

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District MIDDLE
Name (under which you were convicted): THEODORE MEAD KIMBLE		Docket or Case No.:
Place of Confinement: (x)		Prisoner No.: 0599011
Petitioner (include the name under which you were convicted) THEODORE MEAD KIMBLE		Respondent (authorized person having custody of petitioner) v. (x)
The Attorney General of the State of (x)		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Guilford County Superior Court, Greensboro North Carolina 27402

(b) Criminal docket or case number (if you know): 99 CAS 23161; 39501; 99 CAS 23101; 99 CAS 23244-48
- (a) Date of the judgment of conviction (if you know): January 28, 1999

(b) Date of sentencing: March 5, 1999
- Length of sentence: 1,289 Minimum Months to 1451 Maximum Months
- In this case, were you convicted on more than one count or of more than one crime? Yes No
- Identify all crimes of which you were convicted and sentenced in this case: Second Degree Murder, First Degree Arson, Conspiracy to Commit First Degree Murder, and 8 Counts of Solicitation to Commit First Degree Murder.
- (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest) (4) Insanity plea

An ALFORD Plea to 8 Counts 99 CAS 2324-48.

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? Guilty: Second Degree Murder, First Degree Arson, Conspiracy to Commit First Degree Murder
ALFORD PLEAS: 8 Counts of Solicitation to Commit First Degree Murder.

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only N/A

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court: North Carolina Court of Appeals

(b) Docket or case number (if you know): COA99-1518

(c) Result: DENIED

(d) Date of result (if you know): December 19, 2000

(e) Citation to the case (if you know): State v. Kimble, 141 N.C. App 144, 539 S.E. 2d (2000)

(f) Grounds raised: Appeal and Error Preservation of Issues, sufficiency of evidence to support ALFORD Pleas - No objection - Evidence to support Aggravated Factors - No objection - Prejudice of Plain Error.

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court: North Carolina Supreme Court

(2) Docket or case number (if you know): 37P01

(3) Result: DENIED

(4) Date of result (if you know): April 5, 2001

(5) Citation to the case (if you know): State v. Kimble, 141 NC, App 144, 539 SE. 2d (2000)

(6) Grounds raised: Discretionary Review from North Carolina Court of Appeals Denied, Appeal and Error - Preservation of Issues - sufficiency of evidence to support ALFORD PLEAS - No objection - Evidence to support Aggravated Factors - No objection - Prejudice of Plain Error

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Guilford County Superior Court

(2) Docket or case number (if you know): 99CRS 23456; 39581; 98CRS 23486; 99CRS 23241-48

(3) Date of filing (if you know): October 29, 2003

(4) Nature of the proceeding: Motion for Appropriate Relief

(5) Grounds raised: Conflict of Interest, Prosecutor Misconduct, ILLEGAL Sentence, Invalid Indictments, Conviction obtained by Plea of Guilty which was Unlawfully Induced or Not made Voluntary with Understanding of the nature of the Charge or Consequences of the Plea, Conviction obtained by Unconstitutional Failure of the State to disclose to the defendant evidence favorable to Defendant, Denial of Right to Appeal, Conviction obtain by violation of the Privilege against self incrimination, Conviction obtained by use of Coerced Confession, obtained by Double Jeopardy, Denial of Effective Assistance of Counsel, Denial of Counsel at a critical stage of the Proceedings

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: DENIED

(8) Date of result (if you know): November 20, 2003

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: North Carolina Court of Appeals

(2) Docket or case number (if you know): COAPOS 456

(3) Date of filing (if you know): December 16, 2003

(4) Nature of the proceeding: Writ of Certiorari

(5) Grounds raised: Same Issues Raised Above (see 11.A-5) All the same

Constitutional Violations. Also Ineffective Assistance of Trial and

Appellate Counsel. Extreme Miscarriage of Justice, The Superior

Court Judge Albright fail to address "Many" violations raised in M.A.R.

