

**RECEIVED**

**Mar 27 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Charleston County  
Honorable Roger M. Young, Sr., Circuit Court Judge  
Appellate Case Tracking No. 2022-001410

---

David Israel Smith,

Appellant,

vs.

State of South Carolina,

Respondent.

---

**RETURN TO MOTION TO REMAND AND RECONSTRUCT  
AND MOTION TO DISMISS APPEAL**

---

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

Appellant has served and filed a notice of appeal from an Order of the Honorable Roger M. Young, Sr., denying his motion for reconsideration of his sentence. Thereafter, he filed a Motion with this Court that appears to be a Motion to Remand and for Reconstruction of the hearing related to his Motion to Reconsider Sentence. The State submits the Motion for Remand and Reconstruction should be denied because a hearing took place and a copy of the transcript is available. (See Transcript attached as Exhibit A). Further, as discussed below, the State believes the Order of Judge Young is a nullity and the appeal should be dismissed in light of the procedural history of this case.

Appellant was originally charged with criminal domestic violence of a high and aggravated nature, but ultimately indicted for attempted murder. On July 10, 2014, he pled

guilty to assault and battery of a high and aggravated nature and sentenced to twenty years in prison. (Indictment and Sentencing Sheet attached as Exhibit B). Appellant's counsel served and filed a Motion to Reconsider Sentence on July 18, 2014. (Motion attached as Exhibit C). The motion was heard on November 17, 2014, before the Honorable Roger M. Young, Sr. At the end of the hearing, Judge Young denied the motion to reconsider. (Exhibit A p.10).

Significantly, on March 31, 2015, Appellant served and filed an Application for Post Conviction Relief. (PCR Application attached as Exhibit D). By filing and proceeding with a PCR, Appellant acknowledged the finality of his sentence and waived the requirement of a written order as it relates to the denial of his Motion to Reconsider Sentence. The PCR was denied and an Order of Dismissal entered on August 3, 2016. (Order of Dismissal attached as Exhibit E). Thereafter, Appellant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, which was denied.

Because Appellant proceeded with a PCR application and hearing after his motion to reconsider was denied on the record, it would be final and Appellant cannot later claim he did not receive a final order. See e.g., Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004) (Doctrine of Judicial Estoppel requires "(1) Two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.").

In November 2021, Appellant served and filed a Motion for Reconsideration and Modification of Sentence and followed it with a Motion to Docket Case on Court Calendar. (Motions attached as Exhibit F). These motions, as stand-alone motions were clearly out of time.


See Rule 29(a), SCRCrimP (providing for ten days from sentencing to serve and file a post-trial motion). Judge Young seemed to construe them as a request to provide a formal written ruling on the previously filed Motion to Reconsider that was handled at the November 2014 hearing. However, because that oral ruling was final, and considered final by Appellant through his application for PCR and appeal, there was no need for the written ruling. As a result, any appeal from the current underlying order of Judge Young is not timely and should have occurred prior to the application for PCR being filed in March 2015. See State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008); State v. Warren, 392 S.C. 235, 239, 708 S.E.2d 234, 236 (Ct. App. 2011). Therefore, this Court should deny the motion to remand and dismiss this appeal as untimely.

WHEREFORE, Respondent prays that the Court deny Appellant's request and dismiss this appeal as untimely.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General

  
WILLIAM M. BLITCH, JR.  
S.C. Bar No. 15608  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 27, 2023

# **EXHIBIT A**

STATE OF SOUTH CAROLINA      COURT OF COMMON PLEAS  
 COUNTY OF CHARLESTON        2015-CP-10-1855

DAVID I. SMITH,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF RECORD
	)	
-vs-	)	November 17, 2014
	)	
THE STATE OF	)	Charleston, South Carolina
SOUTH CAROLINA,	)	
	)	
Defendant.	)	

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

A P P E A R A N C E S:

Luke Joseph Malloy, III, Esq.  
Attorney for the Plaintiff

Jessica Baldwin, Assistant Solicitor  
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR  
Circuit Court Reporter

1 (November 17, 2014.)

