

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
Hon. Eugene C. Griffith, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2022-001682

Billy Ray Smith, Petitioner,

v.

State of South Carolina, Respondent.

APPENDIX

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INDEX

Orders

Order of Dismissal of PCR Application, filed November 21, 20221

PCR

Application for Post-Conviction Relief, filed August 28, 201715
Respondent’s Return to Application for Post-Conviction Relief, dated November 29, 201724

Transcripts

Transcript of August 14, 2019 – Hon. Judge Eugene C. Griffith32
 Billy Ray Smith – Direct by Richey37
 Billy Ray Smith – Cross by Smith.....42

 Nathan Smith – Direct by Richey55
 Nathan Smith – Cross by Smith.....60

 Herverly Young – Direct by Richey61
 Herverly Young – Cross by Smith.....67

Other Documents

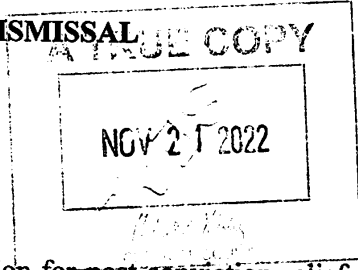
Indictments & Sentencing Sheets77

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
 Billy Ray Smith, #274409,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2017-CP-04-01786

ORDER OF DISMISSAL



This matter comes before this Court by way of an application for post-conviction relief filed by Billy Ray Smith (“Applicant”) on August 28, 2017. The State (“Respondent”) served its return to the application on November 29, 2017. An evidentiary hearing in this matter was held before the undersigned at the Anderson County Courthouse on August 14, 2019. Applicant was present and was represented by Rodney Wade Richey. Taylor Zane Smith of the South Carolina Attorney General’s Office represented Respondent. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief, and denies the application with prejudice.

PROCEDURAL HISTORY

Applicant is presently imprisoned in the South Carolina Department of Corrections. The crimes at issue in this case concern Applicant’s shooting Sandra Smith (“the victim”), his wife at the time, in the head on April 22, 2014. Trial Tran. 76. In July of 2014, the Anderson County Grand Jury indicted Applicant for attempted murder (2014-GS-04-1278), possession of a firearm during the commission of a violent crime (2014-GS-04-1278), and obstruction of justice (2014-GS-04-1276). In September of 2015, the Grand Jury indicted him for unlawful possession of a

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 Anderson, SC COCL CP/SS

pistol (2015-GS-04-1382). On November 16-18, 2015, Applicant proceeded to a jury trial with the Honorable R. Scott Sprouse (“the trial court”) presiding. Herverly B. O. Young (“trial counsel”) represented Applicant at that trial. At the conclusion of trial, the jury found Applicant guilty as indicted on all charges. The trial court sentenced Applicant as follows: for attempted murder, to imprisonment for twenty years; for possession of a weapon during the commission of a violent crime, to imprisonment for five years; for unlawful possession of a pistol, to imprisonment for five years; and for obstruction of justice, to imprisonment for five years; with all sentences running concurrently.

Trial counsel filed a timely notice of appeal. Appellate Defender David Alexander (“appellate counsel”) of the South Carolina Commission on Indigent Defense represented Applicant on appeal. Appellate counsel filed a petition to be relieved as counsel, and a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing that the trial court erred in giving a jury instruction on voluntary intoxication that constituted an improper comment upon the facts. Applicant filed a pro se Anders brief, arguing: (1) that he would be denied the constitutionally effective assistance of counsel if appellate counsel’s petition to be relieved were granted; and (2) that the trial court erred in denying the defense’s motion for a directed verdict. The South Carolina Court of Appeals granted appellate counsel’s petition to be relieved and dismissed the appeal. State v. Smith, Op. No. 2017-UP-257 (Ct. App. filed June 28, 2017) (per curiam). The remittitur was issued on July 14, 2017.

CURRENT PROCEEDING

In his pro se application, filed on August 28, 2017, Applicant raises multiple claims, which this Court interprets as follows: (1) trial counsel was constitutionally ineffective for not adequately investigating as witnesses David Hogg and Nathan Smith (“Nathan”); (2) trial counsel was

constitutionally ineffective for not requesting a jury instruction on first-degree assault and battery as the lesser-included offense of attempted murder; (3) trial counsel was constitutionally ineffective for not objecting to the jury instruction that malice may be inferred; and (4) appellate counsel was constitutionally ineffective for not arguing on appeal that the trial court erred in denying the defense's motion for a directed verdict as to attempted murder.

At the evidentiary hearing before this Court, Applicant, through counsel, clarified that he would proceed upon only two claims: (1) that trial counsel was constitutionally ineffective for not conducting an adequate investigation and (2) that trial counsel was constitutionally ineffective for not properly advising Applicant regarding a plea offer. This Court finds that Applicant has abandoned and waived all claims other than these two, and will only address those two claims in this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Anderson County Clerk of Court for Applicant's convictions and sentences; Applicant's records from the Department of Corrections; Applicant's direct appeal records, including the notice of appeal, appellate counsel's Anders brief, Applicant's pro se Anders brief, the record on appeal, the supplemental transcript, the Court of Appeals' dispositive opinion, and the remittitur; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

Applicant's claim that trial counsel was constitutionally ineffective for not conducting an adequate investigation

Applicant testified before this Court at the evidentiary hearing. He testified that he was intoxicated at the time of the crime and that he told trial counsel that the shooting was an accident.



He testified that he was guilty of having a gun around the victim but not of murder. He testified that there would have been no way that he would have been found guilty if the witnesses' statements had been introduced or admitted at trial. He testified that he tried to get trial counsel to meet him at the jail to go over the discovery and asked for a competency evaluation.

On cross-examination, Applicant testified that trial counsel did not meet with him many times. He testified that he would have been acquitted if his son had told the truth. He gave his version of the facts of the shooting. He testified that the shooting was accidental. He testified that trial counsel discussed with him the possibility of relying upon the defense of accident at trial. He testified that he wanted trial counsel to meet with David Hogg, Chris Guthrie, and his brother Nathan.

Nathan testified before this Court at the evidentiary hearing. He testified that he did not see his brother on the day of the shooting, but did talk to him on the phone for thirty minutes before the shooting occurred. He testified that Applicant asked him what a Smith and Wesson .22 caliber revolver was worth. He testified that he told Applicant that he could not say without seeing the gun, but estimated that it would have been worth at least \$200. He testified that Applicant said that he had a chance to buy one for the victim to carry for self-protection. He testified that he did not think that there had been any animosity between Applicant and the victim because he could hear them laughing together. He testified that Applicant made a joke about the victim's cheating on him. He testified that both Applicant and the victim had been intoxicated with alcohol and a prescription medication. He testified that trial counsel did not talk with him. He testified that he only knows about the things he overheard on his phone call with Applicant before the shooting. He testified that his wife had said that Applicant and the victim had been having a good day.

On cross-examination, Nathan admitted that he had spoken on Applicant's behalf during sentencing at trial. He testified that his phone call with Applicant had occurred at approximately 8:00 p.m. on the night of the shooting. He testified that trial counsel never contacted him. He testified that he found out about Applicant's trial date from Applicant. He testified that he was at the sentencing hearing because Applicant had asked him to attend.