Gave inaccurate Summary of M.A.R. Facts of Record. Fail to address Illegal Sentences,

the Petitioner entered an ALFORD Plea to 8 Counts of Solicitation, But the States

factual showing proved one solicitation ONLY. Plea Agreement stated the Defendant was to receive consecutive sentences on each CASE, NOT each COUNT. Petitioner was sentenced 8 times for (1) Case (Counsel Fail to Object) Fail to Address "Denial of Counsel" at the Pro se Motion to Withdraw, Conflict of Interest, Counselor Zimmerman's prior sentencing of the Petitioner. Several unaddressed issues

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: DENIED

(8) Date of result (if you know): January 13, 2004

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: North Carolina Court of Appeals

(2) Docket or case number (if you know): COA03-956

(3) Date of filing (if you know): October 27, 2003

(4) Nature of the proceeding: Motion for Relief from The Judgement

(5) Grounds raised: (See 11-A-5) Same Grounds raised as in the motion for appropriate relief. Especially "Conflict of Interest; Counsel acting as Judge Zimmerman sentenced the Petitioner to prison, then came off the Bench to act as Petitioner's defense Counsel. "Judicial Misconduct."

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: DISMISSED

(8) Date of result (if you know): November 24, 2003

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: Appealed Result of First Petition to Supreme Court N.C., DENIED it without the State filing as to why it should be denied. Appealed DENIAL of M.A.R (11-B) To the N.C. Court of Appeals; By Law No further Appeal possible.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Conviction obtained by plea of guilty which was unlawfully induced or not made voluntary with understanding of the nature of the charge & the consequences of the plea.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Petitioner was unaware of the consequences of his plea, because Counsel lied to him and his parents (see Affidavits) He said Petitioner would receive no more than 20 years. The Prosecutor VIOLATED the Plea Agreement. It stated Petitioner was to receive consecutive sentences on all CASES (There was 4) But Petitioner was sentenced (11 times) on all CASES & COUNTS. State's factual showing proved only (1) Solicitation of Murder Case. Prosecutor deceived the Petitioner by assigning each (8) Count with it's own case number after the fact. Petitioner was sentenced in the Aggravated Range B of 11 sentences, but Mitigating Factors favored 3rd. Petitioner tried to withdraw his Plea. Denied.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro, North Carolina 27402

Docket or case number (if you know): 97CRS 23656, 34581, 98CRS 23482, 99CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): See Attachment as requested (4 pages)

M.A.R. was DENIED. Judge Albright gave an inaccurate MAR Summary & Facts of the Record. Fail to address many Constitutional violations. Clarified in Writ of Certiorari

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals;
Raleigh, North Carolina

Docket or case number (if you know): COAPO3-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
Simply "DENIED"; No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Filed "Motion For Relief From The Judgment" (10-27-03) N.C. Court of Appeals COAPO3-956, DISMISSED (11-24-03). "Motion in Arrest of Judgment (11-3-03) N.C. Court of Appeals COAPO3-956 DISMISSED (11-24-03) etc...
Writ of Mandamus (11-7-03) COAPO3-956 DENIED (11-24-03)

GROUND TWO: Conviction obtained by a violation of the protection against double-jeopardy

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): On Nov. 3, 97 Petitioner was indicted on "91CRS23656 count one" Arson of an Unoccupied Dwelling. But in pertinent parts it clearly stated the Dwelling WAS occupied. The Prosecutor realized his error, tried to cover-up by RE-Indicting on July 6, 98 "First Degree Arson" #98CRS23496. Even used the same words, thus Petitioner was charged TWICE for the same crime. Petitioner pointed out more details in his M.A.R. pages #24, 25, But M.A.R. was DENIED. Since Petition was Denied effective assistance of counsel, his Conviction was obtained by a violation of the protection against double-jeopardy. His Plea should NOT relinquish his Rights.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel. Refused to file M.A.R. to raise new evidence, Fail to notice errors, Abandon issues,

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro, North Carolina 27402

Docket or case number (if you know): 91CRS 23656, 34581, 98CRS 23486, 99CRS 23841-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages) DENIED; Judge Albright claimed Petitioner lost his Constitutional Right when he entered plea. Ineffective Assistance of Counsel, never advised Petitioner of his rights.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals; Raleigh, North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page) Simply "DENIED," No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Motion For Relief From The Judgment (10/27/03)
N.C. Court of Appeals (COA03-956 DISMISSED (11/24/03)) Motion In Arrest of Judgment (11/2/03)
NC Court of Appeals (COA03-956 DISMISSED (11/24/03)) writ of Mandamus (11/7/03)
NC Court of Appeals COA03-956 DENIED (11/24/03)

GROUND THREE: Denial of defendant's Right to Appeal, without a knowing, voluntary and valid waiver by defendant of his Right to Appeal

