

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

FILED

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GUILFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA

v.

THEODORE MEAD KIMBLE

DEFENDANT.

IN THE GENERAL COURT

OF JUSTICE

SUPERIOR COURT DIVISION

FILE NO.'s 97 CRS 23656

97 CRS 39581; 98 CRS 23486

99 CRS 23241-48

MOTION FOR APPROPRIATE RELIEF

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NOW COMES, THE DEFENDANT, THEODORE MEAD KIMBLE PRO-SE

IN THE ABOVE-CAPTIONED CASE'S, AND RESPECTFULLY MOVE THIS HONORABLE COURT, PURSUANT TO N.C.G.S. 15A-1411, ET. SEQ., FOR APPROPRIATE RELIEF FROM THE DEFENDANT'S CONVICTION AND SENTENCES IN SAID

CASES. IN SUPPORT OF THIS MOTION, DEFENDANT SHOWS THE COURT:

FACTS

1.) I AM ASKING THE COURT TO REVIEW THE LEGALITY OF THE FOLLOWING CONVICTIONS WHICH I AM PRESENTLY OBLIGATED TO SERVE: DATE OF CONVICTION WAS MARCH 5, 1999. PRESIDING JUDGE PETER M. McHUGH, IT WAS A GUILTY PLEA TO SECOND DEGREE MURDER 97CRS39581; FIRST DEGREE ARSON 98CRS 23486; THE CHARGE OF CONSPIRACY TO COMMIT FIRST DEGREE MURDER CASE # 97 CRS 23656 WAS "SUPPOSED" TO BE "DISMISSED" PER PLEA AGREEMENT UPON PLEA OF GUILTY,

However Petitioner was sentenced to 163-205 months REGARDLESS.

Petitioner took an "ALFORD" plea in cases 99 CRS 23241-48, After being "TRICKED" and "DECEIVED" into signing "WAIVERS" to waive the Findings and the Return of Bills of Indictment, and agreed that the above said cases may be tried upon the above information on the BILL OF INFORMATION SHEETS, by prosecutor RICHARD PANOSH, and attorneys H.W. ZIMMERMAN JR., FRED G. CRUMPLER JR., on January 28, 99 making me believe it was in my best interest, for which Petitioner received a total of a minimum of 840 months and maximum of 1,084 months on those "8" charges alone, which equals 70 to 90.4 years, So by counsel deceiving Petitioner into signing those papers, Petitioner was actually "THROWING HIS LIFE AWAY" without even having the Grand Jury show they be-
lieved there would be enough evidence to indict on said charges, Solely on the word of a known Jailhouse thief, Homosexual, and habitual liar, which "FOUR" other witnesses testified to those facts, So it's as if counsel was working against Petitioner, which was obviously Ineffective Assistance of Counsel. As if Petitioner had no counsel at all. Petitioner wants to bring out the "FACT" attorney H.W. ZIMMERMAN "WAS" the sentencing JUDGE whom had sentenced Petitioner on December , 1997 to a total of 50-60 months, For B.E./ Larceny charges, and while serving that sentence Mr Zimmerman came off the bench and went into private practice, Petitioner and his family hired F.G. Crumpler Jr. from a law firm in Winston-Salem (N.C.) Mr Zimmerman had just started working at the same law firm. Mr Zimmerman wanted to team-up with Mr Crumpler to represent Petitioner. (Judge) Zimmerman told Petitioner and his family that he could win the case for \$60,000 dollars; That since he had served as a Judge he could "ARRANGE" everything. A month or so after retired Judge Zimmerman took my case and had received full payment, he started asking Petitioner's family for more money, when Mr Zimmerman learned they had no-more money to give, Mr Zimmerman changed his statement from how he could

WIN the case, to how Petitioner must take a "20 year PLEA BARGAIN". IF Petitioner did NOT take the 20 year plea bargain he would be put to death. Petitioner had hired H.W. Zimmerman out of DURESS, after his previous attorneys had told him the same thing. Mr. Zimmerman coerced Petitioner to sign the said WAIVERS. He assured Petitioner everything was ARRANGED, Petitioner was to get 20 years sentence total for "Everything," Although it wasn't shown on the Plea Bargain when signed. As Mr. Zimmerman stated, he had "PULL" with the Judge (Peter McHugh) and Prosecutor (Richard Panosh), as he worked with them when he was a Judge HIMSELF, when sentenced, Petitioner received a total of 1,289 minimum months and 1,651 maximum months on all sentences, which were all ran consecutively. Attorney (Judge) Zimmerman showed prejudice toward Petitioner, his own client. Clearly a Miscarriage of Justice and conflict of interest. ^{EXHIBIT} (EE)

2). Petitioner's attorney filed Notice of Appeal in the N.C. Court of Appeals on March 12, 1999.

3). On October 7, 1999 Petitioner's appellate counsel assigned, MS. DANIELLE M. CARMAN filed The Proposed Record on Appeal, ON APRIL 20, 2000, Appellate Counsel sent Petitioner a copy of the State's brief. Petitioner had told Appellate Counsel to make sure that she brought it to the Courts attention in her assignment of Errors, The "FACT" that Mr. Zimmerman WAS the sentencing JUDGE who sentenced Petitioner on the unrelated charges (to begin with), and how he had assured Petitioner and his family how he had everything under control, How he would use his INFLUENCE from being a former Judge to ensure that Petitioner won his case, How a WIN changed to a 20 year plea agreement when no more money could be sent. Petitioner would receive a 20 year sentence on ALL charges, how Petitioner was told the reason it couldn't be in the Plea Bargain because it would draw ATTENTION and may arouse SUSPICION that it had all been PRE-ARRANGED secretly, When in FACT, Mr. Zimmerman's only GOAL was to

send Petitioner away for the Rest of HIS LIFE! And get PAID \$50,000 for Doing It!

Yet Appellate Counsel Carman fail to say one word about these FACTS in her ASSIGNMENT of ERRORS! Which shows Ineffective Assistance of Appellate Counsel, and Grave Miscarriage of Justice!

4). The entire time Petitioner's appeal was in the N.C. Court of Appeals, Petitioner repeatedly told Appellate Counsel to file a motion for Appropriate Relief, To bring out FACTS that were NOT able to be put in her brief. Like the FACT Mr. Zimmerman was the previous sentencing JUDGE, and how he TRICKED Petitioner into allowing him to represent Petitioner through FALSE Promises, And at the threat of receiving a DEATH Penalty. Still Appellate Counsel refused to fill a M.A.R., which would be allowed to be filed in the Court of Appeals, Instead of in Superior Court of Guilford County where Petitioner was "SHANGHAIED" and many of his RIGHTS were violated, STATE and CONSTITUTIONAL RIGHTS, and Petitioner was sentenced ILLEGALLY, But Counsel Carman stated she does NOT file Motions for Appropriate Relief. Counsel could have brought out all kinds of facts NOT included in her brief, As Rules state, Pursuant to 15A-1418, which Provides in pertinent parts as FOLLOWS:

A). When a case in the Appellate Division is there for review based upon grounds set out in N.C.G.S. 15A-1415 must be made in the Appellate Division. For the purpose of this section, A case is in the Appellate Division when the jurisdiction of the Trial Court has been divested as provided in G.S. 15A-1418 (OR) when a Petitioner for Writ of Certiorari has been granted. Petitioner seeks Relief upon the following grounds:

The sentence imposed was unauthorized at the time imposed, Contained A type of sentence disposition or A term of imprisonment NOT authorized for the particular class of offense and prior record, and conviction level was ILLEGALLY imposed, or is otherwise invalid as a matter of Law. (N.C.G.S. 15A-1415(B)(9)) Ineffective Assistance of

Trial Counsel North Carolina General Statute 15A-1415 (E). But Counsel Carman **REFUSED** to file a Motion for Appropriate Relief and Petitioner's appeal was **DENIED**.

The court did **NOT** have an opportunity to review all the State and Federal rules and laws that were **VIOLATED** in Petitioner's case and **ILLEGAL** sentence.

5). Thereafter, Petitioner pleaded with Appellate Counsel Danielle Carman to file a Motion for Appropriate Relief again repetitiously, and Counsel finally said she would, **HOWEVER**, Appellate Counsel did just the **OPPOSITE**, on April 10, 2001 Petitioner was mailed a letter from Appellate Counsel Carman along with a **ORDER** from the N.C. **SUPREME** Court denying a petition she filed for **DISCRETIONARY REVIEW** dated April 6, 2001 **AGAINST MY KNOWLEDGE** and against my will! By Counsel filing a petition for Discretionary Review, the court simply denied my appeal. This did **NOT** enable her to bring out the **FACTS** and **ISSUES** that can be brought out in a **M.A.R.**, As Petitioner constantly instructed her to file. This was a Gross Display of Ineffective Assistance of Appellate Counsel. Ms. Carman never brought it to the Court's attention that Mr. Zimmerman was the previous sentencing **JUDGE**, and what a **GRAVE CONFLICT** of **INTEREST** it was by him representing Petitioner. Ms. Carman stated it would **NOT** do any good to bring up those **FACTS**, and speaking on that issue would only cause trouble for her. She **FEARED REPROCUCTIONS** from all involved if she pointed those facts out!

STATEMENT OF FACTS

6). This Motion comes within N.C. G.S. 15A-1415.

A). My convictions were obtained in violation of Due Process of Law, (U.S. Const. AM. 5, 6, 14; N.C. Const. ART. I, sec 18, 19, 23,) as well as other provisions of the United States and North Carolina Constitutions. G.S. 15A-1415.

B). Even if my convictions were valid, there was a problem **"IN THE WAY"** I was sentenced

and my sentences are INVALID, see N.C.G.S. 15A-1415 (B)(1)(3)(4)(5)(8)(C)(E)(G).

OTHER CONSTITUTIONAL VIOLATIONS

A). Conviction obtained by Plea of Guilty which was Unlawfully Induced or **NOT** made **VOLUNTARY** with understanding of the nature of the charge and the consequences of the plea.

U.S. Const. AM 5, 6, 14; NC Const. ART I sec. 19, 23.

1). Movest was represented by and through attorneys H.W. Zimmerman Jr. and Fred G. Cumppler Jr. As such Movest was of the impression and understanding that said attorneys were skilled and trained in the laws of N.C. Movest was advised (**COMPELLED/INDUCED**) to take a Plea Bargain by the forenamed Counsel, They stated that it was in my best interest. Mr. Zimmerman told Petitioner that everything was all **PRE-ARRANGED** for a "20 year sentence", That Mr. Parosh only wanted a **CONVICTION** because of all the **Publ-icity**. If the tax payers had to pay all the unnecessary money to go to trial, the D.A. would make sure I was sentenced to **DEATH** no matter what. see **MOORE v. U.S.**, 950 F2d 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 F2d 1102 (7TH CIR 1998) and **U.S. v. UNGER**, 665 F2d 251 (8TH CIR 1981) Defendant's assertion that Counsel advised her that if she plead guilty to kidnapping charges, she would be given probation, and that if she went to trial and was found guilty, that she would probably get the Death Penalty, Stated a valid claim of Ineffective Assistance of Counsel, which **"REQUIRED an EVIDENTIARY HEARING."** In this case at bar, Petitioner was told **IF** he plead guilty, he would get a sentence of 20 years. If he went to trial, he would **POSITIVELY** be found Guilty, And get the Death Sentence **FORESURE!** It was later ascertained just recently, upon Movest having time to study N.C. Laws and Procedures, and studying the Court transcript records, That Movest's attorneys

COMPELLED/INDUCED him to sign waivers which would ensure him 70 to 90.4 years on "8" counts alone. The fact Mr. Zimmerman "was" a JUDGE, leaves NO-EXCUSE for such a Gross Miscarriage of Justice! Making Petitioner sign 8 waivers knowing the charges would positively be DISMISSED if Petitioner did NOT sign! This is A conflict of Interest! And it is obvious that Mr. Zimmerman wanted to make absolutely sure that Petitioner would spend the rest of his life in prison. See U.S. v. SANDERSON, 595 F2d 1021 (5TH CIR 1979) (Trial Counsel's misrepresentation of material facts, withholding information, And exerted pressure on Defendant to induce a guilty plea, Constitutes Ineffective Assistance of Counsel and REQUIRES an Evidentiary Hearing to Resolve Claim.) In case at bar, Prosecutor had already tried to have Petitioner "indicted on all (8) counts, But solely on the word of one inmate William Wayne Stewart, And FOUR people saying Stewart was lying, No indictment could ever be considered on such FLIMSEY-HERESY. Mr. Panosh needed a conviction on those 8 counts to give Petitioner 70 to 90.4 years, which was twice as much time at the original charges put together. Mr. Panosh himself had offered a 20 year plea agreement to Petitioner prior to Co-defendant's trial. Petitioner fully believed Counselor Zimmerman when he gave assurance of a 20 year plea agreement, that all charges would be combined, that the state only wanted a conviction! After Counselor Zimmerman had Petitioner sign waivers, he had Petitioner plead Guilty to a charge that was INVALID and DISMISSED, But later (Approx. 8 months) being RE-CHARGED with a different case number (98 CRS 23486) and changed the name of the charge to First Degree Arson, with the same wording as the previous charge from 8 months earlier, which was then case number (97 CRS 23656) Arson of an Unoccupied Building, However as the WORDING states in pertinent parts "Burn or cause to be burned a the Dwelling house INHABITED by PATRICIA KIMBLE." Obviously a charge titled

UNOCCUPIED can't also be INHABITED at the same time, so it naturally had to be dismissed as a matter of Law. However, Counsel had Movent believe that particular charge and "ENTIRE" case #97 CRS 23656 was being dismissed as part of the plea bargain, Counsel FAIL to note the RE-INDICTMENT (DOUBLE-JEOPARDY) for the same offense, Only this time as case #98 CRS 23486 titled "First Degree Arson," with the same exact wording as in previous dismissed case #97 CRS 23656. Which was Ineffective Assistance of Counsel and Due Process of Law, see U.S. v. GIARDINO 797 F.2d 30 (1st Cir 1986) Trial Counsel lied to Defendant to induce a Guilty Plea, Constitutes Ineffective Assistance of Counsel and REQUIRES the plea to be set aside. Case at bar, Counselor Zimmerman lied when he told Petitioner everything had been Arranged for the 20 year plea agreement, that Petitioner should NOT question his authority. Clearly a Conflict of Interest for Mr. Zimmerman was the JUDGE that first sent Petitioner to prison, He can NOT possibly be looking out for Petitioner's best interest, To prove it just look at Petitioner's 107-134 YEAR SENTENCE!

B). Conviction obtained by the Unconstitutional Failure of the State to disclose to the Defendant evidence favorable to the Defendant. U.S. Const. AM. 5, 6, 14;
N.C. Const. ART. I, sec 18, 19, 23.

1). State "FAIL" to provide the Defendant and the Court with the results of the (PRE-SENTENCE- INVESTIGATION-REPORT), Despite the fact the lady was subpoenaed, By Court records "2" weeks prior to March 5, 99 sentencing! It's a violation of Due Process of law not to be given the chance to have the Judge consider the recommendations of the P.S.I. Report, Defeating the whole purpose of the P.S.I. Rules, And Defendant was sentenced ANYWAY! see U.S. v. DAVENPORT, 151 F.3d 1325 (11th Cir. 1998) Pre-Sentence Report must be disclosed to BOTH defense Counsel and Defendant at least TEN (10) Days prior to sentencing as MANDATED by Statute. Also see U.S. v. GORDON 173 F.3d

(10TH Cir. 1999) and U.S. v. BARTHOLOMEN 974 F2d (5TH Cir. 1992) Trial Counsel NOT only didn't have a chance to object to any inaccuracies or errors in the P.S.I. Report, "NO P.S.I. Report was ever produced!" A casual perusal of the record shows that Petitioner was denied all his State and Constitutional Rights from "DAY ONE", why start following the Rules at this point, Sentence Petitioner anyway! see WEST v. U.S. 994 F2d 518 (8TH Cir. 1993) Trial Counsel's FAILURE to object to errors in the Pre-Sentence Report can constitute Ineffective Assistance." In case at bar, Trial Counsel did NOT even care that NO Pre-Sentence Report was even produced! No less object to any errors in it! Counselor Zimmerman was a JUDGE, there's "NO" excuse, He just sat there and did NOTHING! Blatantly prejudice and malice toward Petitioner.

