P.S.I. Report was turned into the Court, Despite the fact the lady from Step-One was subpoenaed 2 weeks before sentencing, yet Counsel never said a word, and let Petitioner be sentenced anyway, without the P.S.I. Report. See EXHIBIT (I) Pages 218 and 219 Sentencing Transcripts. Which Violates U.S Const AM. 5, 6, 14; N.C. Const. ART. I, Sec. 18, 19, 23. See U.S. v. DAVENPORT, 151 F.3d 1325 (11th Cir 1998) Pre-Sentence Report must be disclosed to both Defense Counsel and Defendant at least (10) days prior to sentencing as mandated by Statute. This clearly shows conviction obtained by the unconstitutional failure of the State to disclose to the Defendant evidence favorable to the Defendant, In Violation of Petitioner's State and Federal Rights and Due Process of Law, see U.S. v. GORDON, 172 F3d (10th Cir 1999) and U.S. v. BARTHOLOMEW, 474 F2d (5th Cir 1992) Trial Counsel NOT only didn't have a chance to object to any inaccuracies or errors in the P.S.I. Report, "NO" P.S.I. Report was ever produced! see WEST v. US, 994 F2d 518 (8th Cir 1993) Trial Counsel's failure to object to Errors in the Pre-Sentence Report can constitute Ineffective Assistance of Counsel.

8) Petitioner contends there were many-many other violations throughout the entire Proceedings, But Petitioner never recieved an Evidentiary Hearing, To bring out these issues of Material Facts, Such as Prosecutor intimidation and threatening witnesses, Running Defense witness out of town, Having a PHONY witness against Petitioner released from Prison early, Failure of

Prosecutor to turn over Evidence of Material Facts favorable to the Defense, Petitioner could go on and on, But if this Honorable Court will just look at the Record, It's obvious that Petitioner was Railroaded.

Petitioner prays this Honorable Court in view of all the above Miscarriages of Justice that were committed against Petitioner, Grant Petitioner's Motion In Arrest of Judgment, And any other Relief this Honorable Court deems Just and Proper,

Respectfully Submitted This  
The 29 Day of October 2003,



Pro-se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

Date: 10-29-03

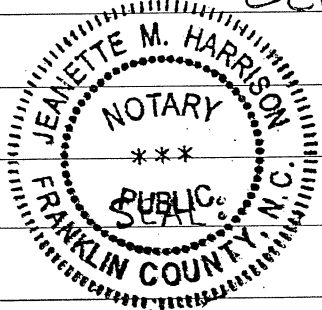
Witness: Jenette M Harrison

My Commission Expires: My Commission Expires 4-4-2006.

VERIFICATION

I, Theodore Mead Kimble, Being First Duly Sworn Depose and Say, I am the Petitioner in the foregoing Motion In Arrest of Judgment, I have read the same, And the Statements contained therein are True, As for any statements made on information and belief, Are made in good faith, And I believe to be True.

Signed under Penalty of Perjury, This the 29 Day of October 2003.



Pro-Se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

Sworn To And Before Me This The 29 Day of October 2003

Witness: Jeanette M Harrison Date: 10-29-03  
My Commission Expires: My Commission Expires 4-4-2006.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT THE FOREGOING MOTION  
IN ARREST OF JUDGMENT WAS DULY SERVED BY  
PLACING THE SAME IN THE U.S. MAIL POSTAGE  
PRE PAID AND ADDRESSED AS FOLLOWS:

Mr. Roy Cooper  
Attorney General  
P.O. Box 629  
Raleigh, N.C. 27602

Pro-Se in Theodore Mead Kimble

SEAL:

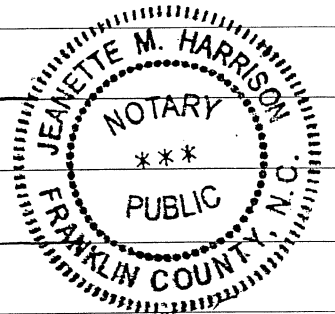
THEODORE MEAD KIMBLE  
1300 Western Blvd.  
Raleigh N.C. 27606

Sworn To And Before Me This The 29 Day of  
October 2003

Date: 10-29-03

Witness: Jeannette M Harrison

My Commission Expires 4-4-2006.





STATE OF NORTH CAROLINA

File No. 97CR 2

EXHIBIT (A) 1 of 3

GUILFORD

County

GREENSBORO

Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI offense(s).)

STATE VERSUS

JUDGMENT AND COMMITMENT

Defendant

THEODORE MEAD KIMBLE

Race

White

Sex

M

DOB

12-08-1969

ACTIVE PUNISHMENT FELONY

STRUCTURED SENTENCING

G.S. 15A-1301, 15A-1340.13

Attorney For State

RICHARD PANOSH

Def. Found

Not Indigent

Def. Waived

Attorney

Attorney For Defendant

ROBERT L. MCCLELLAN

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

File No. (s) And Offense(s)

97CRS 23655 POSSESS WEAPON OF MASS DESTRUCTION

Date Of Offense

04-01-1997

G.S. No.

14-288.8

F./M.

F

CL.

F

The Court:

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be -0-
2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

PRIOR

I III V

RECORD LEVEL: II IV VI

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony. G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race).
7. finds no Extraordinary Mitigation.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of:

015

months

for a maximum term of:

018

months

in the custody of the:

- Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)
Class B1 Felony: Life Imprisonment Without Parole
Violent Habitual Felon: Life Imprisonment Without Parole

- N.C. DOC.
Sheriff pursuant to G.S. 15A-1352(b).
Other

The defendant shall be given credit for 32 days spent in the confinement prior to the date of this Judgment as a result of this charge.

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: List the case number, date, county and court in which prior sentence imposed.)

12/16/97 EKP

(check all that apply)

1. The defendant shall pay the costs.  2. The defendant shall pay a fine of \$ \_\_\_\_\_.
- The Court recommends:**
3. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h).  4. Psychiatric and/or psychological counseling.
5. Work Release
6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the items and amounts set out below.

Fine	Costs	Restitution*	Reimbursement For Atty Fee & Other Expenses	Total Amount Due
			\$1,850.00	\$1,850.00

\*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The Court further recommends:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The Court does not recommend:

1. Restitution as a condition of post release supervision or work release.  2. Work release.

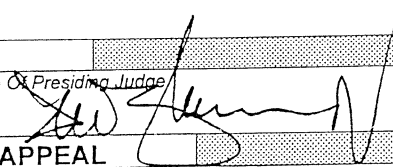
**AWARD OF FEE TO COUNSEL FOR DEFENDANT**

A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

**ORDER OF COMMITMENT/APPEAL ENTRIES**

- It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
12-08-1997	H. W. ZIMMERMAN, JR.	

**ORDER OF COMMITMENT AFTER APPEAL**

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

**CERTIFICATION**

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

Appeal Entries (AOC-CR-350)

Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)

Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)

Commitment Information Statement (DC-600)

Date	Signature And Seal
Date Certified Copies Delivered To Sheriff	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
12-16-97	

STATE OF NORTH CAROLINA

FILED

File-No.

