

No. COA99-573

TWENTY-NINTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA,)
Plaintiff,)
vs.)
JAMES ALLEN SMITH,)
Defendant.)

From Henderson County:
File Nos. 98 CRS 3060,
98 CRS 3061 and 98 CRS 3062

INDEX

Organization of the Trial Court	1
Indictment - 98 CR 3060	2
Indictment - 98 CR 3061	3
Indictment - 98 CR 3062	4
Order of Assignment of Counsel	5
Motion to Dismiss	6
Transcript of Plea	8
Motion for Joinder	11
Statement Concerning Arraignment	12
Jury Sheet	13
Notice of Filing Verbatim Transcript Pursuant to Rule 9(c)	14
Exhibits	15
Verdict 98 CRS 3060	16
Verdict 98 CRS 3061	17
Verdict 98 CRS 3062	18
Worksheet	19
Judgment and Commitment - 98 CRS 22459	21
Judgment and Commitment - 98 CRS 3061	23
Judgment and Commitment - 98 CRS 3062	25
Notice of Appeal	27
Appellate Entries	28
Appeal Order [Assignment of Counsel]	30
Certificate of Court Reporter	31

DOCKETED

MAY 17 1999

IN THE OFFICE OF
CLERK COURT OF APPEALS
OF NORTH CAROLINA

FILED
99 MAY 11 PM 1:51
IN THE OFFICE OF
CLERK COURT OF APPEALS
OF NORTH CAROLINA

Motion for Extension of Time to Serve Defendant's Proposed Record on Appeal.....	32
Order Extending Time to Serve Defendant's Proposed Record on Appeal.....	34
Motion for Enlargement of Time to Serve Proposed Record on Appeal	35
Order (Extending Time).....	39
Assignments of Error	40
Identification of Counsel of Record	46
Stipulations and Settlement of Record on Appeal	47
Certificate of Service	48

NO. COAP99-106

TWENTY-NINTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA,)
Plaintiff,)

vs.)

JAMES ALLEN SMITH,)
_____)

From Henderson County:
File No. 98 CRS 3061

ORGANIZATION OF THE TRIAL COURT

Before Zoro J. Guice, Jr., J., at the September 28, 1998, Criminal Session of Superior Court, Henderson County, Defendant James Allen Smith appeals from Judgment entered on the 5th day of October, 1998. (Filed CA May 11, 1999, and Docketed CA May 17, 1999).

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No.

98CR 03060

Film No.

HENDERSON

County

STATE VERSUS

Defendant

James Allen Smith

Date of Offense

7/27/98

Offense in Violation of G.S.

14-7.1

INDICTMENT

HABITUAL FELON

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

The jurors for the State upon their oath present that James Allen Smith is an Habitual Felon in that on or about August 12, 1982 James Allen Smith did commit the felony of Second Degree Arson in violation of G.S. 14-58 and that on or about February 21, 1983 James Allen Smith was convicted of the felony of Second Degree Arson in the Superior Court of Buncombe County, NC; and that on or about December 22, 1990 James Allen Smith did commit the felony of Assault With A Deadly Weapon Inflicting Serious Injury in violation of G.S. 14-32(b) and that on or about March 6, 1991 James Allen Smith was convicted of Assault With a Deadly Weapon Inflicting Serious Injury in the Superior Court of Buncombe County, NC; and that on or about March 1, 1996 James Allen Smith did commit the felony of Habitual Misdemeanor Assault in violation of G.S. 14-33.2 and that on or about October 9, 1996 James Allen Smith was convicted of the felony of Habitual Misdemeanor Assault in the Superior Court of Buncombe County, NC.

Signature of Prosecutor

Corey T. Elb

WITNESSES



Tim Griffin, HPD



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

July 27, 1998

Signature of Grand Jury Foreman

Mary Beth Hauss

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

File No

98CR 03061

Film No.

HENDERSON County

STATE VERSUS

Defendant

James Allen Smith

Date of Offense

5/15/98

Offense in Violation of G.S.

14-33.2

INDICTMENT

HABITUAL MISDEMEANOR ASSAULT

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

COUNT I

Assault Karen Conard, a female person, by hitting her about the head and body. The defendant is a male person and was at least eighteen years of age when the offense occurred.

COUNT II

The defendant has been previously convicted of the misdemeanor assault of Assault On a Child Under the Age of 12 on March 6, 1991 in Buncombe County District Court; the defendant has been previously convicted of the misdemeanor assault of Assault on a Female on May 16, 1994 in Buncombe County District Court; the defendant has been previously convicted of the misdemeanor of Second degree Trespassing on February 26, 1998 in Henderson County District Court; the defendant has been previously convicted of the misdemeanor of Injury to Real Property on March 25, 1998 in Henderson County District Court; the defendant has been previously convicted of the misdemeanor of Second Degree Trespass on March 25, 1998 in Henderson County District Court.

Signature of Prosecutor

Corey T. Ellis

WITNESSES

☒

T. Griffin, HPD

☐

☐

☐

☐

☐

☐

☐

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

July 27, 1998

Signature of Grand Jury Foreman

Mary Beth Harris

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

File No.

98CR 03062

Film No.

HENDERSON

County

STATE VERSUS

Defendant

James Allen Smith

Date of Offense

5/15/98

Offense in Violation of G.S.

14-33.2

INDICTMENT

HABITUAL MISDEMEANOR ASSAULT

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

COUNT I

Assault a female, Kieyoundra McDowell, a female person by striking her upper body. The defendant is a male person and was at least eighteen years of age when the offense occurred.

COUNT II

The defendant has been previously convicted of the misdemeanor assault of Assault On a Child Under the Age of 12 on March 6, 1991 in Buncombe County District Court; the defendant has been previously convicted of the misdemeanor assault of Assault on a Female on May 16, 1994 in Buncombe County District Court; the defendant has been previously convicted of the misdemeanor of Second degree Trespassing on February 26, 1998 in Henderson County District Court; the defendant has been previously convicted of the misdemeanor of Injury to Real Property on March 25, 1998 in Henderson County District Court; the defendant has been previously convicted of the misdemeanor of Second Degree Trespass on March 25, 1998 in Henderson County District Court.

Signature of Prosecutor

Corey J. Ellis

WITNESSES



Tim Griffin, HPD



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

July 27, 1998

Signature of Grand Jury Foreman

Mary Beth Hawn

98CRS 3060, 3061
File No. 3062

STATE OF NORTH CAROLINA

Henderson County

In The General Court Of Justice
☒ District ☐ Superior Court Division

Name Of Defendant, Petitioner, Respondent

James Smith

ORDER OF ASSIGNMENT
OR
DENIAL OF COUNSEL

G.S. 7A-450, 7A-451(a)

Offense(s) (List Offense(s) Only If File No. Has Not Been Assigned)

From the petition heard in this matter, it appears to the Court that the applicant named above is party to a proceeding or action listed in G.S. 7A-451(a);

and, from the affidavit made by the applicant, and from the inquiry made by the Court, which is documented in the record, it is determined that the applicant;

- ☐ 1. is not likely to be imprisoned if he/she is convicted of the offense(s) for which he/she is charged; it is ORDERED that the defendant's petition is denied.
- ☐ 2. is not likely to be imprisoned if he/she is found in contempt; it is ORDERED that the defendant's petition is denied.
- ☐ 3. is financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is not an indigent and his/her petition is denied.
- ☒ 4. is **not** financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is an indigent and is entitled to the services of counsel as contemplated by law, and that he/she shall be represented by:

☒ the attorney named below.☐ the public defender in this judicial district.

Name Of Appointed Attorney (If Applicable)

P. Collins

Date

8/4/98

Signature

W. E. Brown

☒ Judge☐ Clerk Of Superior Court

Custody

next term Sup Ct

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Files 98 CRS 3060-3062,
98CRS 22459-22466,482,23055

STATE OF NORTH CAROLINA
V.