2.) State NOT only FAIL to advise the Petitioner that the charge of "ARSON OF AN UNOCCUPIED" Dwelling IND #97CRS 23656 DATED Nov. 3, 1997 had been Dismissed by Law. Because the Dwelling WAS OCCUPIED by Patricia Kimble, The indictment was in fact a mistake, Making it "NULL AND VOID!" Even the words underneath the charge states in pertinent part, "The Dwelling house INHABITED by PATRICIA KIMBLE." Therefore this can't be an "UNOCCUPIED DWELLING!" Yet, Instead of making these facts known, The State made the Petitioner believe Conspiracy to Murder 97CRS 23656 charge would be DISMISSED as part of the plea bargaining, then committed "DOUBLE JEOPARDY" by RE-SUBMITTING the charge to the Grand Jury as case #98CRS 23486 titled "FIRST DEGREE ARSON", this time dated JULY 6, 1998, For further "PROOF" if this was not in fact TRUE then WHY wasn't Petitioner charged with "FIRST DEGREE ARSON" on Nov. 3, 1997, and was instead MISTAKENLY charged with 97CRS 23656 "Arson of an Unoccupied Building"? The "FACTS" speak for themselves in this issue. BOTH Indictments had the same exact wording. Which was also Ineffective Assistance of Counsel for NOT saying anything about it! And Due Process of Law. See JACKSON v. LEONARD 162 F3d 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 was Appellate Counsel Ineffective for Not putting it in her Assignment of Errors, But Trial Counsel HAD PETITIONER PLEAD GUILTY TO IT! which calls to mind WILLIAMS V. TURPIN 87 F3d 1204 1211 (11th Cir 1996) Petitioner entitled to Evidentiary Hearing if Petitioner succeeds in demonstrating Ineffective Assistance of Appellate Counsel, then the Evidentiary Hearing maybe considered in court. With the underlying claim of Ineffective Assistance of Trial Counsel. In case at bar, The record and Appellate Counsel's Assignment of Errors show clearly that Petitioner just PROVED the above Ineffectiveness of BOTH Counsel at the same time for a FACT! Appellate counsel Carman has a duty to report any miscarriage of Justice, Not only in her Assignment of Errors, She should also have reported the fact that Mr Zimmerman was the prior sentencing Judge to the State Bar, Plus with all the other obvious misconduct from all parties involved, All the "ILLEGAL" state and Federal law violations that were used to get these convictions, All should have Immediately been reported to the State Bar, NOT only did she FAIL to Report ANYTHING, she did NOT put ANY of these FACTS in her Brief! The Prosecutor 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 ONE and ONLY indictment that had "2" counts, Out of all the indictments. The State tricked Petitioner with the aid of Counselor Zimmerman, into believing by Pleading Guilty to that charge, it would be DISMISSED, Even in the Jan. 28, 99 transcript of the proceedings Page 11 Lines 18-19 The Court stated, "In Case 97CRS 23656 shall be dismissed by the state upon your plea of guilty." On Jan 28, 99 The only charge in case 97CRS 23656 was in fact "Conspiracy First Degree Murder," so Petitioner naturally figured that was the

charge - the court was talking about, and Mistake or Not the Judge in fact Dismissed

"Conspiracy First Degree Murder." See SCOTT v. WAINWRIGHT 698 F2d 427 429-30 (11th Cir. 1983) Trial

Counsel's FAILURE to learn the facts and familiarize himself with the law in relation to Plea Constitutes Ineffective Assistance of Counsel. HERBING v. ESTELLE, 491 F2d 135 (5th Cir. 1974)

Trial Counsel's FAILURE to familiarize himself with the facts, Law relevant to the case in relation to the guilty plea Constitutes Ineffective Assistance of Counsel and renders

the plea INVOLUNTARILY ENTERED. In case at bar, After plea was entered Petitioner discovered his trial Counsel only possessed 3 of 20 plus volumes covering his co-defendant's trial, Counsel never even recovered much of the notes and information from

Petitioner's previous Counsel. Clearly Trial and Appellate Counsel did NOT read the

*Indictments or they would have noticed Petitioner was charged TWICE for ARSON.

Petitioner "was" ignorant of the law, but even now with limited knowledge the ERROR

is plain to the eye. The Prosecutor had to have knowledge of these facts as he is the one who used TRICKERY by Re-Submitting the crime charge to begin with, but concealing these facts to make Petitioner believe he was getting some kind of break in a plea deal,

And Counsel went right along with the Prosecutor in this "CONSPIRACY" they committed against Petitioner, As if Petitioner had Counsel acting as the Prosecution working against him, Because Counsel surely didn't do ANYTHING to help Petitioner in ANY, SHAPE, or FORM!

On July 6, 1998 The State ILLEGALLY RE-INDICTED Petitioner on 98CRS 23486 calling it in fact

"First Degree Arson," this time with the same exact wording! See JACKSON v. LEONARD 162 F3d 81

(2ND Cir. 1998) Prosecutor this time committed Double Jeopardy, by using the same case twice,

to raise the charge, Changing the title, But SAME WORDING, Same FACTUAL PREDICATED!

And PROSECUTOR MISCONDUCT! Petitioner was given 163-205 months for an ILLEGAL RE-INDICTMENT.

The State didn't even type the right charge number correctly on the Judgement and Commitment

paper, listed as "98"CRS 23656 making the paper VOID. (See Judgement and Commitment paper EXHIBIT (B))

3). Petitioner contends that the Prosecutor having Petitioner Plead Guilty to 97CRS39581 "Second Degree Murder" was in fact an "ILLEGAL SENTENCE," Petitioner positively did **NOT** kill Anybody! And Petitioner can't be guilty of 97CRS 23656 Conspiracy First Degree Murder and guilty of Second Degree Murder at the same time, this is despite the fact that charge was DISMISSED upon Plea of Guilty anyway!

4). State and Attorneys TRICKED defendant into signing 8 Bills of Information WAIVERS on Jan. 28, 99 there by "WAIVING the Findings and Return of a Bill of Indictment on case 99CRS-23241-48," knowing for a fact there was **NO** evidence to present said cases to the Grand Jury for consideration of indictment, "Soley" on the word of Inmate William Wayne Stewart, when "FOUR" witnesses all testified the inmate in question bragged of robbing Petitioner, bragged of lying on Petitioner to get out of prison early, was in fact the one who solicited the Defendant, Robbed Petitioner's locker to steal information about his case, Stewart stole legal and personal information to make his PHONY story more believable, when he is in fact a known Habitual Lier, Thief, Homosexual, who claimed to be a "Hit-Man", the only thing he "Hit" was Petitioner's locker to steal his property, to fabricate a WILD STORY so he could be released from prison early, which the "PROSECUTOR" arranged by having a Judge order his release in violation of all State and Federal laws. The Prosecutor made positively sure that William Wayne Stewart was **NOT** in court to testify or face cross examination of his PHONY STORY. Yet his statement was entered in the record against Petitioner. Petitioner was CONNED into an ALFORD-Plea on all (8) counts with "NO Proof what so ever" and Petitioner recieved a total of 840 to 1,084 Months on those charges alone, which is 70 to 90.4 years, on the word of an inmate who FOUR witnesses testified to the fact it was all "LIES"! This should be considered as a BRADY violation, In view of facts.

5). Counsel not only FAIL to take a statement from Patrick Pardee, but also FAIL to take statement from several other witnesses. Mr. Pardee would have testified for the Defense,

but Counsel waited until the D.A. threaten Mr. Pardee with prosecution of several charges, And would fabricate charges if necessary, The D.A. threaten Mr. Pardee with severe prosecution if he didn't make a statement against Petitioner. The D.A. also threaten Robert Nicholes in the same manner. Jeff Roberts and James Ogburn were going to testify for the Defense, but the D.A. threaten them and ran them off! It's Prosecutor MISCONDUCT to threaten a Defendant or witnesses or anyone else with additional or fabricated charges, see U.S. v. ESTRADA, 849 F.2d 1304 (10th Cir 1998) Furthermore, Prosecutor Can't threaten witnesses in ANYWAY, see U.S. v. AGUILAR 90 F. SUPP. 2d 1152 (D. Col. 2000) Prosecutor's statement to Defense witness that government might void witness plea agreement and re-instate previously dismissed charges unless he invoked his Fifth Amendment privilege against self-incrimination, *Deprived defendant of his Right to Due Process and Compulsory Process. In case at bar, The Prosecutor threaten every witness in oneway or another, Destroying all Defense Witnesses, and Counsel went right along with it working hand and hand with the Prosecutor, as if Petitioner had no Counsel at all! Mr. Panosh (D.A.) knew he didn't have to follow any rules or disclose any facts to the Defense or Petitioner, due to the fact Mr. Zimmerman wanted to put his client away for the rest of his natural life, Counsel just let Mr Panosh do anything he wanted, legally or illegally. The main goal with everyone working together was to send Petitioner away for the rest of his life, and they all succeeded as the record shows. Even Appellate Counsel worked against Petitioner, as the brief she filed speaks for itself. Mr. Pardee told Melanie Oxendine 3 days before he signed a statement against Petitioner, that he had No idea of anything about the Kimble case, Then all of a sudden after the Prosecution threaten Pardee, he then signed a statement against Petitioner. This was clearly Vindicative. -Prosecution, Plus the fact that this is a violation of Due Process of Law. "Clearly Prosecutor Misconduct!"

6). Jeff Roberts and James Ogburn were BOTH interviewed several times by the

D.A., The Prosecutor **FAIL** to turn over a single statement to the Court and to Petitioner's Counsel. Jeff Roberts could have testified that Robert Nicholes had told him that he knew **NOTHING** about the Kimble case, and that Bob claims to be going down to the D.A.'s office for **COACHING LESSONS** on the Kimble case. James Ogburn could have testified how Ronnie Kimble was in front of him from "3:45PM. until 4:30 PM, On Oct. 9, 95 the time and day that the Homicide took place. James Ogburn could have testified about the conversations he had with Robert Nicholes, See "Newly Discovered Evidence EXHIBIT(T)" see U.S. v. ESCHMAN 227 F3d 886 (7TH Cir 2000) Due Process REQUIRES that Defendant be sentenced on basis of **Accurate Information**. The Prosecutor never turned over those statements to the Court or the Defense, In fact for further information Please (see **"AFFIDAVIT OF THEODORE KIMBLE" EXHIBIT(S)**). This is all in violation of U.S. Const. AM 5, 6, 14; N.C. Const. Art I, Sec 18, 19, 23. The State **FAIL** to supply or provide the Court and Petitioner many various **FACTS and EVIDENCE**, and statements from Pardee, Roberts, Ogburn, and others as stated here in and above. The D.A. **TWISTED** witnesses' testimonys around and threaten them to change their story. And took a **FALSE** statement from William Stewart, And many other violations. This **ENTIRE** procedure was done in violation of N.C.G.S. 15A-1340.14 and Affirmed by STATE v. RICH, 130 N.C. APP. 113, 502, SE 2d 49 (1998). BOYLE v. MILLION, 201 F3d 711 (6TH Cir 2000) BERGER v. U.S. 295 U.S. 78, 88, 79, L. ed. 1314, 55 S. ct. 629 (1935).

While a Prosecutor is clearly authorized to strike hard blows in an earnest and vigorous prosecution, He or She is **NOT** at liberty to strike **FOUL** ones. U.S. v. NAPPI, 243 F3d 758 (3RD. 2001) U.S. v. ESCHMAN, 227 F3d. 886 (7TH Cir. 2000) Due Process REQUIRES that Defendant be sentenced on basis of **"ACCURATE INFORMATION"**! U.S. v. HERRERA-ROJAS, 243 F3d. 1139 (9TH Cir 2001) If the District Court fails to make the required findings during the Sentencing Hearing, The Sentence must be **VACATED** and the Defendant Re-Sentenced. U.S. v. CONTRERAS, 249 F3d. 595 (7TH Cir. 2001) Sentencing Determination must be based on **RELIABLE** evidence. Point NO PSI Report at Sentencing!

U.S. v. DOE, 860 F2d 488 (1st Cir. 1988) "Prosecutor does NOT represent an Entity whose interests include Winning at all cost; Prosecutors client is Society, which seeks Justice NOT Victory." Furthermore, Petitioner would be DENIED Due Process of Law if his Motion for Appropriate Relief is denied without a hearing. (See N.C.G.S. 15A-1420(c)(1) AND (4). ALSO STATE v. HANTON, 140 N.C. App. 689, 540 S.E. 2d 382. was Remanded for Re-Sentencing because he didn't stipulate to the "NATURE" of his SUPPOSED prior Convictions. In this case at bar, Petitioner's Counsel stipulated to level II, Petitioner was never asked at all about his prior convictions, And never was it mentioned or explained to him. Petitioner contend that the prior convictions were never mentioned, because THEN it would be on record in the transcripts that Judge Zimmerman, now attorney Zimmerman for the defense, is the one who in fact sentenced Petitioner, This would clearly show "CAUSE" and "GROSS CONFLICT" of Interest and Ineffective Assistance of Counsel.

7). As Petitioner has demonstrated in his M.A.R. and is prepared to show in his Evidentiary Hearing if granted by this Honorable Court, MANY of the ALLIGATIONS represented as fact to him and the Court were in fact FALSE. As these were also matters of public record, The D.A. must be presumed to have actual knowledge of their FALSITY, Plus the fact he BROKE THE LAW, Twisted testimonies by "BLACKMAIL" of the witnesses. Counsel obviously went along with the D.A. and any information he gave them (LIES), Never verifying anything the D.A. said. Petitioner therefore received Ineffective Assistance of Counsel and an Unlawful Sentence. Furthermore, if Petitioner is Denied this Motion for Appropriate Relief and an Evidentiary Hearing, Petitioner would be denied his Right to introduce evidence to "Refute" the State's "false" Alligations.

c). DENIAL OF RIGHT TO APPEAL.

1). Petitioner's Counsel said he had no-right of Appeal at Sentencing. They FAIL and Neglected to advise Petitioner of his Rights of Appeal. Not only did Counsel

say I had No Right of Appeal, Counsel also didn't Request Bond or Speak on Petitioner's behalf, or say anything at all, See U.S. v. HAMMONDS, 425 F2d 599 (D.C. 7 Cir 1970) Trial Counsel's FAILURE to Request Bond after Conviction and speak on Defendants behalf after sentencing, Constituted Ineffective Assistance of Counsel. Also see LOZADA v. DEEDS, 488 U.S. 430, 112 L.ed. 2d. 956 111 S.Ct. 860 (1991) Defense Counsel's FAILURE to inform Petitioner of his Right to Appeal Constitutes Ineffective Assistance of Counsel. When Petitioner did Appeal, He instructed Appellate Counsel Danielle Carman repeatedly to file a M.A.R., And add all kinds of FACTS, Establishing the unlawfulness of his sentences to the record, She REFUSED to file a M.A.R., (OR) A Reply Brief!

