

1 on the document.

2 THE COURT: All right, sir.

3 MR. KIMBLE: Uh, I've had no time to review
4 the document. No prior knowledge to it. I'd also like
5 to move -- upon sitting here reviewing it, it was filled
6 out when they didn't give me the medication. How could
7 they have known when I got it and when I didn't. If
8 you'll note on the 25th, I was in court that day and they
9 filled it out as though they had administered it to me.
10 So, I object---

11 THE COURT: All right, thank you.

12 MR. KIMBLE: ---to the introduction of the
13 information.

14 THE COURT: Objection is overruled.

15 (Pause.)

16 THE COURT: At this time is there anything
17 further for the defendant or for the respondent State?

18 MR. PANOSH: No, Your Honor.

19 THE COURT: All right, thank you. Enter this
20 order. This matter is before the Court upon the
21 defendant's motion submitted pro se to the Court that he
22 be allowed to withdraw a plea of guilty, which the
23 defendant entered before the Court on January 28th, 1999
24 before the undersigned presiding judge. Upon the
25 defendant's appearance in court on January 28th, 1999,

1 the defendant being represented by counsel, Mr. Zimmerman
2 and Mr. Crumpler, the Court proceeded to adjudicate the
3 defendant's plea of guilty upon the offenses of second
4 degree murder, conspiracy to commit first degree murder,
5 arson, and eight counts of solicitation to commit murder.
6 Pursuant to statute, the Court thereupon conducted a plea
7 colloquy with the defendant, and the Court has directed
8 upon notification that the defendant has presented this
9 motion, transcript of the proceedings before the Court on
10 January 28th be promulgated by the verbatim court
11 reporter assigned to preside at that session. And the
12 transcript has been made available to the Court. The
13 Court has had the opportunity to review the transcript of
14 said proceeding.

15 This motion is called for hearing upon the
16 motion of the defendant, and with his consent. Present
17 at all times during the conduct of this hearing was the
18 defendant, who argued this motion pro se on his own
19 behalf, his attorneys, Mr. Zimmerman and Mr. Crumpler,
20 and present representing the State of North Carolina is
21 Assistant District Attorney Richard Panosh.

22 The Court has had the opportunity to see and
23 to observe the witnesses who have testified in this
24 hearing, and the Court has had the opportunity to
25 determine what weight and credibility to assign to the

1 testimony of each witness who has testified.

2 Based upon the testimony presented at this
3 hearing, and based upon the Court's review of the records
4 of this proceeding, the Court makes the following
5 findings of fact, combined findings of fact and
6 conclusions of law.

7 The Court concludes as a matter of law that
8 pursuant to the rule enunciated in State of North
9 Carolina versus Handy in 326 N.C. 532, a presentence
10 motion to withdraw a plea of guilty should be allowed if
11 the defendant meets the burden of showing that his motion
12 to withdraw is supported by some fair and just reason.
13 The factors which this Court has considered in
14 determining whether the defendant should be permitted to
15 withdraw his guilty plea upon a showing of some fair and
16 just reason include the following factors,
17 determinations, and circumstances. Whether the defendant
18 has actually asserted his legal innocence, the Court has
19 determined and considered whether the strength of the
20 State's proffer of evidence is strong or is not strong to
21 establish the defendant's guilt to the offenses to which
22 he's entered a plea of guilty. The Court has considered
23 the length of time between the defendant's entry of the
24 guilty plea and his desire to change the guilty plea.
25 The Court has determined whether the, and considered