2 THE COURT: All right. This is State versus  
3 David Israel Smith, a motion to reconsider. Is this your  
4 motion?

5 MR. MALLOY: It is, Your Honor. Your Honor,  
6 Mr. Smith, this case started off -- was originally  
7 charged as a criminal domestic violence of a high and  
8 aggravated nature, was eventually indicted as attempted  
9 murder, but he was allowed to plea to assault and battery  
10 of a high and aggravated nature and to receive the  
11 20-year sentence, which is the max for an ABHAN.

12 I'm asking you to reconsider that and  
13 consider imposing a sentence less than the max. I first  
14 want to point out that I don't think if this were to be a  
15 trial that a conviction for attempted murder would be a  
16 foregone conclusion. We disagreed with some of the facts  
17 as presented by the State.

18 Unfortunately, I think it would have been a  
19 situation where we would have been stuck arguing for an  
20 ABHAN conviction, which is obviously not a great position  
21 to be in at trial, but I think that ABHAN is the  
22 appropriate charge in this case, and I think that it was  
23 the correct decision for him to plead on that charge.

24 And, Your Honor, one thing that I was not  
25 made aware of at the time of the plea, through no fault

1 of the solicitor, are several letters, two letters, that  
2 were sent from Mr. Smith to the victim in this case,  
3 Ms. Grayson, from the detention center. Those letters  
4 were turned over to the previous attorney who had the  
5 case.

6           Unfortunately, one of the unfortunate  
7 consequences of switching representations is things get  
8 lost in the mix, and those did not stay with the file  
9 which the State presented, those files with their request  
10 for a maximum sentence, arguing that Mr. Smith would be a  
11 danger to go back to the victim in this case and harm  
12 Ms. Grayson.

13           After reviewing those letters, Your Honor, I  
14 did not perceive them to be threatening in nature. I  
15 don't believe they are intended to be threatening. I  
16 think they may have been perceived in that way by  
17 Ms. Grayson, but I would characterize them as more  
18 consistent with a love letter. He talks about the good  
19 times that they shared in their relationship, Your Honor.

20           There was a relationship between he and  
21 Ms. Grayson before this incident occurred. Through my  
22 experience representing Mr. Smith, it does not appear to  
23 me he has any intention of going back to Ms. Grayson at  
24 all, and I think it's been made abundantly clear to him  
25 that she does not want him in her life and that he is not

1 to have any contact with her, Your Honor, but I would ask  
2 you to consider imposing a sentence less than 20 years,  
3 or perhaps suspending a portion of that 20-year sentence.  
4 Thank you.

5 And, Your Honor, Mr. Smith is joined today by  
6 his two aunts, Sharon and Jennifer, and his brother Seth.

7 THE COURT: All right. What would the State  
8 like to say?

9 MS. BALDWIN: Do you need a refresher on the  
10 facts at all?

11 THE COURT: I do. I don't recall.

12 MS. BALDWIN: As Mr. Malloy said, the  
13 defendant and victim did date prior to the incident.  
14 Just prior to the incident, they had broken up, and as to  
15 the incident itself, the victim came to her house. She  
16 got home. It was nighttime. She got out of her car.  
17 She heard a rustling in the bushes, and the defendant  
18 jumped out of the bushes at her.

19 He then jumped on the victim's back and began  
20 trying to stab her. She fought back, trying to grab the  
21 knife from him. He then punched her in the face, knocked  
22 her to the ground. He continued slashing at her, tried  
23 to stab her. She continued to fight him off while  
24 yelling for help.

25 The victim's sister, who is also present with

1 the victim in the courtroom today, was inside and heard  
2 the yelling. She came outside, saw the defendant on top  
3 of the victim, saw the knife in the defendant's hand, and  
4 saw the defendant trying to stab the victim.

5 The sister then yelled for the defendant to  
6 get off of her, at which point defendant said, I'm going  
7 to kill both of you bitches, and then he fled the scene.  
8 The victim did suffer multiple lacerations, stab wounds  
9 to her arms, her right hand, and her back. She had a cut  
10 on her nose from where the defendant punched her, and the  
11 defendant was located in Las Vegas two months later.  
12 During the time he was on the lam, he had been texting,  
13 contacting the victim several times and threatening her.