Petitioner's Appeal was DENIED because many IMPORTANT FACTS establishing the unlawfulness of the sentences were NOT in the record, which should've been done by filing a M.A.R., And raising substantial issues of MATERIAL FACT. Like the fact Judge Zimmerman sentenced Petitioner to Prison to begin with, And then he got a second chance as Petitioner's Counsel, to send Petitioner away for the rest of his life, and that's exactly what Counselor Zimmerman did, Just as if he were sitting on the bench all over again, only this time he got paid \$50,000 for doing it, And he tried to get more money out of Petitioner's parents by promising that Petitioner wouldn't get any time. when he realized he wasn't getting anymore money, the story changed to a 20 year plea! Mr Zimmerman and Mr Panosh TRICKED Petitioner into signing those 8 waivers, on charges that were going to be dismissed, that alone insured 70 to 90+ years! By Appellate Counsel Carman NOT filing a M.A.R. in the Court of Appeals she was unable to bring out issues of Material Fact, For which the Court could Review, Had Counselor Carman filed a M.A.R. as Petitioner INSTRUCTED her to do, The MANY issues of material facts could have been raised, By Counselor Carman's refusal to file a M.A.R. as instructed, Petitioner was actually DEPRIVED of his Right

to Appeal and Effective Assistance of Counsel. See EVITTS v. LUCEY, 469 U.S. 387, 83 Fed. 2d 821, 105 Sct. 830 (1985) Due Process guarantees Defendant the Right to Effective Assistance of Counsel on First Direct Appeal. Also see WALKER v. McCAUGHTRY, 72 Supp 2d 1025 (E.D. WIS. 1999) Denial of Appellate Counsel resulted in Automatic Prejudice and Required Reinstatement of State Appeal.

2). Transcript of proceeding Page # 8 Lines 22-25 the sentencing **JUDGE** said Petitioner would have NO Right of Appeal. See EXHIBIT (V). See PARKUS v. DELE, 33 F3d 933 939-940 (8TH Cir 1994) (Petitioner ENTITLED TO EVIDENTIARY HEARING HAVING SHOWN CAUSE AND PREJUDICE) see TONY v. GAMMON, 79 F3d. 693, 697 (8TH Cir. 1996) (Petitioner entitled to Evidentiary Hearing where Counsel Failed to obtain requested blood test); see WILLIAMS v. TURPIN, 87 F3d. 1204, 1211 (11TH Cir 1996) (Petitioner Entitled to Evidentiary hearing if Petitioner succeeds in demonstrating Ineffective Assistance of Appellate Counsel, then the Evidentiary Hearing may be considered in Court, with the Underlying claim of Ineffective Assistance of Trial Counsel). Furthermore, by the Trial **JUDGE** denying Petitioner's Right to Appeal and forfeit all his Rights, State and Federal, Petitioner submits that advising a Defendant that he has No-Right of Appeal is a Professional Dereliction of the Judge's responsibility and structural ERROR, And should be considered a BRADY violation. See EXHIBIT (V)

D). Conviction Obtained by the VIOLATION of the Privilege Against Self-Incrimination.

1). On Jan. 28, 99 Both Prosecutor and Counsel coerced/Induced Petitioner into signing WAIVERS on (8) cases that never could possibly have brought back Indictments solely on the word of a Jail-house, Petty Thief, and Habitual Lier, There by Petitioner signing away his entire life, Given 70 to 90+ years alone on those charges. see U.S. v. SANDERSON, 595 F2d. 1021 (5TH Cir. 1979) (Trial Counsel's Misrepresenting of Material Facts, Withholding Information, and exerted pressure on Defendant to Induce a Guilty Plea, Constitutes Ineffective Assistance and Requires and Evidentiary Hearing to Resolve Claim.)

In relation to case at hand, Counsel and Prosecutor Misrepresented the facts, that the Grand Jury Refused To Indict on 8 Counts solely on the word of William Stewart; Withholding Information that all 8 Counts would be DISMISSED automatically if I did NOT sign the waivers. Both Counsel and Prosecutor exerted pressure by saying, "Sign and Plead Guilty, or Be Put To Death Infront of Your Parents." Counsel said to Plead Guilty and all Petitioner would get is 20 years under the Plea-Bargain, Counsel further stated the Prosecutor truly wanted to put Petitioner to Death. When the Plea was entered Counselor Zimmerman stood next to Petitioner WHISPERING the words, "JUST SAY IT - SAY YES ..." The whole time Counsel knew Petitioner didn't want to enter a Plea of Guilty, To something he did NOT do. Clearly Prosecutor misconduct and Ineffective Assistance of Counsel. Mr. Zimmerman being a former JUDGE who sentenced Petitioner to prison to begin with, knew by Petitioner saying "Yes", it would seal Petitioner's fate. Counselor Crumpler was acting as a "Puppet", after all what chance did he have to defend his client, with everyone else against Petitioner. Even Petitioner's private detective got mad and walked out after seeing Mr. Zimmerman speaking badly to Petitioner in an attempt to Coerce him. The Private Detective told Petitioner's Parents he couldn't believe Counsel was talking to Petitioner in such a manner. If Petitioner is given his Evidentiary Hearing by this Honorable Court, Petitioner would like to have the private Detective subpoenaed to Court to testify to this and other facts of misconduct by Mr. Zimmerman and Prosecutor Panosh. An Evidentiary Hearing would be required to bring out these vital issues of Material Fact. Petitioner ask what happen to the PRE-ARRANGED 20 year Plea Agreement Counsel promised to he and his parents? Petitioner got 70 to 90.4 years on (8) Fancy counts alone! Each were ran consecutively; On top of everything Petitioner was sentence in the "AGGRIVATED RANGE" on nearly every charge!

See MOORE v. U.S. 950 F.2d. 656 (10TH Cir. 1997) Coercion by Trial Counsel or Prosecutor to INDUCE a Guilty Plea Renders the Plea "INVOLUNTARY." Case at bar, The Private Detective would testify to the coercion he witnessed, and the misconduct of Mr. Zimmerman. All that is needed would be a Evidentiary Hearing to bring out these and many other issues of material fact!

2). Prosecutor's press Conference Portraying Petitioner as a villain or some kind of Monster, "Deprived" Petitioner of any kind of chance for a FAIR Trial, And Petitioner begged the Court to move the trial to Winston-Salem. Extreme Prejudice and Intimidation were pressed upon Petitioner in Greensboro N.C. The Day Petitioner entered his Plea, Jan 28, 1999 Petitioner was escorted to court surrounded by armed guards carrying machine guns and M-16's. Dressed in solid Black, they wore body armor with ski-mask over their faces. At one point Petitioner stumbled over his leg irons and nearly fell, Only to look up and see a "Machine Gun Pointed at His Head." Petitioner feared for his life. Inmates who saw Petitioner being escorted by such a show of force were intimidated. One inmate said, "I don't know what you did, but I'll pray for you." By trial Counsel's FAILURE to aid or speak for Petitioner, To express the need for the trial to be moved, Shows Conflict of Interest, To make Petitioner defend himself, (FAIL TO AID OR SPEAK FOR DEFENDANT). See GARDINER v. U.S. 679 F. SUPP 1143 (D. Me. 1988) Failure to speak in Defendant's behalf at sentencing, may constitute Ineffective Assistance of Counsel.

3). Prosecutor-Threatening the Defense's witnesses with severe prosecution if he didn't change his testimony of how he was with Petitioner on the Day of the murder till at least 5:30PM, And with Ramie Kimble (SR) till 4:30PM. By the Prosecutor destroying all of Petitioner's witnesses, And FAILURE of Counsel to "AID AND DEFEND," And by saying if Petitioner didn't Plead Guilty he would be put to "DEATH" no matter what, Petitioner had No choice but to Plead Guilty, Do to Prosecutor Misconduct, Threatening Defense witnesses with severe prosecution

if they didn't change their statement to say what he wanted. See U.S. v. AGUILAR, 90 F. Supp. 2d 1152 (D. Col. 2000) Prosecutor's statement to Defense witness that the Government might void witness plea agreement and reinstate previously dismissed charges unless he invoke his Fifth Amendment privilege against self-incrimination, **DEPRIVED** defendant of his Right to Due Process, By the Prosecutor threatening a **KEY WITNESS** of the Defense, so he would **NOT** testify to the **"TRUTH"**, Deprived Petitioner of any chance at a fair and just trial. Thereby obtaining a conviction by the violation of the privilege against self incrimination, same as **NOT** allowing Petitioner to move the trial to Winston-Salem, For a chance of a fair trial, and **"NO"** help from Counsel!

4). The Averment and Allegations of (A) Thru (G) of these Constitutional and N.C. violations are incorporated as if more fully set forth here in. Because Petitioner's attorneys **FAIL** to prepare the case for trial and Petitioner was advised that the Plea offer was reasonable, since they were **NOT** the one(s) who would have to spend the rest of their lives in prison for crimes Petitioner did **NOT** even commit. Petitioner was wrongfully coerced into entering a Plea which was clearly contrary to his best interest, And which he would **NOT** have considered but for the **DENIAL** of Effective Assistance of Counsel, And the Prosecutor's Attitude of **"WIN AT ALL COST,"** legally or Illegally does **NOT** matter to him.

E). CONVICTION OBTAINED BY USE OF COERCED CONFESSION.

1). The Trial Court denying Petitioner's Motion to Withdraw his Pleas and Justifying it by the Court's Findings of Fact and Conclusions of Law, and denying his Right to Withdraw his ALFORD Pleas, despite the **Fact** Petitioner met the requirements in N.C. v. HANDY 326 NC532 quoted by the Court to **TWIST** the requirements around when Petitioner **DID IN FACT ASSERT** his INNOCENCE. Petitioner **DID** send a letter to the Court on Jan 29, 99 and a copy to the Prosecutor, which **"VANISHED"**. This should surprise **NO-ONE**, And Petitioner had to send **ANOTHER** letter to withdraw on Feb. 24, 99. see U.S. v. ALVAREZ-TAUTIMEZ, (60 F3d. 573 (9TH Cir. 1998)) ALSO:

U.S. v. ELLISON, 798 F.2d 1102 (7th Cir. 1986) Ellison filed a Motion to Withdraw his Guilty Plea in the context of a letter form. Ellison claimed his Guilty Pleas were the result of psychological pressure of solitary confinement, the exclusion from family and friends; And on the erroneous advise of his Court appointed attorney, "That an immediate Guilty Plea would place him in better and more humane living conditions and renew contact with family and friends." In case at bar, Petitioner was placed in solitary confinement on Dec. 22, 98 and **DENIED** contact with family and friends, "Prison Records" will show. Court Records were off by 3 weeks, but still it shows Petitioner was on **solitary** confinement.

See EXHIBIT (E.F.) Note: Exhibit states one non-contact weekday visit per week, but Petitioner was **DENIED ALL VISIT!** Petitioner was under psychological pressure of solitary confinement, was "**COERCED**" into a Confession for crimes he had **NOTHING** to do with, rather than get sentenced to "**DEATH!**" Counsel **REFUSED** to aid and defend Petitioner on Motion to Withdraw. Counsel was only concerned with getting the case over with! At the Withdraw Hearing Counsel said, "**WE WILL SIT THIS ONE OUT.**"

Counsel found Petitioner might be successful in withdrawing his Pleas, because they had **NOT** prepared for trial. Counsel never read much of the information on the case, they couldn't have read but so much because they never took the time to go get it!

2). How could Counsel be considered competent having Petitioner sign waivers insuring their client 70 to 90+ years, on these charges alone, Petitioner's Pleas were in fact entered in haste and coerced by counsel telling him the trial would start right away, How could he let himself be put to "**DEATH**" and make his parents suffer for the rest of their lives, Petitioner was told he would get 20 years, His attorneys told him and his parents several times. Petitioner's attorney's asked how he could take a Death Sentence and put his Mother through such pain as to watch her son be put to death. Plus the fact that on this sameday of Jan 28, 99 Petitioner was **SUPPOSED** to be in Court solely for

a "CHANGE OF VENUE," And to make matters worse, his attorneys had him sign a BLANK Plea Bargain and later typed in what they wanted. Clearly Petitioner would have known he was NOT getting the 20 years sentence PROMISED, if the Plea Bargain had been properly filled in. For further information and proof, The only people that could HUMANLY fit into the tight holding-cell area where Petitioner signed the papers were himself, Detective, and attorneys, Yet Christina Dann signed in the box beside Petitioner's name, "SWORN AND SUBSCRIBED TO BEFORE ME," She was no-where around because there was no place for her to stand, "SHE Lied," Note the paper bore No notary stamp whatsoever. Also other names were then added later, like Mr Panosh, and Judge Peter M. McHugh. See EXHIBIT (B). In BORIA v. KEANE 83 F.48 (2ND Cir 1996) Defense Counsel's Failure to advise Defendant the Desirability of accepting offered plea bargain of 1 to 3 years and discuss the strength of the Government and chances of acquittal, Constituted Ineffective Assistance of Counsel. Thus, Prejudice was established where the Defendant received a 20 year sentence as opposed to 1 to 3 years plea bargain offer. The court ordered the Defendant's sentence to be reduced to time served and discharged from prison. In case at bar, Counsel said no-matter what, Petitioner would only get 20 years. Counsel said, "It's all ~~PRE-ARRANGED~~," Yet Petitioner received over 100 years! see TREJO v. U.S. 66 F.SUPP. 2d 1274 (S.D. FLA. 1999) "Counsel's Misrepresentation of plea agreement that (1) Cooperation of any en Defendant would insure to the benefit of all of them; (2) That this agreement need not be included in the plea-agreement because it had been "ARRANGED" with the Prosecutor; (3) That based on their cooperation, the Defendant would receive a sentence as low as five years of imprisonment, but in any case not more than ten years, required setting aside the Guilty Pleas based on Ineffective Assistance of Counsel." In case at bar, Counsel COERCED Petitioner into pleading Guilty! Saying he'd get 20 years total!

3). Petitioner was under the influence of medication which impaired his judgement on Jan 28, 99, Yet the Judge let a psychologist testify who clearly stated on the stand that he was **NOT QUALIFIED**, Yet Court Entered Judgement and Commitment in all cases regardless, on Mar. 5, 99 sentencing. The Grounds that trial Court's statements about the Mandatory minimum and possible maximum punishments were erroneous in Law and Violated N.C.G.S. 15A-1022, and that Petitioner's Pleas were **NOT** voluntary, but were **COERCED** and uninformed, all in Violation of N.C.G.S. 15A-1021 and 15A-1022, Also N.C. Common Law; Petitioner recieved Ineffective Assistance of Counsel at the Motion to Withdraw Hearing. (See TRANSCRIPT PG. #3 Line 17-21 EXHIBIT(X), Counsel remained "**NEUTRAL**", Didn't defend or help Petitioner with his asserted grounds to withdraw Pleas, Clearly a Conflict of Interest and Ineffective Assistance of Counsel.) Counsel remained **NEUTRAL** and did **NOT** aid or defend Petitioner at the Motion to Withdraw Hearing, because Counsel did **NOT** prepare for trial! After a plea was entered Petitioner discovered Counsel did **NOT** have **Most** of the information about the case. Counselor Zimmerman knew Petitioner was on medication the day a plea was entered, Counsel knew Petitioner was in a weaken mental state and took advantage of him. At one point Counsel even suggested Petitioner deny being on any medication if anyone asked, especially the Judge Peter McHugh. Petitioner was incoherent and did **NOT** understand what was going on around him. Counselor Zimmerman placed papers before Petitioner and demanded he sign them. Counsel stated if Petitioner wanted to live he had better sign said papers. Counsel assured Petitioner everything was **ARRANGED** as **PROMISED**, Petitioner must plead Guilty to what charges Judge McHugh said, to recieved the 20 year sentence. Petitioner tried to over come the pressure and stated his innocense to Counsel,

and clearly stated he wanted to go to trial, but Counsel would **NOT** listen. When Petitioner entered his plea Counselor Zimmer stood next to him WHISPERING all the answers to the questions Judge Peter McHugh asked. Counselor Zimmerman had told Petitioner prior to entering the Court-room that it would best to simply repeat what ever he said. see UNGER v. COHEN, 718 F.Supp.185(S.D.N.Y.1989)

"Unger characterized the criminal proceedings as "Assembly-line Justice" which certainly was correct. Unger was not allowed to contact the Counsel of his choice. After spending a night in jail, A legal aid attorney met him briefly at the Court house, who advise was to plea Guilty to whatever the Judge said. Counsel waived the reading of the charges, the reading of Unger's Rights; and the allocution on the Guilty Plea. The record did not indicate an admission of factual Guilt on Unger's part. Unger's Counsel merely informed the Court that her client intended to plead Guilty. The Court concluded that Counsel's advice was not within the range of competence demanded of attorneys in criminal cases." In case at bar, Petitioner was **coerced and threaten** with **DEATH** unless he pled Guilty to everything the judge stated, as in the above **UNGER** case. Petitioner recieved over a hundred years at the cost of \$50,000 to his family!... The Court's findings are **NOT** supported by the evidence, the conclusions are **NOT** support by the findings and are erroneous under N.C. Statutory and Common Law, and Violated Petitioners State and Federal Constitutional Rights to the extent this **ERROR** is **NOT** preserved, Petitioner asserts plain error and his counsel did **NOT** defend, diligently and zealously within the bonds of Law.