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Since Petitioner entered his Pleas (Guilty & Alford) Counsel stated he had no Right to Appeal. Counsel FAIL & NEGLECTED to advise the Petitioner, refused to aid in the withdraw Hearing. Appellate Counsel was to file a M.A.R. and raise Prosecutor/Counsel Misconduct, Conflict of Interest, and other new Evidence, Establishing the Unlawfulness of Petitioner's sentences, yet Counsel FAIL to file a M.A.R. She ABANDON issues of illegal sentences on 2 Courts of single case

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Denial of Effective Assistance of Counsel

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief
Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina 27402

Docket or case number (if you know): 97CRS 23456; 98CRS 23486; 99CRS 23441-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages)
DENIED; Many issues unaddressed in Ruling.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals,
Raleigh, North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
Simply "DENIED"; No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: Motion For Relief From The Judgment (10/27/03)

NC Court of Appeals COA03-956; "DISMISSED" (11/24/03) Motion In Arrest of Judgment (11/3/03)

NC Court of Appeals COA03-956; DISMISSED (11/24/03) Writ of Mandamus (11/4/03); "DENIED"

GROUND FOUR: Conviction obtained by Denial of Counsel at a Critical
stage of Proceedings; without a knowing, voluntary, & valid waiver by Defendant of the right to Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): When the
Petitioner requested to withdraw his Pleas and go to Trial, He was DENIED
the Right to Counsel. He was forced to proceed in Prose. Form. Counsel
ABANDON him. Counsel told the Court they would remain NEUTRAL, which
left the Petitioner defenseless. Once Motion was DENIED, the Court went straight
into Sentencing, further denying the Petitioner the Right of Appeal. The Petitioner

Knew NOTHING of the LAW, and was blind-sided. Counsel was working with the Prosecution against the Defendant.

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Denial of Effective Assistance of Counsel.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina

Docket or case number (if you know): 97CRS 23656; 39591; 98CRS 53486; 99CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages) DENIED; Did NOT address this issue. Denied Petitioner his Constitutional Rights.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals; Raleigh North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page) Simply DENIED; No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

Motion For Relief From The Judgment (11/27/03)
N.C. Court of Appeals COAP03-956 DISMISSED (11/24/03) Motion In Arrest of Judgment (11/3/03)
N.C. Court of Appeals COAP03-956 DISMISSED (11/24/03) Writ of Mandamus (11/7/03)
N.C. Court of Appeals COAP03-956 DENIED (11/24/03)

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: John Bryson & Bob McCullen; Greensboro & High Point NC.

(b) At arraignment and plea: Butch Zimmerman & Fred Crumpler

(c) At trial: N/A

(d) At sentencing: Butch Zimmerman 114 W. 2nd Ave. Lexington NC 27292 (336) 238-3118

Fred G. Crumpler Jr. 301 North Main St. Winston Salem NC 27150 (336) 725-1304

(e) On appeal: Danielle M. Carman; N.C. Appellate Defender; 123 West Main Street Suite 600 Durham NC 27701

(f) In any post-conviction proceeding: Pro-se

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro-se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No Consecutive/Unconstitutional

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No N/A

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

See: 28 USC Sec 2244; Between the final Ruling (Dec 2002) to this very day, Applicant has been DEPRIVED of his legal Materials and personal property by Counsel, Prosecution, and State Prison Staff. Such impediment prevented Full Fair access to the Courts, and opportunity to be heard in a timely process, creating a Due Process Violating, First, Fourth, and Fourteenth U.S. Constitutional violation. (Government Impediment)

NEWLY DISCOVERED EVIDENCE; Prosecutor Misconduct in the form of "suppressed Evidence" "Keeps" coming to light. Although claims were raised in earlier Motions (M.A.C.) I now have NEW evidence to support the claims. Example, STAR witness Janet Smith was threaten several times by the Prosecution. She is willing to testify. The Prosecution still has not turned over statements from STAR witness James Ogburn, who was interviewed several times by Det Church and DA Parish. Mr Ogburn swore this Applicant and his Co-defendant were in front of him 15 miles away at the time of the crime, but he was threaten by the state to remain silent. Edna Kunkle watched Det Church interview Mr Ogburn and is willing to testify (See Affidavits to follow). New Evidence "proves 3 State witnesses, Pardee, Nicholas, and Dyers each committed PERJURY at the Co-defendants trial. Each had Plea Agreements in exchange. New Evidence proves Det Bowman and DA Parish committed PERJURY. Through Due Diligence Applicant could NOT have litigated ProSe and met such a time period limitation. Only after filing Grievances with the NC Bar did one Attorney turn over part of the case. Discover the other Counsel still has not complied. (Letters sent to Counsel follow as Exhibits in the Supporting Memorandum). Counsel have refused to cooperate. The NC Dept of Correction has moved the Applicant several times, and in the course destroyed parts of his legal property (See 28 USC 1746 Sworn Declaration Affirmation.)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

