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September 8, 1999

Theodore M. Kimble, #0599011  
Central Prison  
1300 Western Blvd.  
Raleigh, North Carolina 27606

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

Dear Mr. Kimble:

It was nice to meet you yesterday. As promised, I am writing this letter to document and clarify our discussion. There are two categories of errors I could argue in your appeal -- I have enclosed a copy of the proposed assignments of error in your case to assist you in understanding this letter. First, despite your guilty pleas, I can and will challenge the trial judge's findings in aggravation and imposition of aggravated sentences in the murder, arson, and 6 of the solicitation cases (Assignments of Error Numbers 4, and 6-10). If we win that argument, you will get a new sentencing hearing, at which you could be sentenced in the presumptive or mitigated range on each of those charges. Thus, in the murder case, you received an aggravated term of 204 months minimum; at a new sentencing hearing, you could not be sentenced to any longer than 204 months and hopefully could get a shorter authorized minimum term (as low as 114 months). In the arson case, you received an aggravated term of 82 months minimum; at a new sentencing hearing, you could not be sentenced to any longer than 82 months and hopefully could get a shorter authorized minimum term (as low as 46 months). Finally, in the 6 solicitation cases, you received aggravated terms of 108 months minimum; at a new sentencing hearing, you could not be sentenced to any longer than 108 months on each count and hopefully could get shorter authorized minimum terms (as low as 60 months on each count). Thus, your current total minimum term of 107 years could either stay the same or be reduced by as much as 34.5 years. However, you need to understand that *the best possible result* of winning that argument is that your total minimum sentence will still be 72.5 years (i.e., 107 years minus 34.5 years). As you know, the practical benefit to you from any such reduction is minimal at best.

Second, we can argue that the trial judge should have allowed you to withdraw your guilty pleas and proceed to trial (Assignments of Error Numbers 1-3, and 5). As I mentioned yesterday, you had no absolute *right* to withdraw those pleas. However, I do think there is a significant chance that the Court of Appeals will find that you received

ineffective assistance of counsel at the motion to withdraw hearing; that you made an adequate showing to justify withdrawal of the pleas; and that the trial judge erred in not allowing you to do so. It is *very* important that you and your family understand the possible consequences of "winning" that argument in the Court of Appeals. If your pleas are vacated, you will essentially return to the exact position you were in prior to entering those pleas -- namely, you will be facing a capital trial on all charges. While it may not seem fair or just, the question you need to face is not whether you are *in fact* guilty but whether you believe you will be *found* guilty by a jury. You stated to me yesterday that -- regardless of your actual innocence -- you believe a jury probably would find you guilty. If that happens, there are only 2 possible sentences under North Carolina law -- life imprisonment with no possibility of parole and the death penalty. For all practical purposes, the first punishment would leave you in the exact same position you are in now. The second punishment, however, *is* far worse.

I understand and respect everything you said yesterday about believing that the likelihood of your success at any future trial is dependent on *Ronnie's* ability to secure a new trial and be acquitted. I also understand that you would feel cheated out of your only chance at beating this if Ronnie wins on appeal after you dismissed your appeal and waived your right to challenge your pleas. However, you *will not* have all of the information you want before you need to make that decision. Right now, Ronnie's appeal is about 2-3 months ahead of yours. Thus, while you may know the results of Ronnie's *appeal* before the Court decides your appeal, you will almost certainly *not* know the results of any *new trial* in Ronnie's case before the Court of Appeals issues a decision in your case. I know that puts you in a position of making vital decisions without all of the necessary information; unfortunately, there is little that can be done to change that position.

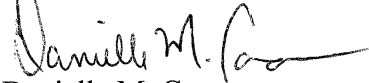
At this point, your proposed record on appeal is due on October 7 (because I am waiting for the extra transcript Mr. Panosh requested). Assuming Mr. Panosh and I am able to agree on the contents of that record, your appeal probably will be officially docketed by the Court of Appeals in early December. Thus, I expect your brief will be due shortly after Christmas. You can always withdraw your appeal *after* the brief is filed but *before* the Court of Appeals issues a decision. However, because the timing of the Court's opinion will be fairly unpredictable, I think that you need to decide before I file your brief.

As I mentioned yesterday, the decision here belongs to you and you alone, and I will do everything I can to help you either way. However, as you rightly observed, you are "playing with fire" with this appeal and you need to think very carefully about this decision. Again, I am extremely sorry that I cannot bring you better news or more hope. But as your attorney, I need you to be informed before you make decisions.

I will visit you again before I file your brief in December. In the meantime, I hope you are doing as well as possible. Please remember that you will not be in solitary

confinement forever, and that things will be more tolerable once you are returned to general population.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle M. Carman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Danielle M. Carman  
Assistant Appellate Defender

Enclosures

cc: Rev. Ronnie and Edna Kimble  
6318 Liberty Rd.  
Julian, North Carolina 27283

## DEFENDANT'S ASSIGNMENTS OF ERROR

Defendant assigns as error the following:

1. The trial court's action in misinforming defendant about the consequences of his guilty pleas and *Alford* pleas, on the grounds that the court's statements to defendant about the mandatory minimum sentences and possible maximum sentences were erroneous under North Carolina statutory and common law, violated G.S. 15A-1022, and rendered defendant's pleas involuntary in violation of defendant's State and Federal constitutional rights. Defendant asserts plain error.