F). Conviction Obtained by Violation of the Protection Against Double-Jeopardy.

1). Indictment case 97CRS 23656 Dated Nov. 3, 1997 incorrectly listed as **ARSON** of an **UNOCCUPIED DWELLING**, yet statement read in pertinent parts, "The **DWELLING**

HOUSE INHABITED BY PATRICIA KIMBLE," had to be DISMISSED by Law, because an INHABITED house can't be UNOCCUPIED at the same time?! Petitioner was CONNED by both Attorneys working AGAINST him. The Prosecutor (Richard Panosh) made a ERROR, but instead of making it known he broke the law in an attempt to cover-up his ERROR, and RE-INDICTED Petitioner a second time, 8 months later on July 6, 1998, changing the charge to "First Degree Arson," with the same exact wording. Thus charging Petitioner with the same alleged crime TWICE committing DOUBLE JEOPARDY! Yet Counsel had Petitioner plea Guilty to the charge, see JACKSON v. LEONARD 162 F3d. 81 (2nd Cir 1998) Appellate Counsel 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 raised on the same FACTUAL predicated constitutes Ineffective Assistance of Counsel. Case at bar, Applies to Counsel having Petitioner Plead Guilty, Inducing/coerced plea, And clearly Prosecutor MISCONDUCT! Appellate Counsel also FAIL to raise Double-Jeopardy claim, "Clearly Ineffective Assistance."

G). Denial Of Effective Assistance Of Counsel.

1). On Jan 29, 1999 Petitioner sent a letter to the Court and a copy to Prosecutor Richard Panosh, Requesting to withdraw his Pleas and go to trial. When Petitioner did NOT hear anything in the following few weeks, he filed a SECOND motion on Feb. 24, 1999. See EXHIBIT (U) Petitioner was represented by Counsel, and thus it was the Counsel's JOB to file a Motion to Withdraw the Guilty Plea. Petitioner told Counsel that he was innocent repeatedly, and that he wanted to go to trial, but Counsel would NOT listen. Counsel coerced Petitioner into entering a Plea. Movent told Counsel he did NOT want to enter a plea, but Counsel continued to attack Petitioner. When Petitioner tried to withdraw his Plea, Counsel REFUSED to aid.

Counselor Zimmerman instructed Petitioner he was UNPREPARED for Trial, should Petitioner win his Motion to Withdraw Petitioner would surely go to trial and lose, would receive the Death Sentence and be put to DEATH. see U.S. v. ALVAREZ-TAUTIMEZ 160 F3d 593 (9TH Cir. 1998)

2). On March 1, 99 Petitioner's Motion to Withdraw was heard before the Court. Petitioner was forced to represent himself as best he could because Counsel refused to aid him. Petitioner presented SEVERAL reason for his desire to Withdraw his Pleas as follows :

i. First, Withdraw of Pleas Hearing Page #3 Lines 17-21 ^{*EXHIBIT(X)} Conflict of Interest and Failure of Counsel to Defend and Represent their Client Diligently and Zealously within the Bonds of Law, Counsel remained "NEUTRAL" and forced Petitioner to defend and Express himself in all his Explanations, As if he had NO Counsel at all. Clearly Ineffective Assistance of Trial Counsel. See EXHIBIT(X) see GARDINER v. U.S 679 F.Supp. 1143 (D. Me. 1988) "Failure to speak in Defendant's behalf at sentencing may constitute Ineffective Ass. of Counsel." see U.S. v. HAMMONDS, 425 F.2d. 597 (D.C. Cir 1970) "Trial Counsel's Failure to request bond after conviction and to speak on Defendants behalf after sentencing, Constitutes Ineffective Assistance of Counsel." In case at bar, Counsel did NOTHING!

ii. Counsel FAILED to get a Sworn Affidavit from a "STAR" witness, James Ogburn could positively SWARE that Petitioner and Ronnie Kimble (brother) were at "Lyle's Building Material standing in front of him at the time of the crime. Thus, impossible for Ronnie to have committed the crime. see COSS v. LACKAWANNA County District ATTORNEY, 204 F3d. 453 (3rd Cir 2000) Defense Counsel's failure to subpoena certain witness and to interview those witness Constituted Ineffective Assistance of Counsel. Also see HART v. GOMEZ 174 F3d 1067 (9TH Cir 1999). Counsel let the Prosecutor pressure James Ogburn Not to testify for the Defense. Mr. Ogburn changed his story after the D.A. threaten

him. see EXHIBIT (A.A.) page #149 Transcript Lines 14-19. Three days before signing a statement against Petitioner, Patrick Pardee told Melanie Oxendine he knew **Nothing** about the Kimble case. Yet Counsel **FAILED** to get a sworn Affidavit before the D.A. (Panosh) had a chance to coach Pardee and threaten him with severe Prosecution on pending charges. Shows **GROSS** Ineffective Assistance of Counsel. See U.S. v. ESTRADA, 849 F2d 1304 (10TH Cir 1988) The Court held that (1) Defendant who alleged that Prosecutor threatened to file Unwarranted charges against him, that Defense Counsel Coerced him to Plead Guilty by threatening to withdraw, and that both Prosecutor and Defense Counsel Promised him light sentence, was entitled to Evidentiary Hearing to Determine Voluntariness of Plea.

iii. See EXHIBIT (A.A.) Transcript page #149 Lines 21-24. Melanie Oxendine testified of the **FACTS** in the statement Patrick Pardee made to her. (Mr. Zimmerman clearly showed the Conflict of Interest between himself and Petitioner, being the former JUDGE that first sent Petitioner to Prison, All he wanted was to help the Prosecutor)

IV. Petitioner's father even got on the stand on Mar. 5, 1999. See Transcripts page #129 Line 12 Thru Page #130 Line 8 EXHIBIT (Z). James Ogburn told him "**2 Weeks**" before Trial, how he was with both sons when the crime was committed, and how the D.A. **THREATEN** Him to change his story, with pressure of pending charges. The **FACT** Counsel had "**MONTHS**" to get a Sworn Affidavit from this "**STAR**" witness, But **REFUSED** to do so. A case of Grave Negligence and **FAILURE** to defend Petitioner, Counsel only cared about a "**Plea Bargain**", Clearly Ineffective Assistance of Counsel. see U.S. v. SCOTT, 625 F2d 633 (5TH Cir 1981) A conviction on a Guilty Plea that is entered solely as a result of faulty legal advice is a miscarriage of Justice. Also see HART v. GOMEZ, 174 F3d. 1067 (9TH Cir 1999). LORD v. WOOD, 184 F3d. 1083 (9TH Cir 1999)

Counsel's failure to investigate evidence, which demonstrated his clients factual innocence, undermines the confidence in the verdict and constitutes Ineffective Assistance of Counsel. See HOLLINES v. ESTELLE, 569 F.Supp.146 (W.D. Tex. 1983) Trial

Counsel's failure to conduct pretrial investigation and interview witnesses; Constitutes Ineffective Assistance of Counsel. See U.S. v. JOHNSON, 995 F.Supp.1259 (D. KAN. 1998) Trial

Counsel's Failure to investigate, and to call "Critical" witnesses required an Evidentiary Hearing to resolve Ineffective Assistance claim.

IV. On Jan 28, 99 Counsel acting (in consent) with Prosecutor "Panosh" all INDUCED / COERCED Petitioner into signing (8) waivers in cases 23241-48 which would SEAL Petitioner's FATE. Both Prosecutor and Counsel knew for a FACT those charges could NOT be presented to the Grand Jury for possible Indictment solely on the word of WILLIAM STEWART, Jailhouse petty thief and habitual liar, as "FOUR" witnesses testified in Court against his testimony, yet Counsel working Hand-in-Hand with the D.A. COERCED / INDUCED Petitioner to sign the (8) waivers, giving the Petitioner another 10 to 15 years onto his sentences to ensure he would positively NEVER get out of prison alive. Which was clearly Gross Ineffective Assistance of Counsel. Trial Counsel should have told his Client NOT TO SIGN waivers that clearly would be Dismissed, As NO Indictments could possibly be returned on such NONSENSE evidence, "Counsel FAIL to even explain what the waivers were." See U.S. v. TAYLOR, 139 F.3d. 924 (D.C. Cir. 1998) "Trial Counsel's failure to advise Defendant of "Advice of Counsel" Defense resulted from a conflict of interest amounting to Ineffective Assistance of Counsel and "Required" an Evidentiary Hearing." In case at Hand, Black's Law Dictionary defines "Advice of Counsel", as ① "The guidance given by lawyers to their clients, ② In a malicious Prosecution lawsuit, a D. must sign a complete presentation of facts by the Defendant to his or her Attorney and honest compliance

with the Attorney's advice. ③ A Defence in which a party seeks to avoid liability by claiming that He or She acted reasonably and in good faith on the Attorney's advice." In case at bar, Having his client sign 8 waivers that were about to be dismissed "BY LAW", Can NOT possibly be the result of an attorney looking out for his clients best interest, Sending Him away "FOREVER!"

VI. See Transcript page #150 Lines 5-12 EXHIBIT (A.A.) One day James Ogburn and a fellow employee of Lyles Building Material took a work break. They walked across the street to get a soda at the gas station. While there Rob Nicholes Pulled-up. Rob told James and Mr. Cole Sr. he had talked it over with his wife, and decided NOT testify and lie against Ted (Petitioner) as the D.A. had been pressuring him to do. Rob stated He was on His way down-town for one of his coaching lessons from the D.A., but this time he plan to tell the D.A. he wasn't going through with it (SEE NEWLY DISCOVERED EVIDENCE STATEMENTS EXHIBIT (T) ISA-1415(C)) Counsel didn't care about using this "Vital" evidence against the D.A. to show "VINDICTIVE PROSECUTION", Clearly Ineffective Assistance of Counsel.

VII. As Petitioner pointed out in Transcript Page #165 Lines 3-15 EXHIBIT (B.B.) which is a matter of public record for "Proof," How Pardee and Nichols both signed statements against Petitioner. How they both had pending charges, And the Prosecutor "CUT-DEALS" (Take it or else!) in exchange for their statements ("SELECTIVE PROSECUTION") Against-Petitioner. Violated all laws and Rules, and Guidelines. Even let William Stewart out of prison early by Panosh filing a motion in Court for his EARLY-RELEASE, and Counsel did NOTHING about it. "Ineffective Assist."

VIII. See Transcript Page #176 Lines 15-19 EXHIBIT (C.C.) When questioned by the Prosecutor, Petitioner spoke of the Trailer he owned, how Robert (Rob) Nichols

broke into his business and stole it, took it to the beach and sold it!
The D.A. refused to do anything about it. The D.A. actually "COVERED-UP" the
crime by running a Defense Witness (Jeff Roberts) out of Town, who could have
testified to the "FACTS": see SWORN AFFIDAVIT OF T.M. KIMBLE EXHIBIT(S).

On Page 176 Line #19 (EXHIBIT C.C.) The Prosecutor just went on to the next Question
as if Petitioner never made that statement! A year later (or less) Petitioner's
Dad went and reported WHERE the stolen trailer was, After Petitioner saw
how it was FOR-SALE in the newspaper. Still the D.A. COVERED-UP once again.
The Appellate Counsel Carman REFUSED to have Prosecutor "REPORTED", for this
Gross Miscarriage of Justice, Ineffective Assistance of Counsel again and again!
see FREEMAN v. LANE, 962 F2d 1252 (7TH Cir 1992) Appellate Counsel's failure to raise issue
of Prosecutorial Misconduct on direct Appeal created a "Procedural Default" that limited
review of the ERROR and constituted "CAUSE" for failure to raise the claim under
WAINSWRIGHT v. SYKES. Also see GRAY v. GREER, 800 F2d 644 (7TH Cir 1987) Appellate
Counsel's Ineffectiveness can constitute "CAUSE" for failure to raise a significant and
obvious issue. Also see MEDINA v. BARNES, 71 F3d 363 (10TH Cir 1995) Trial Counsel's failure
to Investigate Prosecution's key witness where key witness lied about his Criminal
activity with victim at the time he called police constituted "CAUSE" for Procedure
Default and required an Evidentiary Hearing under the fundamental miscarriage of
Justice standard to resolve Ineffective Assistance of Counsel claims. Case at bar,
By Appellate Counsel NOT RAISING the issue that Counselor Zimmerman was
Petitioner's previous sentencing JUDGE, who put him into prison to begin with,
constitutes "CAUSE", And Violates Due Process!

IX. See Page #218 Transcripts And Page #219 EXHIBIT (D.D.) Shows how the
P.S.I. Report was NEVER given to the Court, And Petitioner was sentenced

without it, all in violation of **DUE PROCESS**, Despite the fact the lady was subpoenaed from "Step-one" 2 weeks in advance prior to sentencing, and "Prior" to her getting sick, when she was at home and could have given the report to anyone from Step-one **PSI** Organization to bring to Court. see BYDER v. MORRIS, 752 F.2d 327, 332-33 (8TH Cir 2000) Counsel's failure to object to inaccuracies in P.S.R. amounts to Ineffective Assistance and requires an Evidentiary hearing. In case at Hand, Counsel never even objected to the fact, "NO P.S.I. REPORT WAS EVER TURNED IN!" See SMITH v. U.S., 871 F. Supp. 251, 255 (E.D. VA. 1994) Defense Counsel's failure to lodge objections to clear an indisputable **ERROR** in Presentence Report is not within the wide range of Professional Performance, REMANDED BY THE SIXTH AMENDMENT! The prosecutor could have went and got the Report, but why would he go and get something **FAVORABLE** for the Defense, since he (D.A. Panosh) failed to hand over anything favorable to the Defense through the ENTIRE case! Counselor Zimmerman allowed Mr. Panosh to do anything he wanted, legal or illegal did not matter. Counsel should have at least Postponed sentencing, until the Judge McHugh could read the recommendations. However Counsel said NOTHING as always, why should they start to defend Petitioner's Rights at this point? They were paid \$50,000 to do Nothing! All they wanted was to get it over with, and find New Victims to take their money! What does "DEFEND DILIGENTLY AND ZEALOUSLY HAPPEN"? U.S. v. DAVENPORT, 151 F.3d 1325 (11TH Cir 1998) "Presentence report must be disclosed to both Defense Counsel and Defendant at least Ten (10) days prior to sentencing as mandated by statute."