NOTICE OF MOTION

JAMES ALLEN SMITHS,
Defendant

Now comes the DEFENDANT, by and through his attorney
Patrick H. Collins, and respectfully moves for a dismissal of the
Indictments against the DEFENDANT, pursuant to the General Statutes
of North Carolina, and the United States Constitution and The
Constitution of the State of North Carolina.

Patrick H. Collins
318 North Main Street
Hendersonville, NC 28792

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served
counsel for all other parties in the foregoing matter, or
unrepresented parties themselves, with a copy of the foregoing
document by depositing in the U.S. Postal Service a copy of the
same in a properly addressed envelope with adequate postage thereon
or, where so noted, by hand delivery or by express courier.

Office of the District Attorney
Henderson County Courthouse
Hendersonville, NC 28792

This the 130th day of September, 1998.

COLLINS CALLOWAY HARRELSON, L.L.C.

The prosecution seeks to utilize N.C.G.S. 14-33.2 as a means of elevating a misdemeanor (if convicted) into a class H. Felony, Thereafter the prosecution seeks to use any such conviction as means for a habitual felon proceeding and sentencing.

The session Laws of 1995 are silent as to the relevant dates of prior convictions. However, at the editors notes subsuquent to 14-33.2 in the General Statutes it is clearly recited that the section is effective 12/1/95 and is applicable to offenses committed after that date. The "predicate" offenses listed in the indictments for habitual misdemeanor assault do not list 5 relevant convictions subsuquent to 12/1/95.

The North Carolina Constitution clearly prohibits ex post facto laws (section 16). The Federal Constitution also prohibits ex post facto laws (Article 1 Par. 9 section 3) The people are ignoring these laws and seek to administratively overcome lawful prohibitions against the application of 14-33.2 in the cases involving Mr. Smith.

Respectfully submitted,
Patrick H., Collins , attorney for Defendant, James A. Smith.

HENDERSON

County

In The General Court Of Justice
☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

JAMES ALLEN SMITH

DOB

6/30/61

Age

37

Highest Level Of Education
Completed

9th

TRANSCRIPT OF PLEA

G.S. 15A-1022

The defendant, having offered a plea of Guilty and being first duly sworn,
makes the following answers to the questions set out below:

Answers

1. Are you able to hear and understand me? (1) YES
2. Do you understand that you have the right to remain silent and that any statement you make may be used against you? (2) YES
3. At what grade level can you read and write? (3) 9th
4. (a) Are you now under the influence of alcohol, drugs, narcotics, medicines, pills, or any other intoxicants? (4a) NO
- (b) When was the last time you used or consumed any such substance? (4b) 136 days
5. Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand every element of each charge? (5) YES
6. (a) Have you and your lawyer discussed the possible defenses, if any, to the charges? (6a) YES
- (b) Are you satisfied with your lawyer's legal services? (6b) YES
7. (a) Do you understand that you have the right to plead not guilty and be tried by a jury? (7a) YES
- (b) Do you understand that at such trial you have the right to confront and to cross examine witnesses against you? (7b) YES
- (c) Do you understand that by your plea(s) you give up these and your other constitutional rights relating to a trial by jury? (7c) YES
8. Do you understand that, if you are not a citizen of the United States of America, your plea(s) of guilty or no contest may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law? (8) _____
9. (if applicable) Do you understand that upon conviction of a felony that you automatically forfeit any licensing privileges as defined by G.S. 15A-1331A for the full term:
 - ☐ (a) (FSA cases only occurring on or after May 1, 1994) of the maximum sentence of imprisonment imposed at the time of conviction if: (1) you are offered a suspended sentence on condition that you accept probation and you refuse probation, or (2) your probation is revoked or suspended and the Court makes findings that you failed to make reasonable efforts to comply with the conditions of probation. (9a) _____
 - ☐ (b) (Structured Sentencing cases committed on or after October 1, 1994) of the period you are placed on probation if: (1) your probation is revoked or suspended, or (2) (for offenses committed before 1/1/97) you are offered a suspended sentence on condition you accept probation and you refuse probation. G.S. 15A-1331A(b). (9b) YES
10. Do you understand that you are pleading (guilty) (~~no contest~~) to the charges shown on the attached sheet, which carry the total punishments listed. (10) YES
11. Do you now personally plead (guilty) (~~no contest~~)? (11) YES
12. (a) (if applicable) Are you in fact guilty? (12a) YES
- (b) (if applicable) Do you understand that upon your plea of no contest you will be treated as being guilty whether or not you admit your guilt? (12b) _____
- (c) (if applicable) (Alford Plea)
 - (1) Do you now consider it to be in your best interest to plead guilty? (12c1) _____
 - (2) Do you understand that upon your "Alford Plea" you will be treated as being guilty whether or not you admit that you are in fact guilty? (12c2) _____
13. Have you agreed to plead as part of a plea arrangement? Before you answer, I advise you that the Courts have approved plea negotiating, and if there is such, you may advise me truthfully without fear of incurring my disapproval? (13) NO

+. (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

- (a) Is this correct as being your full plea arrangement? (14a) _____
- (b) Do you now personally accept this arrangement? (14b) _____
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? (15) NO
16. Do you enter this plea of your own free will, fully understanding what you are doing? (16) YES
17. Do you have any questions about what has just been said to you or about anything else connected with your case? (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
		10/1/98
Date	Signature	Signature Of Defendant
10-1-98	Bette McCase	James A. Smith Jr.
<input checked="" type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court
		Name Of Defendant (Type Or Print)
		JAMES ALLEN SMITH

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	Name Of Lawyer For Defendant (Type Or Print)	Signature Of Lawyer For Defendant
10/1/98	Patrick H. Collins	Patrick H. Collins

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	Name Of Prosecutor (Type Or Print)	Signature Of Prosecutor
10-1-98	Athena F. Brack	[Signature]

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. The the defendant is satisfied with his/her lawyer. are
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. are

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

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
10-1-98	ZORO J. GUICE, JR.	Zoro J. Guice Jr.

STATE OF NORTH CAROLINA

In The General Court of Justice

☐ District ☒ Superior Court DivisionHenderson County

File No.

98 CRS 3060, 3061,

3062, 23055,

22463, 22626,

Film No.

22461, 22460,

22462, 22459

22464

STATE VERSUS

MOTION FOR JOINDER

Defendant

James A. Smith

G.S. 15A-926

The undersigned moves the Court for an Order joining the above-captioned ☐ defendants and/or ☒ offenses for trial on the following grounds:

☐ Each of the defendants is charged with accountability for each offense

☒ The several offenses charged are:

☐ part of a common scheme or plan.

☒ part of the same act or transaction.

☒ so closely connected in time, place and occasion, that it would be difficult to separate one charge from proof of the others

☐ Other grounds (specify)

Date

9-30-98

Signature of Moving Party

☒ Prosecutor☐ Defendant's Attorney

CERTIFICATE OF SERVICE

I certify that a copy of this motion was served by:

☒ delivering a copy personally to the ☒ defendant's attorney ☐ prosecutor ☐ defendant

☐ depositing a copy endorsed in a postpaid properly addressed wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service directed to the ☐ defendant's attorney ☐ prosecutor ☐ defendant

☐ leaving a copy at the office of the ☐ defendant's attorney with an associate or employee ☐ prosecutor with an associate or employee

Name and title of person with whom copy left

Pat. Collins

☐ Service accepted by: ☐ defendant's attorney ☐ prosecutor ☐ defendant

Signature of person accepting service

Date served

10-1-98

Signature of person serving

Title

Assistant Dist. Atty.