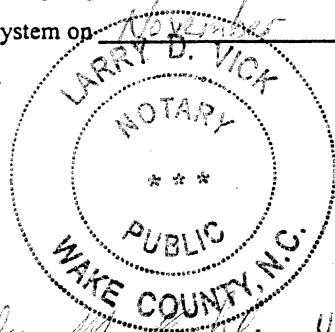
Therefore, petitioner asks that the Court grant the following relief: Reversible Error Committed Requiring
Vacate Judgment, Remand to trial Court for Evidentiary Hearing, Appointment of
Counsel, Resentencing...

or any other relief to which petitioner may be entitled.

N/A
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Petition for Writ of Habeas Corpus was placed in the prison mailing system on November
7th, 2005 (month, date, year).

Executed (signed) on 11-7-05 (date).



Theodore M. Kimble 11-7-05
Signature of Petitioner Larry D. Vick
My Commission Expires 1-5-2009

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing
this petition. _____

THEODORE M. KIMBLE
CENTRAL PRISON
1300 WESTERN BLVD.
RALEIGH, N.C. 27606

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND FIVE: Conviction obtained by the unconstitutional failure of the Prosecution to disclose to the defendant evidence favorable to the Defendant.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): State's witness Jeff Clark testified (See Co-defendant's Transcript Exhibit) that Det. Church showed him pictures, told him facts, wrote his FALSE statement, and signed his name in places (See N.C. BAR Grievance) D.A. Parosky lied to the court and said State's witness William Stewart was released from Prison only (2) weeks early in exchange for his statement. D.O.C. records show it was (3) MONTHS early. Detectives & Prosecution interview STAR witness James Ogburn several times yet never turned over the statements. Ogburn swore the Defendants were 15 miles away at the time of the crime. Edna Kimble witness Ogburn's interview and is willing to testify. (See Affidavit)

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Denial of Effective Assistance of Counsel

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina 27402

Docket or case number (if you know): 97 CRS 23151-39581, 98 CRS 23481, 99 CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 Pages)

DENIED; Many issues unaddressed in Ruling. The claims were raised, but I now have new evidence which proves my case.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals; Raleigh, North Carolina

Docket or case number (if you know): COAPO3-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page) simply "DENIED," No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

Motion For Relief From The Judgment (10/27/03) N.C. Court of Appeals COAPO3-956 DISMISSED (11/24/03) Motion In Arrest of Judgment (11/3/03) N.C. Court of Appeals COAPO3-956 DISMISSED (11/24/03) Writ of Mandamus (11/7/03) DENIED (11/24/03)

GROUND SIX: Conviction obtained by denial of the defendant's right to present evidence in his own defence.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Within days of entering his Pleas Petitioner wrote his Counsel and asked to Withdraw and go to trial, After 3 weeks and No response, the Petitioner wrote all parties involved with the request to Withdraw and go to trial. Not until March 4, 1999 was the Petitioner taken to Court, and without notice told he was there for an Evidentiary Hearing, once in the Courtroom Counsel instructed the Petitioner, "WE PLAN TO SIT THIS ONE OUT." Counsel told the Judge they plan to remain "NEUTRAL". The Evidentiary Hearing went forward in Pro Se form. The Petitioner was blindsided, ambushed, and railroad. Petitioner had no defence, and had to make do. Had NO opportunity to prepare, in order to properly present the FACTS. Once DISMISSED the Court went straight into SENTENCING. Also: No opportunity to appeal.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel, Refused to file M.A.R. and raise new evidence, Abandon Issues

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina 27402

Docket or case number (if you know): 97CRS 23656; 39581; 98CRS 23486; 99 CAS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages) DENIED; Judge Albright made reference to the Evidentiary Hearing, but completely ignored the fact Counsel ABANDON the Petitioner.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals Raleigh, North Carolina

