

STATE OF 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.  
=====

PETITION FOR:

WRIT OF MANDAMUS COMPLAINT

Now comes THEODORE MEAD KIMBLE, Pursuant to North Carolina General Statutes 7A-32(B) and (C) Pro-se, 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 Minimum years and 137.7 MAXIMUM years imprisonment in the above mentioned cases and alleged crimes, Presiding JUDGE PETER M. McHUGH, Petitioner was sentenced ILLEGALLY as a Matter of Law.

3) Petitioner was represented by his "PREVIOUS" sentencing JUDGE H.W. ZIMMERMAN, who retired from the Bench and CONNED Petitioner and his family into allowing him to represent Petitioner as Counsel, "With the PROMISE of Winning the Case." For payment of Parent's life savings in the amount of \$50,000.00. Co-Counsel would be Mr. CRUMPLER Jr., who merely acted as a "PUPPET" for Mr. Zimmerman.

4.) In regards to N.C.G.S. § 7A-32(B) and (C). The Supreme Court has Jurisdiction, exercisable by one Justice or by such number of Justices as the Court may by rule provide, To Issue the Prerogative Writ, Including Mandamus, Prohibition, Certiorari, and Supersedas, In Aid of its own Jurisdiction or in exercise of its General Power to Supervise and Control the Proceedings of any of the other Courts of the General Courts of Justice. The Practice and Procedure shall be as provided by Statute or Rule of the Supreme Court, or, In the absence of Statute or Rule, According to the Practice and Procedure of the Common Law.

The Court of Appeals has Jurisdiction, Exercisable by one Judge or by such number of Judges as the Supreme Court may by rule provide, To Issue the Prerogative Writs, Including Mandamus, Prohibition, Certiorari, and Supersedas, in Aid of its own Jurisdiction, Or to Supervise and Control the Proceedings of any of the Trial Courts of the General Court of Justice, And of the Utilities Commissions and the Industrial Commission. The Practice and Procedure shall be as provided by Statute or Rule of the Supreme Court, Or, In the absence of Statute or Rule, According to the practice and Procedure of the Common Law.

5.) Petitioner filed a "Motion For Appropriate Relief" in the Superior Court of Guilford County North Carolina, Sworn Certificate of Service of said Motion dated October 23, 2003. See EXHIBIT(A), Motion for Appropriate Relief.

6.) Due to ALL the several Miscarriages of Justice throughout the entire Proceedings, Petitioner feels that it is IMPOSSIBLE to receive any "JUSTICE" whatsoever in Superior Court of Guilford County N.C.

7.) As a casual perusal of the record and the EXHIBITS of the enclosed Motion for Appropriate Relief will show; Petitioner's attorney Mr. H.W. ZIMMERMAN was in fact his "Previous" sentencing JUDGE, while still serving the 50-60 month sentence imposed by Judge Zimmerman these Proceedings were going on, which was clearly a "CONFLICT OF INTEREST" from the beginning. Counselor Zimmerman worked with the Prosecutor Mr. Panosh "AGAINST" Petitioner, Provided NO possibility for any chance of Justice and fair play in his case.

See M.A.R. EXHIBIT (EE) JUDGE ZIMMERMAN!

8.) Even Petitioner's Appellate Counsel did NOT represent him Diligently and Zealously within the Bonds of Law. Appellate Counsel neglected and fail to report Prosecutor Misconduct by Prosecutor Panosh, As Petitioner pointed out in his M.A.R. see M.A.R. EXHIBIT (S) "Affidavit of Theodore Mead Kimble SWORN To 10/15/03." Also Appellate Counsel Carman "FAIL" to bring out the FACT Mr. Zimmerman was Petitioner's previous sentencing JUDGE, who sentenced Petitioner to 50-60 months on unrelated charges, And while Petitioner was serving that same sentence, Judge Zimmerman became Counselor Zimmerman to Petitioner,

Representing Petitioner on all above cases, which was a "CONFLICT OF INTEREST" and the 'ENTIRE' Proceedings were ILLEGAL.