See Transcript

Gulford County

DEC 8 1997

In The General Court Of Justice

District Superior Court Division

STATE VERSUS

AT 4:00 O'CLOCK P M

Name And Address Of Defendant

BY NA P CLERK OF SUPERIOR COURT

Theodore M. Kimble

WORKSHEET PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING (STRUCTURED SENTENCING)

G.S. 15A-1340.14, 15A-1340.21

Social Security No.

SID No.

NC 0725218A

Race

Sex

DOB

W

M

12/8/69

NOTE: This worksheet is provided to assist the attorney for the state in calculating and presenting the defendant's prior record level or prior conviction level. Record the defendant's prior record on the reverse side of this form or attach a copy of the defendant's prior record pursuant to G.S. 15A-1340.14(f). If sentencing for a felony, count the number of prior convictions in each offense class and enter those totals in the chart in section I below. For multiple prior convictions at one session of court, see G.S. 15A-1340.14(d). Class 1 misdemeanor offenses under Chapter 20 are not assigned any points for determining prior record level for felony sentencing except misdemeanor death by vehicle [G.S. 20-141.4(a2)]. First Degree Rape and First Degree Sexual offense convictions prior to October 1, 1994, are Class B1 convictions.

I. SCORING PRIOR RECORD/FELONY SENTENCING

Table with 4 columns: NUMBER, TYPE, FACTORS, POINTS. Rows include Prior Felony Class A Conviction (X10), Prior Felony Class B1 Conviction (X9), Prior Felony Class B2 or C or D Conviction (X6), Prior Felony Class E or F or G Conviction (X4), Prior Felony Class H or I Conviction (X2), Prior Class A1 or 1 Misdemeanor Conviction (see note) (X1), SUBTOTAL (0), If all the elements of the present offense are included in the prior offense (+1), If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape (+1), TOTAL (0).

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

FELONY

NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.

NOTE: If sentencing for a felony, locate the prior record level which corresponds to the prior record determined in section I above.

Table with 2 columns: No. Of Prior Convictions, Level. Rows: 0 (I), 1-4 (II), 5+ (III).

PRIOR CONVICTION LEVEL [ ]

Table with 2 columns: Points, Level. Rows: 0 (I), 1-4 (II), 5-8 (III), 9-14 (IV), 15-18 (V), 19+ (VI).

PRIOR RECORD LEVEL [ I ]

The Court has determined the number of prior convictions to be \_\_\_\_\_ and the level to be as show above.

The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.

Date

12/12/97

Name Of Presiding Judge (Type Or Print)

H.W. Zimmerman, Jr.

Signature Of Presiding Judge

[Signature]

EXHIBIT (B) 1068

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23241

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

Film No.  
GUILFORD COUNTY  
**FILED**  
JAN 28 1999  
AT 3:50 P.M.  
BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, knowingly solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Rose Gray Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant  
[Signature]  
Signature of Attorneys for the Defendant  
[Signature]  
[Signature]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No.

99CRS 23242

EXHIBIT (B)  
2018

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

GUILFORD COUNTY Film No.

FILED

JAN 28 1999

BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder

v.  
THEODORE MEAD KIMBLE

AT 350  
BY [Signature]  
CLERK OF SUPERIOR COURT

Offense in Violation of G.S.  
14-2.6 & Common Law

Date of Offense  
On or about November 4, 1998

### COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Patrick Roy Pardee, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

### WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

X Theodore Kimble

Signature of Attorneys for the Defendant

[Signature]  
[Signature]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

EXHIBIT (B)  
3 of 8

File No. 99CRS 23243

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

Film No.

v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
**FILED**  
JAN 28 1999  
AT 350 U.S. 1 M.  
BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Louie Mitchell Widden, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant.  
[Signature]  
Signature of Attorneys for the Defendant  
[Signatures]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23244

EXHIBIT (B)  
40F8

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY Film No.  
**FILED**  
JAN 23 1999  
AT 350 P M  
BY [Signature]  
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION**  
**Solicitation to Commit**  
**First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill David Shane Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature]

Signature of Attorneys for the Defendant

[Signature]  
[Signature]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23245

EXHIBIT (B)  
50FB

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

Film No.

v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 28 1999  
BY [Signature]  
CLERK OF SUPERIOR COURT

BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Gary Paul Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
[Signature: R. E. P. D.]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant  
X Theodore Kimble  
Signature of Attorneys for the Defendant  
[Signature: T. B. Campbell]  
[Signature: A. W. ...]



STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23246

EXHIBIT (B)  
6018

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

Film No.  
**BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder**

GUILFORD COUNTY  
**FILED**  
JAN 23 1999  
AT 3:50 U. CLERK P.M.  
CLERK OF SUPERIOR COURT

Offense in Violation of G.S.  
14-2.6 & Common Law

Date of Offense  
On or about November 4, 1998

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Cara R. Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  
*REPP*

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant  
*Theodore Kimble*  
Signature of Attorneys for the Defendant  
*Fred A. Crumpler*  
*AW*

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

EXHIBIT (B)  
7018

File No. 99CRS 23247

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 28 1999  
AT 350  
BY [Signature]  
CLERK OF SUPERIOR COURT

Film No.

**BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law

**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Linda Thompson Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature]

Signature of Attorneys for the Defendant

[Signature]  
[Signature]

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

File No. 99CRS 23248

EXHIBIT (B)  
8078

GUILFORD COUNTY  
STATE OF NORTH CAROLINA  
v.  
THEODORE MEAD KIMBLE

GUILFORD COUNTY  
FILED  
JAN 23  
BY COO  
CLERK OF SUPERIOR COURT

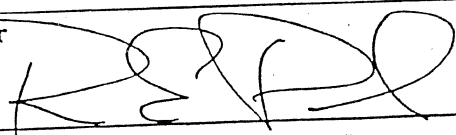
Film No.  
**BILL OF INFORMATION  
Solicitation to Commit  
First Degree Murder**

Date of Offense  
On or about November 4, 1998

Offense in Violation of G.S.  
14-2.6 & Common Law


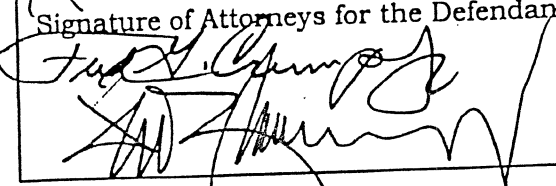
**COUNT I**

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Kevin Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor  


**WAIVER**

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99  
Signature of the Defendant  
  
Signature of Attorneys for the Defendant  


581

EXHIBIT (C)

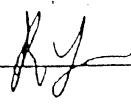
**STATE OF NORTH CAROLINA**

In the General Court of Justice  
Superior Court Division

GUILFORD COUNTY  
STATE OF NORTH CAROLINA

v.