Docket or case number (if you know): COAP03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page) simply "DENIED"; No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

Motion For Relief From The Judgment (10/27/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03)
Motion In Arrest of Judgment (11/3/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03)
Writ of Mandamus (11/7/03)
N.C. Court of Appeals COA03-956 DENIED (11/24/03)

GROUND SEVEN: Conviction obtained by Use of Coerced Confession.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Petitioner showed up at Court surrounded by a S.W.A.T. team carrying M-16's, for a "CHANGE OF VENUE" hearing as the Record shows. Just prior to the hearing Counsel "BULLIED" the Petitioner to sign a Plea Agreement, And 8 Bill of Information Waivers. Petitioner signed while medicated on Paxil and Vistaral, and only after Counsel told him his life was in DANGER! Petitioner "NEVER" wanted to take a Plea Agreement, it was "ALWAYS" his desire to go to trial. Petitioner was under "DURESS." Prosecution was threatening the defence witnesses.

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Gulford County Superior Court, Greensboro North Carolina 27402

Docket or case number (if you know): 97 CRS 23656, 39581, 98 CRS 23486, 99 CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 page)
"DENIED", Many issues unaddressed.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals
Raleigh, North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
DENIED, no reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

Motion For Relief From The Judgment (10/31/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03)
Motion In Arrest of Judgment (11/3/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03)
Writ of Mandamus (11/7/03) DENIED (11/24/03)

GROUND EIGHT: Denial of effective assistance of counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): when Petitioner

tried to withdraw his Guilty and Alford Pleas, Counsel DENIED him, told the Court
they would remain "NEUTRAL", which proved "Conflict of Interest" Counsel Fail to
study indictments 97CRS 23656 + 98CRS 23486, and raise claim of "DOUBLE JEOPARDY"

(*) FAIL TO: Prepare for trial; interview witnesses; take statements; subpoena witnesses; recover
and study Co-defendants transcripts; Report Prosecutor misconduct; Fail to object when

Petitioner was illegally sentence 8 times on a single case, in violation of Plea Agreement.
The N.C. Defender Manual (Oct 2002, Vol. 2, Ch. 21: Guilty Pleas) Uses MY CASE as an EXAMPLE of what NOT to do!

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina

Docket or case number (if you know): 97CAS 23656; 39581; 98CRS 23486; 99CAS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages)
"DENIED"; Gave an inaccurate Summary; "IGNORED" the Facts.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals
Raleigh North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
simply "DENIED".

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND NINE: Conviction obtained by a violation of the privilege against self-incrimination.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Petitioner was wrongfully "COERCED" into entering a plea which was contrary to his Best interest. I can now prove (see EXHIBITS) three of the State's STATE witnesses each committed Perjury in Co-defendants trial. There is NO physical evidence, never was, only the testimony of perjured witnesses. Petitioner never wrote or signed a statement of Confession, because he is NOT Guilty. But only entered Guilty and Alford Pleas, after being "Threaten" with death by Counsel, who told the Petitioner and his family at most a 20 year sentence would be the total.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel; Newly Discovered evidence.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Gulford County Superior Court, Greensboro North Carolina

Docket or case number (if you know): 99CRS 23656; 39591; 99CRS 23486; 99CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages)
DENIED; New evidence to support claims; unavailable at the
time Judge Albright Ruled.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals;
Raleigh, North Carolina

Docket or case number (if you know): COAPO3-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
Simply "DENIED", No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Motion For Relief From The Judgment (10/27/03)
N.C. Court of Appeals COAPO3-956; DISMISSED (11/24/03) Motion in Arrest of Judgment (11/3/03)
N.C. Court of Appeals COAPO3-956; DISMISSED (11/24/03) Writ of Mandamus (11/7/03) DENIED (11/24/03)

GROUND TEN: Denial of defendant's Right to cross-examine his or her
ACCUSER.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The Blawie
of "Solicitation to Commit First Degree Murder" came about in the word of habitual felon
inmate William Stewart, while the petitioner was in prison on unrelated charges, other
inmate(s) were reading of the high profile case in the newspaper, then writing the
Prosecutor trying to get time out from their prison sentence, in exchange for their
testimony. During sentencing the trial Court allowed State's witness Det. James Bowman to
testify of statements made by inmate William Stewart, But the Detective and State admitted
to having no idea where Stewart was at that time. Det Bowman testified inmate Stewart was
released from prison a few days early, The Prosecution spoke up and said a couple weeks early, and
that the State had a special order signed by a Judge to release Stewart. NEWLY DISCOVERED EVIDENCE
proves both Det Bowman and Prosecutor Panesh committed PERJURY. D.A.C. records prove Stewart was