STATEMENT CONCERNING ARRAIGNMENT

Pursuant to Rule 9(a)(3)d., the Defendant provides the following statement showing all arraignments and pleas:

Arraignment of the Defendant on 98-CRS-3060 (T.p. 164, line 12)
Arraignment of the Defendant on 98-CRS-3061, Count 1 (T.p. 18, line 12)
Arraignment of the Defendant on 98-CRS-3061, Count 2 (T.p. 18, line 12)
Arraignment of the Defendant on 98-CRS-3062, Count 1 (T.p. 20, 9)
Arraignment of the Defendant on 98-CRS-3062, Count 2 (T.p. 21, 16)

State of North Carolina
 VS. James Allen Smith

JURY

File No. 3061, 3062, 22454,
 22460, 22461, 22462
 Film No. 22463, 22464, ~~22465~~
 22466,

BACK ROW

1 Peter Syme POLLED	2 John Pischel POLLED	3 Timothy McManus POLLED	4 Stephen Arndgewald Clysten Hugh Linder St April Dawn Nichols POLLED	5 Date Brackshaw (W) Quanita Hunsley Harvill POLLED	6 Sara Waechter Had to be released medical emergency
7 Sharon Beuther (By) Pamela R. Justice POLLED	8 Donald Yelton FOREMAN - POLLED	9 Levi Fredmonal Nashine Justice Brown POLLED	10 Marvin Matthews (ST) Daniel A. Costa POLLED	11 Richard Ledford POLLED	12 Adria Mackenzie POLLED ALTERNATE Marilyn Johnson Kinne POLLED

FRONT ROW

CHALLENGES

For Cause _____

State or Plaintiff II

Defendant II

AOC-G-111 (Replaces L-168)
 New 8/88

12/2 Jury Palled 3:00 PM

Certify that in the above-numbered case the persons whose names appear above were called as jurors, that those whose names are marked through were excused, and that those whose names are not marked through were empanelled to serve as jurors.

This 1 day of October, 1998.
Bette M. Case Clerk.

NOTICE OF FILING OF VERBATIM TRANSCRIPT PURSUANT TO RULE 9(C)

Pursuant to Appellate Rule 9(c), the transcript of proceedings in this case, taken by Marie B. Johnson, Court Reporter, on October 1, 1998, October 2, 1998, and October 5, 1998, consisting of 218 pages numbered 1 through 218 and bound in one volume, is filed contemporaneously with this record.

EXHIBITS

Pursuant to Rule 9(d) of the Rules of Appellate Procedure, the exhibits identified below are documentary and are required for an understanding of the errors assigned and a necessary part of the record on appeal. Further pursuant to Rule 9(d)(2) three copies of each documentary exhibit will be transmitted in accordance with the aforesaid Rule.

State's Exhibit No. 1 consisting of 6 pages which are:

Certificate of True Copy of original file [Buncombe Co. 82-CRS-19350]
Indictment – Second Degree Arson
Transcript of Plea
Judgment and Commitment

State's Exhibit No. 2 consisting of 7 pages which are:

Certificate of True Copy of original file [Buncombe Co. 90-CRS-27298]
Information
Transcript of Plea
Judgment Suspending Sentence

State's Exhibit No. 3 consisting of 6 pages which are:

Certificate of True Copy of original file [Buncombe Co. 96-CRS-56730]
Indictment – Habitual Misdemeanor Assault
Transcript of Plea
Judgment and Commitment

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF HENDERSON

SUPERIOR COURT DIVISION

FILE NUMBER 98CRS 3060

VERDICT

STATE OF NORTH CAROLINA

VS

JAMES ALLEN SMITH

WE THE MEMBERS OF THE JURY, UNANIMOUSLY FIND THE DEFENDANT

GUILTY X HABITUAL FELON

OR

NOT GUILTY _____

Ronald E. Yelton
FOREPERSON

DATE

Oct 2, 1998

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF HENDERSON

SUPERIOR COURT DIVISION

FILE NUMBER 98CRS 3061

VERDICT

STATE OF NORTH CAROLINA

VS

JAMES ALLEN SMITH

WE THE MEMBERS OF THE JURY, UNANIMOUSLY FIND THE DEFENDANT

GUILTY X ASSAULT ON FEMALE KAREN CONNARD

OR

NOT GUILTY _____

Donald E. Yelton
FOREPERSON

DATE Oct 2, 1998

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF HENDERSON

SUPERIOR COURT DIVISION

FILE NUMBER 98CRS 3062

VERDICT

STATE OF NORTH CAROLINA

VS

JAMES ALLEN SMITH

WE THE MEMBERS OF THE JURY, UNANIMOUSLY FIND THE DEFENDANT

GUILTY X ASSAULT ON FEMALE KIEYOUNDRA MC DOWELL

OR

NOT GUILTY _____

Donald E. Yelton
FOREPERSON

DATE Oct 2, 1998

STATE OF NORTH CAROLINA

File No.

HENDERSON

County

☐ In The General Court Of Justice
☐ District ☒ Superior Court Division

STATE VERSUS

Name And Address Of Defendant

JAMES A. Smith

Social Security No.

SID No.

Race

B

Sex

M

DOB

6-30-61
WORKSHEET
PRIOR RECORD LEVEL FOR
FELONY SENTENCING AND
PRIOR CONVICTION LEVEL FOR
MISDEMEANOR SENTENCING
(STRUCTURED SENTENCING)

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). The only Class 1 misdemeanor offenses under Chapter 20 that are assigned points for determining prior record level for felony sentencing are misdemeanor death by vehicle (G.S. 20-141.4(a2)) and, for sentencing for felony offenses committed on or after December 1, 1997, impaired driving (G.S. 20-138.1) and commercial impaired driving (G.S. 20-138.2). First Degree Rape and First Degree Sexual offense convictions prior to October 1, 1994, are Class B1 convictions.

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE	FACTORS	POINTS
	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	
<u>9</u>	Prior Class A1 or 1 Misdemeanor Conviction (see note above)	X 1	<u>9</u>
SUBTOTAL			<u>9</u>
If all the elements of the present offense are included in any prior offense whether or not the prior offenses were used in determining prior record level.		+ 1	
If the offense was committed:			
(a) while on supervised or <u>unsupervised probation</u> , parole, or post-release supervision; or			
(b) while serving a sentence of imprisonment; or		+ 1	<u>1</u>
(c) while on escape			
TOTAL			<u>10</u>

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

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

No. Of Prior Convictions	Level
0	I
1-4	II
5+	III

 PRIOR
CONVICTION
LEVEL
III
☐ The Court has determined the number of prior convictions to be _____ and the level to be as shown above.

FELONY

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

Points	Level
0	I
1 - 4	II
5 - 8	III
9 - 14	IV
15 - 18	V
19+	VI

 PRIOR
RECORD
LEVEL
IV
☐ The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.
Date 10-5-98 Name Of Presiding Judge (Type Or Print)

Signature Of Presiding Judge

AOC-CR-600, Rev. 12/97

© 1997 Administrative Office of the Courts

(Over)

III. PRIOR CONVICTION

NOTE: Federal law precludes making computer printout of DCI-CCH (rap sheet) part of permanent public court record.

[illegible]