Trial counsel testified before this Court. He testified that Applicant's case did not go to trial until about eighteen months after the shooting, which gave him plenty of time to meet with Applicant; in fact, he testified, he met with Applicant quite a few times. He testified that Applicant told him that he could not read or write, so trial counsel read things to him. He testified that Applicant sent letters to him by dictating to other inmates, so trial counsel received letters from Applicant in different handwritings. He testified that Applicant even had someone send a motion to have trial counsel relieved to him. He testified that, when he questioned Applicant about the motion, Applicant denied knowing what it said and denied that he wanted to have trial counsel relieved. He testified that he made a point to go to the jail to show CDs and videos to Applicant, and to read the discovery to him, so that other inmates would not get involved. He testified that he used an investigator, who also went to the jail to talk with Applicant. He testified that he went over all of the discovery with Applicant; the only things that Applicant did not see were some photographs, but Applicant chose not to see those. He testified that he gave a copy of all of the discovery to Applicant. He testified that he knew that Applicant had limited education, but he never had any indication during his meetings with Applicant that Applicant was unable to understand the proceedings. He testified that Applicant was able to discuss the facts of the case and asked intelligent questions of him. He felt that Applicant's prior criminal record had given Applicant some experience with the process.



Trial counsel testified that he personally talked to some witnesses and had the investigator meet with others. He testified that the investigator attempted to speak or spoke to the victim, the daughter and son of Applicant and the victim, and Hogg and Guthrie, whom he described as the son's friends. He testified that he did not call Hogg as a witness at trial because, although Hogg had given a statement to law enforcement officers, Hogg was not able to speak directly to anything that happened during the incident and did not have anything to add to the case. He did not call Guthrie as a witness because Guthrie had lived near Applicant, but had not been present on the day or the shooting. He testified that Guthrie had spoken about an incident when he and others had been working on a boat and Applicant came over, having been drinking alcohol. He did not think that Guthrie had anything to add to the case based on what had been in his statement, and he noted that Guthrie kept dodging whenever trial counsel's investigator tried to talk to him. He testified that he did not remember discussing the facts of the case with Nathan personally, but he did remember talking to Nathan and Nathan's wife about Applicant and the status of the case. He testified that his investigator spoke with Nathan and confirmed that Applicant had asked Nathan earlier on the day of the shooting about the price of a gun. Nathan was present at trial, but trial counsel decided not to call him as a witness because there was a gap in time between Applicant's phone call to Nathan and the shooting itself.

Trial testified that he talked with people at Walmart and Rite Aid in order to get records. He testified that the history of abuse between Applicant and the victim was a mutual one. He testified that the prosecution's case had been that Applicant and the victim had been drinking, that Applicant was mean when he was intoxicated, that Applicant became angry about something, that Applicant shot the victim, and that Applicant tried to stage the shooting as an accident while leaving the victim in the house to die. He testified that Applicant had given three different

statements about the event. He testified that Applicant took the gun with him when he left the house after the shooting, and that gun was eventually found under a couch cushion at Applicant's son's house. He testified that Applicant told him that the shooting had been an accident and that he had not been trying to kill anyone. He testified that there were no witnesses to the shooting except Applicant and the victim. He testified that Applicant told him that he would be acquitted because the victim would testify at trial that the shooting had been an accident. He testified that the victim did not do as Applicant said. He testified that he talked to Applicant's and the victim's daughter, who had talked to the victim after the victim was released from the hospital, and that the victim had made it clear that she would not testify that the shooting had been an accident. He testified that he told this to Applicant, but that Applicant did not accept it as true. He testified that the victim had even attended Applicant's bond hearing and made a statement that indicated that she would not be on the side of the defense, but that Applicant remained convinced that the victim would be a defense witness.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of her lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in Strickland. First, the applicant must prove that the performance of his lawyer was deficient. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting Strickland).

Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." Id. (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting Strickland). An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

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Second, the deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for [the lawyer’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. “Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense.” Hill v. Lockhart, 474 U.S. 52, 58 (1985) (quotation omitted).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether a lawyer’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 697. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel’s performance with respect to his pre-trial investigation. A defense attorney “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Strickland, 466 U.S. at 691. Thus, “[a] criminal defense attorney has

the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). “A court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014) (quoting Strickland). The only specific thing Applicant alleged that trial counsel should have done was to interview or speak with three people: (1) Nathan, (2) Hogg, and (3) Guthrie. Nathan’s testimony that trial counsel did not speak with him is not credible in light of trial counsel’s credible testimony that he did speak with Nathan and Nathan’s wife. Admittedly, trial counsel testified that he probably did not speak about the facts of the case with Nathan; however, trial counsel said that his investigator did so. Trial counsel’s credible testimony that he considered calling Nathan as a witness at trial but then decided not to do so proves that he was familiar with the investigator’s summary of Nathan’s statement. Trial counsel credibly testified that he decided that Nathan had no personal knowledge of the shooting itself and would not have been able to provide testimony helpful to the defense; that was a reasonable conclusion. Trial counsel’s testimony that his investigator spoke to Hogg is credible, and proves that he considered Hogg’s statement. He credibly testified that he did not call Hogg as a witness because Hogg had no personal knowledge of the shooting and trial counsel felt that Hogg had nothing to add to the defense; that too was a reasonable conclusion. Trial counsel’s testimony that Guthrie tried to avoid

speaking to trial counsel's investigator and had not been a witness to the shooting is credible, and proves that trial counsel considered whether Guthrie had anything to add to the defense. His decision that Guthrie's testimony would not be helpful was reasonable under the circumstances.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different if trial counsel had called Nathan, Hogg, or Guthrie as witnesses. A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court's finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Applicant did not produce testimony from Hogg or Guthrie for this Court's consideration, so this Court must find that Applicant has failed to meet his burden with respect to them. Applicant did present testimony from Nathan; however, Nathan's testimony before this Court confirmed the reasonableness in trial counsel's decision not to call Nathan as a witness at trial. Nathan was not a witness to the shooting and could

only say that he had heard both Applicant and the victim sounding over the phone some time before the shooting occurred as if they were in good spirits. If one accepts Nathan's testimony and Applicant's statement to law enforcement officers as true, Nathan's call with Applicant took place at about 8:00 p.m. and the shooting took place at about 9:30 p.m. Trial Tran. 29. The jury heard the victim's testimony about the shooting, which would have been devastating to the defense even if the jury had heard Nathan's testimony. Trial Tran. 273-78. Furthermore, Applicant's multiple explanations for the shooting were quite harmful to Applicant's defense. Trial Tran. 92-93, 100, 110, 113, 120-21, 125, 144, 157, 159-60, 163, 167, 204-06, 218-22.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for conducting an inadequate pre-trial investigation because Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to his investigation and because Applicant has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different had trial counsel called Nathan, Hogg, or Guthrie as witnesses at trial. This claim is denied and dismissed with prejudice.

Applicant's claim that trial counsel was constitutionally ineffective for not properly advising Applicant regarding a plea offer.

Applicant testified before this Court that trial counsel led him to believe that he had a 50% chance of being acquitted at trial and that he would probably be acquitted. He testified that he received a plea offer for twenty years in prison suspended upon the service of eight years' imprisonment and five years of probation based on the investigation that trial counsel had done, and based on the position that trial counsel had taken on Applicant's chance of success. He testified that he and trial counsel talked about the offer once or twice and that he would have accepted the offer if he had known that the witness testimony was going to be so unfavorable.