14 As to his record, there's a 1998 assaulting  
15 police officer while resisting arrest; another resisting  
16 arrest; 2001 possession of marijuana, second offense;  
17 2002 unlawful carrying of a weapon, 2003 failure to stop  
18 for a blue light; 2004 possession of marijuana; 2007  
19 possession of a controlled substance; and in 2009, PWID  
20 cocaine and failure to stop for a blue light, which at  
21 the time of the incident he was on probation for those  
22 charges.

23 As to the letter Mr. Malloy alludes to, it's  
24 not the State's point whether the letters he sent Ms.  
25 Grayson from jail were threatening. Mr. Smith couldn't

1 accept the fact Ms. Grayson no longer wanted to be with  
2 him since she separated from him before this incident  
3 happened. I think it may have been a situation of if I  
4 can't have you, no one will, and that is one of the main  
5 reasons, or one of the reasons, why the State was asking  
6 for the maximum sentence on the ABHAN charge.

7 We did give him the benefit of reducing it to  
8 ABHAN instead of attempted murder. It's the State's  
9 position that the sentence should remain as is because of  
10 the violence involved in the incident, the fact Mr. Smith  
11 continued to contact the victim while on the lam and  
12 while in jail, and it's also the victim's wishes that the  
13 sentence remain the same.

14 The victim and her daughter are in the  
15 courtroom today and would like to address the Court with  
16 your permission.

17 THE COURT: Sure. What is your name, please?

18 THE WITNESS: Maudell Grayson.

19 THE COURT: What would you like to say?

20 THE WITNESS: Right now, 20 years, he know  
21 the reason why he's in jail. No one went through it the  
22 way I went through it with him, so he really know. He  
23 does. If he get out, I know David. He used to sneak up  
24 behind me when I was in the store. He did everything to  
25 himself. I didn't do anything to him, so this is the

1 reason he has the 20 years. That's all.

2 THE COURT: All right. Who else? Yes, your  
3 name, please?

4 THE WITNESS: My name is Esthereana. I'm her  
5 sister. I was the one that was at the house the night he  
6 came over to the house and attacked my sister, and I  
7 yelled for him to get off my sister.

8 He had threatened us before. In July he had  
9 threatened us, and he didn't get arrested that time, and  
10 the judge was getting ready to arrest him. And when he  
11 stopped over to our house that night, like she was  
12 saying, he kept threatening the family wherever he was  
13 running to, wherever they found him.

14 And I don't think that as long as my sister  
15 is here and he know where my sister is going to be, I  
16 feel like he is a threat to our family, and I feel like  
17 he is a very dangerous person.

18 THE COURT: Thank you. Your name, please?

19 THE WITNESS: Smarel Brown. She's my mom.

20 Like my Aunt Hadasah said, before this  
21 incident occurred, we also had an incident, the whole  
22 machete incident, with him chasing me with a machete, but  
23 my mom had given him a chance to work with us, and the  
24 whole, I think, year that he was there, it caused  
25 conflict between our family. There's still some things

1 that I'm getting therapy on because of this, and for the  
2 three months that he was -- the two or three months that  
3 he was in jail, we couldn't go home.

4 I was in college at that time. We couldn't  
5 go home without having a police officer check the house.  
6 We couldn't go out. We couldn't go around the corner  
7 without having friends walking us anywhere.

8 My mom spent two-and-a-half, three months  
9 looking over her back, and still to this day, she is  
10 still conscious about every place that she goes. She  
11 can't hang out late at night, so he may have changed his  
12 appearance, you know, and he may cut off his locks and he  
13 may give everybody a good story, but I know what my mom  
14 went through. I know what she continues to go through,  
15 and I know what he would do if he got out.

16 My brother and I were getting that software  
17 together and working with the US marshals and finding  
18 numbers he was calling from. My mom woke up at 4:00 in  
19 the morning. He's saying he's going to come back and  
20 kill me. Seeing my mom still to this day have  
21 nightmares, if he gets out -- I know he hates me because  
22 of how I stand behind my mom. I know he's going to try  
23 to destroy our whole family just to get to my mom.  
24 That's what he said on the phone.

