

Stand

NORTH CAROLINA
GUILFORD COUNTY

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
1998 JAN 22 PM 1:55
FILE NO. 97CRS-39580
GUILFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA
VS
RONNIE LEE KIMBLE,
DEFENDANT.

BY ASR
)
)
)
)
)
)

MOTION TO STRIKE
DEATH PENALTY
AS UNCONSTITUTIONAL

NOW COMES the Defendant, RONNIE LEE KIMBLE, by and through counsel, and moves the Court pursuant to G.S. 15A-954(a)(1) to dismiss, prior to trial, the charge of first degree murder (provided the Court holds that the indictment herein properly charges first degree murder), or, in the alternative, to declare G.S. 15A-2000 et seq., unconstitutional on its face or as applied to this Defendant; and the Defendant further moves for an order, prior to trial, requiring that should the trial jury determine Defendant guilty of first degree murder, the sentence and penalty imposed shall be only life imprisonment and not death. In support of the relief requested in this Motion, the Defendant respectfully shows the Court the following:

1. Defendant has been indicted in this case on the charge of first degree murder.

2. G.S. 15A-2000 et seq., the Article entitled Capital Punishment, is unconstitutional on its face, or as applied to the Defendant, on the following grounds:

A. The death penalty as defined in G.S. 15A-2000 et seq., and as applied in North Carolina, constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 27 of the Constitution of North Carolina. This is so because, inter alia, the language of the North Carolina Death Penalty statutes requires the Supreme Court of North Carolina to set aside death sentences imposed under the influence of passion, prejudice, or any other arbitrary factor, or upon a finding that the sentence of death is excessive or disproportionate to the penalty in similar cases, considering both the crime and the defendant [G.S. 15A-2000(d)(2)]; the North Carolina Death Penalty statutes permit as an aggravating factor, justifying the imposition of the death penalty, that the capital felony was "especially heinous, atrocious or cruel" [G.S. 15A-2000(e)(9)] See Maynard v. Cartwright, 43 CrL 3053 (1988); and the North Carolina Death Penalty statutes contained in G.S. 15A-2000 et seq., do not preclude the District Attorney from deciding, in his

discretion alone, in which cases to proceed only on second degree murder wherein the Defendant runs no risk of capital punishment. Because all of the aforesaid factors interject discretion throughout the Capital Punishment Article in the jurors, the District Attorney, and the Supreme Court of North Carolina, the North Carolina Death Penalty statutes subject this Defendant to the risk of death in an arbitrary, freakish and capricious fashion in violation of the Eighth Amendment to the Constitution of the United States and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 19 & 27 of the Constitution of North Carolina

B. The purported guidelines established in the North Carolina statutes dealing with the death penalty are illogical, vague, and not suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action; the North Carolina Death Penalty statutes introduce a standard of "diminished responsibility," which is not defined and which, therefore, permits the jury to apply this standard of deciding whether to vote for the death penalty without suitable guidelines avoiding the risk of arbitrary, freakish and capricious decisions. Hence, such statutes interject yet an additional factor which violates the Eighth Amendment to the Constitution of the United States proscribing cruel and unusual punishment, which also violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and which violates Articles 19 & 27 of the Constitution of North Carolina.

C. The North Carolina statutory scheme governing capital punishment, while permitting the Supreme Court of North Carolina to set aside a death penalty where that Court determines the sentence of death is "excessive or disproportionate to the penalty in similar cases, considering both the crime and the defendant," contains no standards by which the Supreme Court of North Carolina is to consider excessiveness or disproportionality so that counsel can effectively argue that his client's case comes within this vague and standardless language, thereby depriving this Defendant of rights secured to him by the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States and Article I, Section 19, 23, & 27 of the Constitution of North Carolina.

D. As still another example of how the North Carolina Death Penalty scheme is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States and the "Law of the Land" Clause of Article I, Section 19 of the Constitution of North Carolina and subjects a defendant, such as the Defendant herein, to the risk of arbitrary, capricious and freakish imposition of the death penalty, is that G.S. 15A-2000(e)(10) and (11) are unconstitutionally vague, overbroad and without sufficient standards to survive constitutional scrutiny.

E. The North Carolina Death Penalty statutory scheme is applied arbitrarily and discriminatorily against certain classes of defendants in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 19 of the Constitution of North Carolina; in that the North Carolina Supreme Court compares death cases under its statutory mandate to determine whether the sentence of death in any given case is excessive or disproportionate only with those cases in which a death sentence has been received and has been actually upheld.

