

NO.

EIGHTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA)	
VS)	FROM GUILFORD COUNTY
RONNIE LEE KIMBLE,)	97CRS - 39580
DEFENDANT)	NO. COA99 - 981

MOTION FOR APPOINTMENT OF COUNSEL

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

DEFENDANT, RONNIE LEE KIMBLE, RESPECTFULLY MOVES THE SUPREME COURT OF NORTH CAROLINA PURSUANT TO THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND THE GENERAL STATUTES OF NORTH CAROLINA TO APPOINT APPELLATE COUNSEL TO ASSIST THE DEFENDANT IN FILING AND PERFECTING HIS APPEAL BEFORE THE SUPREME COURT OF NORTH CAROLINA. IN SUPPORT OF THIS MOTION THE DEFENDANT SHOWS THE FOLLOWING:

FACTS

THIS CASE CAME ON FOR TRIAL DURING THE AUGUST 3, 1998 SESSION OF GUILFORD COUNTY CRIMINAL SUPERIOR COURT BEFORE THE HONORABLE C. PRESTON CORNELIUS, JUDGE PRESIDING. THE DEFENDANT WAS TRIED CAPITALLY BEFORE A JURY AND FOUND GUILTY OF FIRST DEGREE MURDER IN 97CRS - 39580; CONSPIRACY TO COMMIT MURDER IN 97CRS - 23654 AND FIRST DEGREE ARSON IN 98CRS - 23485. AT THE SENTENCING PROCEEDING THE JURY RECOMMENDED LIFE IMPRISONMENT WITHOUT PAROLE AND THE COURT IMPOSED THAT SENTENCE. IN ADDITION THE COURT SENTENCED THE DEFENDANT TO 55 TO 75 MONTHS ON THE ARSON CHARGE TO RUN AT THE EXPIRATION OF THE LIFE SENTENCE AND 135 TO 171 MONTHS ON THE CONSPIRACY CHARGE TO RUN AT THE EXPIRATION OF THE ARSON SENTENCE. THE DEFENDANT FILED NOTICE OF APPEAL ON SEPTEMBER 3, 1998 BEFORE THE HONORABLE C. PRESTON CORNELIUS TO THE COURT OF APPEALS. THIS CASE WAS HEARD IN THE COURT OF APPEALS IN AUGUST 2000 BEFORE THE HONORABLE SMITH, GREENE AND EDMUNDS, JUDGES PRESIDING.

THE COURT OF APPEALS SLIP OPINION WAS FILED 3, OCTOBER 2000 WITH A FINDING OF NO ERROR. THE DEFENDANT'S ATTORNEYS OF RECORD THROUGHOUT ALL PROCEEDINGS WERE JOHN B. HATFIELD, JR. AND W. DAVID LLOYD. AFTER DEFENDANT'S CONVICTION HE WAS COMMITTED TO THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS AND IS PRESENTLY ASSIGNED TO PASQUOTANK CORRECTIONAL INSTITUTION.

REASON WHY COUNSEL SHOULD BE APPOINTED

1. THE DEFENDANT'S COUNSEL HAS DECLINED TO SEEK ANY FURTHER REVIEW AND DID NOT NOTIFY THE DEFENDANT OF THIS DECISION OR THE COURT OF APPEALS JUDGMENT UNTIL AFTER THE DEADLINE FOR FILING NOTICE OF APPEAL PURSUANT TO RULE 14.(A), (B) (2), NCR APP. P. (PLEASE SEE EXHIBIT A)
2. THE DEFENDANT IS UNABLE TO AFFORD COUNSEL AND HAS BEEN DETERMINED BY THE TRIAL COURT TO BE INDIGENT.
3. AS AN INDIGENT PERSON, THE DEFENDANT IS ENTITLED TO COURT APPOINTED COUNSEL AND THE OTHER NECESSARY EXPENSES OF REPRESENTATION PURSUANT TO NCGS 7A - 450.
4. THE LAW IS CLEAR ON BOTH THE ENTITLEMENT AND SCOPE:

PURSUANT TO NCGS 7A - 450. (B) WHENEVER A PERSON, UNDER THE STANDARDS AND PROCEDURES SET OUT IN THIS SUBCHAPTER, IS DETERMINED TO BE AN INDIGENT PERSON ENTITLED TO COUNSEL, IT IS THE RESPONSIBILITY OF THE STATE TO PROVIDE HIM WITH COUNSEL AND THE OTHER NECESSARY EXPENSES OF REPRESENTATION. THE PROFESSIONAL RELATIONSHIP OF COUNSEL SO PROVIDED TO THE INDIGENT PERSON HE REPRESENTS IS THE SAME AS IF COUNSEL HAD BEEN PRIVATELY RETAINED BY THE INDIGENT PERSON. AND PURSUANT TO NCGS §7A - 451. SCOPE OF ENTITLEMENT. (A) AN INDIGENT PERSON IS ENTITLED TO SERVICES OF COUNSEL IN THE FOLLOWING ACTIONS AND PROCEEDINGS: (1) ANY CASE IN WHICH IMPRISONMENT, OR FINE OF FIVE HUNDRED DOLLARS (\$500.00), OR MORE, IS LIKELY TO BE ADJUDGED; (B) IN EACH OF THE ACTIONS AND PROCEEDINGS ENUMERATED IN SUBSECTION (A) OF THIS SECTION, ENTITLEMENT TO SERVICES OF COUNSEL BEGINS AS SOON AS FEASIBLE AFTER THE INDIGENT IS TAKEN INTO CUSTODY OR SERVICE IS MADE UPON HIM OF THE CHARGE, PETITION, NOTICE OR OTHER INITIATING PROCESS. ENTITLEMENT CONTINUES THROUGH ANY CRITICAL STAGE OF ACTION OR PROCEEDING, INCLUDING, IF APPLICABLE: (C) REVIEW OF ANY JUDGMENT OR DEGREE PURSUANT TO G.5. 7A - 27, 7A - 30. (1), 7A 30 (2), AND SUBCHAPTER XIV OF CHAPTER IS A OF THE GENERAL STATUTES.