9) Petitioner contends that a conviction obtained by Plea of Guilty which was Unlawfully Induced or Not made Voluntary with understanding of the Nature of the Charges and the Consequences of the Plea violated His U.S. Const. AM. 5, 6, 14; N.C. Const. ART I, sec 19, 20 By Counselor Zimmerman's advice COMPELLED/INDUCED Petitioner to take a Plea on "ALL" charges, which was clearly NOT in his Best Interest, signing his life away on charges that were REJECTED by the Grand Jury, Indictments that would be Dismissed by Law, DOUBLE-JEOPARDY, And many more Violations of Law, Telling Petitioner all was "PRE-ARRANGED" for a 20 year Sentence by Prosecutor Panosh, And if Petitioner did NOT Plead to All charges he would be found Guilty and be sentenced to DEATH! Which was a Violation of Due Process and Prosecutor Misconduct, See 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 F.2d 1102 (7TH Cir 1998) and U.S v. UNGER, 665 F.2d 251 (8TH Cir 1981).

10) Petitioner contends that by the Prosecutor and Counselor Zimmerman forcing Petitioner to sign 8 WAIVERS for cases that were already "REJECTED" by the Grand Jury, which refused to Indict on any of the 8 counts for such "FLIMSEY" hearsay evidence, was a Grave Miscarriage of Justice, And the FACT that Petitioner received 70 to 90.4 years for said cases, When the Prosecutor insisted all charges were going

to be consolidated into a 20 year sentence, (EMPHASIS SUPPLIED). By Counselor Zimmerman being a prior JUDGE, He should have known better than to break the law and have NO regard for Petitioner and his life like that, saying it would "ALL" be ran together in one 20 year sentence, See U.S. v. SANDERSON, 595 F.2d. 1021 (5TH Cir. 1979).

11) Petitioner contends that a conviction obtained by the "Unconstitutional Failure" of the State to DISCLOSE to the Defendant, Evidence "Favorable" to the Defendant violates his U.S. Const. AM. 5, 6, 14, NG. Const. ART I Sec. 18, 19, 23. Petitioner contends that sentencing him "WITHOUT" a P.S.I. Report violates Due Process of Law, See M.A.R. EXHIBIT (D.D.) Pages #218-#219 Transcripts. Also see U.S. v. DAVENPORT, 151 F.3d. 1325 (11TH Cir 1998) and U.S. v. BARTHOLOMEW, 974 F.2d. (5TH Cir 1992).

12) Petitioner's Counsel did NOT object to Errors in the P.S.I. Report, and could NOT have if he wanted, since "NO" P.S.I. Report was ever presented to the Court, See WEST v. U.S., 994 F.2d. 518 (8TH Cir 1993).

13) Petitioner contends that having Petitioner Plead Guilty to an INVALID Indictment Charge in case #97CRS 23656 "Arson of an Unoccupied Building" Nov. 3, 97; which was DISMISSED when approx. 8 months later being RE-CHARGED with a different case number 98CRS 23486 "First Degree Arson" July 6, 98; But with the same exact wording, which is in fact DOUBLE-JEOPARDY and Violation of Due Process of Law, 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 Firearm in the First Degree" rested on the same Factual predicate Constitutes Ineffective Assistance of Counsel. In Case at bar, Not only did Appellate Counselor Carman NOT raise the Double-Jeopardy claim, She also FAIL to raise the Conflict of Interest Issue, In the FACT Counselor Zimmerman was Petitioner's prior Sentencing Judge, Nor did she raise any other pertinent issues to this case. See M.A.R. EXHIBITS (N) AND (O). Petitioner finds it rather odd that Appellate Counselor Carman recieved a promotion in the middle of his case, When in FACT she did a presentation equivalent to someone just out of Law-School.