F. The North Carolina Death Penalty statutory scheme is applied arbitrarily and discriminatorily in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 19 of the Constitution of North Carolina and in further violation of the United States Supreme Court's mandate in Gregg v. Georgia, 428 U.S. 153 (1976), in that the North Carolina Supreme Court does not submit written findings comparing cases in which it reviews the death sentences with similar cases, in carrying out the mandate of G.S. 15A-2000(d)(2), but merely lists other cases and states that it has made the required comparison. The statutory scheme itself does not require written findings or standards in comparing cases when the appellate court decides the issue of excessiveness or disproportionality. Consequently, such a procedure prohibits a defendant, such as the Defendant herein, from the ability to challenge the affirmation of his death sentence as arbitrary and discriminatory, or excessive or disproportionate, because the Defendant is given no notice as to which permissible factors the appellate court has used or should use in such comparison. This lack of standards also violates the Defendant's right to effective assistance of counsel on appeal under the Sixth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the Defendant respectfully prays the Court as follows:

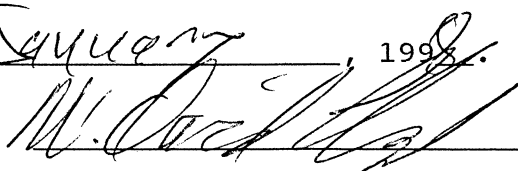
1. That all proceedings under G.S. 15A-2000 et seq., be dismissed as unconstitutional;
2. That the Court dismiss the charge, if the indictment in fact alleges it, of first degree murder against this Defendant;
3. That the North Carolina procedure for administering the death penalty be declared cruel and unusual as proscribed by the Eighth Amendment to the Constitution of the United States as applied to the states through the Due Process Clause of the Fourteenth Amendment and Article I, Section 27 of the Constitution of North Carolina;
4. That the North Carolina Statutory scheme dealing with capital punishment be held to violate the Sixth Amendment to the Constitution of the United States as made applicable to the

states by the Due Process Clause of the Fourteenth Amendment and Article I, Section 23 of the Constitution of North Carolina.

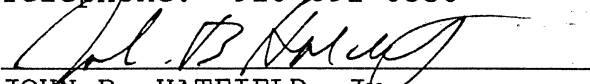
5. That the North Carolina capital punishment statutory scheme be held to violate the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States and the "Law of the Land" Clause of Article I, Section 19 of the Constitution of North Carolina, in that said statutory scheme is so vague, overboard, and permits such arbitrary, freakish and capricious imposition of the death penalty as to offend due process; and

6. That the Court enter an order, prior to trial, in the event that the state is permitted to proceed to trial on the charge of first degree murder, that should the trial jury determine the Defendant guilty of first degree murder, the sentence and penalty imposed shall be life imprisonment only and not death.

This the 22 day of January, 1998.


W. DAVID LLOYD
ATTORNEY FOR THE DEFENDANT

101 South Elm St.
Greensboro, N.C. 27401
Telephone: 910-691-0550


JOHN B. HATFIELD, Jr.,
ATTORNEY FOR THE DEFENDANT

219 W. Washington Street
Greensboro, NC 27401

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned attorney served a copy of the motions listed below or the attached motion on the State of North Carolina by (handing () mailing the same to:

- ✓ MOTION TO STRIKE DEATH PENALTY AS UNCONSTITUTIONAL
- ✓ MOTION TO PROHIBIT THE PROSECUTION FROM DEATH QUALIFYING GUILT-PHASE JURY
- ✓ MOTION TO DISCLOSE THEORY UPON WHICH STATE SEEKS 1st DEGREE MURDER
- * * * MOTION TO ALLOW DEFENSE COUNSEL TO QUESTION JURORS SUBSEQUENT TO CHALLENGE FOR CAUSE BY STATE
- MOTION TO PROHIBIT PHOTOS
- ✓ MOTION TO PERMIT VOIR DIRE EXAMINATION OF POTENTIAL JURORS REGARDING THEIR CONCEPTIONS OF PAROLE ELIGIBILITY
- ✓ MOTION FOR IMMEDIATE PRODUCTION OF STATEMENTS OF STATE'S WITNESSES
- ✓ MOTION TO DISMISS INDICTMENT FOR FAILURE TO ALLEGE ALL ESSENTIAL ELEMENTS OF FIRST DEGREE MURDER
- MOTION FOR INDIVIDUAL VOIR DIRE AND SEQUESTRATION OF JURORS DURING VOIR DIRE
- MOTION FOR A BILL OF PARTICULARS
- MOTION TO PROHIBIT PROSECUTOR FROM PEREMPTORILY CHALLENGING BLACKS
- MOTION FOR DISCLOSURE OF AGGRAVATING AND MITIGATING CIRCUMSTANCES
- ✓ MOTION TO SEVER

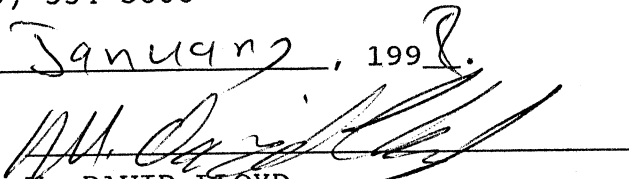
Motion to submit question to Judge

ROBERT McCLELLAN
121 S. Elm St.
Greensboro, NC

REVIS 1/25/98

HORACE KIMEL (or representative)
DISTRICT ATTORNEY
JUDICIAL DISTRICT 18
201 South Eugene Street
Greensboro, North Carolina 27401
(910) 334-5606

THIS the 22 day of January, 1998.


W. DAVID LLOYD
ATTORNEY FOR THE DEFENDANT

101 South Elm Street
Greensboro, North Carolina 27401
Telephone: (910) 691-0550