STATE OF NORTH CAROLINA				File No. 98CRS22459	
<u>HENDERSON</u> County		<u>HENDERSONVILLE</u> Seat of Court		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division	
NOTE: [This form is to be used for misdemeanor offense(s). Use AOC-CR-301 for DWI offense(s) or for G.S. 130A-25 offense(s).]					
STATE VERSUS			JUDGMENT AND COMMITMENT		
Name Of Defendant JAMES ALLEN SMITH			ACTIVE PUNISHMENT		
Race BLACK			MISDEMEANOR(S)		
Sex Male			(STRUCTURED SENTENCING)		
DOB 06-30-1961			G.S. 15A-1301, 15A-1340.20		
Attorney For State ATHENA FOX BROOKS		<input type="checkbox"/> Def. Found Not indigent <input type="checkbox"/> Def. Waived Attorney		Attorney For Defendant PATRICK COLLINS <input checked="" type="checkbox"/> Appointed <input type="checkbox"/> Retained	
The defendant <input checked="" type="checkbox"/> pled guilty to: <input type="checkbox"/> was found guilty/responsible by the Court of: <input type="checkbox"/> was found guilty by a jury of: <input type="checkbox"/> pled no contest to:					
File No.(s)	Off	Offense Description	Offense Date	G.S. No.	CL.
98CRS22459		BREAKING AND ENTERING	05-15-1998	14-54(B)	1
98CRS22460		INJURY TO REAL PROPERTY	05-15-1998	14-127	1
98CRS22461		COMMUNICATING THREATS	05-15-1998	14-277.1	1
98CRS22464		INJURY TO PERSONAL PROPERTY	05-15-1998	14--160	2
98CRS22464		INJURY TO REAL PROPERTY	05-15-1998	14-127	1
The Court has determined, pursuant to G.S. 15A-1340.20, the number of prior convictions to be <u>10</u> . LEVEL: <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input checked="" type="checkbox"/> III (5+)					
<input checked="" type="checkbox"/> 1. The Court imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.					
<input type="checkbox"/> 2. The Court finds: <input type="checkbox"/> (a) enhanced punishment from a Class 2 or Class 3 misdemeanor to a Class 1 misdemeanor. <input type="checkbox"/> G.S. 90-95(e)(4) (drugs); <input type="checkbox"/> G.S. 14-3(c) (race).					
<input type="checkbox"/> (b) enhanced punishment from required suspended sentence to Class 2 misdemeanor. G.S. 90-95(e)(7).					
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 term of <u>120</u> days.		<input checked="" type="checkbox"/> N.C. DOC. in the custody of the <input type="checkbox"/> Sheriff of _____ County. <input type="checkbox"/> Other _____			
The defendant shall be given credit for _____ days spent in the confinement prior to the date of this Judgment as a result of this charge(s).					
<input type="checkbox"/> The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.					
<input type="checkbox"/> 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.)					
AOC-CR-602, Rev. 7/95 © 1997 Administrative Office of the Courts					
Material opposite unmarked squares is to be disregarded as surplusage. (Over)					

(check all that apply)

- ☐ 1. The defendant shall pay the costs. ☐ 2. The defendant shall pay a fine of \$ _____.
- ☐ 3. The Court finds that the defendant ☐ is ☐ is not suitable for placement in a county satellite jail/work release unit. G.S. 15A-1352(a)
- ☐ 4. With the consent of the defendant, work release is ordered and the defendant, after any required processing, shall be committed to:
 (check (a) or (b)) ☐ (a) _____ (specify prison facility within this county/out of county)
☐ (b) _____ (local confinement facility or satellite jail/work release unit within this county/out of county)

The sheriff, Board of County Commissioners or Department of Correction has consented to the commitment to the above described facility, that is not within this county. G.S. 15A-1352(d).

The Court recommends:

- ☐ 5. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h). ☒ 6. Psychiatric and/or psychological counseling.
- ☐ 7. Work release.
- ☐ 8. Payment from work release earnings, if applicable, the items and amounts set out below.

Costs	Fine	Restitution*	Reimbursement For Attorney Fee & Other	Total Amount Due

*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 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

- ☒ 1. 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
- ☐ 2. The defendant gives notice of appeal from the judgment of the District Court to the Superior Court.
- ☐ 3. The current pretrial release order is modified as follows:
- ☐ 4. 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	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
10-05-1998	ZORO J. GUICE, JR.	

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	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 and the attachment marked below is a true and complete copy of the original which is on file in this case. ☐ Appellate Entries (AOC-CR-350).

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

STATE OF NORTH CAROLINA				No. 98CRS 3061	
HENDERSON		County	HENDERSONVILLE		Seat of Court
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).]				In The General Court Of Justice Superior Court Division	
STATE VERSUS			JUDGMENT AND COMMITMENT		
Name Of Defendant JAMES ALLEN SMITH			ACTIVE PUNISHMENT		
Race BLACK			FELONY		
Sex MALE			(STRUCTURED SENTENCING)		
DOB 06-30-1961			G.S. 15A-1301, 15A-1340.13		
Attorney For State ATHENA FOX BROOKS		Def. Found <input type="checkbox"/> Not Indigent	Def. Waived <input type="checkbox"/> Attorney	Attorney For Defendant PATRICK COLLINS	
				<input checked="" type="checkbox"/> Appointed <input type="checkbox"/> Retained	
The defendant <input type="checkbox"/> pled guilty to: <input checked="" type="checkbox"/> was found guilty by a jury of: <input type="checkbox"/> pled no contest to:					
File No.(s)	Off	Offense Description	Offense Date	G.S. No.	F/M CL.
98CRS 3061		HABITUAL FELON	05-15-1998	14-7.1	F C
<p>The Court:</p> <p><input checked="" type="checkbox"/> 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be <u>10</u> . PRIOR <input type="checkbox"/> I <input type="checkbox"/> III <input type="checkbox"/> V <input type="checkbox"/> 2. makes no prior record level finding because none is required for Class A felony, RECORD LEVEL: <input type="checkbox"/> II <input checked="" type="checkbox"/> IV <input type="checkbox"/> VI enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.</p>					
<p>The Court:</p> <p><input checked="" type="checkbox"/> 1. makes no written findings because the prison term imposed is: <input checked="" type="checkbox"/> (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). <input type="checkbox"/> (b) for a Class A felony. <input type="checkbox"/> (c) for enhanced firearm penalty (G.S. 15A-1340.16A). <input type="checkbox"/> (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. <input type="checkbox"/> (e) for drug trafficking offenses.</p> <p><input type="checkbox"/> 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-605.</p> <p><input type="checkbox"/> 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.</p> <p><input type="checkbox"/> 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).</p> <p><input checked="" type="checkbox"/> 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.</p> <p><input type="checkbox"/> 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony. <input type="checkbox"/> G.S. 90-95(e)(3) (drugs); <input type="checkbox"/> G.S. 14-3(c) (race).</p> <p><input type="checkbox"/> 7. finds no Extraordinary Mitigation.</p> <p>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</p>					
for a minimum term of:		for a maximum term of:		in the custody of:	
133 months		169 months			
<input type="checkbox"/> Class A Felony: <input type="checkbox"/> Life Imprisonment Without Parole		<input type="checkbox"/> Death (see attached Death Warrant and Certificates)		<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 B1 Felony: Life Imprisonment Without Parole					
<input type="checkbox"/> Violent Habitual Felon: Life Imprisonment Without Parole					
The defendant shall be given credit for <u>144</u> days spent in confinement prior to the date of this Judgment as a result of this charge(s).					
<input type="checkbox"/> The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. <input type="checkbox"/> 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.)					

(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.

Fines	Costs	Restitution*	Reimbursement For Attorney Fee & Other	Total Amount Due
			\$1,100.00	\$1,100.00

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

The Court further recommends:

PARTICIPATE IN ANY ASSESSMENT AND OR COUNSELING AVAILABLE

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

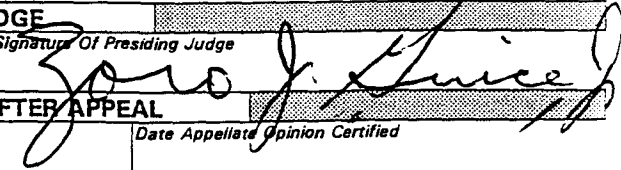
☐ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

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	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
10-05-1998	ZORO J. GUICE, JR.	

