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November 8, 1999

The Honorable Peter M. McHugh  
Resident Superior Court Judge  
Rockingham County Courthouse  
Post Office Box 97  
Wentworth, North Carolina 27375-0097

Re: *State v. Theodore Mead Kimble*  
97 CrS 39581; 98 CrS 23486, 23656; 99 CrS 23241-23248

Dear Judge McHugh:

Pursuant to Rule of Appellate Procedure 11(c), I request that you settle the record on appeal in the above-captioned cases. You were the presiding judge at the January 25, 1999 Criminal Session of Guilford County Superior Court when defendant Kimble entered his guilty and *Alford* pleas; and at the March 1, 1999 Criminal Session of Guilford County Superior Court when you denied defendant Kimble's motion to withdraw his pleas and subsequently conducted a sentencing hearing. On March 12, 1999, defendant gave notice of appeal and, on March 15, 1999, you appointed the Appellate Defender's Office to perfect the appeal.

On October 7 and October 15, 1999, defendant served his proposed record on appeal on Assistant District Attorney Richard E. Panosh. Page 22 of the proposed record, as subsequently amended to comply with one of Prosecutor Panosh's objections, contains the following proposed stipulation:

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 personal phone calls and are permitted only one non-contact non-attorney week-day visit per week.

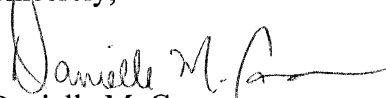
Defendant believes that the proposed stipulation concerning his confinement during the time period between entry of his guilty pleas and his *pro se* motion to withdraw those pleas is proper under Appellate Rules 2, 9, and 11 because it is relevant to proposed assignment of error number 6 -- “[t]he trial court’s findings of fact, conclusions of law, and Order denying defendant’s motion to withdraw his guilty pleas and *Alford* pleas, and entry of judgment and commitment in all cases . . . .” -- and because it is true. The conditions of defendant’s confinement were included in the proposed stipulation to provide background and show some circumstances affecting the delay between entry of defendant’s pleas and his *pro se* motion to withdraw those pleas. Moreover, while those circumstances were not elicited in defendant’s sworn testimony at the motion to withdraw hearing, defendant was effectively proceeding *pro se* at that hearing. Finally, defendant’s proposed stipulation is true. The information contained in the stipulation was obtained from a Department of Corrections computerized record check, a telephone conversation with officials at Southern Correctional Institution (Officer Tidwell and Records Office employee Wutzer), and the enclosed written correspondence with Superintendent Jay Clark.

On November 5, 1999, Prosecutor Panosh filed a document entitled “Objection to Proposed Record on Appeal and Request Settlement Conference,” which objects (at “Statement Concerning the Defendant’s Confinement,” Objection 1.f.) to the last sentence of the stipulation on the ground that it is inaccurate. As a result, defendant has altered that last sentence of his proposed stipulation to include “*personal* phone calls” and “*non-attorney* week-day visit,” as shown above, to make it more accurate. Moreover, defendant has altered the Organization of the Trial Tribunal in accordance with Mr. Panosh’s first objection. See Enclosed Organization of Trial Tribunal.

However, Prosecutor Panosh also objects to including the proposed “Statement Concerning the Defendant’s Confinement” in its entirety on the additional grounds set forth in Objection 1.a. through 1.e. As shown above, defendant disagrees with the State’s objection and requests that you settle the record on appeal. I have enclosed copies of all relevant documents.

I would like to settle the record in the manner most convenient to you and the parties, and would be happy to settle the record through a telephone conference call or a simple written order. Thank you for your time.

Sincerely,

  
Danielle M. Carman  
Assistant Appellate Defender

Enclosure

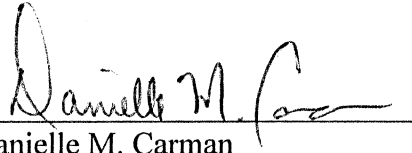
cc: Guilford County Clerk of Superior Court  
Richard E. Panosh, Assistant District Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that the original Request for Settlement of Record on Appeal has been duly served by first-class mail, postage prepaid upon the Honorable Peter M. McHugh, Resident Superior Court Judge, Rockingham County Courthouse, Post Office Box 97, Wentworth, North Carolina 27375-0097, by placing it in a depository for that purpose.

I further hereby certify that a copy of the above and foregoing Request for Settlement of Record on Appeal has been duly served upon Richard E. Panosh, Post Office Box 10769, Greensboro, North Carolina 27404-0769, by first-class mail, postage prepaid.

This the 8th day of November, 1999.

A handwritten signature in cursive script, appearing to read "Danielle M. Carman", written over a horizontal line.

Danielle M. Carman  
Assistant Appellate Defender