**THEODORE MEADE KIMBLE**



File No.

**97CRS 23656**

Film No.

**INDICTMENT  
ARSON  
CONSPIRACY TO MURDER**

Date of Offense  
October 9, 1995

Offense in Violation of G.S.  
14-58 and the Common Law

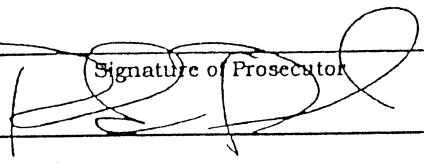
**COUNT I  
ARSON OF AN UNOCCUPIED DWELLING**

**THE JURORS FOR THE STATE OF NORTH CAROLINA**, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC.

**COUNT II  
CONSPIRACY**

**AND THE JURORS FOR THE STATE OF NORTH CAROLINA**, upon their oath do present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, and feloniously that conspire, combine, confederate and agree with Ronnie Lee Kimble to commit the felony of Murder in the First Degree, in that Theodore Mead Kimble did agree with Ronnie Lee Kimble to murder, kill and slay Patricia Kimble in violation of N.C. Gen.Stat. 14-17, and the common law of the State of North Carolina.

Signature of Prosecutor



**WITNESSES**

J. D. Church  
Guilford County Sheriff's Department  
95-1009-0027

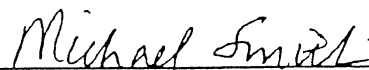
The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

- A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
- NOT A TRUE BILL

Date

**NOV 03 1997**

Signature of Grand Jury Foreman



253

EXHIBIT (D)

20

**STATE OF NORTH CAROLINA**

In the General Court of Justice  
Superior Court Division

FILED

GUILFORD COUNTY

STATE OF NORTH CAROLINA 1998 JUL -6 PM 3: 58

v.

**THEODORE MEAD KIMBLE** GUILFORD COUNTY, N.C.

File No: **98CRS 23486**

Film No. **INDICTMENT  
FIRST DEGREE ARSON**

Date of Offense October 9, 1995 BY [Signature]

Offense in Violation of G.S.  
14-58 and the Common Law

**FIRST DEGREE ARSON**

**THE JURORS FOR THE STATE OF NORTH CAROLINA**, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC. At the time of the burning Patricia Kimble was in the dwelling.

[Signature] Signature of Prosecutor

**WITNESSES**

J. D. Church  
Guilford County Sheriff's Department  
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.  
 NOT A TRUE BILL

Date **JUL 06 1998**

Signature of Grand Jury Foreman  
[Signature]

1 GUILTY TO THOSE OFFENSES BECAUSE YOU CONSIDER IT TO BE IN YOUR  
2 BEST INTEREST TO DO SO?

3 DEFENDANT:- YES, SIR.

4 THE COURT:- DO YOU UNDERSTAND THAT WHEN YOU PLEAD  
5 GUILTY TO THOSE OFFENSES UPON THAT CONDITION THAT YOU WILL BE  
6 ADJUDGED GUILTY AND SENTENCED FOR THOSE OFFENSES WHETHER OR NOT  
7 YOU, IN FACT, ADMIT THAT YOU ARE GUILTY OF THEM?

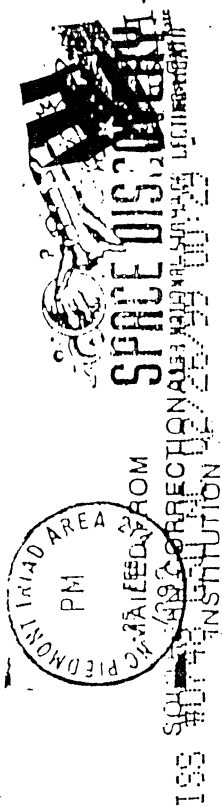
8 DEFENDANT:- YES, SIR.

9 THE COURT:- HAVE YOU AGREED TO TENDER A PLEA OF  
10 GUILTY TO THESE SEVERAL OFFENSES AS PART OF A PLEA ARRANGEMENT  
11 THAT WAS NEGOTIATED ON YOUR BEHALF BY YOUR ATTORNEYS WITH THE  
12 DISTRICT ATTORNEY?

13 DEFENDANT:- YES, SIR.

14 THE COURT:- IS THIS A CORRECT STATEMENT OF WHAT YOU  
15 UNDERSTAND YOUR FULL PLEA ARRANGEMENT TO BE: THE STATE OF  
16 NORTH CAROLINA HAS AGREED, PURSUANT TO THE PLEA ARRANGEMENT, TO  
17 ACCEPT A PLEA OF GUILTY TO SECOND DEGREE MURDER IN CASE  
18 97-CRS-39581. COUNT ONE IN THAT -- IN CASE 97-CRS-23656 SHALL  
19 BE DISMISSED BY THE STATE UPON YOUR PLEA OF GUILTY. IN RETURN,  
20 THE DEFENDANT AGREES TO ENTER PLEAS OF GUILTY TO SECOND DEGREE  
21 MURDER IN CASE 39581, CONSPIRACY TO COMMIT FIRST DEGREE MURDER  
22 IN CASE 97-CRS-23656, AND FIRST DEGREE ARSON IN CASE  
23 98-CRS-23486, AND EIGHT COUNTS OF SOLICITATION TO COMMIT FIRST  
24 DEGREE MURDER PURSUANT TO THE BILLS OF INFORMATION WHICH HAVE  
25 BEEN SUBMITTED TO THE COURT. THE DEFENDANT AGREES PURSUANT TO

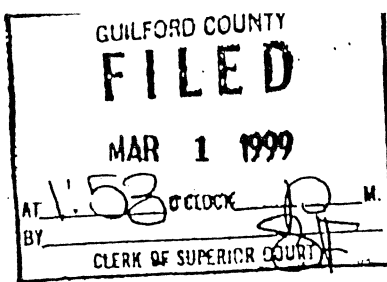
Therese Kimble  
Po Box 786  
Troy NC 27371



To: Guilford County Court House  
 Superior Court Judge Peter McHugh  
 Greensboro NC 27402

27400/9999

EXHIBIT (F) 2 of 3



Superior Court Judge  
Peter McHugh

I Therefore Mr Kimble would like to withdraw my guilty-plea on all accounts and charges. I request to go before a jury and plead my case. I was pressured into my earlier plea. I'm NOT Guilty and here by withdraw my earlier plea of Guilty.

When you read the Plea Agreement, you asked if I had been threatened in any way to force me to take the agreement? The answer is Yes! The Zimmerman stood by my side, under his breath saying, "Play it cool." I told him yes before hand and he was afraid I'd tell you. I ask, How can I say "No" when I'm being told if I don't, I'll be killed should I go to trial.

I believe your opinion needs to wait till the evidence is heard. I disapprove of you saying "Good Job" to my lawyers. It sounds as if you had read the newspapers and formed your own opinions. I hope a byist attitude isn't shown during the trial or favoritism to the D.A.