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	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Superior Clerk of Court

STATE OF NORTH CAROLINA				No. 98CRS 3062	
HENDERSON		County	HENDERSONVILLE		Seat of Court
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).)					In The General Court Of Justice Superior Court Division
STATE VERSUS			JUDGMENT AND COMMITMENT		
Name Of Defendant			ACTIVE PUNISHMENT		
JAMES ALLEN SMITH			FELONY		
Race			(STRUCTURED SENTENCING)		
BLACK		Sex	MALE		DOB
					06-30-1961
Attorney For State			Attorney For Defendant		
ATHENA FOX BROOKS			PATRICK COLLINS		
<input type="checkbox"/> Def. Found Not Indigent			<input type="checkbox"/> Def. Waived Attorney		
			<input checked="" type="checkbox"/> Appointed <input type="checkbox"/> Retained		
The defendant <input type="checkbox"/> pled guilty to: <input checked="" type="checkbox"/> was found guilty by a jury of: <input type="checkbox"/> pled no contest to:					
File No.(s)	Off	Offense Description	Offense Date	G.S. No.	F/M CL.
98CRS 3062		HABITUAL FELON	05-15-1998	14-7.1	F C
The Court: PRIOR <input type="checkbox"/> I <input type="checkbox"/> III <input type="checkbox"/> V <input checked="" type="checkbox"/> 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be <u>10</u> . RECORD LEVEL: <input type="checkbox"/> II <input checked="" type="checkbox"/> IV <input type="checkbox"/> VI <input type="checkbox"/> 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: <input checked="" type="checkbox"/> 1. makes no written findings because the prison term imposed is: <input checked="" type="checkbox"/> (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). <input type="checkbox"/> (b) for a Class A felony. <input type="checkbox"/> (c) for enhanced firearm penalty (G.S. 15A-1340.16A). <input type="checkbox"/> (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. <input type="checkbox"/> (e) for drug trafficking offenses. <input type="checkbox"/> 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. <input type="checkbox"/> 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. <input type="checkbox"/> 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). <input checked="" type="checkbox"/> 5. adjudges the defendant to be an habitual felon pursuant to Article 2A* of G.S. Chapter 14. <input type="checkbox"/> 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony. <input type="checkbox"/> G.S. 90-95(e)(3) (drugs); <input type="checkbox"/> G.S. 14-3(c) (race). <input type="checkbox"/> 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:		for a maximum term of:		in the custody of:	
133 months		169 months		<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 _____ days spent in confinement prior to the date of this Judgment as a result of this charge(s).					
<input type="checkbox"/> The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. <input checked="" type="checkbox"/> 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 3061 OCTOBER 5, 1998; HENDERSON CRIMINAL SUPERIOR					

(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.

Fines	Costs	Restitution*	Reimbursement For Attorney Fee & Other	Total Amount Due
-------	-------	--------------	--	------------------

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

The Court further recommends:

PARTICIPATE IN ANY ASSESSMENT AND OR COUNSELING AVAILABLE.

The Court does not recommend:

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

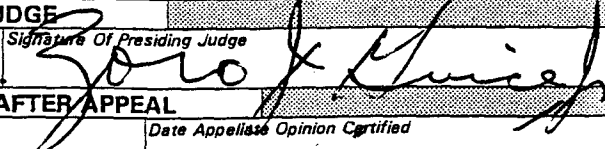
AWARD OF FEE TO COUNSEL FOR DEFENDANT

- ☐ 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	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
10-05-1998	ZORO J. GUICE, JR.	

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	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Superior Clerk of Court

FILED

OCT 7 1998

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 98 CRS 03060-3062

STATE OF NORTH CAROLINA)
)
 v.)
)
 JAMES ALLEN SMITH,)
 Defendant)
 _____)

NOTICE OF APPEAL

Please take Notice that Defendant, James Allen Smith, appeals from the Superior Court of Henderson County the order and judgement entered October 5, 1998 sentence. Defendant requests appeal bond.

This the 6th day of October, 1998.

James Allen Smith
James Allen Smith
Henderson County Detention

STATE OF NORTH CAROLINA

File No.

98CRS 3061

HENDERSON County

In The General Court Of Justice
☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

JAMES ALLEN SMITH

Social Security No.

239-17-9476

Co-defendant(s) If Tried Jointly

APPELLATE ENTRIES

Rules 7, 9, 11, 27; N. C. Rules Of App. Proc.

Additional File No.(s)

98CRS 3062

Name And Address Of Trial Prosecutor

ATHENA FOX BROOKS

200 N. GROVE ST. SUITE 223

HENDERSONVILLE, NC

28792

Telephone No.

828-6974882

Name And Address Of Defendant's Trial Counsel

PATRICK COLLINS

318 N. MAIN ST. SUITE 9

HENDERSONVILLE, NC

28792

Telephone No.

828-696-8660

Name And Address Of Court Reporter(s)

MARIE B. JOHNSON

370 LAMPLIGHTER ROAD

ZIRCONIA, NC 28790

Telephone No.

828-6923960

Name And Address Of Defendant's Appellate Counsel

☐ The Appellate Defender (919) 560-3334

200 Meredith Drive, Suite 200, Durham, NC 27713

☐ Alternative Counsel to Appellate Defender☒ Appellate Counsel

Phillip T. Jackson

422 N. Church Street

Hendersonville, NC

28792

Telephone No.

828-697-5410

Date(s) Of Trial And Other Hearings

October 1, 2, 5, 1998

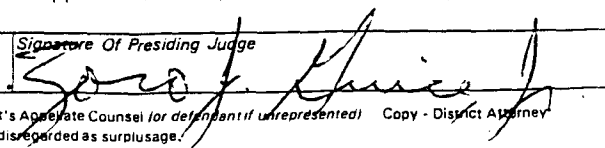
JUDGE'S INITIAL APPEAL ENTRIES

1. The defendant has given Notice of Appeal to the: ☒ N. C. Court of Appeals. ☐ N. C. Supreme Court.
2. Defendant's trial counsel was given an opportunity to object to the jury charge out of the hearing or presence of the jury and ☐ did so. ☐ did not do so.
3. The defendant shall serve a proposed record on appeal on the State within 35 days, if this is a non-capital case, or 70 days if this is a capital case, after the court reporter(s) delivers copies of the transcript to defendant's appellate counsel or after giving or filing notice of appeal if no transcript was ordered.
4. The State shall serve its amendments, objections or proposed alternative record on appeal on the defendant within 21 days if this is a non-capital case or 35 days if this is a capital case, after service upon it of the defendant's proposed record on appeal.
5. Release of the defendant pursuant to G.S. 15A-536 is ☒ denied. ☐ allowed upon execution of a secured bond in the amount of \$ _____, and compliance with the following additional conditions:

6. Unless indigent, the defendant shall contract with the court reporter(s) for production of the transcript as provided in the Rules of Appellate Procedure.

- ☒ 7. (NOTE: Check in all cases where defendant is indigent.) The defendant is indigent and has requested a transcript and the appointment of counsel. It is ORDERED that the defendant is allowed to appeal as an indigent and:
 - a. The Administrative Office of the Courts shall pay the costs of producing a transcript, and of reproducing the record and the defendant's brief.
 - b. ☐ (1) The appellate defender is appointed to perfect the defendant's appeal. In the event the appellate defender declines this appointment pursuant to G.S. 7A-486.3(1), the defendant's alternative appellate counsel named above is appointed to perfect the defendant's appeal.
☐ (2) The defendant's appellate counsel named above is appointed to perfect the defendant's appeal.
 - c. The Clerk shall furnish to the defendant's appellate counsel a copy of all documents on file in this case.
 - d. Unless the parties stipulate that parts of the proceedings shall not be transcribed, the Clerk shall order from the court reporter(s) a transcript of all parts of the proceedings except:

8. The Clerk shall mail a copy of these Entries to the prosecutor, all appellate counsel, the defendant (if unrepresented), and to the court reporter(s).

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
100898	HONORABLE ZORO J. GUICE, JR.	

Original - File Copy - Court Reporter(s) Copy - Defendant's Trial Counsel Copy - Defendant's Appellate Counsel (or defendant if unrepresented) Copy - District Attorney

Material opposite unmarked squares is to be disregarded as surplusage.