25 He said, My plan was to come back and kill

1 you and kill myself, because that's how strong he thinks  
2 their love was. So I think that if it can't be longer,  
3 his sentence should stay exactly where it is.

4 THE COURT: All right.

5 MS. BALDWIN: Nothing further, Your Honor.

6 THE COURT: All right. Did you want to reply  
7 to anything? You look like --

8 MR. MALLOY: Your Honor, I would. I would  
9 like to briefly reply.

10 I mentioned there are several facts that  
11 Mr. Smith does dispute regarding her -- in regards to how  
12 the State presented what occurred at this incident. Your  
13 Honor, he denies the statement saying that, I'm going to  
14 kill you; I'm going to kill you.

15 He's always said he was parked in a vehicle.  
16 He wanted to have a conversation regarding the nature of  
17 their relationship. He did not jump out of the bushes  
18 and charge her from behind, but this thing started off as  
19 sort of an argument and then escalated from there.

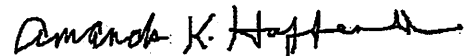
20 And, Your Honor, when I say this, I'm not  
21 trying to downplay the significance of what occurred  
22 during this incident, but I would not characterize the  
23 wounds as life threatening in nature. We're dealing with  
24 lacerations to the hands and arms, no body wounds, no  
25 damage to organs. All X-rays came back negative.



I, the undersigned Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 17th of November 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 16, 2017



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Circuit Court Reporter

# **EXHIBIT B**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

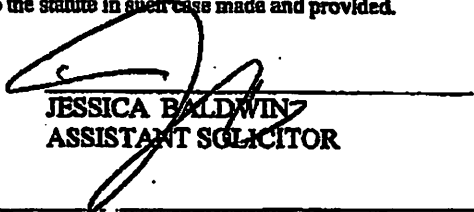
INDICTMENT

At a Court of General Sessions, convened on May 7, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about October 18, 2011, the Defendant, DAVID ISRAEL SMITH, did, with intent to kill and malice aforethought, attempt to kill Maudell Grayson. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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

  
JESSICA BALDWIN  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF Charleston )  
 STATE VS. )  
 David Israel Smith )  
 AKA: )  
 Race: BLACK Sex: M Age: 36 )  
 DOB: 77 SS# )  
 Address: President St )  
 City, State, Zip: Charleston, SC 29403 )  
 DL#: SID#: SC01064700 )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1002533  
 A/W#: 1601373  
 Date of Offense: 10/18/2011  
 S.C. Code §: 16-03-0029  
 CDR Code #: 3410

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: Assault and Battery of a High and Aggravated Nature

CONVICTED OF or  PLEADS

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Baldwin, Jessica 76284 Defendant Luke Malloy 100169  
 SC Bar# SC Bar# Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years 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.  
 CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_  
 \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling   
 Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk Baldwin, Jessica  
 Court Reporter: A. P. Pender  
 SCCA/217 (03/2011)

Presiding Judge \_\_\_\_\_  
 Judge Code: 2134  
 Sentence Date: 7/10/14

# **EXHIBIT C**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) Case No(s):  
Warrant No(s): I601373; W10110325  
Charge(s): Attempted Murder, Probation  
Violation

STATE OF SOUTH CAROLINA )  
 )  
 vs. )  
 )  
 DAVID ISRAEL SMITH, )  
 )  
 Defendant )

**MOTION TO RECONSIDER SENTENCE**

PLEASE TAKE NOTICE THAT the Defendant, David Israel Smith, through his undersigned attorney, will move this Honorable Court for a reconsideration of the sentence imposed on July 10, 2014. The grounds for the motion will be presented at the hearing on July 29, 2014.

Respectfully submitted,



Luke J. Malloy  
Attorney for the Defendant

Charleston, South Carolina

Dated: July 18, 2014

FILED  
2014 JUL 18 AM 11:28  
JULIE W. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

# **EXHIBIT D**

STATE OF SOUTH CAROLINA

COUNTY OF .....

David I. Smith # 360603 Plaintiff(s)

vs.