I request a gag order be placed on the D.A. He has done nothing but brain wash the public and potential jurors. Further

trial = [Signature]



Do to the D.A.'s press conferences I'd like my trial moved to Winston Salem in Forsyth County.

I've not made my decision known to my attorneys at this point, but am presently doing so. I assure you, I will not allow someone to push me around again. My mind is made up.

Thank you,

Theodore W. Kimble

2-24-99

P.S. What is justice when a D.A. tells an opposing witness, "Your life is at a fork in the road, one goes to prison the other to probation. Don't show at the Kimble trial."

3/1/99 cc: Parosh

Zimmerman/Crompler

# EXHIBIT (G)

## STATEMENT CONCERNING DEFENDANT'S CONFINEMENT

Prior to entry of his guilty pleas in the instant cases, defendant was in the custody of the Department of Corrections at Southern Correctional Institution in Troy, North Carolina for unrelated larceny and breaking and entering convictions. On January 12, 1999, defendant was placed on disciplinary segregation. Defendant entered his guilty pleas in the instant cases on January 28, 1999. On February 1, 1999, defendant's control status was changed to administrative segregation. On February 5, 1999, defendant was placed on maximum control and remained there until he was transferred to Caledonia Correctional Institution on February 26, 1999. Pursuant to state-wide policy, all three levels of control require 23-hour-per-day lock-up, with one hour per day for showering and individual recreation. In addition, inmates held at all three control levels are not allowed phone calls and are permitted only one non-contact week-day visit per week.

1 (March 4, 1999.)

2 THE COURT: Mr. Panosh, you may proceed.

3 MR. PANOSH: Your Honor, we are before the  
4 Court on the matter of Theodore Mead Kimble, the  
5 remaining case is 97 CRS 39581. I believe that the first  
6 matter is a motion to withdraw filed pro se by the  
7 defendant.

8 Your Honor, the State has filed an Answer to  
9 the motion to withdraw, and I've served counsel with a  
10 copy. I did note that on page 1 when I indicated date of  
11 change of counsel, I have the wrong date there. It  
12 should have been December 3rd, of '98 change of counsel.  
13 And I've made that correction.

14 THE COURT: Thank you. Mr. Crumpler, Mr.  
15 Zimmerman, are you appearing with the defendant at this  
16 time?

17 MR. CRUMPLER: Your Honor, we are appearing  
18 by virtue of the nature of the motion. We have explained  
19 to the defendant actually we will remain neutral because  
20 we may be asked questions, and the defendant understands  
21 that.

22 THE COURT: All right. Thank you. Mr.  
23 Kimble, would you stand up, please?

24 (Defendant stands.)

25 THE COURT: Mr. Kimble, the court records

1 right up to the time of her execution. That just shows  
2 you not a mitigating factor, that shows that he's a cold  
3 blooded murderer. He planned this and he had the ability  
4 to hug and kiss his wife knowing that he was about to  
5 kill her to collect the insurance money.

6 This defendant, Your Honor, lives in a world  
7 of bombs and silencers and sniper rifles. He just feels  
8 that anybody who gets in his way, he should be able to  
9 eliminate. We ask you to sentence him remembering that.  
10 Thank you.

11 THE COURT: All right, thank you. Mr.  
12 Zimmerman, are you prepared to tender your sentencing  
13 memorandum?

14 MR. ZIMMERMAN: We don't have it at this  
15 point in time, if Your Honor please. If Your Honor would  
16 be kind enough to consider a short recess, I'll check one  
17 more time and see what the problem is. This witness has  
18 been subpoenaed since two weeks ago. And she was just  
19 deathly ill yesterday. I apologize for having the phone  
20 ringing in the courtroom. That was her calling me  
21 yesterday. She couldn't get out of the bed. It's this  
22 flu going around, and I can understand it because I had  
23 some of that before I had my other problem.

24 MR. PANOSH: May we approach?

25 THE COURT: Yes, sir.

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MR. ZIMMERMAN: Absolutely satisfactory with the defendant.  
(Counsel approach the bench.)

THE COURT: Counsel, the Court will provide you with a recess to attempt to provide that element of evidence.

Court will be in temporary recess, Sheriff.  
(A recess was taken.)  
(All parties present.)

MR. ZIMMERMAN: If Your Honor pleases, the defense appreciates Your Honor's thoughtful and serious consideration of the presentence study, and apologizes for the delay.

THE COURT: That's no need to apologize, Counsel. In this matter I'm anxious to have all the evidence that any party wishes to produce.

Is there any further evidence at this time for the State or for the defendant?

MR. PANOSH: No, thank you, Your Honor.

MR. CRUMPLER: No, Your Honor.

THE COURT: Is there any further matters before the Court enters judgment?

MR. PANOSH: No, Your Honor.

THE COURT: Judgment of this Court shall be entered first in case 97 CRS 39581, wherein the defendant

No. COAP03-956

North Carolina Court of Appeals

\*\*\*\*\*

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

\*\*\*\*\*

From Guilford  
(97CRS23656, 97CRS39581, 98CRS23486,  
99CRS23241-48)

FILED  
03 NOV 24 PM 3:35  
COURT OF APPEALS  
OF NORTH CAROLINA

ORDER

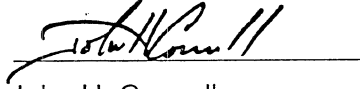
The following order was entered:

The motion filed in this cause on the 3rd day of November 2003 and designated "Motion in Arrest of Judgment" is dismissed.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell  
Clerk of North Carolina Court of Appeals

CSC Orig  
cc:  
Mr. Theodore Kimble  
Ms. Kathleen U. Baldwin

NO. P03-956

EIGHTEENTH DISTRICT

STATE OF NORTH CAROLINA  
COURT OF APPEALS

THEODORE MEAD KIMBLE )

PETITIONER, )

v. )

STATE OF NORTH CAROLINA )

RESPONDENT. )

RE: { "MOTION IN ARREST OF JUDGMENT" }

" NO. P03-956

" FILE NO.'S 97CRS-23656,

" 97CRS-39581; 98CRS-23486;

" 99CRS-23241-48, = = =

\* \* \* \* \*  
PETITIONERS RESPONSE TO THE  
STATES ANSWER.  
\* \* \* \* \*

NOW COMES THE PETITIONER, THEODORE MEAD KIMBLE, AND SAYS:

D. THE STATES PROCEDURAL HISTORY IS FALSE, AS HER TWO (2) OTHER RESPONSES,

(A) IF THIS COURT WILL LOOK AT IND. # 97CRS-23656, WHICH WAS COUNT ONE DISMISSED, AND IND. # 98CRS-23486, THEY SHOW THE SAME EXACT WORDING, WHICH THE PROSECUTOR (MR. PANOSH) HAD PETITIONER RE-INDICTED, THUS COMMITTING DOUBLE-JEOPARDY.