CLERK'S TRANSCRIPT ORDER AND CERTIFICATE		
<p>(NOTE: To be completed <u>ONLY</u> when defendant is indigent.)</p>		
<p>To The Court Reporter(s) Named On The Reverse:</p> <p>Prepare and deliver to the parties a transcript of all portions of the proceedings in the above-captioned case <u>except</u>: (Specify any portions of the proceedings which need not be transcribed pursuant to a stipulation filed by the parties under Rule 7(a)(2), or pursuant to No. 7.d. on reverse side.)</p>		
<p>I certify that I delivered a copy of this Transcript Order to the court reporter(s) on the date shown below:</p> <p><input checked="" type="checkbox"/> personally. --</p> <p><input type="checkbox"/> by mailing it to the reporter(s) at the address(es) shown on the reverse.</p>		
<p>Date Clerk's Transcript Order Entered And Filed</p> <p style="text-align: center;">November 2, 1998</p>	<p>Signature</p> <p style="text-align: center;"><i>Bette M. Case</i></p>	
<p>Date Order Delivered To Court Reporter(s), If Different</p> <p style="text-align: center;">November 2, 1998</p>	<p><input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court</p>	
<p>EXTENSION OF TIME TO PREPARE TRANSCRIPT OR SERVE RECORD</p>		
<p>Pursuant to Rules 7 and 27, N. C. Rules of Appellate Procedure, upon motion of the <input type="checkbox"/> defendant <input type="checkbox"/> State <input type="checkbox"/> court reporter, and for good cause shown, it is ORDERED that:</p> <p><input type="checkbox"/> the time for preparation of the transcript is extended for 30 additional days.</p> <p><input type="checkbox"/> the time permitted for service of the proposed record on appeal is extended for 30 days.</p>		
<p>NOTE: The trial court may grant only one extension of time to prepare the transcript or to serve the record on appeal. Neither extension may be for more than 30 days. A motion for any further extension of time must be made in the Appellate Court to which the appeal has been taken. Rules 7(b)(1) and 27(c)(2), N. C. Rules of Appellate Procedure.</p>		
<p>Date</p>	<p>Name Of Judge (Type Or Print)</p>	<p>Signature Of Judge</p>
<p>CERTIFICATION</p>		
<p>I certify this Appellate Entries form is a true and complete copy of the original on file in this case.</p>		
<p>Date</p> <p style="text-align: center;">11-2-98</p>	<p>Signature And Seal</p> <p style="text-align: center;"><i>Bette M. Case</i></p>	
<p><input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court</p>		
<p>AOC-CR-350, Side Two Rev. 4/97</p>		

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 96 CRS 03060-62

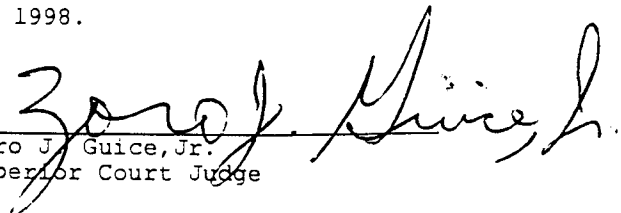
STATE OF NORTH CAROLINA,)
Plaintiff)
V.)
JAMES ALLEN SMITH)
Defendant.)
_____)

APPEAL ORDER

WHEREAS, Defendant appealed the judgement rendered October 5, 1998, and
whereas Attorney Patrick Collins was originally appointed to prosecute said
appeal, and whereas, Attorney Patrick Collins, for good cause, has requested
to be relieved of said appointment,

IT IS HEREBY ORDERED that Attorney Philip Jackson, Henderson County Bar, is
appointed as Attorney for the Defendant, James Allen Smith.

This the 22 day of October, 1998.



Zoro J. Guice, Jr.
Superior Court Judge

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C E R T I F I C A T E

THIS IS TO CERTIFY THAT THE FOREGOING TRANSCRIPT OF
PROCEEDINGS, TAKEN AT THE SEPTEMBER 28, 1998 SESSION OF CRIMINAL
SUPERIOR COURT, HENDERSON COUNTY, NORTH CAROLINA, IS A TRUE AND
ACCURATE TRANSCRIPTION OF THE PROCEEDINGS TAKEN BY ME WITH
STENOMASK AND TRANSCRIBED BY ME PERSONALLY.

THIS THE 8TH DAY OF JANUARY, 1999

Marie B. Johnson
MARIE B. JOHNSON, CVR
OFFICIAL COURT REPORTER
P.O. BOX 1386
FLAT ROCK, N.C. 28731
828-698-5156

MY COMMISSION EXPIRES:

FEBRUARY 15, 1999

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 98 CRS 3061

STATE OF NORTH CAROLINA,
Plaintiff,
v.
JAMES ALLEN SMITH,
Defendant.

**MOTION FOR EXTENSION OF TIME
TO SERVE DEFENDANT'S
PROPOSED RECORD ON APPEAL**

NOW COMES the Defendant, JAMES ALLEN SMITH, by and through undersigned counsel, and moves the Court pursuant to Rules 11(f) and 27(c)(1) of the North Carolina Rules of Appellate Procedure for an Order extending for 30 days the time in which to serve the Defendant's Proposed Record on Appeal in this matter, and in support of said motion shows the following unto the Court:

1. That Notice of Appeal was given by the Defendant on the 8th day of October, 1998.
2. That the undersigned was appointed as appellate counsel for the Defendant on the 8th day of October, 1998.
3. That the Certificate of the Court Reporter regarding the transcript of the proceedings in this cause is dated the 8th day of January, 1999.
4. That undersigned counsel was only provided with a copy of the court file on January 22, 1999.
5. That the undersigned counsel for the Defendant has not had adequate time in which to prepare the Proposed Record on Appeal in this matter and is in need of an additional 30 days in which to prepare the Proposed Record on Appeal.

WHEREFORE, the Defendant, JAMES ALLEN SMITH, respectfully moves the Court to extend the time to serve the Proposed Record on Appeal up to and including the 9th day of March, 1999.

This the 25th day of January, 1999.

JACKSON & JACKSON
Attorneys for Defendant

By 

PHILLIP T. JACKSON
P. O. Box 1666
Hendersonville, NC 28792
Phone: 828.697.5410
N. C. State Bar # 21134

CERTIFICATE OF SERVICE

This is to certify that I have this day served the attorney named below with a copy of this pleading by [X] hand delivery or [] by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon in the manner prescribed by Rule 5 of the Rules of Civil Procedure and/or Rule 26 of the Rules of Appellate Procedure.

Athena Fox Brooks
Assistant District Attorney
200 N. King Street, Suite 223
Hendersonville, NC 28792

This the 15th day of January, 1999.


PHILLIP T. JACKSON

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 98 CRS 3061

STATE OF NORTH CAROLINA,
Plaintiff,
v.
JAMES ALLEN SMITH,
Defendant.

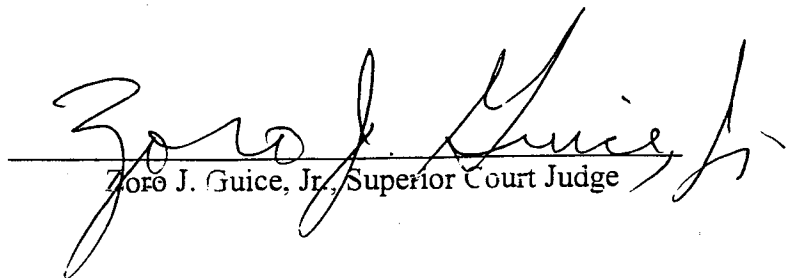
**ORDER EXTENDING TIME
TO SERVE DEFENDANT'S
PROPOSED RECORD ON APPEAL**

FILED
1999 FEB 10 11:37
HENDERSON COUNTY CSC
B7

This cause being heard by the undersigned Superior Court Judge of the 29th Judicial District on Defendant's Motion for entry of an order extending the time in which to serve the Proposed Record on Appeal, pursuant to Rules 11(f) and 27(c)(1) of the North Carolina Rules of Appellate Procedure; and it appearing to the Court that the time allowed has not expired and that the Motion should be allowed.

It is, therefore, ORDERED that the Defendant is hereby allowed an extension of thirty (30) days, up to and including the 9th day of March, 1999 in which to serve the Defendant's Proposed Record on Appeal.

This the 27 day of January, 1999.


Zoro J. Guice, Jr., Superior Court Judge

NO. COA

TWENTY-NINTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA,)
Plaintiff/Appellee,)

vs.)

JAMES ALLEN SMITH,)
Defendant/Appellant.)