Jan. 28, 1999 Pleas Transcript, Tpp. 9, line 15 through 10, line 7  
Jan. 28, 1999 Pleas Transcript, Tp. 12, lines 8-16  
Rpp. 17-20

2. The trial court's acceptance of defendant's guilty pleas and *Alford* pleas, on the grounds that the pleas were not freely, voluntarily, and understandingly entered, and that the court's action was erroneous under North Carolina common law and G.S. 15A-1021 and 15A-1022, and violated defendant's State and Federal constitutional rights. Defendant asserts plain error.

Jan. 28, 1999 Pleas Transcript, Tp. 18, lines 4-14  
Rp. 18

3. Defendant's attorneys' ineffective assistance of counsel at the hearing on his motion to withdraw his pleas, on the grounds that the attorneys had a conflict of interest and that their performance was deficient in violation of defendant's State and Federal constitutional rights.

Mar. 4, 1999 Motion to Withdraw, Tpp. 3-39

4. The trial court's ruling denying defendant's objection to State documentary exhibit number 1 and admission of that exhibit into evidence at the motion to withdraw hearing, on the grounds that the evidence was inadmissible and incompetent, and that the court's ruling was erroneous under North Carolina statutory and common law and violated defendant's State and Federal constitutional rights.

Mar. 4, 1999 Motion to Withdraw, Tpp. 29, line 23 through 30, line 14

5. The trial court's findings of fact, conclusions of law, and Order denying defendant's motion to withdraw his guilty pleas and *Alford* pleas, and entry of judgment and commitment in all cases, on the grounds that the trial court's statements about the mandatory minimum and possible maximum punishments were erroneous in law and violated G.S. 15A-1022; that defendant's pleas were involuntary, coerced, and uninformed in violation of G.S. 15A-1021 and 15A-1022 and North Carolina common law; that defendant received ineffective assistance of counsel at the motion to withdraw hearing; and that the court's findings are not supported by the evidence, the conclusions are not supported by the findings and are erroneous in law, and the Order is erroneous under North Carolina statutory and common law, and violative of defendant's State and Federal constitutional rights. To the extent this error is not preserved, defendant asserts plain error.

Mar. 4, 1999 Motion to Withdraw, Tpp. 30, line 19 through 39, line 14  
Rpp. 27-36, 54-75

6. The trial court's admission of State witness James Bowman's testimony at the sentencing hearing, on the grounds that the evidence was inadmissible and incompetent hearsay and that the court's action was erroneous under North Carolina statutory and common law and violated defendant's State and Federal constitutional rights. Defendant asserts plain error.

Mar. 4, 1999 Sentencing Hearing, Tpp. 56, line 11 through 67, line 1

7. The Trial Court's finding of the non-statutory aggravating sentencing factor that "defendant acted with premeditation and deliberation in committing this offense" in case number 97 CrS 39581 and imposition of a greater-than-presumptive sentence in that case, on the grounds that the factor was not adequately proved in law, not supported by any competent record evidence, inherent in the offense, and supported by the same evidence used to prove an element of the offense in violation of North Carolina statutory and common law and defendant's State and Federal constitutional rights.

Mar. 5, 1999, Sentencing Hearing, Tpp. 220, line 5 through 221, line 10  
Rpp. 38-39, 54-55

8. The Trial Court's finding of the non-statutory aggravating sentencing factor that "defendant acted for pecuniary gain" in case number 97 CrS 39581 and imposition of a greater-than-presumptive sentence in that case, on the grounds that the factor was not adequately proved in law and not supported by any competent record evidence in violation of North Carolina statutory and common law and defendant's State and Federal constitutional rights.

Mar. 5, 1999, Sentencing Hearing, Tpp. 220, line 5 through 221, line 10  
Rpp. 38-39, 54-55

9. The Trial Court's finding of the non-statutory aggravating sentencing factor that the "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" in case number 98 CrS 23486 and imposition of a greater-than-presumptive sentence in that case, on the grounds that the factor was not adequately proved in law, not supported by any competent record evidence, inherent in the offense, and supported by the same evidence used to prove an element of the offense in violation of North Carolina statutory and common law and defendant's State and Federal constitutional rights.

Mar. 5, 1999, Sentencing Hearing, Tpp. 221, line 25 through 222, line 23  
Rpp. 40-41, 58-59

10. The trial court's findings of both statutory aggravating sentencing factors 5(a) and 5(b) in case numbers 99 CrS 23241, 23242, 23243, 23244, 23246, and 23247 and imposition of greater-than-presumptive sentences in those cases, on the grounds that the factors were not adequately proved in law, not supported by any competent record evidence, supported by the same evidence used to prove an element of the offense, and supported by the same evidence used to prove each other in violation of North Carolina statutory and common law and defendant's State and Federal constitutional rights.

Mar. 5, 1999, Sentencing Hearing, Tpp. 222, line 24 through 226, line 20  
Rpp. 42-53, 60-73