(a) (CONT.) released "3" MONTHS EARLY! The Petitioner's Rights were violated because he was denied the opportunity to Cross Examine his Accuser (William Stewart) Four other inmates marched into Court and testified inmate Stewart had bragged to them about lying to get out of prison early. The State's factual showing proved only (1) Solicitation, which had 8 names, so the State violated the Plea Agreement & assigned each name it's own case number. Instead of (1) Sentence, Petitioner was sentenced (8)

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No Procedurally Barred; Raised on Direct Appeal.

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

97 CrS 23656, 39581

98 CrS 23484, 99 CrS 23241-48

RECEIVED
MAY 25 11 12 AM '06
GUILFORD COUNTY, C.S.C.

cdj

STATE OF NORTH CAROLINA,

ORDER

v.

THEODORE MEAD KIMBLE,
Defendant.

This matter is before the Court on a paper writing filed by the Clerk on October 29, 2003. It is captioned "Motion for Appropriate Relief" and is signed by the defendant acting pro se.

In the motion, the defendant alleges ineffective assistance of counsel, in that his trial lawyer promised the conspiracy charge would be dismissed pursuant to plea agreement, that his lawyer told him the reason the dismissal wasn't in the plea agreement was because the deal was secret, that the conspiracy charge was not so dismissed, and that he received an additional sentence for conspiracy; that he was tricked and deceived in unspecified ways by his attorneys into waiving indictment by the grand jury to eight counts of solicitation to commit murder which charges were not supported by any evidence other than the testimony of "a known habitual liar, thief, homosexual"; that his attorneys told him if he did not accept the plea bargain he would get the death penalty "for sure;" that one of his attorneys had a conflict of interest in that the attorney had, while serving as a judge of the Superior Court, earlier sentenced the defendant for an earlier conviction; that defendant's attorney on appeal did not raise all of these various errors before the North Carolina Court of Appeals; that his appellate counsel refused to file a Motion for Appropriate Relief on his behalf; that his attorneys failed and refused to assist him when he filed his pro se motion to withdraw his guilty plea; and that his attorneys failed to get an affidavit from defendant's "star" witness, who then disappeared after defendant's attorneys allowed the District Attorney to threaten the witness.

The defendant further alleges that the sentences imposed were illegal and unauthorized by law in unspecified ways; that the state failed to provide the defendant and the Court with the results of a pre-sentence investigation report in violation of his right to due process; that the new arson charge to which defendant pled guilty violated his right against double jeopardy, having previously been dismissed by the state; that the District Attorney threatened various witnesses for the defendant that if they testified for the defendant they would be prosecuted for other crimes, thus depriving him of key

witnesses; and that the defendant was on unspecified medication on the day he pled guilty and did not know what he was doing.

A review of the file, including the decision by the North Carolina Court of Appeals, shows the following facts of record:

1. On 7 April 1997, Defendant was indicted by a Guilford County grand jury for first-degree murder based on the death of Patricia Gail Kimble (Kimble), Defendant's wife. The indictment alleged Kimble was murdered on 9 October 1995. On 3 November 1997, Defendant was indicted for arson and conspiracy to commit first-degree murder based on the 9 October 1995 incident, and on 6 July 1998, Defendant was indicted for first-degree arson based on the 9 October 1995 incident. Finally, on 28 January 1999, the State filed bills of information charging Defendant with eight counts of solicitation to commit first-degree murder. The eight counts of solicitation to commit first-degree murder related to incidents that occurred after the 9 October 1995 death of Kimble.
2. On 25 January 1999, Defendant pled guilty to second-degree murder, conspiracy to commit first-degree murder, and first-degree arson. Defendant also pled guilty to the eight counts of solicitation to commit first-degree murder. Sentencing was continued.
3. On 26 February 1999, Defendant filed a pro se motion to withdraw his guilty pleas on the ground he was "pressured into [his] earlier plea." The trial court subsequently held a hearing on the motion. At the conclusion of the hearing, the trial court denied Defendant's motion to withdraw his guilty pleas.
4. On 4 March 1999 through 5 March 1999, the trial court held Defendant's sentencing hearing. At the conclusion of the hearing, the trial court found aggravating and mitigating factors existed as to some of the crimes. The defendant was sentenced consistently with his plea agreement.
5. Defendant thereafter filed a Notice of Appeal. The Court entered appellate entries and appointed the Appellate Defender to represent the defendant. The Court of Appeals found no error.