Trial counsel testified that the solicitor initially refused to make an offer of fewer than twelve to fifteen years, but eventually offered an eight-year sentence with probation. He testified that he advised Applicant that a jury could go either way on the case. He testified that Applicant told him that the shooting had been an accident, that he had not been trying to kill anyone, and that he wanted a plea offer with a sentence that would allow him to be released from prison before he died. He testified that Applicant wanted a jury trial based on all of those considerations. He testified that he, and Applicant's own daughter, tried to talk Applicant into taking the plea offer, but that Applicant refused to do so and wanted a trial.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his communications to Applicant about the plea offers. "[A] defendant has the right to effective assistance of counsel during the plea bargaining process." Bell v. State, 410 S.C. 436, 440-41, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. A defense attorney "has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Id. (quoting Missouri v. Frye, 566 U.S. 134 (2012)). Applicant has not proven that there was any plea offer that trial counsel did not communicate to Applicant. On the contrary, it appears that trial counsel communicated all offers that were extended. Applicant admits that he turned down a plea offer, and alleges that he did so based upon advice from trial counsel that Applicant would probably be acquitted at trial. Trial counsel testified that he tried to convince Applicant to take the plea deal because he did not believe that the evidence at trial would be favorable for the defense, and that even Applicant's own daughter tried to convince Applicant to plead guilty; and trial counsel testified that his efforts in that regard were not successful because Applicant felt confident that the victim would testify

favorably towards the defense at trial, with Applicant disregarding trial counsel's advice that the victim would not do so. This Court finds that Applicant's testimony that trial counsel painted a positive picture of Applicant's chance of success at trial is not credible. Trial counsel's testimony that he advised Applicant to plead guilty is credible. Applicant's decision to reject the plea offer was based upon his own estimation of his chance of success at trial, which discounted trial counsel's advice to the contrary.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective in his communications to Applicant about plea offers because Applicant has not proven that trial counsel's performance was deficient in any way and has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.


IT IS THEREFORE ORDERED:

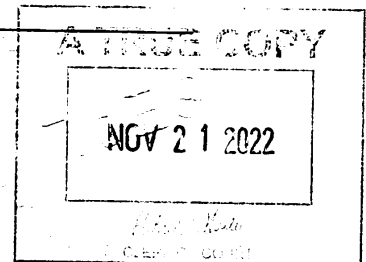
1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.


AND IT IS SO ORDERED this 17th day of November, 2022.

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Anderson, SC COC: CP/GS

York, South Carolina


Eugene C. Griffith, Jr.
Presiding Judge



14 of 14 

FORM 5

STATE OF SOUTH CAROLINA)

County of Anderson)

Billy Ray Smith #274409)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-04-01786

APPLICATION FOR

POST-CONVICTION RELIEF

COMMON PLEAS AND
GENERAL SESSIONS

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FILED-CLERK'S OFFICE
ANDERSON SC

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 Perry Correctional Inst. 430 Oaklawn Road, Pelzer, SC
29669
2. Name and location of Court which imposed sentence General Sessions Court,
Anderson County Courthouse, Anderson, SC
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Unlawful Pistol Possession By Certain Person 2015-GS-04-01382
 - (b) Attempted Murder 2014-GS-04-01278

A TRUE COPY
AUG 28 2017
Richard D. Binder
ANDERSON CLERK OF COURT

- (c) Obstructing Justice 2014-GS-04-01276
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 11/18/2015 - ~~20 years~~ 5 years concurrent
- (b) 11/18/2015 - 20 years concurrent
- (c) 11/18/2015 - 5 years concurrent and five years concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. appeal dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 28, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2017-UP-257
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Please see additional page 3(a).

- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Please see additional page 3(a)

- (b) _____
- (c) _____
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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- 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. _____
- ii. _____
- iii. _____

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

- i. _____
- 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) First PCR
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

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. Hervery B. Young, Esq. Public Defender, Anderson County
 - ii. David Alexander, Appellate Defender, Solumbia, SC
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial/Sentence
 - ii. ~~XXXXXXXXXX~~ Direct Appeal
 - iii. _____

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

New Trial. Appointment of Counsel.

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

no

STATE OF SOUTH CAROLINA)
)
County of Anderson)

VERIFICATION

I, Billy Ray Smith #274409, 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.

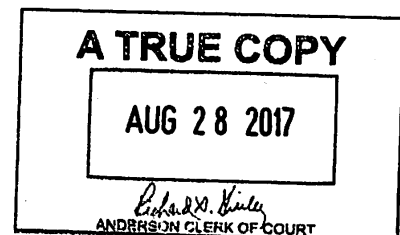
Billy R Smith ✓

SWORN to and subscribed before me this 16th day of August, 2017.

Nancy C Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

FILED-CLERK'S OFFICE
ANDERSON SC
2017 AUG 28 AM 9:51
COMMON PLEAS AND
GENERAL SESSIONS



Revised 3/2003

2017-CP-04-01786

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

I, Billy Ray Smith #274409, 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.

Billy Ray Smith
Applicant ✓

SWORN or affirmed to and subscribed before me this
16th day of August, 2017.

Nancy C. Marchant
Notary Public

My Commission Expires: 1-23-2023

FILED-CLERK'S OFFICE
ANDERSON SC
2017 AUG 28 AM 9:51
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
AUG 28 2017
Richard W. Kinley
ANDERSON CLERK OF COURT

Revised 3/2003

Allegations.

10(a) Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, §§ 3 and 14 of the South Carolina Constitution because of ineffective assistance of counsel prior to and during his jury trial.

Supporting Facts.

11(a) Trial counsel's performance prior to and during my jury trial phase was both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

1. Counsel failed to adequately investigate the facts of (2) witnesses that would have testified at my trial, namely, David Hogg and Nathan Smith. Counsel's failure to conduct such an investigation and call these witnesses, deprived the jury of critical information relevant to an accurate assessment of applicant's guilt or innocence.

2. Counsel failed to adequately investigate the facts and law concerning my jury trial so he could request to the court to instruct the jury on the lesser included offense of attempted murder. The law says, "First degree assault and battery based on attempt to injure another person in manner likely to produce death or great bodily injury, is a lesser included offense of Attempted Murder. Counsel's failure to conduct such an investigation and request the court to instruct the jury on lesser included offense, deprived the jury of critical information of law relevant to an accurate assessment of applicant's guilt or innocence.

3. Counsel failed to adequately investigate the facts and law because he failed to object to the instruction of the court, where the court stated: Malice may be inferred from conduct showing a total disregard for human life. Tr.p. 356 lines 1-25. Counsel's failure to conduct such an investigation and object to the court's instruction on malice, deprived the jury critical information relevant to an accurate assessment of applicant's guilt or innocence.

4. Appellate Counsel David Alexander, failed to raise on my direct appeal, my trial counsel's motioned for a directed verdict specifically on the charge of the attempted murder. Trial counsel stated, "I do not believe that there's been any evidence that has been presented to support the element of specific intent to kill in this particular case." Tr.p. 286 lines 23-25 - p. 287 lines 1-3. Applicant was denied his right to effective assistance of appellate counsel.

Perry Correctional Inst.
430 Oaklawn Road - Q1A-110
Pelzer, SC 29669

August 21, 2017

Honorable Richard A. Shirley
Clerk of Court
P.O. Box 8002
Anderson, SC 29622

FILED-CLERK'S OFFICE
ANDERSON SC
2017 AUG 28 AM 9:50
COMMON PLEAS AND
GENERAL SESSIONS

Dear Mr. Shirley:

Please find enclosed my Application for Post Conviction Relief for filing with your office. Also, please return to me a filed clocked copy for my own records with a docket number.

I do thank you for all your kind help and assistance with this important matter. I'll be at this time awaiting your reply and return.

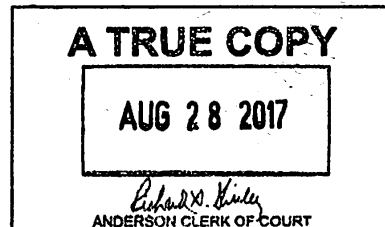
With kind regards,

Sincerely,

cc:

on
S/ Billy Ray Smith
Billy R. Smith, #774409

file.





