

Case Number _____

Eighteenth District

Clerk of Superior Court

Guilford County

David L. Churchill

RE: 97 CRS 23656, 39581;

Post office Box 3008

98 CRS 23486, 99 CRS 23241-48

Greensboro N.C. 27402-3008

Dear Mr. Churchill,

On November 25, 2003, Judge Albright denied my Motion For Appropriate Relief. I have enclosed a copy of Judge Albright's 4 page Order, and have it listed as EXHIBIT(A). In this Order on page 4, assignment #6. (EXHIBIT A-4 of 4.) Judge Albright said, "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." I've enclosed a few Transcript pages and listed them as EXHIBIT(B). On page 190 (Exhibit B) you will read, "Mrs. Yvonne Johnson of One Step Further, 621 Eugene Court, Suite 101, here in Greensboro." Mrs. Johnson was the one who prepared the P.S.I Report. On page 191 (Exhibit B) Counselor Zimmerman explained that he did not yet have the Report. On page 192 (Exhibit B) Judge Peter McNugh ask Mr Zimmerman for the presentence report, And once again Counsel explains how he does not have it. On pages # 218 + 219 (Exhibit B) you will see where I was sentenced without the P.S.I. Report.

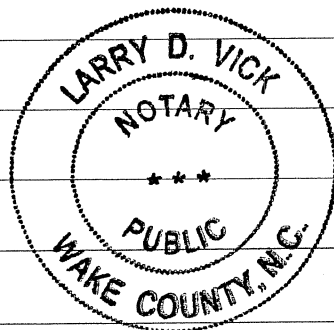
Now, Judge Albright has made the bold claim that the P.S.I Report is on file. I have read much of Article 61, and I have a fair understanding of the "Sentencing Services Act." One Step Further prepared the P.S.I. Report,

But it was never shown to the Court as set forth under N.C.G.S. § 7A-774. Judge Albright has made the bold claim that the Report is on file. Under N.C.G.S. § 15A-1333(b) I am entitled to a copy of this Report. Mr. Churchill, Clerk of Superior Court, would you "PLEASE" send me a copy of the Pre-Sentence Investigative Report? I would truly appreciate your cooperation in this matter.

Furthermore, "I have a question." In cases 97 CRS 39581; 98 CRS 23486; and cases 99 CRS 23241, 42, 43, 44, 46, 47, the Mitigating Factors outweighed the Aggravated Factors 3 to 1. Yet someone marked the WRONG-BOX, and I was sentenced in the Aggravated Range. I received nearly double the amount of time I should have received. Of course Judge Albright FAIL to address this issue, which leads me to believe he did not read my motion. I only point this out to ask, "who is responsible for this ERROR?" Does the Clerk of Court fill out the Findings of Aggravated and Mitigating Factors worksheet (or) Does the District Attorney?

Sincerely,
Theodore M. Kimble

2-11-04



2-11-04

Larry D. Vick

My Commission Expires 1-5-2009.

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.

BY Cdf

STATE OF NORTH CAROLINA,

ORDER

v.

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 (5th 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

1 A. After my brother -- yes. I mean as far as writing
2 it over, yes. But I had it way before his trial.

3 Q. And all those witnesses had testified, and their
4 names and addresses were in the record, and in fact your
5 private investigator had already talked to them; isn't
6 that right, sir?

7 A. I believe I gave most of the information to my
8 attorneys and where to find them.

9 MR. PANOSH: No further.

10 MR. ZIMMERMAN: Nothing further, Your Honor.

11 THE COURT: Come down, please.

12 (Witness stood aside.)