14.) The Prosecutor with the aid of Counselor Zimmerman 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 only Indictment that had "2" Counts out of All the Indictments. The State TRICKED Petitioner 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 (See M.A.R. EXHIBIT "W"), 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 #98CRS 23486, Committing DOUBLE-JEOPARDY, Count One of Case 97CRS 23656 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.

See SCOTT v. WAINWRIGHT, 698 F.2d. 427, 429-30 (11TH Cir. 1983).

15) Petitioner contends that the Prosecutor THREATEN Defense Witnesses, saying "IF" they didn't change their statements and testify AGAINST Petitioner, He would prosecute them to the fullest extent of the Law. Clearly an Act of Prosecutor Misconduct and a BRADY violation. It's totally ILLEGAL for the Prosecutor to tell Defense Witnesses to get out of town, or they had better NOT show at the Kimble trial. See U.S. v. ESTRADA, 849 F.2d. 1304 (10TH Cir 1998), Also See U.S. v. AGUILAR, 90F. SUPP. 1152 (10TH Cir 2000). See M.A.R. EXHIBIT (T) "Newly Discovered Evidence" Statements from witnesses never presented to the Court. See U.S. v. ESCHMAN, 227 F. 3d. 886 (7TH Cir 2000) Due Process requires that Defendant be sentenced on basis of accurate information. See Affidavit of THEODORE MEAD KIMBLE, M.A.R. EXHIBIT (S).

16) Petitioner contends that he was "Denied" his Constitutional Rights by NOT being allowed to Withdraw his Pleas. On January 29, 1999 Petitioner filed a Motion to Withdraw (Letter Form). Copies were sent to the D.A. and Counsel, which "All" vanished, forcing Petitioner to file another Motion to Withdraw Pleas (Letter Form) on Feb. 24, 1999. See EXHIBIT of M.A.R. (U). Counsel further REFUSED to represent Petitioner at the Withdraw Hearing and left Petitioner "Without Counsel". See M.A.R. EXHIBIT (X) Page #3-Transcript. Counsel stated He would remain "NEUTRAL", Refusing to Defend, Aid, and Represent, Clearly Violates Petitioner's U.S. Const. 5, 6, 14; and N.C. Const. ART. I,

sec. 18, 19, 23 Rights to Counsel.

17) Petitioner contends that Counselor Zimmerman's soul purpose in representing the Petitioner as his Attorney, Instead of being his sentencing JUDGE again, was to EXTORT \$50,000<sup>00</sup> from Petitioner's Parents, And whatever else he could possibly get out of them. And to send Petitioner away for the rest of His natural life, Or see Him receive a Death sentence.

18) Petitioner contends that receiving CONSECUTIVE sentences in all cases is a violation of Petitioners Constitutional Rights, Plus sentencing Petitioner in the Aggravating Range on practically all charges was also a violation of all State and Federal Laws. See M.A.R. EXHIBITS (A)(B)(C)(D).

19) Petitioner contends that Counsel and Prosecutor violated all of Petitioner's State and Federal Rights throughout the ENTIRE Proceedings, "Both" broke Laws and Rules as they pleased, Such as the Prosecutor submitting a Motion to the Court to RELEASE William Wayne Stewart from prison "EARLY", which was GRANTED in exchange for a PHONY statement against Petitioner, Clearly violates the Rules in a civilized nation, And should be construed as a BRADY violation, And Prosecutor Misconduct.

20) Petitioner also contends that the Prosecutor agreed to dismiss and give probation on pending charges against witnesses "IF" they changed their statements and testify AGAINST Petitioner, Or be severely Prosecuted on "All" pending



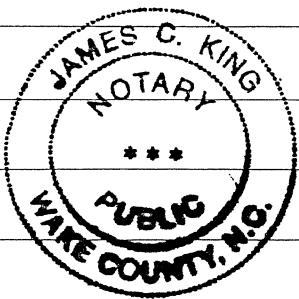
charges constitutes Vindictive Prosecution.