ALAN WILSON
ATTORNEY GENERAL

November 29, 2017

The Honorable Richard A. Shirley
Clerk of Court, Anderson County
PO Box 8002
Anderson, SC 29622-8002

Re: Billy Ray Smith, #274409 v. State of South Carolina
2017-CP-04-01786

Dear Mr. Shirley:

Enclosed please find the **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General

LAM/pk
Enclosure

cc: Rodney W. Richey, Esquire

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
Billy Ray Smith, #274409,)	Case No.: 2017-CP-04-1786
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed on August 28, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. In July 2014, the Anderson County Grand Jury indicted Applicant for one count each of attempted murder and possession of a firearm during the commission of a violent crime (2014-GS-04-1278), and one count of obstructing justice (2014-GS-04-1276). Applicant was subsequently indicted in September 2015 for unlawful possession of a pistol by certain persons (2015-GS-04-1382). The charges resulted from an incident in which Applicant shot his wife in the middle of the forehead with an illegally possessed revolver before hiding the revolver at his son's home. (Tr. pp. 317-318). Herverly B. Young, Esquire, represented Applicant. Assistant Solicitors Kristin W. Reeves, Esquire, and Chelsey Moore, Esquire, prosecuted the case. On November 16, 2015, Applicant proceeded to trial before the Honorable R. Scott Sprouse and a jury. The jury found Applicant guilty as indicted on all charges. On November 18, 2015, Judge Sprouse sentenced Applicant to imprisonment for twenty years for

attempted murder, five years for possession of a weapon during the commission of a violent crime, five years for unlawful possession of a pistol by certain persons, and five years for obstruction of justice, all to be served concurrently.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander filed a brief on behalf of Applicant pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant also filed a pro se brief. The South Carolina Court of Appeals dismissed Applicant's appeal and granted appellate counsel's motion to be relieved in an unpublished opinion filed June 28, 2017. State v. Smith, Op. No. 2017-UP-257 (Ct. App. 2017). The remittitur was returned to the Circuit Court on July 14, 2017.

Attached to this Return and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Trial Counsel:
"Trial Counsel's performance prior to and during my jury trial phase was both unreasonable and prejudicial. See Strickland. Counsel's acts or omissions included, but are not limited to the following:
 - a. Counsel failed to adequately investigate the facts of two witnesses that would have testified at my trial, namely, David Hogg and Nathan Smith. Counsel's failure to conduct such an investigation and call these witnesses deprived the jury of critical information relevant to an accurate assessment of Applicant's guilt or innocence.
 - b. Counsel failed to adequately investigate the facts and law concerning my jury trial so he could request to the court to instruct the jury on the lesser included offense of attempted murder. The law says, 'first degree assault and battery based on attempt

to injure another person in manner likely to produce death or great bodily injury is a lesser included offense of attempted murder.’ Counsel’s failure to conduct such an investigation and request the court to instruct the jury on lesser included offense deprived the jury of critical information of law relevant to an accurate assessment of Applicant’s guilt or innocence.

c. Counsel failed to adequately investigate the facts and law because he failed to object to the instruction of the court where the court stated: ‘Malice may be inferred from conduct showing a total disregard for human life.’ (Tr. p. 356, ll. 1-25). Counsel’s failure to conduct such an investigation and object to the court’s instruction on malice deprived the jury of critical information relevant to an accurate assessment of Applicant’s guilt or innocence.”

2. Ineffective Assistance of Appellate Counsel:

a. “Appellate Counsel failed to raise on my direct appeal my trial counsel’s motion for a directed verdict specifically on the charge of the attempted murder. Trial counsel stated, ‘I do not believe that there’s been any evidence that has been presented to support the element of specific intent to kill in this particular case.’ (Tr. p. 286, ll. 23-25 – p. 287, ll. 1-3). Applicant was denied his right to effective assistance of appellate counsel.”

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

III.

Respondent submits Applicant’s allegations of ineffective assistance of trial counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his

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, Applicant must prove his “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the

record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). “However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show appellate counsel’s performance was deficient and that he was prejudiced by the deficiency. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine “whether appellate counsel failed to present significant and obvious issues on appeal.” Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends appellate counsel rendered effective assistance. Nevertheless, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent therefore requests an evidentiary hearing on this allegation. Sharper v. State, 279 S.C. at 264, 305 S.E.2d at 247.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial and appellate counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 29, 2017

6 of 6

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	
)	2017-CP-04-01786
)	
BILLY RAY SMITH, #274409)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent,)	
_____)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney W. Richey, Esquire
 Richey & Richey, PA
 PO Box 10916
 Greenville, SC 29603-0916

DATED this the 29th day of November, 2017.



 Patricia Keaton, Legal Assistant
 For Respondent

1 State of South Carolina
In the Court of Common Pleas
2 County of Anderson

3
4 BILLY RAY SMITH,)
5 Applicant,) 2017-CP-04-01786
6 -vs-) August 14, 2019
7 STATE OF SOUTH CAROLINA,)
8 Respondent.)
9) Transcript of Record
-----)

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B E F O R E:
The Honorable Eugene C. Griffith, Judge

A P P E A R A N C E S:
Taylor Smith, Esquire
SC Attorney General's Office
Attorney for the State
Rodney Richey, Esquire
Attorney for Claimant

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

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I N D E X

Witnesses		Page
BILLY RAY SMITH		
Direct Examination by Mr. Richey		6
Cross-Examination by Mr. Smith		11
NATHAN SMITH		
Direct Examination by Mr. Richey		24
Cross-Examination by Mr. Smith		29
HERVERY YOUNG		
Direct Examination by Mr. Richey		30
Cross-Examination by Mr. Smith		36

E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted
	None offered.		

For the Respondent:

Marked	Description	I.D.	Admitted
	None offered.		

1 (The case of Billy Ray Smith vs. The State of
2 South Carolina, Anderson County Case No.
3 2017-CP-0186, was called for Postconviction Relief
4 Hearing at 10:00 a.m. on Wednesday,
5 August 14, 2019. The defendant and all counsel
6 were present.)

7 P R O C E E D I N G S

8 MR. SMITH: May it please the Court? This is the
9 case of Billy Ray Smith v. State. The case number is
10 2017-CP-04-1786. Mr. Smith is presently confined in
11 SCDC pursuant to orders of commitment of the Anderson
12 County Clerk of Court.

13 July 2014, the Anderson County Grand Jury indicted
14 him for one count each of attempted murder, possession
15 of a firearm during the commission of a violent crime,
16 and obstructing justice.

17 He was subsequently indicted in September of 2015
18 for unlawful possession of a pistol. The charges
19 resulted from an incident in which he shot his wife in
20 the forehead with an illegally possessed revolver
21 before hiding the revolver at his son's home.

22 November 16, 2015, he proceeded to trial before
23 Judge Sprouse and a jury and was found guilty as
24 indicted on all charges. And Judge Sprouse sentenced
25 him to imprisonment for 20 years for attempted murder,

1 five for possession of the weapon, five for unlawful
2 possession of a pistol, and five for obstruction of
3 justice, all running concurrently.

4 He did file an appeal, and his appellate defender
5 filed an Anders brief, and Mr. Smith did file a pro se
6 brief, after which the court of appeals dismissed the
7 appeal in June of 2017.

8 He then filed this PCR application on August 28,
9 2017, in which he raised the following issues: Trial
10 counsel was ineffective for failing to investigate two
11 witnesses, Nathan Smith and David Holland; counsel was
12 ineffective for failing to investigate the law and the
13 facts; failure to request a jury charge on the lesser
14 included offense of assault and battery; failure to
15 investigate -- I'm sorry -- failure to object to a jury
16 instruction on malice; and a claim of ineffective
17 assistance of appellate counsel for failure to raise
18 trial court error on the court's denial of the motion
19 for directed verdict.

20 And I've talked with Mr. Richey. I think maybe
21 they are narrowing down the issues to failure to
22 investigate, but I'll let him speak to that more, Your
23 Honor.

