

STATE OF SOUTH CAROLINA

) Indictment Nos. 2021-GS-46-01040, 2022-GS-46-05500
) 2023-GS-46-00843

IN THE COURT OF APPEALS
State of South Carolina

FILED-RECEIVED

2023 FEB 15 PM 4:23

-vs-

DAVID HAMILTON
S.C.C.P. & GS
YORK COUNTY, SC

Russ Stewart Smith,

Defendant.

RECEIVED

FEB 17 2023

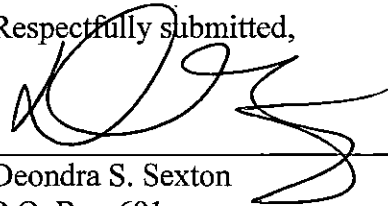
SC Court of Appeals

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), the issue to be raised on appeal is whether the trial court abused its discretion when it imposed the Ninety (90) day weekend sentence upon the Appellant after he pled guilty to Domestic Violence 2nd, Possession of Methamphetamine 1st and Unlawful Carrying of a Pistol.

The undersigned does not have a good faith basis to believe that this issue is properly before the Court of Appeals, and the undersigned did not object to the sentence or file a motion to reconsider the sentence. Nevertheless, the undersigned consulted with the Appellant about his right to appeal, and after consultation, the undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. *See Frazer v. South Carolina*, 430 F.3d 696, 705 (4th Cir. 2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'") (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

Respectfully submitted,



Deondra S. Sexton
P.O. Box 691
York, South Carolina 29745
(803) 628-3031
Attorney for Russ Stewart Smith

York, South Carolina

February 15, 2023

**Sixteenth Circuit
Public Defender
Office**

**Moss Justice Center
1675-1E York Highway
P.O. Box 691
York, S.C. 29745**



**B.J. Barrowclough
Sixteenth Circuit Defender**

**Deputy Public Defenders
Melissa Inzerillo
Phil Smith**

**Sr. Assistant Public Defenders
Mark McKinnon**

**Assistant Public Defenders
Stroud Baker
Chris Bonds
Tyler Bratton
Shawana Burris
Fred Davis
Devon Nielson
Ryan Newkirk
Melissa Rogers
Ugonna Udogwu**

February 15, 2023

Russ Stewart Smith
432 Vermillion Drive
York, SC 29745

Dear Mr. Smith:

Enclosed please find certified copies of the Notice of Appeal, Rule 203(B) Explanation and Certified Certificate of Service regarding your recent plea. Please note that you must inform the South Carolina Court of Appeals in writing, within **twenty (20) days** of the date of this letter, of any arguable basis that there are issues preserved for appeal.

You must send your arguments for your appeal to the following address:

**South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211**

Sincerely,

**Deondra S Sexton
Assistant Public Defender
Sixteenth Judicial Circuit**

RECEIVED

FEB 17 2023

SC Court of Appeals

DSS/fnw

Enclosure

Cc: South Carolina Court of Appeals

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

2023 FEB 15 AM 9:18
ORIGINAL
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE

VS.

INDICTMENT/CASE#: 2021-GS-46-01040

RUSS STEWART SMITH

A/W#: 2021A4610200323

AKA:

Date of Offense: 02/21/2021

Race: W

Sex: M

Age: 52

S.C. Code §: 16-25-0020(C)

DOB:

SS#

CDR Code #: 3812

Address:

City, State, Zip:

SENTENCE SHEET

DL#*

SID# SC00688168

rec 90

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Domestic Violence, 2nd Degree (NMT 3 years &/or \$2500-5000)

In violation of § 16-25-0020(C) of the S.C. Code of Laws, bearing CDR Code # 3812

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

/s Jenny E. Desch
Solicitor

72806 /s Russ Stewart Smith
SC Bar # Defendant

Deanna Sexton
/s (No Attorney) Prose
Attorney for Defense PROSE
SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 1 days/months/years/Time Served Youthful Offender Act not to exceed years.