X. Counsel was Ineffective by NOT objecting to Petitioner being sentenced in the **AGGRAVATING** Range on the **NON-STATUTORY** Aggravating sentence

Factor in case 97 CRS 39581 and Court imposed a Greater-Than-Presumptive sentence, and was supported by the same evidence used to prove an element of the offense violated N.C. statutory and common law and Petitioner's Federal Constitutional Rights. See EXHIBIT (E).

XI. Counsel NOT objecting to the Greater-Than-Presumptive sentence in case 97 CRS 39581 which was NOT supported by any competent record evidence either, which was a NON-STATUTORY Aggravating Sentence factor also. EXHIBIT (E)

XII. Counsels NOT objecting to the Court's NON-AGGRAVATING sentence factor used in 98 CRS 23486 resulting in Petitioner being sentenced of a Greater-Than-Presumptive range, and the factor was NOT proven adequately in law, NOT supported by element of offense. see EXHIBIT (F).

XIII. Counsel NOT objecting to the Court's findings of both Aggravating sentencing factors 5(A) and 5(B) in case 99 CRS 23241, 23242, 23243, 23244, 23246, and 23247 receiving a Greater-Than-Presumptive sentences, when grounds were NOT adequately proven in law, NOT supported by any competent record evidence, supported by the same evidence used to prove an element of the offense, and used by the "SAME" evidence used to prove "EACH-OTHER" all in violation of N.C. statutory and common law and state/federal constitutional rights, and counsel did NOT object to any of these VIOLATIONS in X thru XIII, all Ineffective Assistance of Counsel. See EXHIBITS (G)(H)(I)(J)(K)(L).

XIV. See Transcript Page #6 Lines 1-4 EXHIBIT (Y). Petitioner HIMSELF had to beg the court to move the trial to Winston-Salem to get a fair trial and possibly a just D.A., when counsel remained "NEUTRAL" which was a FAILURE to defend and represent, counsel got paid, why should they have to do any work?! Ineffective Assistance of Counsel and Procedural Default. Clearly a Conflict of Interest by

Counselor Zimmerman being Petitioner's previous sentencing JUDGE and then his lawyer. A casual perusal of the record at various stages will show nothing but "Vandictiveness" by Mr. Zimmerman, How he FAILED to defend or represent Petitioner. Mr. Zimmerman made sure Petitioner got as much time as possible, which is proven by Petitioner receiving over 100 years in prison.

Movant is NOT a skilled Attorney and as such relied upon Trial Counsel to do a workman-type presentation in court, of the facts of the case, By and through trial Counsel's MANY unprofessional acts and conflicts of interest, and working AGAINST Petitioner. Movant is now being DENIED protection of the Constitution and his Liberty.

PRAYER FOR RELIEF

WHEREFORE Petitioner respectfully moves this Honorable Court for the following Relief Based on Submitted Motion for Appropriate Relief:

(A) Petitioner be Remanded to the Superior Court of Guilford County for a NEW Sentencing Hearing G.S. 15A-1417(A)(4).

(B) To be Released from Prison upon the Posting of a Suitable BOND pending Appeal pursuant to N.C.G.S. 15A-536.

(C) Any other Appropriate Relief G.S. 15A-1417(A)(4).

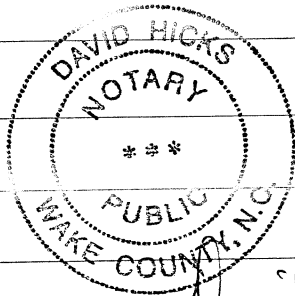
Petitioner further respectfully request this Honorable Court to Appoint Counsel to advise and represent Petitioner on this Motion. (See General Statutes 15A-1420(c)(4), 15A-1421, 7A-450-451); and Order an Evidentiary Hearing on all Factual Issues, see G.S. 15A-1420(c)(1) and (4).

And any other Relief this Court Deems Just and Proper.

(Continued Page 34)

Respectfully Submitted This The 23 Day of
October 2003.

SEAL:



pro-se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

WITNESS: Neil Huber

DATE: 10-23-03

MY COMMISSION EXPIRE: My Commission Expires 5-18-2008.

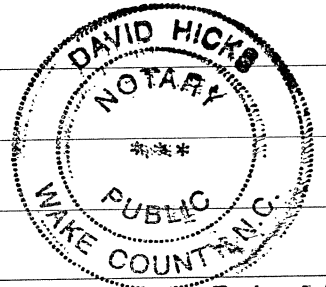
VERIFICATION

I, THEODORE MEAD KIMBLE, BEING FIRST DULY SWORN
DEPOSE AND SAY, I AM THE PETITIONER IN THE FOREGOING
MOTION FOR APPROPRIATE RELIEF,
I HAVE DRAFTED AND READ THE SAME, AND THE STATEMENTS
CONTAINED THEREIN ARE TRUE, AS FOR ANY STATEMENTS
MADE ON INFORMATION AND BELIEF, ARE MADE IN GOOD
FAITH, AND I BELIEVE TO BE TRUE. SIGNED UNDER
PENALTY OF PERJURY, THIS THE 23 DAY
OF OCTOBER 2003.

PRO-SE *Theodore Mead Kimble*

THEODORE MEAD KIMBLE

SWORN TO AND BEFORE ME THIS THE 23 DAY
OF OCTOBER 2003.



My Commission Expires 5-18-2008.

MY COMMISSION EXPIRES _____

David Hicks

10-23-03

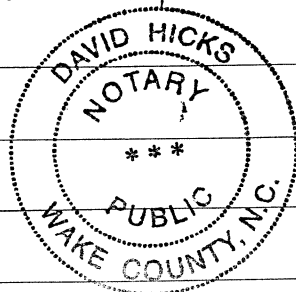
CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT THE FOREGOING WAS DULY SERVED BY PLACING SAME IN THE U.S. MAIL, POSTAGE PRE-PAID AND ADDRESSED AS FOLLOWS:

MR. ROY COOPER ATTORNEY GENERAL
P.O. BOX 629,
RALEIGH, N.C. 27602

DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
GUILFORD COUNTY SUPERIOR COURT
P.O. BOX 10769
GREENSBORO, N.C. 27402

SWORN TO AND BEFORE ME THIS THE 23 DAY
OF OCTOBER, 2003



PRO-SE Theodore Mead Kimble

THEODORE MEAD KIMBLE
1300 WESTERN BLVD.
RALEIGH, N.C. 27606

MY COMMISSION EXPIRES

My Commission Expires 5-18-2008.

David Hicks 10-23-03

LIST OF EXHIBITS IN SUPPORT OF FACTS

- (A) 97 CRS-39581 JUDGMENT AND COMMITMENT
- (B) 97 CRS-23656 JUDGMENT AND COMMITMENT
- (C) 98 CRS-23486 JUDGMENT AND COMMITMENT
- (D) 99 CRS-23241-48 JUDGMENT AND COMMITMENTS
- (E) 97 CRS-39581 AGGRAVATING/MITAGATING FACTORS
- (F) 98 CRS-23486 AGGRAVATING/MITAGATING FACTORS
- (G) 99 CRS-23241 AGGRAVATING/MITAGATING FACTORS
- (H) 99 CRS-23242 AGGRAVATING/MITAGATING FACTORS
- (I) 99 CRS-23243 AGGRAVATING/MITAGATING FACTORS
- (J) 99 CRS-23244 AGGRAVATING/MITAGATING FACTORS
- (K) 99 CRS-23246 AGGRAVATING/MITAGATING FACTORS
- (L) 99 CRS 23247 AGGRAVATING/MITAGATING FACTORS
- (M) N.C. SUPREME COURT ORDER
- (N) 97 CRS-23656 NOV. 3, 97 INDICTMENT (Y) TRANSCRIPT PAGE #6
- (O) 98 CRS-23486 JULY 6, 98 INDICTMENT (Z) TRANSCRIPT PAGES #129 & #130
- (P) DISMISSAL PERSUANT TO PLEA (A.A.) TRANSCRIPT PAGES #149 & #150
- (Q) STATEMENT LISTING OF PLEAS (B.B.) TRANSCRIPT PAGE #165
- (R) PLEA AGREEMENT PAPER (C.C.) TRANSCRIPT PAGE #176
- (S) AFFIDAVIT OF T.M. KIMBLE (D.D.) TRANSCRIPT PAGES #218 & #219
- (T) NEWLY DISCOVERED EVIDENCE (E.E.) 97 CRS 23655 JUDGMENT AND COMMITMENT
BY H.W. ZIMMERMAN JR. (JUDGE)
- (U) MOTION TO WITHDRAW PLEAS
(NOTE: (E.E.) IS ONE EXAMPLE / TOTAL SENTENCE WAS 50-60 MONTHS)
- (V) TRANSCRIPT PAGE #8
- (W) TRANSCRIPT PAGES #11 & #12 (F.F.) STATEMENT OF CONFINEMENT
- (X) TRANSCRIPT PAGE #3

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI.)

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

1999 MAR -5 11:12:44

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12/08/69

(STRUCTURED SENTENCING) G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Attorney For Defendant Zimmerman/Crumpler

The defendant [X] pled guilty to: [] was found guilty by a jury of: [] pled no contest to:

Table with columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 97CRS 39581, Second degree murder, 10-09-95, 14-17, F, B.

The Court: [X] 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: [X] II [] IV [] VI

The Court: [X] 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. [] 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 204 months for a maximum term of: 254 months in the custody of: [X] N.C. DOC. [] Sheriff pursuant to G.S. 15A-1352(b). [] Other

The defendant shall be given credit for 381 days spent in confinement prior to the date of this Judgment as a result of this charge(s). [X] The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

EXHIBIT (B)

STATE OF NORTH CAROLINA

Guilford

County Greensboro

Seat of Court

97CRS 23656

In The General Court Of Justice
Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DW)

STATE VERSUS

1997-11-2-5

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT
FELONY

Race

White

Sex

Male

DOB

12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State

Richard Panosh

Def. Found
Not Indigent

Def. Waived
Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

File No.(s)	Off	Offense Description	Offense Date	G.S. No.	F/M	CL.
98CRS 23656		Conspiracy: First Degree Murder	10-09-95	C.L. & 14-2.4	F	B-

The Court:

PRIOR

I III V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II IV VI
- 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
- 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
- 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
- 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
- 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
- 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.)
- 7. finds no Extraordinary Mitigation.
- 8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.
- 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: <u>163</u> months	for a maximum term of: <u>205</u> months	in the custody of: <input checked="" type="checkbox"/> N.C. DOC. <input type="checkbox"/> Sheriff pursuant to G.S. 15A-1352(b). <input type="checkbox"/> Other _____
<input type="checkbox"/> Class A Felony: <input type="checkbox"/> Life Imprisonment Without Parole <input type="checkbox"/> Death (see attached Death Warrant and Certificates)		
<input type="checkbox"/> Class B1 Felony: Life Imprisonment Without Parole <input type="checkbox"/> Violent Habitual Felon: Life Imprisonment Without Parole		

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
- The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.)
97CRS39581 Criminal Superior Division Guilford County Greensboro 03-05-99

EXHIBIT 10

STATE OF NORTH CAROLINA

No. 98CRS23486

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

1999 MAR 5

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12/08/69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 98CRS 23486, First degree arson, 10-09-95, C.L. & 14-58, F, D

The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 082 months for a maximum term of: 108 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

97CRS23656 Criminal Superior Division Guilford County Greensboro 03-05-99

STATE OF NORTH CAROLINA

Guilford

County

Greensboro

Seat of Court

a No.

99CRS 23241

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offenses, and (2) misdemeanor offenses, which are consolidated for judgment with any felony offenses). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Race

White

Sex

Male

DOB

12-08-69

Attorney For State

Richard Panosh

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23241, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court:

PRIOR

I III V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: XI IV VI
2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.)
7. finds no Extraordinary Mitigation.
8. finds the above designated offenses(s) is a reportable conviction involving a minor. G.S. 14-208.6.
9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC.
Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)
Class B1 Felony: Life Imprisonment Without Parole
Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.)

98CRS 23486 Criminal Superior Division Guilford County Greensboro 03-05-99

EXHIBIT(D) 3068

STATE OF NORTH CAROLINA

No. 99CRS 23243

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offenses(s), and (2) misdemeanor offenses(s), which are consolidated for judgment with any felony offenses(s). Use AOC-CR-301 on DWI)

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23243, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.) 99CRS 23242 Criminal Superior Division Guilford County Greensboro 03-05-99

Guilford

County Greensboro

Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Race

White

Sex

Male

DOB

12-08-69

Attorney For State

Richard Panosh

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23244, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court:

PRIOR

I III V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II IV VI
2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.).
7. finds no Extraordinary Mitigation.
8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.
9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC.
Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)
Class B1 Felony: Life Imprisonment Without Parole
Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.)

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING) G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M CL. Row 1: 99CRS 23245, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR RECORD LEVEL: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.). 7. finds no Extraordinary Mitigation. 8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6. 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 096 months for a maximum term of: 125 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole Sheriff pursuant to G.S. 15A-1352(b). Other

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.) 99 CRS 23244 Criminal Superior Division Guilford County Greensboro 03-05-99

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23246, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR RECORD LEVEL: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.) 99CRS 23245 Criminal Superior Division Guilford County Greensboro 03-05-99

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23247, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR I III V II IV VI 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II IV VI 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.). 7. finds no Extraordinary Mitigation. 8. finds the above designated offenses(s) is a reportable conviction involving a minor. G.S. 14-208.6. 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole Sheriff pursuant to G.S. 15A-1352(b) Other

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.) 99CRS 23246 Criminal Superior Division Guilford County Greensboro 03-05-99

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Race White Sex Male DOB 12-08-69

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23248, [blank], Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR [] I [] III [] V [X] 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: [X] II [] IV [] VI [] 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: [X] 1. makes no written findings because the prison term imposed is: [X] (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). [] (b) for a Class A felony. [] (c) for enhanced firearm penalty (G.S. 15A-1340.16A). [] (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. [] (e) for drug trafficking offenses. [] 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. [] 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. [] 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). [] 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. [] 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony [] G.S. 90-95(e)(3) (drugs); [] G.S. 14-3(c) (race, etc.). [] 7. finds no Extraordinary Mitigation. [] 8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6. [] 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 96 months for a maximum term of: 125 months in the custody of: [X] N.C. DOC. [] Sheriff pursuant to G.S. 15A-1352(b). [] Other [] Class A Felony: [] Life Imprisonment Without Parole [] Death (see attached Death Warrant and Certificates) [] Class B1 Felony: Life Imprisonment Without Parole [] Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). [] The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. [X] The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.) 99CRS 23247 Criminal Superior Division Guilford County Greensboro 03-05-99

STATE OF NORTH CAROLINA

Case No. 97CRS39581

Guilford County

EXHIBIT (E) 1 of 2
FILED

In The General Court Of Justice
Superior Court Division

STATE VERSUS

1999 MAR 5 PM 12:44

Name Of Defendant
Theodore Mead Kimble

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Offense
Second degree murder

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:
 - 1. The defendant acted with premeditation and deliberation in committing this offense.
 - 2. The defendant acted for pecuniary gain in committing the offense.

The Court makes no findings of any aggravating factors.

- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

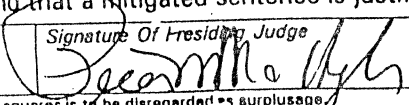
Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
03-05-99	PETER M. MCHUGH	

EXHIBIT (A) 10/2

Guilford County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

1999 MAR - 5

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Name Of Defendant

Theodore Mead Kimble

Offense

First degree arson

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
 - 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:
This offense was committed for the purpose of avoiding detection in the murder of Patricia Gail Kimble and for the purpose of covering up the murder.