(B) PETITIONER NEVER PLEAD GUILTY TO 99CRS-23241-48, IT WAS AN ALFORD PLEA AS PETITIONER POINTED OUT IN OTHER RESPONSES TO THE STATES ANSWERS. AND PETITIONER RECEIVED ILLEGAL CONSECUTIVE SENTENCES ON EACH COUNT TOTALING 70 TO 90.4 YEARS, WHICH WAS ILLEGAL AS A MATTER OF LAW.

(C) PETITIONER WAS PROMISED A TOTAL 20 YEARS SENTENCE FOR ALL PLEAS. COUNSEL HAD PETITIONER SIGN A BLANK PLEA BARGAIN, WHICH WAS FILLED IN AFTERWARD, AND FILLED IN INCORRECTLY. IT'S A FACT PETITIONER PLED ALFORD IN CASES 99CRS-2324-48, AND THE PLEA BARGAIN WAS FILLED IN AS ALL "GUILTY" PLEAS. PETITIONER IS ENTITLED TO RELIEF IN ARREST OF JUDGMENTS BY LAW.

2. (A) BRIEF FOR THE STATE PAGE #2 STATES "INCORRECTLY", "WITH-DRAW [HIS] GUILTY-  
-PLEA ON ALL ACCOUNTS AND CHARGES" THE WORD "ALFORD" PLEA WAS AGAIN CONVENIENTLY LEFT OUT.

(B) THE STATE "AGAIN" LEFT OUT THE FACT THAT PETITIONER HAD TO DEFEND HIMSELF AT THE "WITHDRAW HEARING", BECAUSE COUNSEL CHOOSE TO



REMAIN "NEUTRAL", LEAVING PETITIONER WITHOUT REPRESENTATION, VIOLATING DUE PROCESS.

③. (A) STATE ASSERTS HOW PETITIONER HAD DIRECT APPEAL, BUT LEFT OUT HOW APPELLATE COUNSEL ALSO "FAIL" TO REPRESENT AND PERSUE PERTINENT ISSUES, AND ABANDON ISSUES OF THE ILLEGAL 70 TO 90.4 YEAR SENTENCES IN CASES #99CRS-23241-48. PLUS FAIL TO REPORT PROSECUTOR MISCONDUCT, AND CONFLICT OF INTEREST BY PROSECUTORS ("PARTNER"), PETITIONER'S "PRIOR" SENTENCING JUDGE MR. ZIMMERMAN NOW REPRESENTING HIM AS COUNSEL; FAIL TO BRING UP THE ISSUE OF NO P.S.I. REPORT, OR ANY OTHER PERTINENT ISSUES AS PETITIONER POINTED OUT THROUGH HIS "MOTION IN ARREST OF JUDGMENT" UNDER DISCUSSION.

(B) PETITIONER'S APPELLATE COUNSEL FILED DISCRETIONARY REVIEW IN N.C. SUPREME COURT AFTER DENIAL IN N.C. COURT OF APPEALS. YET PETITIONER CONSTANTLY INSTRUCTED HER TO FILE MOTION FOR APPROPRIATE RELIEF, AND SHOULD HAVE APPEALED IN CERTIORARI TO N.C. SUPREME COURT. NATURALLY 99 TIMES OUT OF 100 THE N.C. SUPREME COURT USUALLY ALWAYS GOES ALONG WITH THE N.C. COURT OF APPEALS RULINGS.

4. PETITIONER FILED "MOTION IN ARREST OF JUDGMENT" BECAUSE HE IS ENTITLED RELIEF FROM HIS ILLEGAL SENTENCE. IT'S NOT IN ACTUALITY A "MOTION FOR APPROPRIATE RELIEF" AS THE STATE'S ATTORNEY BALDWIN HAS STATED IN "BRIEF FOR THE STATE PAGE #2." PETITIONER CAN'T EXPECT ANY RELIEF WHATSOEVER IN A SUPERIOR COURT THAT RAILROADED HIM IN EACH AND EVERY WAY POSSIBLE, AS IF IT WAS A LYNCHING MOB. THAT'S WHY PETITIONER FILED A "MOTION IN ARREST OF JUDGMENT" TO THIS HIGHER COURT, TO TRY AND ACTUALLY RELIEVE JUSTICE.

5. THE STATE POINTED OUT HOW, "RELIEF FORMERLY AVAILABLE BY MOTION IN ARREST OF JUDGMENT, MOTION TO SET ASIDE THE VERDICT, MOTION FOR NEW TRIAL, POST CONVICTION PROCEEDINGS, CORAM VOBIS AND ALL OTHER POST-CONVICTION PROCEEDINGS' MOTIONS IS AVAILABLE BY MOTION FOR APPROPRIATE RELIEF." THE STATE LEFT OUT THE FACT THAT RELIEF IS ALSO AVAILABLE BY FILING MOTION IN ARREST OF JUDGMENT IN THE N.C. COURT OF APPEALS, AND THE FACT IT'S NOT "MANDATORY" TO FILE IT IN SUPERIOR COURT. AND TO PROVE THAT "FACT",

"IF" PETITIONER WAS NOT ALLOWED BY LAW TO FILE SAID MOTION IN THE COURT OF APPEALS, THEN MR. JOHN H. CONNELL CLERK OF N.C. COURT OF APPEALS WOULD NEVER HAVE DOCKETED THE SAID MOTIONS FOR A RULING (OR) GIVEN A DOCKET CASE NUMBER PO3-956; THIS IS DESPITE THE FACT PETITIONER HAD SOMEONE CALL HIM AND HE SAID "YES" THE MOTIONS CAN BE FILED IN THIS COURT! (919) 733-3561. MR. CONNELL SAID PROCEEDURE IS THAT "IF" THE MOTIONS COULDN'T BE FILED OR HEARD IN THIS COURT, HE WOULD HAVE RETURNED THEM AND INSTRUCTED OF HOW IT WAS "MANDATORY" TO FILE THE SAID MOTIONS IN SUPERIOR COURT! THE STATE'S ATTORNEY KATHLEEN U. BALDWIN WOULDN'T NEED TO FILE (3) "SEPERATE" IDENTICAL RESPONSES EATHER, ASKING THE COURT TO DISMISS (OR) DENY PETITIONER'S MOTIONS "UNLESS" THE COURT OF APPEALS HAS THE POWER AND AUTHORITY TO GRANT PETITIONER'S MOTIONS. (EMPRASIS SUPPLIED).

3) PETITIONER WOULD ALSO LIKE TO BRING TO THE COURTS ATTENTION THAT AGAIN ON ALL (3) MOTIONS PETITIONER FILED IN THIS COURT UNDER DISCUSSION, STATES ATTORNEY BALDWIN "FAIL" TO PROTEST ANY OF PETITIONER'S CONTENTIONS IN ANY ONE OF THE THREE MOTIONS; AS IT'S OBVIOUS IN ALL (3) MOTIONS THAT ALL PETITIONER'S STATE AND FEDERAL RIGHTS WERE VIOLATED IN

SO MANY WAYS THAT PETITIONER CAN'T  
COUNT THEM ALL.