Defendant(s)

IN THE COURT OF COMMON PLEAS

2015-CP-10-1855 CIVIL ACTION COVERSHEET

-CP-

FILED MAR 31 AM 9:42 JULIE J. ARMSTRONG CLERK OF COURT

Submitted By: Address:

SC Bar #: Telephone #: Fax #: Other: E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstates Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order, Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

David I. Smith

Date:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA )  
County of Charleston )

IN THE COURT OF COMMON PLEAS  
2015-CP-10-1855

David J. Smith # )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
2015 MAR 31 AM 9:43  
JULIE J. ANTHONY  
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

✓

1. Place of detention McCormick Correctional Institution  
McCormick SC 29899
2. Name and location of Court which imposed sentence General Session Court of  
Common Pleas for Charleston County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2012GS1002533

- (b) \_\_\_\_\_  
 (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:  
 (a) 7/10/2014 sentence of 20 yrs  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:  
 (a) after a plea of guilty ✓  
 (b) after a plea of not guilty \_\_\_\_\_  
 (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
no
8. If you answered "yes" to (7), list:  
 (a) the name of each Court to which you appealed:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (b) the result in each such Court to which you appealed:  
 i. \_\_\_\_\_  
 ii. N/A  
 iii. \_\_\_\_\_  
 (c) the date of each such result:  
 i. \_\_\_\_\_  
 ii. N/A  
 iii. \_\_\_\_\_  
 (d) if known, citations of any written opinion or orders entered pursuant to such results:  
 i. \_\_\_\_\_  
 ii. N/A  
 iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:  
 (a) did not know that I could have

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Misadvice in guilty Plea, not advised within timely manner
- (b) Ineffective Assistance of Counsel
- (c) Forgery of indictment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel was not prepared for this case
- (b) Counsel misadvised me to accept a plea after
- (c) Counsel was not on case long enough to prepare a defense.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_ N/A

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_ N/A

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_ N/A

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) \_\_\_\_\_ NO \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes \_\_\_\_\_
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? yes \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Luke, Joseph McIlroy III, 101 meeting st, Chas. G.C. 29461  
5th floor
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. at plea and sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

sentence vacated, charges dismissed, or time served

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA )

County of Charleston )

VERIFICATION

I, David I. Smith #360603, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David I. Smith

SWORN to and subscribed before me this 10<sup>th</sup>  
day of November, 2014.  
Stephanie Marshall (L.S.)  
Notary Public

My Commission Expires: May 12, 2021

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, David E. Smith #360603, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

✓ David E. Smith

Applicant

SWORN or affirmed to and subscribed before me this

4<sup>th</sup> day of February, 2015.

Stephanie Marshall  
Notary Public

My Commission Expires: May 12, 2021



# **EXHIBIT E**

CE  
AT  
AG

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
David I. Smith, #360603, )  
 )  
Applicant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent, )  
 )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-10-1855

ORDER

2016 AUG -4, AM 11:53

Applicant filed this Post-Conviction Relief application on March 23, 2015. The Court heard this matter on August 1, 2016. Applicant was represented by Christopher Murphy, Esquire; the State was represented by J. Rutledge Johnson, Esquire.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2012 term of the Charleston County Grand Jury for attempted murder (2012-GS-10-2533). Luke Malloy, Esquire, represented him.<sup>1</sup> On July 10, 2014, the Applicant pled guilty to the lesser included offense of assault and battery of a high and aggravated nature (ABHAN).<sup>2</sup> The Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for twenty (20) years. The Applicant did not appeal his sentence or plea.

In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Misadvised in guilty plea"
2. "Not indicted within timely manner"
3. "Ineffective Assistance of Counsel"
  - a. "Counsel was not prepared for this case"

<sup>1</sup> Applicant had two other attorneys prior to his representation by Luke Malloy, Esq.

<sup>2</sup> Which carries a potential penalty of up to twenty (20) years incarceration. SC. Code Ann. § 16-03-600(B)(1).