The Court makes no findings of any aggravating factors.

EXHIBIT (F) 9012

- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
- b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date
03-05-99

Name Of Presiding Judge (Type Or Print)
PETER M. MCHUGH

Signature Of Presiding Judge
Peter M. McHugh

Guilford ...

County

EXHIBIT (P) 10/2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

100-107-3 10/2/85

Name Of Defendant

Theodore Mead Kimble

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Offense

Solicitation: first degree murder

COO

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

EXHIBIT (6) 2012

- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date 03-05-99	Name Of Presiding Judge (Type Or Print) PETER M. MCHUGH	Signature Of Presiding Judge <i>Peter M. McHugh</i>
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Guilford County

In The General Court Of Justice
Superior Court Division

EXHIBIT (H) 1 of 2

STATE VERSUS

1999-010-5 11/10/15

Name Of Defendant

Theodore Mead Kimble

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Offense

Solicitation first degree murder

COJ

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

1. The defendant committed the offense under: *EXHIBIT(H) 2 of 2*
- a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
2. The defendant:
- a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
3. The defendant was suffering from a:
- a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
4. The defendant's:
- a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
5. The defendant has made:
- a. substantial restitution to the victim.
 - b. full restitution to the victim.
6. The victim was more than 16 years of age and:
- a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
7. The defendant:
- a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
8. a. The defendant acted under strong provocation.
 b. The relationship between the defendant and the victim was otherwise extenuating.
9. The defendant:
- a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
10. The defendant reasonably believed that the defendant's conduct was legal.
11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
- a. at an early stage of the criminal process.
 - b. prior to arrest.
12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
13. The defendant is a minor and has reliable supervision available.
14. The defendant has been honorably discharged from the United States Armed Services.
15. The defendant has accepted responsibility for the defendant's criminal conduct.
16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
17. The defendant supports the defendant's family.
18. The defendant has a support system in the community.
19. The defendant has a positive employment history or is gainfully employed.
20. The defendant has a good treatment prognosis and a workable treatment plan is available.
21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

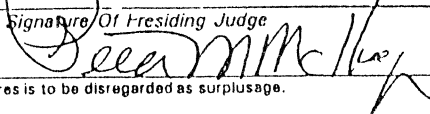
The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date
03-05-99

Name Of Presiding Judge (Type Or Print)
PETER M. MCHUGH

Signature Of Presiding Judge



Guilford

County

EXHIBIT (F) 1 of 2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Offense

Solicitation first degree murder

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
 - 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

EXHIBIT 2 of 2

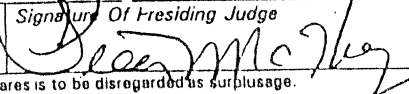
- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date 03-05-99	Name Of Presiding Judge (Type Or Print) PETER M. MCHUGH	Signature Of Presiding Judge 
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Guilford County

EXHIBIT (D) 10/2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

1999 MAR -5 PM 12:45

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Offense

Solicitation first degree murder

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

1. The defendant committed the offense under: *EXHIBIT (J) 2012*
- a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
2. The defendant:
- a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
3. The defendant was suffering from a:
- a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
4. The defendant's:
- a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
5. The defendant has made:
- a. substantial restitution to the victim.
 - b. full restitution to the victim.
6. The victim was more than 16 years of age and:
- a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
7. The defendant:
- a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
8. a. The defendant acted under strong provocation.
- b. The relationship between the defendant and the victim was otherwise extenuating.
9. The defendant:
- a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
10. The defendant reasonably believed that the defendant's conduct was legal.
11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
- a. at an early stage of the criminal process.
 - b. prior to arrest.
12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
13. The defendant is a minor and has reliable supervision available.
14. The defendant has been honorably discharged from the United States Armed Services.
15. The defendant has accepted responsibility for the defendant's criminal conduct.
16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
17. The defendant supports the defendant's family.
18. The defendant has a support system in the community.
19. The defendant has a positive employment history or is gainfully employed.
20. The defendant has a good treatment prognosis and a workable treatment plan is available.
21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date 03-05-99	Name Of Presiding Judge (Type Or Print) PETER M. MCHUGH	Signature Of Presiding Judge <i>Peter M. McHugh</i>
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Guilford County

EXHIBIT (S) 1 of 2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

Offense Solicitation first degree murder

COJ

FELONY JUDGMENT

FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

EXHIBIT (K) 2 of 2

- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

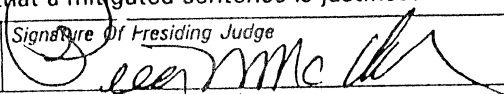
The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date
03-05-99

Name Of Presiding Judge (Type Or Print)
PETER M. MCHUGH

Signature Of Presiding Judge



Guilford

County

EXHIBIT (L) 10/2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

Offense

Solicitation first degree murder

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

- 1. The defendant committed the offense under: *Exhibit (L) 2082*
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date
03-05-99

Name Of Presiding Judge (Type Or Print)
PETER M. MCHUGH

Signature Of Presiding Judge

EXHIBIT (M)

SUPREME COURT OF NORTH CAROLINA

(State v Theodore Mead Kimble)

State of North Carolina
v
Theodore Mead Kimble

RECEIVED
APR 10 2001
CLERK OF SUPREME COURT

From NC Court of Appeals
(COA99-1518)
(97CRS23656)
(97 CRS 39581)
(98 CRS 23486)
(99CRS23241-48)

ORDER

Upon consideration of the petition filed by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 5th day of April 2001.

s/ Butterfield, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of April 2001.

Christie Speir Cameron
Clerk, Supreme Court of North Carolina

Carol B. Templeton

Carol B. Templeton
Assistant Clerk

Copy to:
North Carolina Court of Appeals
Ms. Danielle M. Carman, Assistant Appellate Defender, For Kimble
Mr. Edwin W. Welch, Special Deputy Attorney General, For State
Mr. Horace M. Kimel, Jr., District Attorney
Mr. David Churchill, Clerk of Superior Court
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Lexis-Nexis

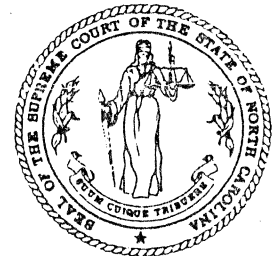


EXHIBIT (N)

581

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

GUILFORD COUNTY
STATE OF NORTH CAROLINA

v.

THEODORE MEADE KIMBLE

Ry

File No.

97CRS 23656

Film No.

**INDICTMENT
ARSON
CONSPIRACY TO MURDER**

Date of Offense
October 9, 1995

Offense in Violation of G.S.
14-58 and the Common Law

**COUNT I
ARSON OF AN UNOCCUPIED DWELLING**

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC.

**COUNT II
CONSPIRACY**

AND THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath do present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, and feloniously that conspire, combine, confederate and agree with Ronnie Lee Kimble to commit the felony of Murder in the First Degree, in that Theodore Mead Kimble did agree with Ronnie Lee Kimble to murder, kill and slay Patricia Kimble in violation of N.C. Gen.Stat. 14-17, and the common law of the State of North Carolina.

Signature of Prosecutor

[Handwritten Signature]

WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

- A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
- NOT A TRUE BILL

Date

NOV 03 1997

Signature of Grand Jury Foreman

Michael Smith

253

EXHIBIT (0)

20

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

FILED

File No. **98CRS 23486**

GUILFORD COUNTY

STATE OF NORTH CAROLINA 1998 JUL -6 PM 3: 58

Film No. **INDICTMENT
FIRST DEGREE ARSON**

v.

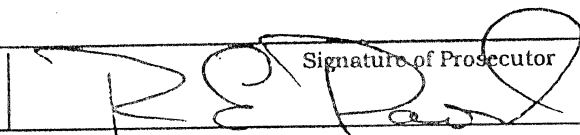
THEODORE MEAD KIMBLE GUILFORD COUNTY, N.C.

Date of Offense
October 9, 1995 BY 

Offense in Violation of G.S.
14-58 and the Common Law

FIRST DEGREE ARSON

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC. At the time of the burning Patricia Kimble was in the dwelling.


Signature of Prosecutor

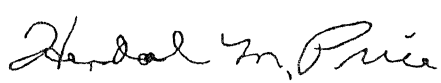
WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
 NOT A TRUE BILL

Date
JUL 06 1998

Signature of Grand Jury Foreman


14. (If applicable) The prosecutor and your lawyer have informed the Court that these are all the terms and conditions of your plea: (See attachment for additional plea arrangements, including voluntary dismissals.)

Answers

The State of North Carolina agrees to accept a plea to Second Degree Murder in 97CRS39581. Count 1 of 97CRS23656 shall be dismissed. In return, the Defendant agrees to enter guilty pleas to Second Degree Murder in 97CRS39581, Conspiracy to Commit First Degree Murder in 97CRS23656, First Degree Arson in 98CRS23486, and eight counts of Solicitation to Commit First Degree Murder in Bills of Information which are to be filed this date. The Defendant agrees and understands that he will receive consecutive sentences in each of these cases. Further, the Defendant agrees to return the ashes of Patricia Blakley Kimble to the Blakley family. The State agrees to dismiss any Breaking and Entry or Larceny indictments against Theodore Meade Kimble which are presently pending in Guilford County.

The parties stipulate that the Defendant is a level II offender, and that under the Structured Sentencing Act the maximum sentence he can receive for each B-2 felony is 254 months, for each Class C felony 159 months, and for the Class D felony 108 months.

- (a) Is this correct as being your full plea arrangement?
- (b) Do you now personally accept this arrangement?

(14a) yes
 (14b) yes

- 15. (Other than the plea arrangement between you and the prosecutor) has anyone made any promises or threatened you in any way to cause you to enter this plea against your wishes?
- 16. Do you enter this plea of your own free will, fully understanding what you are doing?
- 17. Do you have any questions about what has just been said to you or about anything else connected with your case?

(15) no
 (16) yes
 (17) no

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. Neither my lawyer nor anyone else has told me to give false answers in order to have the Court accept my plea in this case. The conditions of the plea as stated above, if any, are accurate.

SWORN AND SUBSCRIBED TO BEFORE ME		Date	1/28/99
Date	1/28/99	Signature	<i>Mustina Davis</i>
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Signature Of Defendant	X <i>Theodore Meade Kimble</i>
		Name Of Defendant (Type Or Print)	Theodore Meade Kimble

CERTIFICATION BY LAWYER FOR DEFENDANT

As lawyer for the defendant named above, I hereby certify that the conditions stated above, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charge(s) to which the defendant is pleading.

Date	1/28/99	Name Of Lawyer For Defendant (Type Or Print)	<i>Fred W. Zimmerman, Jr.</i>	Signature Of Lawyer For Defendant	<i>Fred W. Zimmerman, Jr.</i>
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CERTIFICATION BY PROSECUTOR

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated above, if any, are the terms agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charge(s) in this case.

Date	1/28/99	Name Of Prosecutor (Type Or Print)	<i>Richard E. Parosh</i>	Signature Of Prosecutor	<i>Richard E. Parosh</i>
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PLEA ADJUDICATION

Upon consideration of the record proper, evidence presented, answers of defendant, and statements of the lawyer for the defendant and the District Attorney, the undersigned finds:

1. That there is a factual basis for the entry of the plea.
2. That the defendant is satisfied with his/her lawyer.
3. That the defendant is competent to stand trial and that the plea is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea is hereby accepted by the Court and is ordered recorded.

Date	1/28/99	Name Of Presiding Judge (Type Or Print)	<i>John M. McHugh</i>	Signature Of Presiding Judge	<i>John M. McHugh</i>
------	---------	-----------------------------------------	-----------------------	------------------------------	-----------------------

I was at work, Lyle's Building Material Oct. 9, 1995. AT 3:25 P.M. I called Patricia Kimble, who was about to leave work early to go home and cut the grass. Little did I know my wife would be dead by the end of the day. After I hung-up the phone I walked out of the office as my younger brother, Ronnie Kimble^(Jr.) came driving up (3:45 P.M.). AS I spoke to Ronnie an employee named James Ogburn came walking up. James asked Ronnie about the for-sale sign in the window of his car. While they talked I had to go wait on a customer. After the customer left I went and got the tools Ronnie had asked for. Ronnie left Lyle's Building MTL. around 4:25 P.M. AT 4:45 P.M. Ronnie^(Jr.) was at his home working when his father-in-law, James STUMP came driving up to help him. The rest of the evening Ronnie spent with his in-laws and wife. Thus all of Ronnie's time was accounted for.

Other than myself James Ogburn was the key witness who could verify Ronnie's location from 3:45 P.M. to 4:25 P.M. Detectives spoke to James Ogburn at least (4) times. But the Prosecutor (Dick Panosh) never turned over a single statement made by James. Two of those interviews were made down-town in the D.A.'s office. The first time James Ogburn gave his statement was at Lyle's Building MTL. in-front of Edna Kimble. James was interviewed by whom is believed to be Detective Sergeant Debarry. Detectives Church and Debarry spoke to James at the company a few times.

Approximately a year after the death of Patricia Kimble, A young man named Robert Nicholes (Rob) came to work at Lyle's Building MTL. At the time no one knew that with Rob came a drug (cocaine) and alcohol problem. In Dec. (96) Rob started selling small amounts of lumber to the company (Lyle's Building MTL.) He claimed

a contractor was giving him the left-over lumber off job-sites. On Jan. 2, 1997, Rob asked for my help to go and pick-up some lumber as soon as the company closed, at 5:30 P.M. I agreed to go and help. Before the company closed a friend at the time named Patrick Pardee came driving up. when asked he also agreed to go and help. I closed up as always and the 3 of us headed across town. when we arrived at the site to get the lumber, we not only loaded what Rob claimed was promised to him, we loaded it all. Thus began a crime spree that lasted for the next 60 days.

By the end of the first week in March, Patrick and I had pretty much stopped stealing. Do to Rob's drug problem he continued stealing in an attempt to support his habit. During the second week of March I realized Rob was now stealing from the company, (which I own), but I didn't know what to do about it. During the same week Rob came - up and stated he and his friend (Jeff Roberts) had spotted a trailer loaded with ladders, and asked if I needed anymore? I said, "NO." "Let me ask you Rob, did you tell Jeff what we had done?" Rob said, "NO" and walked off. James Ogburn then walked up and I said, "we're busted because Rob told Jeff. You know how the two of them fight all the time. The next time they fall out, Jeff will call Crime-stoppers for the reward, so he can get more drugs."

On April 1, 1997 I was arrested. A few weeks later I was indicted on 47 felony Breaking/Entering and Larceny charges. When I got the case discovery information I read where Jeff Roberts had called Crime-stoppers just like I said he would. In my absence my father, Ronnie Kimble (Sr.) ran Lyles Building Mtl. My younger brother, Ronnie Kimble (Jr.) was also arrested April 1 (97) and indicted for the death of Patricia Kimble. I would be indicted a few months later. While Ronnie (Jr.) sat in the Greensboro Jail of Guilford County, I sat in the High Point Jail.