Based on the record, the Court concludes that:

1. A defendant who voluntarily and intelligently enters an unconditional guilty plea waives all non-jurisdictional defects in the proceeding, including constitutional violations that occurred before entry of the plea. See State v. Reynolds, 298 N.C. 380, 395, 259 S.E.2d 843, 852 (1979) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty.") By pleading guilty, defendant has waived his claims concerning the alleged defects in the indictment and concerning the prosecutor's conduct; as to the latter, the defendant was aware of all the facts he now claims show prosecutorial misconduct at the time he pled guilty based on the documents he provided with his motion. Moreover, when a defendant pleads guilty, the state no longer has to prove its case beyond a reasonable doubt. By his plea, the defendant has waived any argument he had that the State's evidence was insufficient.

2. A person is presumed competent. "Everyone is presumed to be sane until the contrary appears." Ridings v. Ridings, 55 N.C.App. 630, 633, 286 S.E.2d 614, 616, disc. rev. denied, 305 N.C. 586 (1982). The judge who accepted defendant's guilty plea had the opportunity to examine the defendant in person, and thereafter found the defendant competent to proceed. Nothing in the defendant's motion and attachments gives rise to any question about his ability to understand the nature and object of the proceedings against him, to comprehend his own situation, or to assist counsel in a rational way. NCGS § 15A-1001. Defendant's unsupported post-conviction assertions that he was incompetent at the time of the guilty plea because he was taking medicine do not overcome the Court's properly entered findings and do not require an evidentiary hearing.

3. The record further shows that the defendant was satisfied with his attorneys when he pled guilty. The defendant at that time stated under oath that he was satisfied with his attorney's services. Moreover, the defendant has already had the opportunity for a hearing on this issue in front of the judge who accepted his guilty plea and who sentenced him, when the matter was raised by the defendant in his motion to set aside the guilty plea. Any error in that decision should have been raised on appeal. The defendant's motion does not raise a question of fact and even if it did, it is procedurally barred.

4. A guilty plea is not voluntary and intelligent unless it is "entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel . . .," Brady v. United States, 397 U.S. 742, 755, 25 L. Ed. 2d 747, 760 (1970) (quoting Shelton v. United States, 246 F.2d 101, 115 (5th Cir. 1957) (Tuttle, J., dissenting)); Bryant v. Cherry, 687 F.2d 48, 49 (4th Cir. 1982), cert. denied, 459 U.S. 1073, 74 L. Ed. 2d 637, and is not "the product of such factors as misunderstanding, duress, or misrepresentation by others." Blackledge v. Allison, 431 U.S. 63, 75, 52 L. Ed. 2d 136, 147-148 (1977); State v. Loye, 56 N.C. App. 501, 289 S.E.2d 870 (1982).

The defendant's claim that his lawyers told him the conspiracy charge would be dismissed is belied by the record, including his own sworn statement and his attorneys' certification. The record unambiguously reveals that the defendant was correctly informed of the applicable maximum sentence and that there was no promise made to him that the conspiracy charge would be dismissed. The defendant swore that no other promises had been made to him, and he signed a plea agreement that did not contain any other promises. State v. Wilkins, 131 N.C. App. 220 (1998) (Defendant knew or should have known that she did not have a plea agreement with the State where the defendant signed a plea transcript which detailed the charge to which she was pleading guilty but contained no plea agreement.) Moreover, he was asked in open court about his plea agreement and he did not inform the Court at that time that he had been guaranteed dismissal of the conspiracy charge and indeed specifically pled guilty to the conspiracy charge and denied that any promises other than those in the plea agreement had been made. This unambiguous record creates a "formidable barrier" to defendant's claim. Blackledge v. Allison, 431 U.S. at 73-74. Only extraordinary circumstances would

entitle defendant to relief. Blackledge v. Allison, 431 U.S. at 80 n.19. There are no such extraordinary circumstances here and absolutely no independent indicia that the defendant's claim has merit. Cf. United States v. Cervantes, 132 F.3d 1106, 1110 (5th Cir. 1998)(must be independent indicia of the likely merit of defendant's allegations, such as one or more affidavits from reliable third parties).