- b. "Counsel misadvised me to accept a plea offer"
- c. "Counsel was not on case long enough to prepare a defense"
- 4. "Forgery of indictment"

Applicant's first and third claims are allegations of ineffective assistance of plea counsel. In a Post-Conviction Relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.<sup>3</sup>

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for

---

<sup>3</sup> The same standard applies to pleas of guilt.

counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

The Court interprets the Applicant's second and fourth claims as allegations of due process violations. The Applicant's allegations claim infringement of his rights under certain amendments to the United States Constitution. Applicant presented absolutely no evidence in support of these grounds. Upon request by the Court at the conclusion of the presentation of evidence, Applicant's counsel stated Applicant had two grounds. First, his plea was coerced due to his not being aware of the consequences. Second, Applicant wanted counsel to file an appeal. The Court will therefore address only these two asserted grounds, although it is noted there is no evidence in the record in support of grounds 2 and 4.

Taking the second stated ground first, trial counsel is not ineffective for not filing an appeal for a plea of guilt unless the client requests or where a reasonable attorney would conclude that one entering a plea desires an appeal. See Roe v. Flores-Ortega, 528 US 470 (2000). Applicant has not carried his burden of proof as to either of these exceptions.

Perhaps more significantly, and on its own dispositive of this second ground is that it is not alleged as a ground in Applicant's application for Post-Conviction Relief. Therefore, his second ground is not before the Court for consideration.

As to the first ground, Applicant has not carried his burden of proof. Applicant has not proven neither that he was coerced into entering his plea, nor that he did not understand the consequences of entering a plea. The credible testimony is that of trial counsel. Trial counsel testified that he advised Applicant that Applicant could receive a sentence of up to twenty (20)

*Debra*

years incarceration. Trial counsel testified he never advised Applicant that Applicant could receive forty years as Applicant testified.<sup>4</sup>

Applicant presented a wide range of testimony encompassing his belief that he would not be convicted, that he had a defense of self-defense, he was told by trial counsel that after his plea he could within ten days “revoke” his plea, and that he wanted to appeal. None of these established proof of coercion in his choice to enter his plea of guilty. As to the latter two of his beliefs, they would address post plea issues.

Trial counsel’s advice to Applicant that he should enter a plea of guilt is not a coercive event. Rather, it is within the province and responsibility of trial counsel to so advise his or her client to enter a plea when trial counsel is of that belief. Here, counsel understood a plea of guilty by Applicant was in his client’s best interest and so advised Applicant. The decision to plea is ultimately in every case, and in this case the record reflects the entry of the plea, was Applicant’s free and voluntary choice. *See* Plea Tr. p. 2, LL 4-11; p. 3, LL 10-12; p. 3, L 25-p.4, LL 13-25.

Applicant also testified he wanted to talk to his family before he decided to plea or not. He apparently had plenty of opportunity to do so as there was a two year lapse of time between indictment and plea. None of Applicant’s family testified and Applicant did not testify as to what, if any, value discussions with his family would have on his decision to plead guilty. In any event, the fact that he chose to plea at the time he plead was a choice he made knowing he could go to trial if he desired based on his own testimony at his post-conviction relief hearing, and based on notice from the plea judge. (Plea Tr. p. 2, L 18-p. 3, L 4).

Wherefore, I find Applicant has not carried his burden of proof as to elements of his stated grounds for relief, and has not proven trial counsel was ineffective.

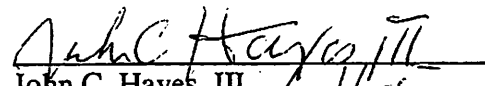
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<sup>4</sup> The plea judge, Roger M. Young, Sr., told Applicant on the record at the time of his plea that attempted murder “carried a sentence of up to 30 years.” (Plea Tr. p 2, LL 4-9).

Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

  
John C. Hayes, III  
Presiding Judge

August 3<sup>rd</sup>, 2016  
Charleston, South Carolina

# **EXHIBIT F**

THE STATE OF SOUTH CAROLINA  
CHARLESTON COUNTY

Court of General Sessions  
Ninth Judicial Circuit

DAVID ISRAEL SMITH, Petitioner

Vs.

STATE OF SOUTH CAROLINA, Respondent

Motion for Reconsideration and Modification  
of Sentence. # 2012GS1002533

2021 NOV 15 PM 4:39  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

Please take note that Petitioner above named hereby moves this court to alter, modify, or rescind its Previous order imposing sentence upon Petitioner which violates state law, as well as Federal State constitution as follows:

First Cause

Under Apprendi v. New Jersey 530 U.S. 466 (2000) Petitioner contends that in order for the court to impose sentence. Facts justifying sentence as Violent would have to be established.