While I sat in jail there was a break-in at Lyle's Building Mtl. Someone loaded shingles into the company's brand new trailer (\$5,500) and drove off with it. A few months passed and Jeff Roberts started coming into "Lyle's" for business. One day while Jeff spoke to Ronnie (Sr.) he broke-down and started telling Mr Kimble about things he and Rob had done. Jeff stated he and Rob had broke into "Lyle's" and stolen the trailer and shingles. Jeff also said he went to the beach with Rob Nicholes, Rob's wife and daughter. While at the beach Jeff helped Rob do a roofing job with the stolen shingles, then Rob went and sold the trailer. Mr. Kimble (Sr.) called and reported this information to the authorities. A detective came and interviewed Jeff Roberts and took a statement, but the District Attorney's office refused to issue a warrant and arrest Robert Nicholes. The actions or lack thereof by the D.A.'s office should've come as no surprise. Jeff also told Mr. Kimble (Sr.) that Rob stated he didn't know anything about Patricia Kimble's death, because I (T.K.) had never talked to him about it. And that the D.A. (Dick Panosh) was coaching him as what to say. Jeff said Rob would joke about having to go down-town for his coaching lessons.

One day James Ogburn and a co-employee of "Lyle's" ran into Rob. Rob asked that they let Mr. Kimble (Sr.) know, He had talked it over with his wife and decided not to go through with it (lie), and testify against Ted (T.K.). James and the co-employee gave signed statements, which copies are enclosed within the M.A.R. "But once again Rob lied."

Meanwhile Patrick Pardee showed up at Chilly's Restaurant one day for lunch, and spoke to a young woman named Melanie Eyendine. Patrick told Melanie he didn't know anything about Patricia Kimble's death, but the Prosecutor was pressing him to sign a statement against Ted (T.K.) anyway. Three days after this conversation Patrick Pardee signed a statement against me (T.K.).

Maybe a month or so after Jeff Roberts confessed to Mr Kimble (Sr.), Jeff

got arrested and thrown into jail. Jeff wasn't just placed anywhere, The D.A. (Dick Panosh) had Jeff placed at the HighPoint Jail, in the very cell "next to me." Jeff told me he was out attempting to steal some scrap aluminum when his truck got stuck in the mud. During the following week Jeff made several trips to the Greensboro D.A.'s office, where he was interrogated; interviewed, and threaten. Each time Jeff would return to his cell and tell me what was happening. Jeff first stated Dick Panosh (Asst. D.A.) and detective J.D. Church wanted him to try and talk to me about my case. On another visit they wanted Jeff to sign a statement against me, which stated I had confessed to him while he was in the cell next to me. If Jeff didn't sign the statement Mr. Panosh threaten to prosecute him to the max! This was the same way Mr. Panosh got Robert Nicholes and Patrick Pardee to sign statements, which said the same thing. After 3-4 visits to the D.A.'s office Jeff was scared to death, but he held-out. After the final visit Jeff told me that Mr. Panosh had stated he better keep his mouth shut and disappear. If Jeff did as told the pending charges against him would be dropped. Mr. Panosh told Jeff he had better NOT show up at trial to testify against Rob during the "Kimble trial." A day or two after this conversation with Jeff, he got out of jail and was never heard from again. Up until the time Mr. Panosh threaten Jeff, he was going to testify for the defense.

I complained to my lawyer about Jeff being in the cell next to me, and told of what Mr. Panosh was trying to do. But my lawyers did nothing.

I was still in jail awaiting trial when a patrol car arrived at Lyle's Building Material. The police officers arrested James Ogburn and claimed it was for back child-support payments. But when James got downtown he was taken to the D.A.'s office to discuss the "Kimble's case." James said the D.A. told him his life was

at a fork in the road, one path leads to prison for the rest of his life, the other path leads to probation, "Don't show up at the Kimble trial!"

For over two years James Ogburn had stated Ronnie Kimble was in front of him on Oct. 9, 1995 between 3:45-4:30 P.M. Two week before Ronnie Kimble's trial James was at the D.A.'s office again for another pep-talk. Once again the D.A. threaten James and made it clear he had better not testify for the defense.

You have to Remember, James was involved with the 47 plus felony Breaking/Entering and Larceny cases. The D.A. threaten to prosecute James on all of these charges if he didn't change his statement. After James' last visit to the D.A.'s office his statement changed, James said he couldn't remember the exact time anymore, and he refused to testify. In exchange the D.A. didn't prosecute James on a single charge.

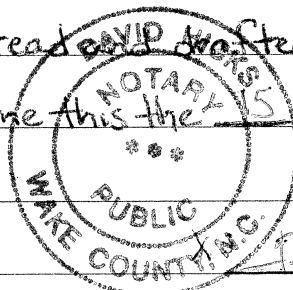
When it came time for (co-defendant) Ronnie Kimble Jr.'s trial, Jeff Roberts and James Ogburn were nowhere in sight. The D.A. had threaten them, and ran them off. Robert Nicholes and Patrick Pardee both marched into court and lied on the stand, saying I had confessed to them, and told them I had hired Ronnie (Jr) to kill my wife. They lied just as Richard Panosh (D.A.) coached them to do. I NEVER said any such thing to either of them! Ronnie Kimble was standing in front of myself and James Ogburn at the time Patricia Kimble died. It would be impossible for Ronnie to be in two places at the same time! Both Rob and Patrick had plea-agreements with Richard Panosh on pending charges, and neither saw a day in prison. To my knowledge both had prior criminal records, yet both received probation and or the First Offender's Program. It's also my understanding Rob and Patrick were only charged with 2-3 crimes each, while I was charged with 47 felonies in which they were

also involved. If this isn't a case of selective prosecution I don't know what is. The D.A. even got a young lady named Joy Dyers, who was an x-girlfriend, to lie in court. Just as the others she had pending charges in which the D.A. used as leverage to coerce witnesses to lie. After Joy testified to the lies, her pending charges were dismissed.

In mid 99' while sitting in prison, waiting on my direct Appeal to be filed, I picked up the Raleigh newspaper (The News & Observer) and read the classifieds. Low and behold I saw an "Ad" for a "TRAILER" which sounded like the one Rob stole from me. I sent the Ad to my father Ronnie (Sr) who drove half-way across the state and found my trailer. It was a custom-built trailer (\$5,500) so there is NOT another one like it in the World. Finally, I had evidence which could be traced back to Robert Nicholes. Mr Kimble (Sr) reported this information to the authorities, but just as before the District Attorney's office refused to go and get the trailer, They refused to arrest Robert Nicholes. Clearly this was a miscarriage of justice, and Prosecutor Misconduct. Richard Panosh sees himself above the Law he's suppose to represent.

The above Affidavit is written in True Accounts of Events that took place, To the Best of my Knowledge all statements made are TRUE and CORRECT, As for any statement made on information and belief are made in good faith, And I Believe to be TRUE, I have read and drafted the same, I swear under perjury. Sworn to and before me this the 15 Day of October 2003.

WITNESS: Ram/Chick 10-15-03



Theodore M. Kimble

MY COMMISSION EXPIRES: My Commission Expires 5-18-2008.

THEODORE MEAD KIMBLE

Leaving work, James and I ran into Rob and talked with him in the parking lot of the boat place. He talked about how well he was doing with his new business and the new home he just purchased. He also spoke on Ted and Ron in reference to how they were doing etc. and mentioned that he was not going to testify to that "bull-shit because it wasn't right. He stated that he and his wife had talked about it and he had had a change of heart and realized it was wrong to do so. She had the same feelings. He stated that instead he would take the "contempt of court charge" and do the time at the County farm. He told James that he was telling him this so that he could relay it to Mr. Kimble.

Walter A. Cole Sr.
8/2/97

EXHIBIT (T) 2 of 3

Time 12:00

4-18-97

Robert informed me that the Police
was on him concerning Ted and the
murder ^{case}. Robert also says that, Ted
told him some things that he shouldn't have,
but nothing concerning the murder. Robert
says he was going to plea guilty to
all larceny charges.

James Ogden

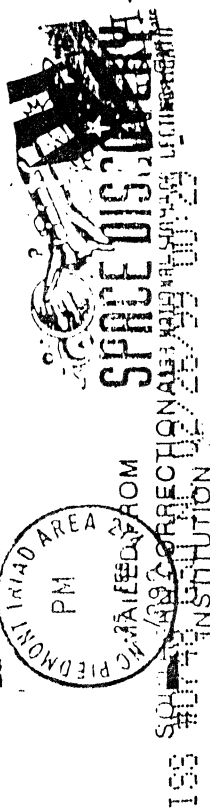
EXHIBIT (5) 3043 7-29-97

On July 22nd, I saw Robert Nicklaus in the parking^{lot} down from Syler Bld. Materials. He stated to me that he wasn't going to testify against Ted, concerning the murder of his wife. Rob also asked me to inform Mr. Kimble of this matter too. Robert says that he would be in contempt of court, for not testifying, and that he would deal with that. His primary message was for me to inform Mr. K

of his actions concerning this matter.

James Ogden

EXHIBIT (U) 1083

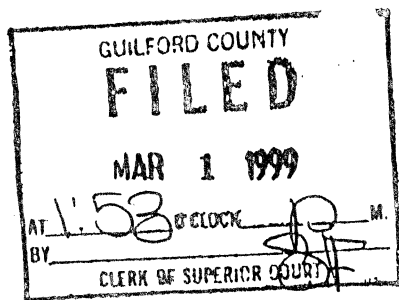


Therese Kimble
 P.O. Box 786
 Troy NC 27371

To: Guilford County Court House
 Superior Court Judge Peter McHugh
 Greensboro NC 27402

27400/9999

2043
EXHIBIT (u)



Superior Court Judge
Peter McHugh

I Theodore M. Kimble would like to withdraw my guilty-plea on all accounts and charges. I request to go before a jury and plead my case. I was pressured into my earlier plea. I'm NOT Guilty and here by withdraw my earlier plea of Guilty.

When you read the Plea Agreement, you asked if I had been threatened in any way to force me to take the agreement? The answer is Yes! Mr Zimmerman stood by my side, under his breath saying, "Play it cool." I told him yes before hand and he was afraid I'd tell you. I ask, How can I say "No" when I'm being told if I don't, I'll be killed should I go to trial.

I believe your opinion needs to wait till the evidence is heard. I disapprove of you saying "Good Job" to my lawyers. It sounds as if you had read the newspapers and formed your own opinions. I hope a byist attitude isn't shown during the trial or favoritism to the D.A.

I request a gag order be placed on the D.A. He has done nothing but brain wash the public and potential jurors. Further

03/17

APR 1 1999

EXHIBIT (U) 3043

Do to the D.A.'s press conferences I'd like my trial moved to Winston Salem in Forsyth County.

I've not made my decision known to my attorneys at this point, but am presently doing so. I assure you, I won't allow someone to push me around again. My mind is made up.

Thank you,

Theodore W. Kimble

2-24-99

P.S. What is justice when a D.A. tells an opposing witness, "Your life is at a fork in the road, one goes to prison the other to probation. Don't slow at the Kimble trial."

3/1/99 cc: Parosh
Zimmerman/Crompler

1 GUILTY TO?

2 DEFENDANT:- YES, SIR.

3 THE COURT:- ARE YOU SATISFIED WITH YOUR ATTORNEYS'
4 LEGAL SERVICES ON YOUR BEHALF?

5 DEFENDANT:- YES, SIR.

6 THE COURT:- HAVE YOU DISCUSSED ANY POSSIBLE DEFENSES
7 THAT YOU MAY HAVE AVAILABLE TO ASSERT AGAINST THESE VARIOUS
8 CHARGES THAT HAVE BEEN FILED AGAINST YOU?

9 DEFENDANT:- YES, SIR.

10 THE COURT:- AND YOU ARE SATISFIED WITH YOUR
11 ATTORNEYS' SERVICES WITH REGARD TO THEIR CONSULTATION, IS THAT
12 CORRECT?

13 DEFENDANT:- YES, SIR.

14 THE COURT:- ALL RIGHT. YOU UNDERSTAND YOU HAVE THE
15 RIGHT TO PLEAD NOT GUILTY TO THESE CHARGES AND TO BE TRIED BY A
16 JURY UPON A PLEA OF NOT GUILTY?

17 DEFENDANT:- YES, SIR.

18 THE COURT:- DO YOU UNDERSTAND THAT, AT SUCH TRIAL,
19 YOU WOULD HAVE THE RIGHT TO CONFRONT THE WITNESSES AGAINST YOU
20 AND TO CROSS EXAMINE THE WITNESSES AGAINST YOU?

21 DEFENDANT:- YES, SIR.

22 THE COURT:- AND DO YOU UNDERSTAND THAT, BY ENTRY OF
23 THIS PLEA, YOU ARE WAIVING, THAT IS, GIVING UP, THESE AND ALL
24 OF YOUR OTHER CONSTITUTIONAL RIGHTS RELATING TO BEING TRIED BY
25 A JURY?

1 GUILTY TO THOSE OFFENSES BECAUSE YOU CONSIDER IT TO BE IN YOUR
2 BEST INTEREST TO DO SO?

3 DEFENDANT:- YES, SIR.

4 THE COURT:- DO YOU UNDERSTAND THAT WHEN YOU PLEAD
5 GUILTY TO THOSE OFFENSES UPON THAT CONDITION THAT YOU WILL BE
6 ADJUDGED GUILTY AND SENTENCED FOR THOSE OFFENSES WHETHER OR NOT
7 YOU, IN FACT, ADMIT THAT YOU ARE GUILTY OF THEM?

8 DEFENDANT:- YES, SIR.

9 THE COURT:- HAVE YOU AGREED TO TENDER A PLEA OF
10 GUILTY TO THESE SEVERAL OFFENSES AS PART OF A PLEA ARRANGEMENT
11 THAT WAS NEGOTIATED ON YOUR BEHALF BY YOUR ATTORNEYS WITH THE
12 DISTRICT ATTORNEY?

13 DEFENDANT:- YES, SIR.

14 THE COURT:- IS THIS A CORRECT STATEMENT OF WHAT YOU
15 UNDERSTAND YOUR FULL PLEA ARRANGEMENT TO BE: THE STATE OF
16 NORTH CAROLINA HAS AGREED, PURSUANT TO THE PLEA ARRANGEMENT, TO
17 ACCEPT A PLEA OF GUILTY TO SECOND DEGREE MURDER IN CASE
18 97-CRS-39581. COUNT ONE IN THAT -- IN CASE 97-CRS-23656 SHALL
19 BE DISMISSED BY THE STATE UPON YOUR PLEA OF GUILTY. IN RETURN,
20 THE DEFENDANT AGREES TO ENTER PLEAS OF GUILTY TO SECOND DEGREE
21 MURDER IN CASE 39581, CONSPIRACY TO COMMIT FIRST DEGREE MURDER
22 IN CASE 97-CRS-23656, AND FIRST DEGREE ARSON IN CASE
23 98-CRS-23486, AND EIGHT COUNTS OF SOLICITATION TO COMMIT FIRST
24 DEGREE MURDER PURSUANT TO THE BILLS OF INFORMATION WHICH HAVE
25 BEEN SUBMITTED TO THE COURT. THE DEFENDANT AGREES PURSUANT TO

1 THAT PLEA ARRANGEMENT AND UNDERSTANDS THAT HE WILL RECEIVE
2 CONSECUTIVE SENTENCES IN EACH OF THESE CASES. FURTHER, THE
3 DEFENDANT AGREES TO RETURN THE ASHES OF PATRICIA BLAKLEY KIMBLE
4 TO THE BLAKLEY FAMILY. THE STATE AGREES PURSUANT TO ITS
5 COMMITMENT AND THE PLEA ARRANGEMENT TO DISMISS ANY BREAKING AND
6 ENTERING OR LARCENY INDICTMENTS PENDING AGAINST THEODORE MEAD
7 KIMBLE WHICH ARE PRESENTLY PENDING IN GUILFORD COUNTY, NORTH
8 CAROLINA. THE PARTIES STIPULATE, PURSUANT TO THE PLEA
9 ARRANGEMENT, THAT THE DEFENDANT, THAT IS YOU, IS SUBJECT TO
10 SENTENCE AS A LEVEL TWO OFFENDER, AND THAT, PURSUANT TO THE
11 STRUCTURED SENTENCING ACT, THE MAXIMUM SENTENCE THAT THE
12 DEFENDANT MAY RECEIVE FOR EACH OF THE B2 FELONIES IS 254
13 MONTHS, FOR EACH CLASS C FELONY, IT'S 159 MONTHS, AND FOR THE
14 CLASS D FELONY, IT IS 108 MONTHS. IS WHAT I'VE JUST SAID TO
15 YOU A CORRECT STATEMENT OF WHAT YOU UNDERSTAND YOUR FULL PLEA
16 ARRANGEMENT TO BE, MR. KIMBLE?