7. PETITIONER CONTENDS THAT THE PURPOSE  
OF THE ASSISTANT ATTORNEY GENERAL TO EVEN  
RESPOND "AT ALL" TO ANY SUBMITTED MOTIONS  
IS TO POINT OUT HOW PETITIONER IS WRONG  
IN HIS ASSERTED GROUNDS FOR RELIEF; IN ANY  
PARTICULAR MOTION. (NOT "WINNING" AT ALL COSTS) HOWEVER,  
STATE'S ATTORNEY BALDWIN DIDN'T AND COULDN'T  
RESPOND TO ANYTHING IN ANY OF PETITIONER'S  
MOTIONS, BECAUSE AS THE BIBLE SAYS, "THE  
HANDWRITING IS ON THE WALL"!

8. PETITIONER IS SEEKING JUSTICE  
AND A LAWFUL SENTENCE, AND APPEALING TO  
THIS HONORABLE COURT TO REVIEW PETITIONER'S  
MOTIONS, THE RECORD, THE ILLEGAL INDICT-  
MENTS, THE ILLEGAL SENTENCES, THE ILLEGAL  
REPRESENTATION OF COUNSELOR ZIMMERMAN BEING  
PETITIONER'S PRIOR SENTENCING JUDGE, THE ILLEGAL ACT  
OF FORCING PETITIONER TO DEFEND HIMSELF AT THE WITH-  
-DRAW HEARING, HOW PETITIONER WAS ILLEGALLY  
SENTENCED WITH NO PSY REPORT, THE ILLEGAL  
JUDGMENT AND COMMITMENT PAPERS, HOW  
PETITIONER WAS ILLEGALLY SENTENCED ON THE DOUBLE-

- JEOPARDY INDICTMENTS, ILLEGALLY SENTENCED ON 8 WAIVERS WITH CONSECUTIVE SENTENCES AND COUNSEL JUST SAT BACK AND SAID NOTHING; ILLEGALLY FILLING IN BLANK PLEA BARGAIN, THE PROSECUTOR ILLEGALLY RELEASING AN INMATE FROM PRISON EARLY IN EXCHANGE FOR A FALSE STATEMENT AGAINST PETITIONER, THE PROSECUTOR ILLEGALLY RUNNING WITNESSES FOR DEFENSE OUT OF TOWN, THE PROSECUTOR ILLEGALLY THREATEN PETITIONER WITH THE DEATH PENALTY SENTENCE, THE PROSECUTOR ILLEGALLY COVERED-UP THE CRIME OF ROBERT NICHOLS STEALING PETITIONERS TRAILER AND SELLING IT, THE PROSECUTOR ILLEGALLY THREATEN DEFENSE WITNESSES WITH SEVERE PROSECUTION ON PENDING CHARGES IF THEY DIDN'T CHANGE THEIR STATEMENTS AND GO AGAINST PETITIONER, AND OFFERING TO DISMISS AND GIVE PRO-BATION TO ALL WITNESSES ON THEIR PENDING CHARGES IF THEY COOPERATE WITH THE PROSECUTOR. WITNESSES "RECORDS" WILL VARY THE PROSECUTOR ILLEGALLY DID WHATEVER IT TOOK TO SEND PETITIONER AWAY FOR THE REST OF HIS NATURAL LIFE. THE WORD "LEGAL" DOES NOT APPLY ANYWHERE THROUGHOUT THESE PROCEEDINGS, SO NATURALLY PETITIONER SEEKS "JUSTICE" IN THE HIGHER COURT!

WHEREFORE, IN VIEW OF ALL THE ABOVE  
MISCARRAGES OF JUSTICE THAT WERE COMMITTED  
AGAINST PETITIONER, PETITIONER PRAYS THIS  
HONORABLE COURT GRANT PETITIONER'S MOTION  
IN ARREST OF JUDGMENT, AND ANY OTHER  
RELIEF THIS HONORABLE COURT DEEMS JUST AND  
PROPER.

RESPECTFULLY SUBMITTED THIS THE  
24 DAY OF NOVEMBER 2003.

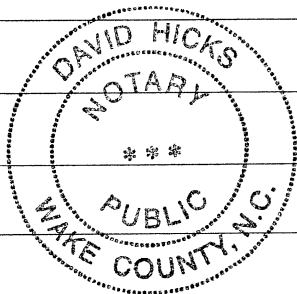
pro-se: Theodore Mead Kimble  
THEODORE MEAD KIMBLE

DATE: 11-24-03

WITNESS: David Hicks

My Commission Expires 5-18-2008.

MY COMMISSION EXPIRES \_\_\_\_\_



\* J \*

# VERIFICATION

I, THEODORE MEAD KIMBLE, BEING FIRST ONLY SWORN  
DEPOSE AND SAY, I AM THE PETITIONER IN THE  
FOREGOING PETITIONERS RESPONSE TO THE STATES ANSWER,  
I HAVE READ THE SAME, AND THE STATEMENTS  
CONTAINED THEREIN ARE TRUE, AS FOR ANY STATE-  
MENTS MADE ON INFORMATION AND BELIEF, ARE MADE  
IN GOOD FAITH, AND I BELIEVE TO BE TRUE.

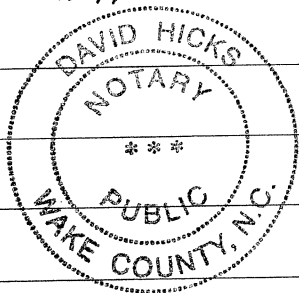
SIGNED UNDER PENALTY OF PERJURY, THIS THE 24  
DAY OF NOVEMBER 2003.

Pro-se Theodore Mead Kimble  
THEODORE MEAD KIMBLE

SWORN TO AND BEFORE ME THIS THE 24 DAY OF  
NOVEMBER 2003,

DATE: 11-24-03  
WITNESS: David Hicks

MY COMMISSION EXPIRES 5-18-2008.



CERTIFICATE OF SERVICE

I, Theodore Mead Kimble, do hereby certify  
that the foregoing petitioners response to the  
states answer was only served by placing the  
same in the U.S. Mail, postage pre-paid and  
addressed as follows:

Mr. Roy Cooper  
Attorney General  
P.O. Box 629,  
Raleigh, N.C. 27602,

pro-se Theodore Mead Kimble  
Theodore Mead Kimble  
1300 Western Blvd.  
Raleigh, N.C. 27606

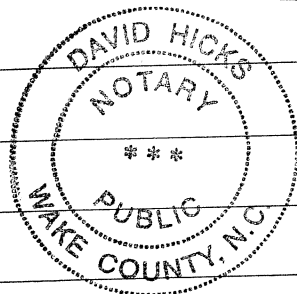
Sworn to and before me this 24<sup>th</sup> day of  
November 2003.

DATE: 11-24-03

Witness: Daniel Huber

My Commission Expires

My Commission Expires 5-18-2008.