1 whether the defendant has had competent counsel at all
2 relevant times to the issues presently before the Court.
3 Court has furthered considered such circumstances as any
4 misunderstanding of the consequences of the guilty plea
5 by the defendant, any hasty entry of the guilty plea by
6 the defendant, confusion or coercion exerted upon the
7 defendant. Based upon the credible evidence introduced
8 at this hearing, the Court finds as a fact that during
9 the plea adjudication hearing on January 28th, 1999 the
10 State of North Carolina, pursuant to the stipulation of
11 the defendant, was permitted to make a factual showing to
12 establish a factual basis for the plea. The Court finds
13 that the evidence offered by the State during this
14 forecast and during the factual showing was
15 extraordinarily strong, and pointed unerringly to the
16 guilt of the defendant to the offenses then before the
17 Court. The Court finds as a fact that following the
18 entry of the plea of guilty on January 28th, 1999 the
19 defendant by letter, which was dated February 24th, 1999
20 bearing a postal mark of February 25th, 1999, and
21 received and filed by the Clerk of Superior Court on
22 February 26th, 1999, that the defendant made known to the
23 Court his desire and his intent to withdraw the plea of
24 guilty. The Court finds that the expiration of
25 approximately 20-some days from the time of the entry of

1 the guilty plea to the time of the notice of the intent
2 to withdraw is a long period of time, which mitigates and
3 causes the Court to determine that a much stronger
4 showing of fair and just reason for the withdrawal of the
5 plea must be established by the defendant. The Court
6 finds as a fact, based upon the Court's perusal of the
7 records in this action, that the defendant has been
8 represented in this action at all times by competent
9 counsel, and the defendant makes no assertion otherwise.
10 The Court finds as a fact that the defendant, shortly
11 after being served with a warrant for arrest alleging
12 first degree murder, was appointed to be represented by
13 the Public Defender of Guilford County, Mr. Wallace
14 Harrelson. Within a number of days following that
15 appointment, the defendant was provided the services of
16 Robert McClellan to assist Wallace Harrelson in the
17 representation of the defendant. Thereafter Mr.
18 Harrelson and Mr. McClellan represented the defendant
19 until the Public Defender's Office was permitted by order
20 of the Court to withdraw by reason of a conflict, and
21 concurrent with the order permitting the withdrawal of
22 Mr. Harrelson, Mr. John Bryson of the Guilford County Bar
23 was appointed to assist Mr. McClellan in the
24 representation of the defendant. Mr. McClellan and Mr.
25 Bryson continued to represent the defendant at all times

1 following their appointment until the date of December
2 3rd, 1998. On said date at a hearing before the
3 undersigned Court, the defendant, under oath and having
4 been advised of the premises, instructed the Court that
5 it was his intention to discharge Mr. McClellan and Mr.
6 Bryson, and to retain Mr. Crumpler and Mr. Zimmerman.
7 The Court makes findings of fact and conclusions of law
8 that the defendant's determination to retain Zimmerman
9 and Crumpler was his own voluntary choice made freely and
10 intelligently, and that the decision to discharge
11 appointed counsel was likewise so made.

12 The Court has had the occasion and the
13 responsibility to review fee petitions submitted by Mr.
14 Bryson and Mr. McClellan. And the Court takes judicial
15 notice of the fee petitions which are incorporated in the
16 court file. That the attorneys submitted a combined
17 hours of representation for the defendant in excess of
18 500 hours. The Court has reviewed these fee petitions
19 and determined that the petitions are reasonable, and are
20 not inflated or otherwise excessive.

21 From the date of December 3rd, 1998 until the
22 present date, the defendant has at all occasions been
23 represented by Mr. Zimmerman and Mr. Crumpler. During
24 the course of this hearing, the defendant has presented
25 to the Court no complaint or no dissatisfaction with the

1 services of his attorneys, and has in fact advised the
2 Court that he wishes them to continue to represent him in
3 this matter.

4 Based upon the foregoing, the Court concludes
5 as a matter of law that the defendant at all times
6 relevant to this consideration has been represented by
7 highly competent, skilled and expert attorneys, who have
8 extensive experience in the trial of capital cases and
9 grievous and serious criminal proceedings.