From Henderson County:
File No. 98 CRS 3061

IN THE COURT OF
CLERK COURT OF APPEALS
OF NORTH CAROLINA

99FEB18 AM 9:11

FILED

**MOTION FOR ENLARGEMENT OF TIME
TO SERVE PROPOSED RECORD ON APPEAL**

The Defendant/Appellant moves the Court, pursuant to Rule 27(c)(2) of the Rules of Appellate Procedure, for an order extending the time in which to serve his Proposed Record on Appeal in this matter up to and including the 8th day of April, 1999.

In support of this motion the following is shown unto the Court.

1. That pursuant to an Order of the trial court dated January 27, 1999, the time to serve Defendant/Appellant's proposed record on appeal was extended to the 9th day of March, 1999.
2. The undersigned attorney is the attorney of record for the Plaintiff/Appellant in Alexander v. Quattlebaum, COA 99-2. The printed Record on Appeal was mailed by the Clerk of the Court of Appeals in Alexander v. Quattlebaum on the 9th day of February, 1999. Thus the Plaintiff/Appellant's brief is due in Alexander v. Quattlebaum on the 11th day of March, 1999. (The undersigned attorney does not anticipate requesting an extension of time to file and serve the brief in Alexander v. Quattalebaum.)
3. The undersigned attorney is attorney of record for the Defendant/Appellant in State v. Schlaepfer, COAP99-57. The Defendant/Appellant's extended date by this Court to serve the proposed record on appeal is the 9th day of March, 1999.

4. The undersigned attorney is attorney of record for the Defendant/Appellant in State v. Corral, COA P98-1604. The printed Record on Appeal was mailed by the Clerk of this Court on the 2nd day of February, 1999; thus the Defendant/Appellant's Brief is due on the 4th day of March, 1999. (Note that this same day the undersigned counsel has filed a Motion with this Court requesting a 30-day extension to serve the Appellant's Brief.)
5. The undersigned attorney is attorney of record for the Defendant/Appellant in Ice v. Ice, 92 CvD 243 and 94 CvD 278, Transylvania County, and the proposed record on appeal (as the extended date was set by the trial court) is the 11th day of March, 1999. (Note the undersigned attorney does not anticipate requesting this Court to extend the time to serve the proposed record on appeal in Ice v. Ice.)
6. The undersigned attorney is attorney of record for one of the Respondents in the case of Onuska v. Barnwell, 97 SP 79, Henderson County Superior Court, which said case is the 4th case on the March 1, 1999 Civil Superior Jury Trial Calendar.
7. The undersigned counsel is attorney of record for the Plaintiff in the case of Pack v. U.S., No. 1:98Cv4-C, United States District Court, Western District of North Carolina, Asheville Division, and pursuant to a pre-trial order, the 9th day of March, 1999 is the deadline for filing dispositive motions and briefs supporting the same.

WHEREFORE, Defendant/Appellant, by and through undersigned counsel, respectfully moves the Court to extend the time the Defendant/Appellant has to file and serve his Proposed Record on Appeal in this matter to and including the 8th day of April, 1999.

This the 17th day of February, 1999.

JACKSON & JACKSON
Attorneys for Defendant/Appellant

By 

PHILLIP T. JACKSON
P. O. Box 1666
Hendersonville, NC 28792
828.697.5410
N. C. State Bar # 21134

CERTIFICATE OF SERVICE

This is to certify that I have this day served the attorney named below with this pleading by ☐ hand delivery or ☒ by depositing in the United States Mail [Federal Express] a copy of same in a properly addressed envelope with adequate postage thereon in the manner prescribed by the applicable Rules of Procedure:

Mr. John H. Connell
Clerk of the Court of Appeals
Court of Appeals Building, Room A
P. O. Box 279
Raleigh, NC 27602

This the 17th day of February, 1999.



PHILLIP T. JACKSON

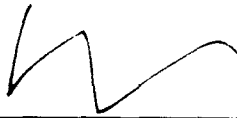
CERTIFICATE OF SERVICE

This is to certify that I have this day served the attorney named below with a copy of this pleading by [] hand delivery or [X] by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon in the manner prescribed by the applicable Rules of Procedure:

Department of Justice
P. O. Box 629
Raleigh, NC 27602-0629

Athena Fox Brooks
Assistant District Attorney, 29th District
Henderson County Courthouse
Hendersonville, NC 28792

This the 17th day of February, 1999.



PHILLIP T. JACKSON

No. COAP99-106
North Carolina Court of Appeals

STATE OF NORTH CAROLINA

V

JAMES ALLEN SMITH

ORDER

The following order was entered:

The motion filed in this cause on the 18th day of February 1999 and designated "Motion For Enlargement of Time to Serve Proposed Record on Appeal" is allowed. Proposed record on appeal shall be served on or before 8 April 1999.

By order of the Court this the 18th day of February 1999.

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

Witness my hand and official seal this the 18th day of February 1999.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig
cc:
Mr. Phillip T. Jackson
Attorney General

FILED
99 FEB 18 PM 4:06
CLERK OF
NORTH CAROLINA
COURT OF APPEALS
From Henderson
(98CRS3064)

ASSIGNMENTS OF ERROR

The Defendant/Appellant assigns the following as error:

1. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel failed to object to the joinder of all the charges against the Defendant for trial.

(R p. 11; T p. 3, line 24; T p. 22, line 4)
2. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel admitted to the accuracy of Count II of the indictment in 98 CrS 3061.

(T p. 19, line 12; T p. 118, line 6)
3. The trial court erred in treating the Defendant's "Admission" to Count II of the indictment in 98 CrS 3061 as a plea of guilty on the grounds that it was contrary to law and an abuse of discretion.

(T p. 19, line 8; T p. 118, line 6)
4. The trial court erred in treating the Defendant's "Admission" to Count II of the indictment in 98 CrS 3062 as a plea of guilty on the grounds that it was contrary to law and an abuse of discretion.

(T p. 21, line 15)
5. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel admitted the accuracy of Count II of the indictment in 98 CrS 3062.

(T p. 22, line 4)
6. The trial court erred in denying the Defendant's Motion to dismiss the habitual misdemeanor assault charges made prior to the selection of jury and presentation of evidence on the grounds that it denied the Defendant rights guaranteed by the North Carolina and United State's Constitutions, including but not limited the right to be free from being twice put in jeopardy for the same offense.

(R p. 6; T p. 24, line 1)
7. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel failed to object to hearsay testimony of the witness Susan K. Philipscheck.

(T p. 42, line 22; T p. 43, line 4; T p. 45, line 16)

8. The trial court erred in overruling the Defendant's objection to the testimony of Susan K. Philipsheck regarding what she thought she saw the Defendant had in his hand, on the grounds that it was contrary to law and prejudicial to the Defendant.

(T p. 46, line 23)

9. The trial court erred in overruling the Defendant's objection to the testimony of Susan K. Philipsheck that "we were all terrified" on the grounds that it was contrary to law, an abuse of discretion and prejudicial to the Defendant.

(T p. 47, line 21)

10. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel failed to object to Karen Conrad testifying that the Defendant was "high".

(T p. 63, line 8)

11. The trial court erred in overruling the objection of the Defendant to Karen Conrad testifying that she assumed the Defendant punctured tires on a car with a knife, on the grounds that the witness did not have first hand knowledge of the events, the ruling was contrary to law and prejudicial to the Defendant.

(T p. 69, line 10)

12. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel failed to object to the State's question to Kieyoundra McDowell that "...when he shove you, you didn't get hurt – you didn't have to go to the hospital" on the grounds that the question assumed facts not in evidence and was leading.

(T p. 91, line 24)

13. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel questioned Kieyoundra McDowell and during that questioning elicited testimony that was an essential element of the State's case in 98 CrS 3062, which evidence had not been introduced as part of the State's examination of said witness.

(T p. 93, line 8)

14. The trial court erred in forcing the Defendant to admit the convictions in Count II of the indictment in 98 CrS 3061 and 98 CrS 3062 on the grounds said ruling was contrary to law, an abuse of discretion, and violated the constitutional rights of the

Defendant.

(T p. 117, line 12)

15. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel failed to move the trial court to dismiss 98 CrS 3061 at the close of the State's evidence.