17. DEFENDANT:- YES, SIR.

18 THE COURT:- AND DO YOU PERSONALLY ACCEPT THE PLEA
19 ARRANGEMENT AT THIS TIME?

20 DEFENDANT:- YES, SIR.

21 THE COURT:- OTHER THAN THE CONDITIONS OF THE PLEA
22 ARRANGEMENT I HAVE JUST RECITED TO YOU, HAS ANYONE THREATENED
23 YOU OR MADE ANY PROMISES TO YOU TO IN ANY WAY ATTEMPT TO CAUSE
24 YOU TO ENTER THIS PLEA OF GUILTY AGAINST YOUR WISHES?

25 DEFENDANT:- NO, SIR.

1 (March 4, 1999.)

2 THE COURT: Mr. Panosh, you may proceed.

3 MR. PANOSH: Your Honor, we are before the
4 Court on the matter of Theodore Mead Kimble, the
5 remaining case is 97 CRS 39581. I believe that the first
6 matter is a motion to withdraw filed pro se by the
7 defendant.

8 Your Honor, the State has filed an Answer to
9 the motion to withdraw, and I've served counsel with a
10 copy. I did note that on page 1 when I indicated date of
11 change of counsel, I have the wrong date there. It
12 should have been December 3rd, of '98 change of counsel.
13 And I've made that correction.

14 THE COURT: Thank you. Mr. Crumpler, Mr.
15 Zimmerman, are you appearing with the defendant at this
16 time?

17 MR. CRUMPLER: Your Honor, we are appearing
18 by virtue of the nature of the motion. We have explained
19 to the defendant actually we will remain neutral because
20 we may be asked questions, and the defendant understands
21 that.

22 THE COURT: All right. Thank you. Mr.
23 Kimble, would you stand up, please?
24 (Defendant stands.)

25 THE COURT: Mr. Kimble, the court records

EXHIBIT (Y)

6

1 had manipulated the witnesses and myself. I ask my trial
2 be moved to Winston-Salem because of the publicity around
3 my case, mainly caused by the D.A. I'm tired of being
4 scared, used and run over by Guilford County. It's time
5 I stand up for myself and quit allowing these people to
6 abuse me. I want the truth known by all, and that's what
7 everyone is going to get when I take the stand. It's my
8 life, it should be my choice. Please, Your Honor, set
9 the plea aside and set a trial date. I don't want to
10 have to appeal the decision to get the trial I deserve.
11 This would further delay the inevitable and tie up the
12 court. I would have to get new court appointed lawyers
13 and start over. The lawyers I have were paid. Let them
14 finish what they've started. With all due respect, you
15 represent justice. I'm willing to die to prove my
16 innocence. I love my wife, and I want to tell the truth.
17 The D.A. has done nothing -- everything in his power to
18 ensure that I not receive a fair trial. Please set
19 things straight.

20 I might add, Your Honor, being intimidated,
21 last time I left I was somewhat abused. I was shackled
22 so tight it left bruises on my wrists and nearly broke
23 the skin on my ankles, and the driver was running 97 mph
24 down 220, blowing his horn, flashing his lights at people
25 to get out of his way. By the time I got back to my

1 A. We probably have 350 on the roll. And on Sunday
2 morning worship attendance we probably average 150 to 175
3 altogether.

4 Q. Mr. Kimble, you've heard the witnesses here in
5 court today. Have you heard your wife's testimony?

6 A. Yes, sir.

7 Q. Keeping in mind that His Honor is going to have to
8 pass judgment on your son, Ted, at the conclusion of the
9 hearing, will you relate to the Court things about your
10 son Ted that you would ask the Court to consider in his
11 behalf?

12 A. Yes, sir. Your Honor, I've sat through my other
13 son's trial. There was a question at the end of trial by
14 Mr. Panosh. I told him I would like to express to you I
15 believe with all my heart my sons did not do this. I
16 know I believe it because the time frame, I'd look at it
17 humanly and the time frame that my other son supposedly
18 committed the murder for this son, he could not have done
19 it because he was at the place of business at Lyles
20 Building Material with my son, and with another witness.
21 The witness was going to testify that he was at Lyles up
22 to about 4:30. He told me this on numerous occasions.
23 And about two weeks before the trial started, the D.A.
24 called him down here to his office, and they had
25 mentioned to him about bringing him in on the breaking,

1 entering, larcenies if he didn't cooperate with them. He
2 come back to the place of business and his story changed
3 that my son left -- well, last time he saw him was around
4 3:00. But he told me all the way up to that time that he
5 would be glad to come to court, be glad to testify that
6 my son was at that business till about 4:30. But then
7 when he went to the D.A.'s office, he come back, his
8 story changed. I know with all my heart that my sons are
9 not guilty of this. And I'll go to my grave knowing that
10 because it's just no way. I asked myself could they have
11 done it. I looked at it from every way possible. It's
12 no way they could have because they could not have been
13 there. And my other son, he was working two jobs. His
14 wife told him that if he would pay off the boat--- He
15 wanted to buy a motorcycle. That if he would pay off the
16 boat that he could buy a motorcycle. And then after her
17 death, he did go buy a motorcycle. But first of all, he
18 went out and bought the clothes that he needed, the
19 things that he needed. Then he took little bit of that
20 money, he went and borrowed money from the bank on a
21 charge card and he did buy a motorcycle, which I did not
22 approve of. I owned a couple of motorcycles and they're
23 dangerous. With all my heart I do not believe either one
24 of my sons had anything to do with this murder. I know
25 he took the plea bargain. I know that he did that. But

1 Lyles, did you know these two people, Mr. Pardee and Mr.
2 Nichols?

3 A. Very well, sir.

4 Q. And, uh, did you ever have any conversation with
5 Mr. Nichols or Mr. Pardee concerning anything about your
6 wife or manner in which she was killed or whatever?

7 A. Never. The only conversation, and it was limited,
8 was with Patrick Pardee, and it was about the crooked
9 dealings of the D.A.

10 Q. Did Mr. Nichols or Mr. Pardee ever give you any
11 indication that they would not testify to these facts
12 that you had told them, that you'd had your wife killed
13 or words to that effect?

14 A. I've never heard any of the comments they've made.
15 I do know that Patrick Pardee, three days before signing
16 a statement against me, told Melanie Oxendine that he had
17 no idea of any of the facts surrounding my case. That
18 the D.A. and detectives were pressuring him to lie
19 against me.

20 Q. All right.

21 A. Three days later he signs a statement against me
22 and supposedly knows everything there is about my case.
23 And this is under oath. Melanie Oxendine testified to
24 it.

25 Q. Now, tell me about what happened on the 9th day of

1 October, the date your wife died. Can you tell me what
2 time you -- how long you were at work?

3 A. I need to finish what I was saying.

4 Q. Excuse me. Go ahead.

5 A. Rob Nichols told James Ogburn and a fellow inmate
6 from Lyles Building Material, which I believe you have a
7 statement written by those two employees of Lyles. They
8 ran into each other at the gas station across the street,
9 and he verified to them that he had been being coached by
10 the D.A. That he was no longer going to testify against
11 me, quote unquote, "lie" against me, as the D.A. had been
12 pressuring him to do.

13 Q. All right. Anything else about either one of
14 them?

15 A. Uh, I would like to mention that Rob Nichols has a
16 very serious drug problem. Alcohol abuse problem.
17 Abuses his wife and his child. Uh, the B&E's, he would
18 take his little girl out on the job sites and have his
19 little girl stick her arm through the key hole to reach
20 up and unlock the dead bolt. I mean this is the witness
21 with the halo around his head the D.A. portrays him as.

22 Q. Now, along those lines about the breaking and
23 enterings and the thievery or taking of property, were
24 you engaged in some of that also with them?

25 A. Yes, sir. I'm ashamed to admit it. Under the

1 is a biased opinion. She has never liked me, and told me
2 to my face.

3 Q. And it's your contention that Mr. Pardee and Mr.
4 Nichols, who are under indictment for something; is that
5 correct?

6 A. Yes, sir. They face charges on the B&E's. And
7 they have both signed plea agreements with the D.A. Per
8 se cut deals for their testimony to lie against me.

9 Q. All right. So, you're saying, telling us that
10 there is some sentence consideration on the part of the
11 State in return for their testimony?

12 A. Shoot yeah. That's the only reason he could get
13 them to testify against me, was to give them a plea
14 agreement. Just like the William Stewart guy got out of
15 prison early.

16 Q. All right. Now that's where I'm headed right now.
17 Let me ask you this. As to this William Stewart, how
18 long did you know William Stewart at Southern
19 Correctional?

20 A. Possibly a month. A month or so.

21 Q. During this month period, did Mr. -- did you
22 approach Mr. Stewart about having anybody killed?

23 A. No, sir. I did not. He approached me.

24 Q. And what was his -- can you tell us how he brought
25 it up to or broached the subject to you about killing

1 people off bringing the stuff, selling it to me, and gets
2 me to helping him, you know---

3 Q. Got you to help him?

4 A. He got me to help him.

5 Q. In fact, you're the one that purchased the two-way
6 radios, didn't you?

7 A. The walkie talkies?

8 Q. Yes.

9 A. Yes.

10 Q. And the scanner to listen for the police?

11 A. I had a scanner prior to that. My dad's got one
12 too. Does that make him a criminal?

13 Q. And went out and rented a U-Haul, I mean a lift
14 and a trailer to go to---

15 A. I own the trailer, sir. I owned the trailer
16 before Rob Nichols broke in my lot and stole it and took
17 it to the beach and sold it, and you refused to do
18 anything about it.

19 Q. You rented a lift, didn't you, to go to---

20 A. Yes, I did. To go to Home Depot to load up
21 lumber.

22 Q. Lumber by the lift full?

23 A. Exactly. Rob Nichols used to work there and rip
24 them off all the time. And he instigated it. He knew
25 the managers. He knew their schedule. He knew

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

File No. 97CR 2

EXHIBIT (EE) 10F3

GUILFORD County GREENSBORO Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: [This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI offense(s).]

STATE VERSUS

JUDGMENT AND COMMITMENT

Defendant

THEODORE MEAD KIMBLE

ACTIVE PUNISHMENT FELONY

Race

Sex

DOB

White

M

12-08-1969

1145 109 A CLERK OF SUPERIOR COURT (STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State

RICHARD PANOSH

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant

ROBERT L. MCCLELLAN

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 5 columns: File No(s) And Offense(s), Date Of Offense, G.S. No., F./M., CL. Row 1: 97CRS 23655 POSSESS WEAPON OF MASS DESTRUCTION, 04-01-1997, 14-288.8, F, F

The Court:

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be -0- RECORD LEVEL: I III V 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony. G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race). 7. finds no Extraordinary Mitigation.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 015 months for a maximum term of: 018 months in the custody of the: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for 32 days spent in the confinement prior to the date of this Judgment as a result of this charge.

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

12/16/97 BKKP

(check all that apply)

1. The defendant shall pay the costs. 2. The defendant shall pay a fine of \$ _____.

The Court recommends:

3. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h). 4. Psychiatric and/or psychological counseling.
 5. Work Release
 6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the items and amounts set out below.

Fine	Costs	Restitution*	Reimbursement For Atty Fee & Other Expenses	Total Amount Due
			\$1,850.00	\$1,850.00

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

The Court further recommends:

The Court does not recommend:

1. Restitution as a condition of post release supervision or work release. 2. Work release.

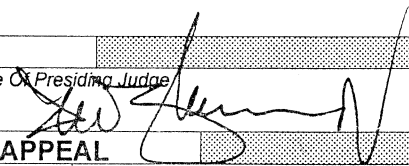
AWARD OF FEE TO COUNSEL FOR DEFENDANT

A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT/APPEAL ENTRIES

It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
 The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date 12-08-1997	Name Of Presiding Judge (Type Or Print) H. W. ZIMMERMAN, JR.	Signature Of Presiding Judge 
--------------------	-----------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified
-----------------------	---------------------------------	----------------------------------

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
------	--------------------	--------------------------------------------------------------------------------------------------------------------------------

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

Appeal Entries (AOC-CR-350)
 Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
 Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)
 Commitment Information Statement (DC-600)

Date	Signature And Seal
Date Certified Copies Delivered To Sheriff 12-16-97	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

STATE OF NORTH CAROLINA

FILED

File-No.

See Transcript

Guilford County

DEC 8 1997

In The General Court Of Justice

District Superior Court Division

STATE VERSUS

AT 4:00 O'CLOCK P M BY NA CLERK OF SUPERIOR COURT

WORKSHEET

PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING (STRUCTURED SENTENCING)

Name And Address Of Defendant

Theodore M. Kimble

Social Security No.

SID No.

NC 0725218A

Race

W

Sex

M

DOB

12/8/69

G.S. 15A-1340.14, 15A-1340.21

NOTE: This worksheet is provided to assist the attorney for the state in calculating and presenting the defendant's prior record level or prior conviction level. Record the defendant's prior record on the reverse side of this form or attach a copy of the defendant's prior record pursuant to G.S. 15A-1340.14(f). If sentencing for a felony, count the number of prior convictions in each offense class and enter those totals in the chart in section I below. For multiple prior convictions at one session of court, see G.S. 15A-1340.14(d). Class 1 misdemeanor offenses under Chapter 20 are not assigned any points for determining prior record level for felony sentencing except misdemeanor death by vehicle [G.S. 20-141.4(a2)]. First Degree Rape and First Degree Sexual offense convictions prior to October 1, 1994, are Class B1 convictions.

I. SCORING PRIOR RECORD/FELONY SENTENCING

Table with 4 columns: NUMBER, TYPE, FACTORS, POINTS. Rows include Prior Felony Class A Conviction (X10), Prior Felony Class B1 Conviction (X 9), Prior Felony Class B2 or C or D Conviction (X 6), Prior Felony Class E or F or G Conviction (X 4), Prior Felony Class H or I Conviction (X 2), Prior Class A1 or 1 Misdemeanor Conviction (see note) (X 1), SUBTOTAL (0), If all the elements of the present offense are included in the prior offense (+ 1), If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape (+ 1), TOTAL (0).

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

FELONY

NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.

NOTE: If sentencing for a felony, locate the prior record level which corresponds to the prior record determined in section I above.

Table with 2 columns: No. Of Prior Convictions, Level. Rows: 0 (I), 1-4 (II), 5+ (III).

PRIOR CONVICTION LEVEL []

Table with 2 columns: Points, Level. Rows: 0 (I), 1 - 4 (II), 5 - 8 (III), 9 - 14 (IV), 15 - 18 (V), 19+ (VI).

PRIOR RECORD LEVEL [I]

The Court has determined the number of prior convictions to be _____ and the level to be as show above.

The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.

Date 12/12/97

Name Of Presiding Judge (Type Or Print) H.W. Zimmerman, Jr.

Signature Of Presiding Judge [Signature]

EXHIBIT (F.F)

STATEMENT CONCERNING DEFENDANT'S CONFINEMENT

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