5. THE DEFENDANT INTENDS TO FILE NOTICE OF APPEAL TO THE SUPREME COURT OF NORTH CAROLINA PURSUANT TO NCGS 7A - 30. (1) AND RULE 14, N.C.R. APP.P..
6. THE DEFENDANT INTENDS TO PRESENT TO THE COURT THAT HIS ATTORNEYS DID NOT ACT IN HIS BEST INTEREST AND NOT ONLY WAS THE COURT OF APPEAL DECISION BASED ON PURJURED TESTIMONY WITHOUT THEIR KNOWLEDGE BUT IT WAS ALSO IN ERROR OF LAW AND CONFLICT OF PRIOR COURT RULINGS.
7. THE DEFENDANT HAS NO FORMAL EDUCATION IN LAW AND HIS KNOWLEDGE AND RESOURCES ARE LIMITED. WITH THE SUBSTANTIAL AMOUNT OF RECORDS IN THIS CASE AND THE COMPLEX ISSUES THE DEFENDANT IS AT DISADVANTAGE WHEN COMPARED TO THAT OF THE STATE.
8. THE SIXTH AND FOURTEENTH AMENDMENTS TO U.S. CONSTITUTION, AND AS WELL BY COURT RULE (FED R. CRIM. P. 44) AND STATUTE (18 U.S.C.A. § 3006A) GUARANTEES A CRIMINAL DEFENDANT WHO IS FINANCIALLY UNABLE TO RETAIN PRIVATE COUNSEL, THE RIGHT TO COUSEL AND EFFECTIVE ASSISTANCE OF COUNSEL.

WHEREFORE, THE DEFENDANT RESPECTFULLY PRAYS THE COURT WILL APPOINT HIM COUNSEL TO ASSIST HIM IN HIS APPEAL.

RESPECTABLE SUBMITTED THIS 15TH DAY OF NOVEMBER 2000.

Ronnie Lee Kimble

RONNIE LEE KIMBLE, DEFENDANT
PASQUOTANK CORRECTIONAL INSTITUTION
527 COMMERCE DRIVE
ELIZABETH CITY, NC 27906

Ex: A

W. DAVID LLOYD
ATTORNEY AND COUNSELLOR AT LAW
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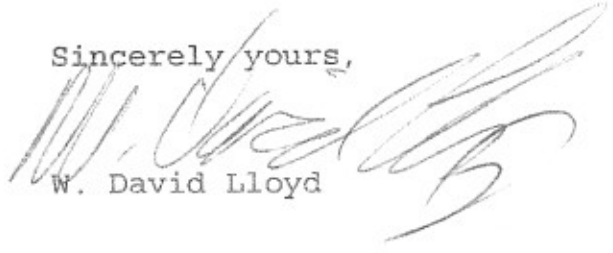
October 17, 2000

Ronnie L. Kimble 0628799
Odom Corr. Rt. 1 Box 36
Jackson, NC 27845

Dear Ronnie:

Enclosed is a copy of the opinion in your case. As you probably already know, we lost. I have considered the opinion at length and have talked to other lawyers including Jack. I simply see no realistic basis for hope of a reversal in the N. C. Supreme Court. Therefore, Jack and I decline to seek certiorari or discretionary review in your case. If you send your father over, I will be glad to turn over your file to him. You have 35 days from the date of the opinion, October 3, 2000 to seek discretionary review. You would need to file with our Supreme Court in order to exhaust state remedies to preserve any federal habeas options. I wish you well.

I am and remain,

Sincerely yours,

W. David Lloyd

WDL/ld
Enclosure:
cc: Jack Hatfield

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT THE FOREGOING MOTION FOR EXTENSION OF TIME AND MOTION FOR APPOINTMENT OF COUNSEL HAS BEEN SERVED THIS DAY BY DEPOSITING A COPY THEREOF IN A DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE IN A FIRST-CLASS POSTAGE - PREPAID ENVELOPE PROPERLY ADDRESSED AS FOLLOWS:

MIKE EASLEY, ATTORNEY GENERAL
N.C. DEPARTMENT OF JUSTICE
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602

THIS THE 15TH DAY OF NOVEMBER, 2000

A handwritten signature in cursive script that reads "Ronnie Lee Kimble".

RONNIE LEE KIMBLE, DEFENDANT
PASQUOTANK CORRECTIONAL INSTITUTION
527 COMMERCE DRIVE
ELIZABETH CITY, NORTH CAROLINA 27906