See M.A.R. EXHIBIT (B.B.) Page #165 Lines 3-15 Transcript

2) Petitioner contends that there were "many" more violations of Petitioner's State and Federal Rights, and violations of Law throughout this ENTIRE Proceedings, And if this Honorable Court will just examine the enclosed "Motion for Appropriate Relief" and Exhibits for Proofs, EXHIBIT (A), This Court will surely see that this case is clearly "ONE OF A KIND!" Petitioner was RAILROADED!, And at the mercy of his former sentencing Judge who worked as his Counsel. After Petitioner's family turned over their entire life savings to Mr. Zimmerman, Petitioner could NOT attempt to retain another Attorney. At the time a Plea was entered Petitioner was on medication and didn't know if he was coming or going, Counselor Zimmerman took full advantage of Petitioner's weaken mental state. Petitioner was under the stress of Solitary segregation, He had been placed in segregation prior to the Jan 28, 1999 hearing, And could NOT see his family or friends, Despite the FACT the MAR. EXHIBIT (F.F.) says One visit a week, The Prison Records will show Petitioner was DENIED! The constant pressure from Counselor Zimmerman and the Prosecutor constantly threatening Petitioner with the Death Sentence Coerced a Plea of Guilty.

WHEREFORE PETITIONER PRAYS THIS  
HONORABLE COURT ORDER:

- 1.) That Petitioner's sentence be set aside and Petitioner be remanded to Superior Court of Guilford County for Re-Sentencing.
- 2.) That Petitioner be Granted an Evidentiary Hearing on all Factual Issues.
- 3.) That this Honorable Court demand the Superior Court of Guilford County to rule on Petitioner's Motion for Appropriate Relief.
- 4.) That in the interest of "THE ENDS OF JUSTICE" This Honorable Court Grant Relief from the Judgments.
- 5.) Such other and further Relief this Court Deems Appropriate and Proper.



This the 4 Day of November 2003.

Pro-se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

1300 Western Blvd.

Raleigh, N.C. 27606

Witness: James C. King

Date: 11-4-03

My Commission Expires:

~~My Commission Expires 12-31-2007~~

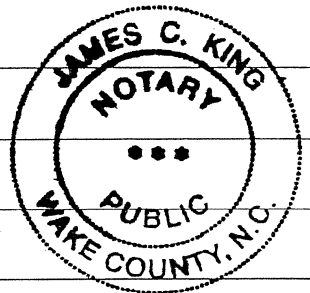
# VERIFICATION

I, Theodore Mead Kimble, Being First Duly Sworn Depose and Say, I am the Petitioner in the foregoing Petition for Writ of Mandamus Complaint, I have read the same, and the statements contained therein are true, as for any statements made on information and belief, I say they are made in good faith, and I believe to be True, Signed under Penalty of Perjury this the 4 Day of November 2003.

Pro-se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

Sworn to and before me this the 4 Day  
of November 2003.



Witness: James C. King

Date: 11-4-2003

My Commission Expires:

My Commission Expires 12-8-2007

# PROOF OF SERVICE

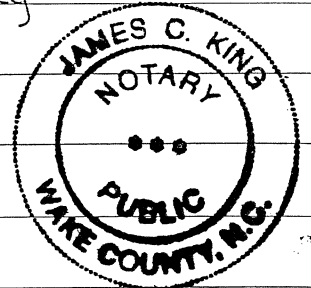
I do hereby certify that the foregoing Petitioner's  
Petition for Writ of Mandamus Complaint copy was  
Duly served by placing the same in the U.S. Mail  
Postage pre-paid and addressed as follows:

Mr. Roy Cooper  
Attorney General  
P.O. Box 629  
Raleigh, NC. 27602

Pro-se: Theodore Mead Kimble  
THEODORE MEAD KIMBLE  
1300 Western Blvd.  
Raleigh, NC. 27606

Sworn to and before me this the 4<sup>th</sup> Day  
of November 2003.

Witness: James C. King  
Date: 11-4-03



My Commission Expires: 12-9-2007