1 MR. PANOSH:- YOUR HONOR, THERE IS A TRANSCRIPT OF  
2 PLEA.

3 AT THIS TIME, HOW DOES YOUR CLIENT PLEAD IN  
4 97-CRS-39581, TO SECOND DEGREE MURDER?

5 MR. CRUMPLER:- HE PLEADS GUILTY, YOUR HONOR.

6 MR. PANOSH:- 97-CRS-23656, CONSPIRACY TO COMMIT  
7 FIRST DEGREE MURDER?

8 MR. CRUMPLER:- HE PLEADS GUILTY.

9 MR. PANOSH:- 98-CRS-23486, FIRST DEGREE ARSON?

10 MR. CRUMPLER:- HE PLEADS GUILTY.

11 MR. PANOSH:- AND 99-CRS-23241 THROUGH 23248, EIGHT  
12 COUNTS OF SOLICITATION TO COMMIT FIRST DEGREE MURDER?

13 MR. CRUMPLER:- NOW, THEY ARE THE 1998 CASES SHOWN ON  
14 THE PLEA TRANSCRIPT?

15 MR. PANOSH:- IT SHOULD BE '99. THEY'RE FILED TODAY.

16 MR. CRUMPLER:- OKAY. YOUR HONOR, HIS PLEA IS  
17 GUILTY, BUT UNDER THE VIRTUE OF THE ALFORD PLEAS.

18 THE COURT:- ALFORD PLEA WITH REGARD TO THE OFFENSES  
19 PRESENTED ON THE BILLS OF INFORMATION ONLY?

20 MR. CRUMPLER:- YES, SIR.

21 THE COURT:- ALL RIGHT. THANK YOU. GUILTY PLEA  
22 WITHOUT RESERVATION WITH REGARD TO THE OTHER MATTERS PRESENTED  
23 BY THE STATE?

24 MR. CRUMPLER:- YES, SIR.

25 THE COURT:- THANK YOU.

1 has entered a plea of guilty to the offense of second  
2 degree murder. The Court having previously found, and  
3 the defendant having stipulated that the defendant is  
4 subject to sentence for these felony offenses, and each  
5 of them a prior offender level 2. In case 39581, the  
6 Court makes the following findings in aggravation and in  
7 mitigation. The factor found by the Court in aggravation  
8 is found pursuant to North Carolina General Statutes 15A-  
9 1340.16(d)(20). And it is that the defendant in the  
10 commission of this offense acted with premeditation and  
11 deliberation. And the Court finds further pursuant to  
12 the same provisions of the North Carolina General  
13 Statutes that the defendant acted for pecuniary gain in  
14 the commission of the offense, the murder of Patricia  
15 Kimble. The Court finds the statutory factors in  
16 mitigation, and these factors are found by the  
17 preponderance of the evidence. North Carolina General  
18 Statute section 1340.16(e)(12)(18) and (19).

19           Upon considering the aggravating factor and  
20 the mitigating factors found, the Court concludes as a  
21 matter of law that the factor found in aggravation  
22 outweighs the factors found in mitigation. And the Court  
23 concludes as a matter of law that the defendant in this  
24 action is subject to sentence within the aggravated  
25 range, a prior record level 2 for the Class B2 felony of

1 second degree murder.

2           And the judgment of the Court on that finding  
3 is that the defendant, Theodore Mead Kimble, should be  
4 imprisoned and he is assigned to the North Carolina  
5 Department of Corrections to serve a minimum term of 204  
6 months and a maximum term of 254 months. And this  
7 sentence imposed by this Court shall commence at the  
8 expiration of any sentence the defendant is currently  
9 assigned to serve in the custody of the North Carolina  
10 Department of Corrections.

11           Judgment of this Court is entered next in  
12 case number 23656, wherein the defendant has entered a  
13 plea of guilty to the offense of conspiracy to commit  
14 first degree murder. In this action the Court makes no  
15 findings in aggravation or in mitigation. Upon the  
16 findings previously found that the defendant is subject  
17 to sentence at prior offender level 2 for this offense,  
18 the judgment of the Court is that this defendant,  
19 Theodore Mead Kimble, is to be imprisoned to serve a term  
20 of imprisonment assigned to the North Carolina Department  
21 of Corrections for a minimum term of 163 months, and a  
22 maximum term of 205 months. This sentence is to commence  
23 at the expiration of the sentence imposed by the Court  
24 for case 97 CRS 39581.

25           Judgment is entered next in case 98 CRS

1 23486. On the defendant's plea of guilty to the offense  
2 of first degree arson, the Court makes the following  
3 findings in aggravation and in mitigation. Pursuant to  
4 North Carolina General Statute 1340.16(d)(20), the Court  
5 finds by the preponderance of the evidence that this  
6 offense was committed for the purpose of avoiding  
7 detection in the murder of Patricia Gail Kimble, and it  
8 was committed for the purpose of covering up that murder.  
9 The Court finds the following statutory mitigating  
10 factors as previously found by the preponderance of the  
11 evidence, factors 12, 18 and 19. The Court concludes as  
12 a matter of law that the aggravating circumstance found  
13 outweighs the mitigating circumstances found, and the  
14 Court concludes in this action that the defendant is  
15 subject to sentence in the aggravated range at prior  
16 offender level 2 for this Class D felony offense. The  
17 judgment of the Court on these findings is that the  
18 defendant is sentenced to serve a term of imprisonment  
19 assigned to the North Carolina Department of Corrections  
20 for a minimum term of 82 months, and for a maximum term  
21 of 108 months. This sentence shall commence at the  
22 expiration of the sentence imposed by this Court in case  
23 number 97 CRS 23656.

24 Judgment is entered next in case number  
25 23242. That is 99 file number -- strike that -- 23241.

1 On the defendant's plea of guilty to the offense of  
2 solicitation to commit first degree murder, the Court  
3 makes the following findings in aggravation and in  
4 mitigation. Pursuant to North Carolina General Statute  
5 15A-1340.16(d)(5), this Court finds by a preponderance of  
6 the evidence that this offense was committed for the  
7 purpose of disrupting the enforcement of the laws, and  
8 that the act of paying someone to murder a person who  
9 would be expected to testify against the defendant in the  
10 prosecution of the charged murder of Patricia Gail Kimble  
11 is an act tending to disrupt or hinder the enforcement of  
12 the laws of this state. The Court finds the same  
13 statutory factors in mitigation as previously found. And  
14 the Court concludes as a matter of law that the  
15 aggravating factor found outweighs the mitigating factors  
16 found, and concludes that the defendant is subject to  
17 sentence in this action within the aggravated range prior  
18 offender level 2 on the Class C felony of solicitation to  
19 commit first degree murder. In that offense the judgment  
20 of the Court is defendant is to be confined to serve a  
21 term of imprisonment for a minimum of 108 months and for  
22 a maximum of 139 months, assigned to the North Carolina  
23 Department of Corrections. The sentence imposed by the  
24 Court in this action is to commence at the expiration of  
25 the sentence imposed by the Court in case 23486.