24 THE COURT: All right.

25 Mr. Richey, what you got?

1 MR. RICHEY: Your Honor, that is correct. We're
2 on failure to investigate, and because of counsel's
3 failure to investigate, he couldn't properly advise him
4 on his plea offer.

5 THE COURT: Okay. So the lesser included assault
6 and battery first, and then the instruction on malice,
7 not going forward on those?

8 MR. RICHEY: No. No, sir.

9 THE COURT: Fair enough.

10 Call your witness.

11 MR. SMITH: Well -- and, Your Honor, if they're
12 waiving the claim of ineffective assistance of counsel,
13 I'd ask for time to call a witness, who's on standby,
14 and let him know that we won't need his testimony.

15 MR. RICHEY: Yeah. We won't need his testimony.
16 Sure.

17 MR. SMITH: I'll be right back.

18 THE COURT: Not a problem.

19 (Pause in proceedings.)

20 MR. SMITH: Thank you, Your Honor.

21 MR. RICHEY: We call Mr. Smith.

22 THE COURT: Come forward to be sworn and have a
23 seat.

24 BILLY RAY SMITH,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 THE CLERK: Take the stand and state your name for
2 the record.

3 THE WITNESS: Billy Smith.

4 DIRECT EXAMINATION BY MR. RICHEY:

5 Q Mr. Smith, are you currently in the Department of
6 Corrections?

7 A Yes, I am.

8 Q And what are you in the Department of Corrections
9 for?

10 A Well, I was charged, like he said, with attempted
11 murder, possession of a weapon that was stolen during a
12 violent crime. I can't pronounce the warrants right.

13 Q Okay. Who represented you on those cases?

14 A Hervery Young.

15 Q Mr. Young?

16 A Yes, sir.

17 Q Okay. And you filed -- you believe that Mr. Young
18 did not effectively represent you; is that correct?

19 A Yes, sir.

20 Q And just -- I'm going to give the court some
21 background on what happened.

22 This was a shooting; correct?

23 A Yes.

24 Q And who was the alleged victim?

25 A My wife.

1 Q And during this shooting, you and your wife had
2 been drinking?

3 A All day.

4 Q And you were under the influence of alcohol; is
5 that correct?

6 A I drank about three pints of whiskey and about a
7 case of beer, so I believe I was.

8 Q Okay. And you -- it's your position that this was
9 an accident; correct?

10 A Yes.

11 Q Okay. And so did you discuss that with Mr. Young,
12 about it being an accident, not an actual intentional
13 killing?

14 A Yes, I did.

15 Q And during your discussions with him, did y'all
16 talk about what investigation he had done?

17 A Yes, sir.

18 Q Okay. And do you believe that he adequately
19 investigated your case?

20 A I don't really think so because he -- I feel like
21 that he was leading me to believe that I could win my
22 charges, being I could be found not guilty.

23 Q Mr. Smith, can you sit up a little bit by that mic
24 because we're having a little bit of a hard time
25 hearing. Speak a little clearer.

1 Okay. Go ahead.

2 A I was led to believe that I could be found not
3 guilty on these charges, which I was most definitely
4 guilty of having a gun around, but we can't talk about
5 the situation.

6 But I felt like that -- man, they knowed how I was
7 going to be found before I stepped into the courtroom.

8 Q Okay. Possession meant that -- counsel's
9 representation was that you were going to be found not
10 guilty, and that's what he told you?

11 A He led me to think that I could be found not
12 guilty. He said I had a 50/50 percent chance. And one
13 of the witnesses that was being -- the statements and
14 stuff, there was no way was I going to be found not
15 guilty of those charges.

16 Now, I spoke to him two or three times. I've
17 tried to get him to come to the jail and read me my
18 motion of discovery, which he never did. I asked him
19 for a mental health evaluation. I had been in that
20 Anderson-Oconee Behavioral Health for years on mental
21 health medications and stuff, and I asked him to get
22 that evaluated. Judge --

23 MR. SMITH: Your Honor, they have not raised the
24 issue of failure to get a competency evaluation.

25 MR. RICHEY: Well, I think he said that he had

1 recent witness --

2 THE DEFENDANT: I got some issues right here.

3 MR. RICHEY: Hold on.

4 I think what he's saying is he never went to these
5 places and got the records, and I think that would be
6 part of an investigation on the case.

7 THE COURT: Okay. We'll go forward. This is
8 background material.

9 MR. RICHEY: Yes, sir.

10 Q And, sir, you feel like all those things were not
11 done during the investigation of your case; correct?

12 A Yes.

13 Q And you say that he led you to believe that you
14 would be found not guilty?

15 A Yes.

16 Q Okay. And then looking at the overall case since
17 you have been in the Department of Corrections, do you
18 believe that was the correct assessment of your case,
19 that that was right?

20 Well, let me ask you this way. Let me ask you
21 this question.

22 There was a plea offer in your case; correct?

23 A Yes.

24 Q And it was for eight years; correct?

25 A That was going to be a 20 suspended to eight and

1 five probation.

2 Q And you turned that down based on the
3 investigation your lawyer had done in the case and the
4 position that was taken; correct?

5 A Yes.

6 Q Okay. And under that agreement, you would have
7 served significantly less time; correct?

8 A Yes.

9 Q And did you talk to him about that?

10 A About the what, the sentence?

11 Q About taking it.

12 A I spoke with him a time or two about it. And if I
13 knew that my witnesses was going to be the way they
14 were -- if the court would let me, I'd like to give you
15 that letter here. It's from one of the State's
16 witnesses.

17 Q Hold on. Okay.

18 Go ahead. Just tell us what you believe from the
19 investigation that witness would have testified or
20 said.

21 A Well, Ms. Whitney Barry committed perjury on the
22 stand. She lied about the results.

23 Q Okay. Well, we can't talk about what somebody
24 said, but I can ask you a question.

25 You believe, based off your understanding now of

1 what these witnesses had done, that if counsel had told
2 you, that you would have pled guilty?

3 A Yes.

4 Q Okay. And you believe you were prejudiced by
5 counsel not giving you that advice, meaning you got
6 considerably more time than you would have gotten;
7 correct?

8 A Yes.

9 Q Thank you.

10 Answer any questions the attorney general has for
11 you.

12 CROSS-EXAMINATION BY MR. SMITH:

13 Q Mr. Smith, how many times did you meet with your
14 attorney before your trial?

15 A Not many. Not many at all. The last one I met
16 with him on before the day of the trial, he was angry
17 enough at me to chew up barbed wire and spit out
18 thumbtacks. I had sent a letter to the attorney
19 general that I felt like that I was being
20 misrepresented and -- by the prosecutor, Ms. Reeves.

21 And they had both been put under an investigation
22 of my only case. And then he come out to the jail that
23 morning, and he kind of led me to believe that -- well,
24 not led me to believe. I could tell he was angry, and
25 he was going -- they was going to go into another room

1 with the judge, which we did. And then I was convinced
2 to let him represent me, and I did.

3 Q Was this the morning of your trial? I'm just
4 trying to understand the time.

5 A I got the dates -- I have had a brain aneurysm.
6 Everybody in here knows that was at the trial. I have
7 a hard time remembering stuff. That's why I write down
8 and bring so much with me.

9 Q Okay. So you're saying he was upset at you
10 because you had written a letter to the attorney
11 general?

12 A Yes.

13 Q Okay. So you don't know how many times you met
14 with him. Can you ballpark it?

15 A He never read my motion of discovery. He never
16 went over my case with me hardly at all. He'd come out
17 there and tell me that we're going to see her, you're
18 going to be on the trial docket, and different things
19 he would say to me.

20 And, actually, I feel like that I was
21 misrepresented then, and I feel like I have been
22 misrepresented today. My lawyer that I have now only
23 came -- I've got his letters right here too, how many
24 times he wrote me and told me he was coming and didn't
25 come.