13 THE COURT: Will there be any further
14 evidence for the defendant on the issue of judgment?

15 MR. ZIMMERMAN: On the issue of what, Your
16 Honor?

17 THE COURT: Judgment.

18 MR. ZIMMERMAN: Yes, sir. If Your Honor
19 pleases, just keeping in mind what Your Honor has
20 indicated back in the corridor a little bit ago about
21 continuing either today or going tomorrow, I want to
22 bring it to the Court's attention whatever the Court
23 wishes, and I want to let you know that we had subpoenaed
24 a Mrs. Yvonne Johnson of One Step Further, 621 Eugene
25 Court, Suite 101, here in Greensboro. She has done a

1 presentence diagnostic study on this, uh, a report on
2 Theodore Mead Kimble. She sounded like she was at
3 death's door when I got her on the telephone. I
4 apologize. That's at least one of those rings on here.
5 Uh, she can't get out of bed. She's sick. She couldn't
6 get the report here today, but she said she could get it
7 here tomorrow.

8 THE COURT: Has the report been prepared at
9 this time, Mr. Zimmerman?

10 MR. ZIMMERMAN: That is my information. I
11 have not seen same.

12 THE COURT: Let me have you do this. If
13 you'll make arrangements to have that report picked up,
14 collected and have it delivered to the Chambers upstairs
15 first thing tomorrow morning, I will take the opportunity
16 to review it before the session convenes, and that will
17 save whatever amount of time it would take otherwise to
18 review it.

19 MR. ZIMMERMAN: All right.

20 THE COURT: Just have it please delivered to
21 the Judge's Chambers tomorrow morning as soon as
22 possible, as early as possible.

23 Mr. Panosh -- would that be the balance of
24 your evidence, Mr. Zimmerman?

25 MR. ZIMMERMAN: That would be the balance.

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THE COURT: I understood, Mr. Panosh, you intend to offer victim impact evidence for the State on the issue of judgment?

MR. PANOSH: Yes, Your Honor. Under the statute, they would like to address the Court. I have some of them in writing, and I could provide each, and give the defense these. But they would like to read them into the record and speak to Your Honor.

THE COURT: All right. We'll recess for the evening at this time then. We'll reconvene at 9:30 in the morning. And I will ask you again, Counsel, to deliver the sentence report to the Chambers prior to that time.

(A recess was taken at 5:53 p.m.)

(Court reconvened on March 5, 1999 at 9:35 a.m.)

(All parties present.)

THE COURT: Mr. Zimmerman, with regard to the presentence report you discussed last evening, is that available?

MR. ZIMMERMAN: If Your Honor please, I've been calling ever since 8:00, and I don't believe One Step opens till 9:00. Mrs. Johnson is still ill, but she -- my secretary said that she was going to go over to One Step and then have it brought over here. Perhaps we

1 could go ahead and hear the victim statements, it will
2 probably be here.

3 Anybody here from One Step? Yvonne Johnson?

4 THE COURT: Mr. Panosh, are you ready to
5 proceed with your evidence at this stage?

6 MR. PANOSH: Yes, sir.

7 THE COURT: All right, you may proceed.

8 MR. PANOSH: Your Honor, the victim's family
9 wants to address the Court. First is Patricia Kimble's
10 father.

11 Go ahead and give your name and then say what
12 you want to say.

13 MRS. BLAKLEY: My name is Sheila Blakley.
14 I'm Patricia Blakley Kimble's mother.

15 THE COURT: Ma'am, can I ask you to speak up,
16 please. I'm having some difficulty hearing you.

17 MRS. BLAKLEY: All right. I am Sheila
18 Blakley Kimble's mother. On October the 9th at 9:35 I
19 had a phone call, and that was my daughter-in-law's
20 parents. Let me rephrase that. They were knocking at
21 the door, and I got up and that's when my nightmare
22 began. That was the worstest (sic) thing I've ever been
23 in in my life. Through the grace of God and faith and
24 strength He's given me, that's why I can stand here
25 today. And through our lives, our lives have changed