1 In the next action, which is 23242 on the  
2 defendant's previously entered and accepted plea of  
3 guilty to the offense of solicitation to commit first  
4 degree murder, the Court enters the same findings in  
5 aggravation and in mitigation as are recorded in case  
6 23241. Court finds in this action that the factor found  
7 in aggravation outweighs the factors found in mitigation.  
8 The judgment of the Court is in 23242 that the defendant  
9 should be confined to be assigned to the North Carolina  
10 Department of Corrections for a term of 108 months  
11 minimum and a maximum term of 139 months. And this  
12 sentence shall commence at the expiration of the sentence  
13 imposed by the Court in 23241.

14 Judgment shall be entered next by the Court  
15 in case 23243. In this action, upon the defendant's plea  
16 of guilty to solicitation to commit first degree murder,  
17 the Court makes those same findings in aggravation and in  
18 mitigation as are recorded previously in case 23241. The  
19 Court concludes in this action that the factor found in  
20 aggravation outweighs the factors found in mitigation,  
21 and enters judgment that the defendant shall be confined  
22 in this action to serve a term of imprisonment for a  
23 minimum term of 108, and a maximum term of 139 months.  
24 The sentence imposed by the Court in case 243 is to  
25 commence at the expiration of the sentence imposed by the

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1 Court in case 23242.

2 Judgment shall be entered next in case 23244.

3 In that action the judgment of the Court is that upon the  
4 finding of the same factors in aggravation and in  
5 mitigation as were found by the Court in case 23241, the  
6 judgment of the Court upon the conclusion that the  
7 defendant is subject to sentence within the aggravated  
8 range as a prior offender level 2, that he be confined to  
9 serve a term of imprisonment of not less than 108 months,  
10 and not more than 139 months to be assigned to the North  
11 Carolina Department of Corrections. And this sentence  
12 shall commence at the expiration of the sentence imposed  
13 in case 23243.

14 Judgment to be entered next in case 23245.

15 In that action the Court makes no findings in aggravation  
16 or in mitigation. The defendant shall be sentenced  
17 within the presumptive range, prior offender level 2 as a  
18 Class C felon. The judgment of the Court is that the  
19 defendant should be confined to serve a term of  
20 imprisonment of not less than 96 months, and a maximum  
21 term of 125 months, assigned to the North Carolina  
22 Department of Corrections, and this sentence shall  
23 commence at the expiration of the sentence imposed by the  
24 Court in case 23244.

25 Judgment to be entered next in case 23246.

1 In this action the judgment of the Court is based upon  
2 the findings that the same aggravating factors and  
3 mitigating factors as found to exist by a preponderance  
4 of the evidence in case 23241 are found in this action.  
5 The Court concludes that the aggravating factor found  
6 outweighs the mitigating factors found. The judgment of  
7 the Court in this action is that the defendant is ordered  
8 confined to serve a term of imprisonment for a minimum  
9 term of 108, and a maximum term of 139 months. This  
10 sentence shall commence at the expiration of the sentence  
11 imposed by this Court in case 23245.

12 Judgment is to be entered next in case 23247.  
13 In this action the Court makes findings in aggravation  
14 and in mitigation identical to those findings entered in  
15 case 23241. In this action the judgment of the Court is  
16 that the defendant should be confined to serve a term of  
17 imprisonment of not less and 108 and not more than 139  
18 months assigned to the North Carolina Department of  
19 Corrections. And this sentence is to commence at the  
20 expiration of the sentence imposed in case 23246.

21 The final judgment of this Court shall be  
22 entered in case 23248. In that action the Court makes no  
23 findings in aggravation or in mitigation. The judgment  
24 of the Court in that action upon the previously entered  
25 conclusion that the defendant is subject to sentence at



1 prior offender level 2 is that the defendant should be  
2 confined to serve a term of imprisonment assigned to the  
3 North Carolina Department of Corrections of not less than  
4 96 and not more than 125 months. That sentence is to  
5 commence at the expiration of the sentence imposed by the  
6 Court in case 23247.

7 Take the defendant, Sheriff.

8 MR. CRUMPLER: May we approach, Your Honor?

9 THE COURT: Yes.

10 (Counsel approach the bench.)

11 THE COURT: Sheriff Barnes, may I see you,  
12 please, at the Bench.

13 (Sheriff Barnes approached the bench.)

14 THE COURT: Is there anything further at this  
15 time, Counsel?

16 MR. ZIMMERMAN: Not for the defense, if Your  
17 Honor please.

18 MR. CRUMPLER: No, Your Honor.

19 MR. PANOSH: No further. Thank you, Judge.

20 THE COURT: Court's in recess, Sheriff.

21 (A recess was taken at 11:40 a.m.)

22 \* \* \* \* \*

23 END OF TRANSCRIPT

24 \* \* \* \* \*

25

1 A. In part.

2 Q. In large part, correct?

3 A. In some part. I considered other facts.

4 Q. And did you consider any information he gave you  
5 was reliable considering the fact that he was under those  
6 medications? Well, let me rephrase that. Do you feel  
7 that those medications would have in any way impaired his  
8 ability to convey to you reliably the information he  
9 wanted to convey to you?

10 MR. ZIMMERMAN: Objection, if Your Honor  
11 please. This man is not a medical doctor.

12 THE COURT: Objection is overruled.

13 A. With the -- again, with the caution that I am not  
14 a medical doctor, I did not detect any signs that would  
15 cause me to question the reliability of what he was  
16 telling me on the basis of a potential medication effect.

17 Q. Now, let me ask you about your personal  
18 background. Do you have a doctorate in psychology; is  
19 that correct?

20 A. Yes. I hold a doctorate in clinical psychology  
21 from the University of Massachusetts at Amherst. And I'm  
22 licensed to practice independently by the State of North  
23 Carolina.

24 Q. And when you are practicing, you consult with a  
25 psycholog--- excuse me, with a licensed psychiatrist when

1 A. Uh, no, sir. It was more of a silent threat.

2 Q. How long after you changed counsel did you begin  
3 to discuss with your attorneys the chance or possibility  
4 of pleading guilty?

5 A. I did not. They came back to me and recommended  
6 after your press conference intimidating witnesses and  
7 others.

8 Q. When they spoke to you and told you of their  
9 recommendation, did you agree?

10 A. No, I did not.

11 Q. When did you agree to plead guilty?

12 A. On the spur of the moment when they looked at me  
13 and told me my life was in danger.

14 Q. What date was that?

15 A. Uh, my last court appearance, the day in which I  
16 was so intimidated by law enforcement.

17 Q. You had not agreed to plead guilty prior to your  
18 court appearance?

19 A. No, I had not.

20 Q. Had your attorneys presented you with documents to  
21 sign or to review prior to your court appearance?

22 A. Uh, yes, sir. They said none of this was final,  
23 and that it was only on the drawing board, and that it  
24 was only in works, that nothing would be final until I  
25 stood before the judge. It was just a preliminary type