and/or to pay a fine of \$; provided that upon the service of 90 days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: all 2-6-23 plea + 2021-54601041

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

2 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

RECEIVED

FEB 17 2023

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SC Court of Appeals

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Attend Voc. Rehab. Or Job Corp
- Mental Health Counseling
- Sex Offender Registry pursuant to S.C. Code § 23-3-430
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____
- Completion of GED
- No Contact with Victim
- May serve W/E beginning: 2/10/23
- Public Service Employment _____ days/hours
- Random Drug/Alcohol Testing
- Domestic Violence Intervention Program

RESTITUTION Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ 100
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$
§56-5-2995 (DUI Assessment)		\$12	\$
§56-1-286 (DUI Breath Test)		\$25	\$
§14-1-212 (Law Enforce. Funding)		\$25	\$ 25
§14-1-213 (Drug Court Surcharge)		\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$
§50-21-114 (BUI Breath Test Fee)		\$50	\$
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$
3% to County (if paid in installments)		TBD	\$
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$
TOTAL			\$ 125

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: dcrp

Presiding Judge: _____
Judge Code: ME Kinnon 2761
Sentence Date: 2/6/2023

WITNESSES

YCSO

Witnessing Officer: *Ligon*

ARREST WARRANT NUMBER

2021A4610200323

ACTION OF GRAND JURY

TRUE BILL

Heather Bochinski
Foreperson of Grand Jury
Date: *5/5/2022*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2021-GS-46-01040

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

MAY 5, TERM 2022

THE STATE

VS.

RUSS STEWART SMITH

INDICTMENT FOR

DOMESTIC VIOLENCE, 2ND DEGREE

SC Code: § 16-25-0020(C)
CDR Code: 3812

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECEIVED

FEB 17 2023

SC Court of Appeals

CERTIFIED TRUE COPY
2023 FEB 15 AM 9:18
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on May 5, 2022, the Grand Jurors of York County present upon their oath:

DOMESTIC VIOLENCE, 2ND DEGREE

The defendant, Russ Stewart Smith, on or about February 21, 2021, in York County, South Carolina, did cause physical harm or injury to Tiffany Nicole Lee Brown, a household member, or did offer or attempt to cause physical harm or injury to said household member with apparent present ability under circumstances reasonably creating fear of imminent peril. In addition, while committing this offense, the defendant impeded the victim's breathing or air flow, all in violation of Section 16-25-0020(C), *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JENNY E. DESCH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2023 FEB 15 AM 9:20

IN THE COURT OF GENERAL SESSIONS

STATE VS.

ORIGINAL
CLERK OF COURT
YORK COUNTY, SC

INDICTMENT/CASE#: 2022-GS-46-05500

RUSS STEWART SMITH

AKA:
Race: W Sex: M Age: 52
DOB: SS#
Address:
City, State, Zip:
DL#* SID# SC00688168

A/W#: 2022A4610202009
Date of Offense: 09/01/2022
S.C. Code §: 44-53-375(A)
CDR Code #: 3009

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the above indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Possession of Methamphetamine 1st Offense (NMT 3 YEARS &/OR \$5,000)

In violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3009

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

/s Jenny E. Desch 72806 /s Russ Stewart Smith /s Deondra Sexton 104787
Solicitor SC Bar # Defendant Attorney for Defense SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 20 days/months/years/Time Served Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: all 2-6-23 pleas + 2021GS4601041

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.