1 I have sent him a letter telling him that I would
2 like for other things to be raised at this hearing,
3 which is not being raised. And, actually, I feel like
4 I need a continuance on this thing altogether and get
5 me an attorney that will testify and do some
6 investigations and find the other two witnesses that
7 never was notified or at the trial.

8 And I have with me my transcript, letters from the
9 prosecutor to my attorney, telling me that Ms. Whitney
10 had lied on the stand and --

11 MR. SMITH: Objection, Your Honor. That's
12 hearsay.

13 THE WITNESS: I got a letter from you -- I mean a
14 letter from the State right here. I mean, if it's
15 hearsay, it's black and white. This came to me from
16 y'all. I mean, that's all I've got to say about that.
17 The lady lied on the stand in my case. And I got --

18 THE COURT: Rephrase the question. Move on.

19 MR. SMITH: Okay.

20 Your Honor, do you want to address the
21 representation issue that he just brought up?

22 THE COURT: What do you want, Mr. Smith? What are
23 you talking about, asking for a continuance in this
24 case?

25 THE WITNESS: Here's the letter I wrote, Your

1 Honor, to Richard Shirley about my case and how I have
2 been represented, and I was asking for another attorney
3 then.

4 THE COURT: When did you write that letter?

5 THE WITNESS: Richard Shirley received it -- let
6 me get the right one here, the one that he sent me back
7 with this. Anderson County, Richard A. Shirley.

8 THE COURT: Right. He's sitting right here. I
9 know where he is. He's right here. But when did you
10 write him?

11 THE WITNESS: I don't think I dated the letter,
12 sir. Yeah, but he received it the 18th -- no.
13 December 10th, 11:50-something. I can't understand
14 this, Your Honor, on this paper, but he -- this is the
15 one I received back from him, a copy of it. And it's
16 dated at the top of this page here January 2nd, 2019.

17 THE COURT: Okay. This is around Christmastime
18 and New Year's when you're writing him a letter?

19 THE WITNESS: Yes, sir.

20 THE COURT: What did you ask for now?

21 THE WITNESS: I was asking for other issues to be
22 raised and looked at in my things. And the only one
23 that's been raised or looked at, Your Honor, is the
24 ones that me and another inmate had gotten in the law
25 library and looked at my case and my transcript.

1 And I sent these four in so it could stop my time,
2 you know, the time that's on the year for you to --

3 THE COURT: To file, yes. I understand.

4 THE WITNESS: Yes, sir. Then nothing else was
5 ever raised about nothing or said about nothing, only
6 ones that I did myself.

7 THE COURT: Right.

8 THE WITNESS: And I feel like that it should have
9 been further investigated. And I looked a little bit
10 deeper in, and I have, Your Honor, with me from one of
11 the State's witness, three different statements. And
12 then the one on the transcript is entirely different
13 from every one of them.

14 THE COURT: Well, the transcript is live
15 testimony, and statements is something taken some other
16 time --

17 THE WITNESS: Well, it's the police officers and
18 the courts that done it.

19 THE COURT: Here is what you don't understand, is
20 statements can be introduced at trial. They can be
21 cross-examined. So if a witness shows up and they're
22 asked questions, that's better than a statement they
23 gave at some other time.

24 THE WITNESS: Well, one of the witnesses is in
25 there and did make statements at my trial, and the

1 other three statements that he give are every one
2 different. And it was my son, Billy Smith.

3 If he would have told the truth, I might have been
4 found not guilty. If Whitney Barry had told the truth,
5 I might have been found not guilty. I feel like I
6 deserve another trial.

7 THE COURT: You think your son is going to tell
8 the truth next time?

9 THE WITNESS: I believe if he was questioned and
10 shown what he signed and then read what he said on the
11 stand, I believe he would.

12 And ever since my brother, I was talking to him
13 not ten minutes before the incident happened, and my
14 son and David was -- I was buying the gun from them two
15 boys, a gun to give to my wife. Me and her had been
16 drinking. All day. I had went fishing down by the
17 river.

18 When I come in that afternoon, I had forgotten
19 about the little pistol. And me and her was sitting
20 there, watching Duck Dynasty on TV. I told her, I
21 said --

22 THE COURT: Let's get back to the lawyer issue.
23 You're starting to get back into retrying the case.

24 Mr. Richey, what do you know about the son's
25 testimony and prior statements? Was that an issue

1 raised in the application for PCR or not?

2 MR. RICHEY: No, sir. And, Judge, I will just say
3 for the record, he was local, down at Perry in
4 Greenville County, and I've seen him at least twice at
5 the prison. Actually, I just saw him maybe ten days
6 ago.

7 I subpoenaed his brother, who he told me to bring
8 as a witness. I went over the issues, and these are
9 the issues that, at the jail ten days ago, that we
10 collectively decided to raise. So, I mean, like I
11 said, I've seen this gentleman a good bit because he's
12 local. He's in Greenville County.

13 THE COURT: Well, I mean, what I'm gathering from
14 him is that he's ready to have his new trial today.
15 And that's just not the issue before the court is does
16 he deserve a new trial or not, but if it was a new
17 trial and how it would be presented. That's kind of
18 what I'm looking at.

19 MR. RICHEY: Yes, sir. That's what we talked
20 about.

21 THE COURT: Mr. Smith, I want to make clear.
22 Mr. Richey says he's been down to see you a couple
23 times. Your issues are limited on postconviction
24 relief as to what you can raise. And the main issue
25 he's focusing on is whether or not your case was

1 properly investigated to present the witnesses and
2 facts that were available for the jury to consider.

3 And you've kind of delved now a little bit, saying
4 if your son would have told this and read that
5 statement, maybe his testimony would have been
6 different. But it's not my job today to retry your
7 case, but to decide whether or not your counsel was
8 effective.

9 THE WITNESS: Yes, sir.

10 THE COURT: I want to know why you think
11 Mr. Richey is not ready to present those issues on your
12 postconviction relief application. Why is he not ready
13 today to say, your trial counsel at trial failed to
14 investigate fully, and call these two witnesses, which
15 is what his focus is? Why is that not okay?

16 THE WITNESS: These were the only two -- the only
17 four issues that was registered at all, Your Honor.
18 And there were several more that I wanted to be
19 registered that I wrote Mr. Richey a letter. I had the
20 letter in my hand. I sent one to the clerk of court,
21 asking to advise him to do a little bit more in looking
22 into my case.

23 And I feel like I'm being led, like I was the
24 first time, you know. When -- I have every letter that
25 I ever got from Mr. Richey right here with me, which at

1 least he has been trying, and he has been helpful.

2 Like I say --

3 THE COURT: Let me ask you this. Do you think if
4 you had some more conversations with him and got better
5 prepared for today's hearing, would you feel better
6 about it?

7 THE WITNESS: Yes, sir. I think I would have --
8 I'd like to have a continuance on it, if I could, where
9 I could understand more about what's happening. I've
10 been in -- I live in single unit at Perry. It's a
11 character-based unit. I've been in school --

12 (Witness crying.)

13 THE COURT: Any objection to continuing,
14 Mr. Richey?

15 THE WITNESS: I'm learning how to read again.

16 MR. SMITH: Your Honor, if Mr. Richey is moving
17 for a continuance, we would object because he's already
18 said he's ready to go today. I mean, you know, I don't
19 see any reason to delay this. I think our witnesses
20 are here, taking the time out of their day to come.

21 As far as wanting a new attorney, I'm not getting
22 involved in that. I'll leave that to the court's
23 discretion as to a continuance. If there is a motion
24 from counsel, we would object to that.

25 THE COURT: Mr. Richey, how do you feel? You know

1 more about the case than I do.