5. Every criminal defendant is entitled to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). Strickland establishes a two-prong test for ineffective assistance of counsel: first, that counsel's performance must fall below an objective standard of reasonableness, and second, that the deficient representation must be so serious as to deprive defendant of a fair trial. See State v. Braswell, 312 N.C. 553, 324 S.E.2d 241 (1985) (adopting Strickland standard for ineffective assistance claims). Here, the defendant has failed to raise any issues of material fact about his attorneys' representation or the specific effect of the alleged conflict of interest. While he has made a laundry list of allegations, they are unsupported by any competent evidence. Moreover, there has been no showing that a different result would have obtained had defense counsel handled any one of these matters differently. Finally, as noted above, the defendant stated under oath at the time of his guilty plea that he was satisfied with his attorneys and he has already had a hearing on many of the issues he raises in the Motion for Appropriate Relief when he his motion to withdraw his guilty plea was heard.

6. The sentencing report is on file herein and there is no evidence that it was not available to the trial court and to the defendant before sentencing. Even if it was not, that is not a constitutional violation.

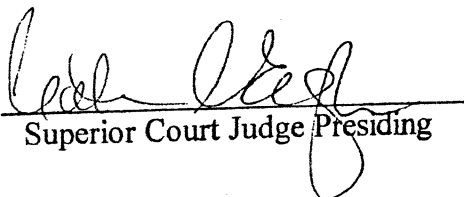
7. An attorney appointed to represent a criminal defendant on appeal has no obligation to file a Motion for Appropriate Relief on behalf of that criminal defendant.

8. There is nothing in the record to support the defendant's claims that the sentences he received are illegal. The sentences he received are valid and within the ranges allowed by the legislature for the crimes to which the defendant pled guilty.

It is therefore ORDERED that:

1. The Defendant's Motion for Appropriate Relief is DENIED.
2. The Clerk shall mail a copy of this Order to the defendant, to the District Attorney for the Eighteenth Judicial District, and to the North Carolina Department of Corrections.

This 20 day of November, 2003.


Superior Court Judge Presiding

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

v

THEODORE MEAD KIMBLE

From Guilford
(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

FILED
JAN 13 PM 2:09
COURT OF APPEALS
OF NORTH CAROLINA

ORDER

The following order was entered:

The petition filed in this cause on the 16th day of December 2003 and designated "Petition For Writ Of Certiorari" is denied.

By order of the Court this the 13th day of January 2004.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 13th day of January 2004.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig
cc:
Mr. Theodore Kimble
Ms. Kathleen U. Baldwin

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

From Guilford

(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

03/10/24 PM 3:35
OFFICE OF THE CLERK
NORTH CAROLINA COURT OF APPEALS

ORDER


The following order was entered:

The motion filed in this cause on the 27th day of October 2003 and designated "Motion For Relief From The Judgment" is dismissed.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig

cc:
Mr. Theodore Kimble
Ms. Kathleen U. Baldwin

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

From Guilford

(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

03 NOV 24 PM 3:35
COURT OF APPEALS
OF NORTH CAROLINA

ORDER

The following order was entered:

The motion filed in this cause on the 3rd day of November 2003 and designated "Motion in Arrest of Judgment" is dismissed.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig

cc:

Mr. Theodore Kimble

Ms. Kathleen U. Baldwin

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

From Guilford

(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

03 NOV 24 PM 3:35
OFFICE OF THE CLERK
OF NORTH CAROLINA

ORDER

The following order was entered:

The petition filed in this cause on the 7th day of November 2003 and designated "Petition For Writ Of Mandamus" is Denied.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig

cc:

Mr. Theodore Kimble

Ms. Kathleen U. Baldwin

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

From Guilford
(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

03 NOV 24 PM 3:37
COURT OF APPEALS
OF NORTH CAROLINA

ORDER

The following order was entered:

The petition filed in this cause on the 18th day of November 2003 and designated "Petition For Writ Of Mandamus" is Denied.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig

cc:

Mr. Theodore Kimble

Ms. Kathleen U. Baldwin

SUPREME COURT OF NORTH CAROLINA

(State v Theodore Mead Kimble)

State of North Carolina
v
Theodore Mead Kimble

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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
Assistant Clerk



Copy to:
North Carolina Court of Appeals
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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
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