2 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

RECEIVED

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

FEB 17 2023
SC Court of Appeals

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Completion of GED
- Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp
- No Contact with Victim
- Domestic Violence Intervention Program
- Mental Health Counseling
- May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430
- Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:		\$
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning _____
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ 275

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: dcrp

Presiding Judge: _____
Judge Code: McKinnon 2761
Sentence Date: 2/6/2023 9:30:00 AM

WITNESSES

YCSO

Witnessing Officer: *Wallace*

ARREST WARRANT NUMBER

2022A4610202009

ACTION OF GRAND JURY

TRUE BILL

Dana Simmons
Foreperson of Grand Jury
Date: *12/8/22*

VERDICT

Foreperson of Petit Jury
Date:

SC Court of Appeals

FEB 17 2023

RECEIVED

DOCKET NO. 2022-GS-46-05500

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 8, TERM 2022

THE STATE

VS.

RUSS STEWART SMITH

INDICTMENT FOR

POSSESSION OF METHAMPHETAMINE

SC Code: § 44-53-375(A)
CDR Code: 3009

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
2023 FEB 15 AM 9:20
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on December 8, 2022, the Grand Jurors of York County present upon their oath:

POSSESSION OF METHAMPHETAMINE

The defendant, Russ Stewart Smith, did on or about September 1, 2022, in York County, South Carolina, knowingly or intentionally possess methamphetamine as defined in Section 44-53-110, all in violation of Section 44-53-375(A), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JENNY E. DESCH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

CERTIFIED TRUE COPY

STATE

2023 FEB 15 AM 9:20

INDICTMENT/CASE#: 2023-GS-46-00843

VS.

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

RUSS STEWART SMITH

AKA:
Race: W Sex: M Age: 52
DOB: SS#
Address:
City, State, Zip:
DL#* SID# SC00688168

Date of Offense: 09/01/2022
S.C. Code §: 16-23-0020
CDR Code #: 0044

SENTENCE SHEET

ORIGINAL

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the above indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Unlawful Carrying of a Pistol (NMT 1 YEAR &/OR \$1,000)

In violation of § 16-23-0020 of the S.C. Code of Laws, bearing CDR Code # 0044

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. **RS** (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

/s Jenny E. Desch	72806	/s Russ Stewart Smith	/s Deondra Sexton	104787
Solicitor	SC Bar #	Defendant	Attorney for Defense	SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 2 (days/months/years/Time Served) Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: all 2-6-23 pleas 202164601041

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

2 (days/months)

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

RECEIVED

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-30 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

FEB 17 2023

SC Court of Appeals

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Completion of GED
- Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp
- No Contact with Victim
- Domestic Violence Intervention Program
- Mental Health Counseling
- May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430
- Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:	\$	Beginning	\$
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	_____	_____
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ 100
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$
§56-5-2995 (DUI Assessment)		\$12	\$
§56-1-286 (DUI Breath Test)		\$25	\$
§14-1-212 (Law Enforce. Funding)		\$25	\$ 25
§14-1-213 (Drug Court Surcharge)		\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$
§50-21-114 (BUI Breath Test Fee)		\$50	\$
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$
3% to County (if paid in installments)		TBD	\$
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$
TOTAL			\$ 125

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: dcrp

Presiding Judge: _____
Judge Code: McKinnon 2761
Sentence Date: 2/6/2023 9:30:00 AM

WITNESSES

YCSO

Witnessing Officer:

ARREST WARRANT NUMBER

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

RECEIVED
FEB 17 2023
SC Court of Appeals

DOCKET NO. 2023-GS-46-00843

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 16, TERM 2023

THE STATE

VS.

RUSS STEWART SMITH

INDICTMENT FOR

UNLAWFUL CARRYING OF A PISTOL

SC Code: § 16-23-0020
CDR Code: 0044

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Russ Stewart Smith
Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
2023 FEB 15 AM 9:20
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on February 16, 2023, the Grand Jurors of York County present upon their oath:

UNLAWFUL CARRYING OF A PISTOL

The defendant, Russ Stewart Smith, did in York County, South Carolina, on or about September 1, 2022, unlawfully carry about his or her person a handgun, whether concealed or not, all in violation of Section 16-23-20, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JENNY E. DESCH
ASSISTANT SOLICITOR

JED