2 MR. RICHEY: Like I say, Judge, I have spoken to
3 this man several times, and just ten days ago, I'm
4 doing what we collectively talked about. I subpoenaed
5 the brother here.

6 So, I mean, if he says he needs more time, like I
7 say, I'll sit down with him because he's local. I sat
8 down with him twice at the prison, and we went through
9 the case, went through all this stuff. And we came up
10 with what the issues are going to be today and to bring
11 the witness he wants.

12 If the case is continued, I'm assuming I would do
13 the exact same thing. I'd go back and talk to him,
14 bring the brother back. But I will say this, the
15 brother, the issue with him is going to be whether or
16 not he's going to be able to be here because he's got a
17 fairly good job. He's off on Wednesdays. I just don't
18 want to get in a situation where he's not going to be
19 here.

20 THE COURT: I think I want to hear a little more,
21 because I think part of Mr. Smith's issue is his
22 physical condition from his -- he said he was a little
23 bit forgetful, writing things down, and he seems to be
24 a little disorganized. And that's not his fault. It's
25 just the way it is.

1 MR. RICHEY: Yes, sir.

2 THE COURT: Let's continue with the
3 cross-examination, Mr. Smith. Continue on.

4 MR. SMITH: Your Honor, just for purposes of the
5 record, he did make some statements about issues that
6 fall outside the pleadings, so we would just move to
7 strike any of that that's not been pled.

8 THE COURT: Go ahead.

9 Q BY MR. SMITH: So, Mr. Smith, let's just get back
10 on track here.

11 You were talking about things you talked about
12 with your attorney, and I asked you how many times had
13 he met with you. Do you know how many times you met
14 with him or can you ballpark it?

15 A With who? Which one?

16 Q Mr. Young.

17 A Mr. Young? I can't remember.

18 Q And you said he never went over discovery with
19 you?

20 A No. Never read motion of discovery to me, not the
21 first time.

22 Q And I believe you testified earlier that you did
23 tell him that the shooting was an accident?

24 A There wasn't no shooting. When I -- when she was
25 handing me the gun, I touched it, and it fired. I was

1 not trying to shoot anybody. The gun went off. She
2 got hit.

3 Q You told him it was an accidental discharge?

4 A Yeah. It was an accidental shooting.

5 Q And did you discuss using that as a defense with
6 him about it was an accident?

7 A Yes.

8 Q Okay. Did you give him -- tell me the people you
9 told me him that you wanted him to talk to.

10 A David Hall, Chris Guthrie.

11 Q And you put in your pleadings you wanted him to
12 talk to your brother, Nathan Smith; is that right?

13 A Yeah.

14 Q Okay. And you mentioned earlier some kind of
15 mental health record. What are you talking about with
16 that?

17 A Anderson-Ocone Behavioral Health, I've been going
18 there for years.

19 MR. SMITH: No further questions. Thank you.

20 THE COURT: Anything further, Mr. Richey?

21 MR. RICHEY: No, Your Honor. No more questions.

22 THE COURT: All right. Mr. Smith, you can step
23 down.

24 THE WITNESS: Your Honor, before I step down,
25 could I ask for a Rule 59(e) be on record or be

1 notified?

2 THE COURT: Yeah, but 59(e) is a reconsideration.
3 I haven't ruled yet, so that's a little early for that.

4 THE WITNESS: Okay. I want to make sure I'm able
5 to speak to you and let you know I want this concerned
6 on [sic] before today is over, if it's going to be
7 possible.

8 THE COURT: Okay. We'll do that. I haven't
9 ruled.

10 MR. SMITH: Just for the purposes of the record,
11 Your Honor, did you deny his motion to have a new
12 counsel?

13 THE COURT: I don't think he asked for that. I
14 think he said he wanted to talk to Mr. Richey further.

15 THE DEFENDANT: I want to ask for a continuance or
16 another attorney that will do the research that needs
17 to be done. I mean, I wrote David Shirley --

18 THE COURT: Richard Shirley.

19 THE DEFENDANT: Richard Shirley, asking him
20 about -- letting him know I thought I was not being
21 represented properly, and I think he sent it on to the
22 attorney general. I had a copy of it he sent back to
23 me that I was going to let you look at, but I done
24 stuck it somewhere here, and I don't see it right off.
25 But there was a letter right there, Your Honor.

1 THE COURT: I'll look at it in a minute.

2 You can step down.

3 THE CLERK: His letter and my reply are in the
4 file.

5 THE COURT: We'll keep moving.

6 Call your next witness.

7 MR. RICHEY: Okay. We call Mr. Nathan Smith.

8 NATHAN SMITH,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE CLERK: If you will take the stand, please,
11 sir, and state your name for the record.

12 THE WITNESS: All right. My name is Nathan Smith.

13 DIRECT EXAMINATION BY MR. RICHEY:

14 Q Mr. Smith, are you related to Billy Ray Smith?

15 A Yes.

16 Q And how are you related to him?

17 A Brother.

18 Q You're his brother.

19 And you're familiar with the allegations regarding
20 him; correct?

21 A Yes, sir.

22 Q On the day that this happened, did you see your
23 brother?

24 A I didn't see him, but I talked to him on the phone
25 less than 30 minutes before it happened.

1 Q Okay. And when you talked to him on the phone,
2 what kind of demeanor did he have?

3 A He -- he called me, and he asked me what a Smith &
4 Wesson .22 revolver would be worth. I was at work, and
5 I told him that without seeing the gun, I didn't have
6 any idea. I said, but if it's any good at all, a Smith
7 & Wesson, you know, it's probably worth a couple
8 hundred bucks, at least.

9 And he told me that he had a chance to buy one,
10 and he was going to be able to get it real cheap. And
11 he was going to -- thinking about buying it and giving
12 it to his wife because she worked at Walmart, and she
13 come out of Walmart late at night. And he was just
14 going to give it to her to have, you know, protection.

15 Q Okay.

16 A And, I mean, him and her was laughing and cutting
17 up about it. I mean, when he told me on the phone, he
18 apparently had me on speaker phone.

19 Q Right.

20 A Because, I mean, I could hear both of them's
21 conversation clear as a bell. And when he told me on
22 the phone that he was going to give it to his wife, she
23 was joking back with him. She said --

24 MR. SMITH: Objection --

25 THE WITNESS: -- "Yeah, you going to give me

1 something I can shoot you with if I catch you cheating
2 on me."

3 MR. SMITH: Objection, Your Honor.

4 THE WITNESS: Like I said, they were both laughing
5 and cutting up.

6 Q BY MR. RICHEY: So there was no animosity between
7 them that you could tell?

8 A No, sir. Not that I could tell on the phone, no.

9 Q And during your time with -- during that phone
10 conversation when you were on speaker phone, could you
11 tell whether they were under the influence of any
12 alcohol or anything?

13 A Yes, sir. Both of them were intoxicated.

14 Q Okay.

15 A And it wasn't just alcohol. I mean, they were
16 both -- my brother was on OxyContin.

17 Q For the back surgery?

18 A Yes, sir. And him and his wife both was taking
19 them.

20 Q When you say both were taking them, they both were
21 taking them illegally or legally? He was taking them
22 legally.

23 A Yeah. But, I mean, she would take one every once
24 in a while.

25 Q But she didn't have a prescription, though; right?

1 A No.

2 Q So based on what you heard and observed, there was
3 no confrontation between the two of them prior to this
4 shooting at all?

5 A No, sir. No, sir. Like I said, they were
6 laughing and cutting up with each other.

7 Q Did you talk to Mr. Young about that?

8 A No, sir.

9 Q Did you have any contact with him at all?

10 A No, sir.

11 Q None?

12 A No, sir.

13 Q Did you attempt to call him or anything, or you
14 just thought the lawyer was going to call?

15 A Well, I just thought that he would call me. Like
16 I said, all I could tell him, you know, was what I
17 heard on the phone call.