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
General Court of Justice

CLERK OF SUPERIOR COURT

DAVID L. CHURCHILL, CLERK
EX OFFICIO JUDGE OF PROBATE

GUILFORD COUNTY
PO BOX 3008
GREENSBORO, NC 27402-3008

JUDGE THOMAS W. ROSS, DIRECTOR
ADMINISTRATIVE OFFICE OF THE COURTS

W. DOUGLAS ALBRIGHT
SENIOR RESIDENT JUDGE

THOMAS W. ROSS
RESIDENT JUDGE

HOWARD R. GREESON, JR.
RESIDENT JUDGE

CATHERINE C. EAGLES
RESIDENT JUDGE

HENRY E. FRYE, JR.
RESIDENT JUDGE

Date: 18 March 04

Dear Mr. Theodore Kimble,

This is to acknowledge receipt of your letter, dated _____, listed below is the information you requested the information indicated below is needed before your request can be processed. Please return this form to our office once the necessary information has been provided.

- Full name: _____
- Case/File Number(s): _____
- Charge(s): _____
- Date(s) of conviction(s): _____
- Other: _____

The copies you requested are enclosed with this letter. There is no charge for these copies since this is the *first* time they have been requested and made for you. However, should you request additional copies of these documents, you will be required to pay for them. Additional requests will not be forwarded to you until payment has been received. You will be charged \$2.00 for the first page and \$0.25 for each additional page thereafter, per document, as provided by law. (This includes the indictment, judgment and commitment, transcript of plea and arresting information.)

In accordance with the North Carolina General Statutes, the cost for copies is \$2.00 for the first and \$0.25 for each additional page thereafter per document. The copies will not be forwarded to you until payment in the amount of \$_____ has been received. Please send certified check or money order payable to "Guilford County Clerk of Superior Court". No personal checks will be accepted. This letter should be included with your payment.

(Note: Please be advised that *in forma pauper's* status applies only to the waiver of a filing fee and not copies.

Other: You need to contact your attorney for your request on a P.S. I. report. Our files do not have that information.

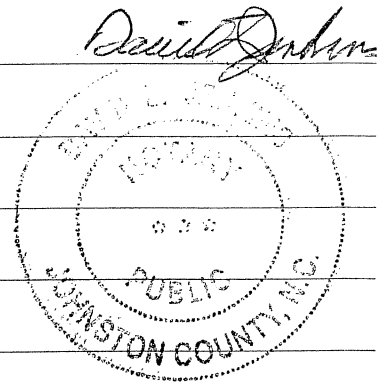
Michelle Jickel
 Deputy Assistant Clerk of Superior Court

cc: Court File # 97 CLS 34581 #2

2-9-07

Ms. Yvonne Johnson
 One Step Further
 621 Eugene Court, Suite 101
 Greensboro, North Carolina

Theodore Kimble
 THEODORE KIMBLE
 1300 WESTERN BLVD.
 RALEIGH, N.C. 27606



I am seeking a copy of my P.S.I. Report. During my Sentence Hearing on March 4 + 5, 1999, My Counsel kept calling your name in open Court. You can see by a copy of the Transcript pages I've enclosed.

On page 190, Counselor Zimmerman listed your name and address. At the top of page 191 Mr Zimmerman referred to this report as a presentence diagnostic study of Theodore Kimble. You will read on page 192 where Judge Peter McHugh actually ask Mr Zimmerman for the presentence report, and once again Counsel refers to you, Ms Johnson. On Transcript pages 218 + 219 you will read where I was sentenced without the P.S.I. Report.

Ms Johnson, I actually remember you coming to the HighPoint jail and interviewing me. Needless to say I've been working on my case and wish to obtain a copy of this report to show the Courts as set forth under N.C. G.S. § 7A-774. I have read much of Article 61 and have a fair understanding of the "Sentencing Services Act". I would like to thank you for working on my case.

Rev. Ronnie Kimble Sr., My father has been to the Clerk of Court. The Clerk stated there is no P.S.I. Report on file in my case. Under N.C. G.S. § 15A-1333(b) I'm entitled to a copy of this report. Since the Report was never filed, the trail leads back to "One Step Further." Ms Johnson would you please send me a copy of the P.S.I. Report you prepared on my case. Thank you for your cooperation in this matter.

Theodore M. Kimble