Second Cause

A guilty Plea does not wave inaccurate fact, or a Courts erroneous rule that is not clearly supported by the Record of the Court.

Third Cause

During guilty Plea nothing in record supports inference that Petitioner was legally sentenced to a violent offense, when facts show and support non-violent offense.

Fourth Cause

Direct consequences should include the maximum penalty to which the defendant is agreeing including any enhancements. Petitioner could not make an intelligent assessment of the relative advantages of pleading guilty without notice of enhancements.

Fifth Cause

In State v. Grooms Op. No 25211 (S.C.Ct. Filed Nov. 7<sup>th</sup> 2000) (Shearhouse Adu. Sh. No. 40 at 39) the Supreme Court of South Carolina decided what burden of proof a defendant must use to establish acredible history of domestic violence.

Sixth Cause

The Grooms language implies the Court believes Apprendi applies to cases that put the sentence outside the maximum Penalty for a crime. Rather than simply sentences which increase the Penalty.

Seventh Cause

South Carolina Code. Ann. Sec. 16-3-500 (A) (cum. Supp. 20) applies to Apprendi as the Sentence is squarely one for which Grooms indicated would trigger Apprendi Rule.

Wherefore it is Prayed Court grant relief.

Respectfully Submitted,

S/ David Israel Smith

David Israel Smith

November 08, 2021

FILED  
2021 NOV 15 PM 4:39  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

The State Of South Carolina  
Charleston County Courthouse

David Smith

Applicant.

vs.

State Of South Carolina,

Respondent.

Chief Administrative Judge:

General Sessions Court  
Ninth Judicial Circuit Court

Motion To Docket Case On Court  
Calendar

# 2012-GS-10-02533

FILED  
2022 APR 14 PM 3:32  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY KLH

Please Take Notice, defendant hereby moves this court for an order Pursuant to applicable rules or statutory provisions, to Place the motion filed in this court on 13 the day NOVEMBER, 2021, to reconsider sentence imposed by this court.

Accordingly, defendant avers that the respondent does not have authority or control over criminal court dockets. As such, defendant asks this court to order clerk of court to Place motion on court non-jury calendar to be so heard.

Under State v. Langford, 400 S.C. 421 (2012) court has authority over the General Sessions Court docket, and under Langford court has right to have the clerk place case on court docket.

Wherefore, it is Prayed court Grant relief.

Date: 22 day of MARCH, 2022.

Respectfully Submitted:

sl David Sand

Your Name / Pro Se

FILED

2022 APR 14 PM 3:32

JULIE J. ARMSTRONG  
CLERK OF COURT

BY KLH

**RECEIVED**

**Mar 27 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Charleston County  
Honorable Roger M. Young, Sr., Circuit Court Judge  
Appellate Case Tracking No. 2022-001410

---

David Israel Smith,

Appellant,

vs.

State of South Carolina,

Respondent.

---

**PROOF OF SERVICE**

---

I, Caroline Collins, certify that I have served the Return to Motion to Remand and Reconstruct and Motion to Dismiss Appeal by depositing in the US Mail, Postage Prepaid, addressed to:

David Israel Smith #360603, *Pro se* Appellant  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010

I further certify that all parties required by Rule to be served have been served.

This 27<sup>th</sup> day of March, 2023.



---

CAROLINE COLLINS  
Administrative Coordinator  
Office of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727



**RECEIVED**  
**Mar 27 2023**  
**SC Court of Appeals**

ALAN WILSON  
ATTORNEY GENERAL

March 27, 2023

David Israel Smith #360603, *Pro se* Appellant  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010

RE: State v. David Israel Smith  
Appellate Case No. 2022-001410

Dear Mr. Smith:

I am enclosing a copy of the Return to Motion to Remand and Reconstruct and Motion to Dismiss Appeal, along with a copy of its exhibits, in the above-referenced case.

Sincerely,

William M. Blich, Jr.  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 15608

Enclosures

cc: Honorable Jenny A. Kitchings (via Electronic Filing)  
Victim Advocacy Division