10 The Court has considered whether the
11 defendant did not understand the consequences of his
12 guilty plea. Upon a review of the record, it is clear to
13 the Court that the defendant made unequivocal responses
14 to the Court on each inquiry during the January 28
15 proceeding, and indicated that he understood completely
16 in each and every respect the nature of the proceeding
17 and the consequences of his plea. The Court in fact
18 finds that the defendant benefitted the plea arrangement
19 entered into on January 28, 1999. And that in return for
20 the defendant's pleas of guilty to the offenses
21 heretofore recounted, the State agreed to and did in fact
22 dismiss a charge of first degree murder. The defendant
23 was thereupon allowed to avoid the possible imposition of
24 the death penalty.

25 The Court has considered whether the plea was

1 entered in haste under coercion or at a time when the
2 defendant was confused or otherwise impaired. The Court
3 finds as a fact that at the date of the entry of the plea
4 of guilty in this action, which was January 28th, 1999,
5 that this date was not on the eve of trial, and that the
6 jury had not been convened or summonsed to hear the
7 issues in the capital proceeding against the defendant.
8 In fact, although the term of January 25th had been
9 tentatively scheduled for the commencement of the trial,
10 that date had been continued upon the motion of the
11 defendant. After having been represented by Mr.
12 Zimmerman and Mr. Crumpler, the defendant filed a motion
13 to continue and that was consented to by the State of
14 North Carolina. The Court retained this matter on the
15 calendar for the term of January 25th to determine the
16 defendant's motion for change of venue, and to determine
17 certain other pretrial motions, which the defendant,
18 through his attorneys, had indicated an intention or
19 desire to prosecute. Therefore, this plea arrangement
20 was not made on the eve of trial.

21 Furthermore, the Court finds as a fact and
22 concludes as a matter of law that the defendant was in no
23 way impaired or under the influence of impairing
24 substances, or otherwise unable to understand the nature
25 of the proceedings. During the proceedings before the

1 Court on January 28th, the Court observed closely the
2 defendant's demeanor and his responses to the Court's
3 questions, and the Court satisfied itself that the
4 defendant's pleas were made freely, voluntarily and
5 understandingly.

6 Furthermore, no credible evidence of any
7 nature has been received during hearing of this motion to
8 lead the Court to find by any standard of proof that the
9 defendant was coerced, threatened, or under the influence
10 of any impairing or intoxicating substance at the time
11 the plea was made.

12 The Court finds as a fact and concludes as a
13 matter of law that the defendant has wholly failed to
14 meet his burden of showing to the Court that the motion
15 to withdraw is supported by some fair and just reasons.
16 The defendant having failed to meet his burden of proof
17 to show to the Court any just and fair reason to withdraw
18 the guilty plea, the motion to withdraw the guilty plea
19 is denied. The defendant's objection to this order is
20 noted for the record. The Court will retain jurisdiction
21 to enter a final order in this action containing such
22 further findings of fact and conclusions of law as may be
23 supported by the record in this action and the competent
24 evidence received.

25 MR. KIMBLE: I'd like to object to the entry

1 of that order, sir.

2 THE COURT: What?

3 MR. KIMBLE: I'd like to object to that
4 entry.

5 THE COURT: You may do that. Objection is
6 noted. Are you ready to proceed?

7 MR. CRUMPLER: Your Honor, I believe at one
8 point you mentioned that a hearing January 25th, 1995.

9 THE COURT: I'm sorry, January 28th, 1999. I
10 will correct any, uh---

11 MR. CRUMPLER: I think you were right on the
12 day and month, but I did hear '95.

13 THE COURT: I'm sorry, I will correct that
14 upon review.

15 MR. PANOSH: Your Honor, with your
16 permission, we'd like to proceed at 2:00. I don't think
17 we can finish this quickly.

18 THE COURT: Okay, we'll be in recess until
19 2:00.

20 (A lunch recess was taken.)

21 THE COURT: State ready to proceed?

22 MR. PANOSH: Yes, sir.

23 THE COURT: Defendant ready to proceed?

24 MR. ZIMMERMAN: Yes, Your Honor.

25 THE COURT: Matter is before the Court for