(T p. 125, line 18)

16. The trial court erred in denying the Defendant's Motion to dismiss in 98 CrS 3062 at the close of the State's evidence on the grounds that the evidence presented was insufficient as a matter of law to establish each and every element of the offense under the theory of guilt presented to the jury.

(T p. 127, line 12)

17. The trial court erred in failing to grant the Defendant's Motion to Dismiss the charge in 98 CrS 3062 on the grounds that there was a fatal variance between the allegations in the indictment and the proof offered at trial.

(T p. 125, line 12; R p. 4)

18. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel failed to have prepared a written instruction on misdemeanor disorderly conduct to submit to the court during the charge conference.

(T p. 130, line 17)

19. The trial court erred in denying the Defendant's request for an instruction on misdemeanor disorderly conduct on the grounds that said ruling was contrary to law and an abuse of discretion.

(T p. 130, line 19)

20. The Defendant's State and Federal constitutional rights to the effective assistance of counsel were denied when his trial counsel failed to object to the introduction of State's Exhibit Nos. 1, 2, and 3.

(T p. 172, line 8; T p. 175, line 14))

21. The trial court erred in overruling the objection of the Defendant to the admission of State's Exhibit 3 on the grounds that said ruling was contrary to law, an abuse of discretion and prejudicial to the Defendant.

(T p. 175, line 2)

22. The trial court erred in ordering that the Defendant be removed from the courtroom during presentation of evidence on the grounds that it the Defendant's right were violated under the North Carolina Constitution and the United State's Constitution which rights include the right to meaningfully participate in the defense of a criminal case.

(T p. 178, line 22; T p. 186, line 10; T p. 202, line 24)
23. The trial court erred in ordering that the Defendant be removed from the courtroom during presentation of evidence on the grounds that it was contrary to law, an abuse of discretion and prejudicial to the Defendant.

(T p. 178, line 22; T p. 186, line 10; T p. 202, line 24)
24. The trial court erred in refusing to allow the Defendant to submit NCGS § 14-33.2 to the jury on the grounds that it was contrary to law, an abuse of discretion and prejudicial to the Defendant.

(T p. 184, line 2)
25. The trial court erred in holding as a matter of law that the conviction evidenced by State's Exhibit 3 was applicable to the determination that the Defendant had achieved an habitual felony status on the grounds that said ruling was contrary to law, an abuse of discretion and prejudicial to the Defendant.

(T p. 184, line 19)
26. The trial court erred in refusing to allow the Defendant to argue to the jury that the conviction purportedly evidenced by State's Exhibit 3 could not form the basis of a felony conviction sufficient to have the Defendant be a habitual felon on the grounds that said ruling was contrary to law, an abuse of discretion and prejudicial to the Defendant.

(T p. 185, line 20)
27. The trial court erred in making the findings of fact in support of his order to exclude the Defendant from participating in the trial on the grounds that said findings of fact were not supported by evidence, were contrary to law and were an abuse of discretion.

(T p. 200, line 13 through T p. 201, line 18)
28. The trial court erred in making the conclusions of law in support of his order to exclude the Defendant from participating in the trial on the grounds that said conclusions of law were not supported by evidence, were not supported by the findings of fact, were contrary to law and were an abuse of discretion.

(T p. 201, line 21 through T p. 202, line 23)

29. The trial court erred in entering an excessive sentence against the Defendant on the grounds that the trial court was not impartial during the sentencing process as evidenced by his statements to the jurors after the verdicts were entered.

(T p. 205, line 5)

30. The trial court erred in finding the Defendant to be a prior record level IV on the grounds that said finding was not supported by the evidence, was contrary to law and was an abuse of discretion.

(R p. 19)

31. The trial court erred in utilizing convictions which supported the habitual misdemeanor assault charges to increase the record level of the Defendant on the grounds that it violated the Defendant's constitutional rights including the right to be free from twice being placed in jeopardy for the same offense and on the grounds that it was contrary to law and an abuse of discretion.

(R p. 19)

32. The trial court erred in sentencing the Defendant in 98 CrS 3061 and 98 CrS 3062 as an habitual felon on the grounds that it was contrary to law and an abuse of discretion.

(R p. 23 and 25)

33. The trial court erred in sentencing the Defendant in the aggravated range in 98 CrS 3061 and 98 CrS 3062 on the grounds that there were no findings of fact, nor any evidence, to support sentencing the Defendant in the aggravated range and therefore such sentencing was contrary to law and an abuse of discretion.

(R p. 23 and 25)

34. The trial court erred in sentencing the Defendant as an habitual felon in 98 CrS 3061 and 98 CrS 3062 on the grounds that the indictment in 98 CrS 3060 failed to allege the predicate felony offense.

(R p. 23 and 25)

35. The trial court erred in making finding no. 5 in the judgment in 98 CrS 3061 and finding no. 5 in the judgment in 98 CrS 3062 on the grounds that finding and adjudging the Defendant to be an habitual felon was contrary to law and an abuse of discretion.

(R p. 23 and 25)

36. The Defendant's State and Federal constitutional rights were violated on the grounds that NCGS § 14-33.2 was unconstitutional as applied to the Defendant.

(R p. 23 and 25)
37. The Defendant's State and Federal constitutional rights were violated on the grounds that Article 2A of Chapter 14 of the North Carolina General Statutes was unconstitutional as applied to the Defendant.

(R p. 23 and 25)
38. The Defendant's State and Federal constitutional rights were violated on the grounds that NCGS § 14-33.2, when combined with Article 2A of Chapter 14 of the North Carolina General Statutes, was unconstitutional as applied to the Defendant.

(R p. 23 and 25)
39. That the trial courts entry of the Judgment and Commitment in 98 CrS 3061 and 98 CrS 3062 was error on the grounds that it violated the Defendant's Federal and State constitutional rights and further was an abuse of discretion and contrary to law.

(R p. 23 and 25)

IDENTIFICATION OF COUNSEL OF RECORD

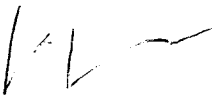
Phillip T. Jackson
P. O. Box 1666
Hendersonville, NC 28793
Attorney for Defendant/Appellant

Athena Fox Brooks
Assistant District Attorney
200 North Grove Street, Suite 223
Hendersonville, NC 28792
Attorney for Plaintiff/Appellee

STIPULATIONS AND SETTLEMENT OF RECORD ON APPEAL

1. It is hereby stipulated that the Record on Appeal consists of these 48 pages, plus the trial transcript.
2. The stenographic transcript of the proceedings in the trial tribunal, as referenced herein at page 14, is an accurate transcription and shall be part of the Record on Appeal and be filed with the Clerk of the North Carolina Court of Appeals when this Record on Appeal is docketed.
3. All papers and/or documents, specifically including but not limited to the Notice of Appeal, the Defendant/Appellant's Proposed Record on appeal, and the objections (if any) to the said Proposed Record on Appeal, were timely filed and served as provided for in the North Carolina Rules of Appellate Procedure.
4. The exhibits stated on page 15 are the only exhibits necessary to an understanding of the assignments of error as presented herein and that the same will be filed with as provided for in Rule 9(d)(2).

Dated: 29 April 1999



PHILLIP T. JACKSON
Attorney for Defendant/Appellant

Dated: 29 April 1999



ATHENA FOX BROOKS
Attorney for Plaintiff/Appellee

CERTIFICATE OF SERVICE

This is to certify that I have this day served the attorneys named below with a copy of this PROPOSED RECORD ON APPEAL by [] hand delivery or [XX] by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon, in the manner prescribed by Rule 5 of the Rules of Civil Procedure and/or Rule 26 of the Rules of Appellate Procedure:

Athena Fox Brooks
Assistant District Attorney
200 North Grove Street, Suite 223
Hendersonville, NC 28792
Attorney for Plaintiff/Appellee

This the 8TH day of April, 1999.

By



PHILLIP T. JACKSON
P. O. Box 1666
Hendersonville, NC 28793
828/697-5410

N.C. State Bar # 21134