18 Q Right.

19 A I mean, I wasn't there. And I don't even know
20 what happened, you know. But, I mean, after I hung up
21 the phone, the next morning I get a call that my
22 brother is locked up and his wife's in the hospital,
23 been shot.

24 Q So you don't know -- so you don't have any direct
25 knowledge of how the shooting occurred or anything

1 afterwards?

2 A No, sir.

3 Q Your knowledge is based on talking to him before
4 the shooting and how he was talking, his demeanor, and
5 the wife?

6 A Yes, sir.

7 Q And you said they were laughing and joking?

8 A Yes, sir. And I spoke with his wife after this
9 one time, and I asked her what happened. And she told
10 me that she don't know. They were having a good day.

11 Q So you could have offered that testimony at trial
12 to dispute what the wife said at trial; correct?

13 A Yes, sir.

14 MR. SMITH: Objection to the hearsay from the
15 wife.

16 THE COURT: All right.

17 MR. RICHEY: I'll rephrase it.

18 THE COURT: Rephrase it.

19 BY MR. RICHEY:

20 Q Based off your conversations with the wife, you
21 believe that you could have assisted him and impeached
22 her at trial, meaning she wasn't telling the truth,
23 based off conversations you had with her?

24 A Based off of conversations I had with his wife,
25 she thought they were having a great day.

1 Q Okay. Okay. Thank you.

2 THE COURT: Mr. Smith.

3 CROSS-EXAMINATION BY MR. SMITH:

4 Q Mr. Smith, you did testify you were at the
5 sentencing hearing for your brother; right?

6 A Yes, sir, I was at the sentencing hearing, but no,
7 sir, I didn't testify. I just made a statement to the
8 court after he was found guilty.

9 Q All right. And you essentially said you didn't
10 think he would do something like that?

11 A Yes, sir.

12 Q Okay. And you testified earlier you weren't there
13 when she was shot in the head?

14 A No, sir, I wasn't.

15 Q All right. Can you tell me, this phone call you
16 had with your brother, about what time of the day would
17 that have been?

18 A It was about probably 8:15 at night. I was at G
19 Stamp down in Union when he called me. I mean, I went
20 to work at -- I think my showup time then was 7:00. So
21 I had went to Spartanburg, got to my job, and got in
22 the big truck and drove to Union before he called me.
23 So probably about 8:00 or 8:15.

24 Q Okay. And it was after that at some point when
25 the gun -- when the shooting happened?

1 A Yes.

2 Q You said Mr. Young never contacted you about the
3 case?

4 A No, sir.

5 Q How did you find out about the trial?

6 A My brother.

7 Q Who asked you to -- who asked you to come to the
8 sentencing hearing?

9 A My brother.

10 Q Okay.

11 MR. SMITH: Thank you, Your Honor. No more
12 questions.

13 THE COURT: Okay. You can step down.

14 MR. RICHEY: Judge, can we take about a
15 five-minute break here?

16 THE COURT: Uh-huh.

17 (Recess taken from 10:37 a.m. to 10:42 a.m.)

18 MR. RICHEY: We call Mr. Hervery Young.

19 THE COURT: Mr. Young, come on up and be sworn.

20 **HERVERY YOUNG,**

21 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

22 THE CLERK: Have a seat. State your full name for
23 the record.

24 THE WITNESS: Hervery Young.

25 DIRECT EXAMINATION BY MR. RICHEY:

1 Q Mr. Young, do you recall representing Billy Ray
2 Smith?

3 A I do.

4 Q Okay. And were you at the Anderson County Public
5 Defender's Office?

6 A Yes.

7 Q And you're not currently employed in that position
8 right now; is that correct?

9 A Correct.

10 Q And so you were appointed to represent him. You
11 were appointed?

12 A Yes, sir.

13 Q Okay. You have been in the courtroom, and one of
14 the things that Mr. Smith has alleged is that you did
15 not investigate the case, meaning you didn't talk to
16 witnesses, one witness being his brother.

17 Can you tell me what investigation that was done
18 on this case?

19 A Well, some witnesses I talked to personally. Some
20 witnesses I didn't because I hired an investigator. I
21 believe the investigator was Scott Hawkins, a local
22 investigator here in the Anderson area, and he went out
23 and talked with -- he attempted to talk with the
24 victim, the daughter, the son.

25 There were two friends of the son, David Hogg and

1 Chris -- Chris something. I can't remember his last
2 name. We spoke with the people at Walmart, the people
3 at -- there was a Rite Aid in the Williamston area. We
4 talked with the people there in order to get records
5 from them, as well as the investigator spoke with his
6 brother.

7 Q Can you briefly tell me, what are the facts the
8 State alleged in this case of what happened?

9 A The State's theory was, basically, there was a
10 history of abuse between Mr. Smith and his wife, and it
11 kind of went both ways. There was a history of
12 incident reports and magistrate-level charges for CDV
13 and things of that nature.

14 And the State's position was basically that they
15 had been drinking. He was a mean drunk. This
16 incident, this day he got mad over something and shot
17 her and tried to stage it as being an accident, and
18 that he left her in the house to die.

19 Q Okay. When you say staged, you're saying that he
20 had done some other acts to make this appear to be an
21 accident; is that what you --

22 A Well, his statements -- because there were
23 actually, I believe, three different statements made at
24 some point in time of what happened that day. And I
25 believe the first one, which involved the

1 possibility -- or the investigation of the son and the
2 friend that was staying with the son or roommates with
3 the son, that somehow or another there was a drive-by
4 shooting, or basically somebody drove by. The door to
5 the house was open, and a bullet came in and hit the
6 wife. That was the first story that was told.

7 The only, I guess, overt act that the State would
8 have alleged would have been that he took the gun away
9 from the -- from his house and took it with him to the
10 son's house, and, ultimately, the gun was found at the
11 son's house under the cushion of a couch.

12 Q And in talking with him, did you discuss with
13 him -- was there a plea offer in this case that you
14 remember?

15 A There were a number of plea offers made in the
16 case. For the longest, the solicitor's office was
17 stuck, and I believe it was somewhere around a 15- or a
18 12-year sentence. But, ultimately, we got down to an
19 eight-year sentence. It was -- as he stated earlier,
20 it was 20 years suspended to eight years active, and
21 then a period of probation to follow.

22 Q And did you discuss that plea offer with him in
23 relationship to his case? What I mean by that is did
24 you sit down with him and say, This case is great or
25 not great; take it or not take it?

1 I know it's his decision to take it, but did you
2 give him any advice as to whether he should accept that
3 offer or not?

4 A Well, I gave him -- as he stated, I told him, with
5 a jury trial, it's 50/50. Nobody can tell him whether
6 he'll win or whether he'll lose. The jury can go one
7 way or the other.

8 Mr. Smith's position was basically this was an
9 accident. He didn't try -- didn't intend to kill
10 anybody, wasn't trying to kill anyone. And if he
11 couldn't get a plea offer that he wanted -- one that,
12 in his words to me, both in letters as well as when we
13 met, a sentence that wouldn't allow him to die in
14 prison -- because a whole bunch of time would mean that
15 he would die in prison -- that he wanted a jury trial
16 based on that.

17 I tried to talk him into taking that plea when we
18 got down to the eight years. I believe at some point
19 in time his daughter attempted to try to convince him
20 to take the plea as well, but it wasn't what he wanted
21 to deal with, so he wanted a jury trial.

22 Q And the facts of this case, looking at this case,
23 when the actual shooting occurred, was there anybody
24 else there other than him and his wife?

25 A No. No. When the shooting actually -- or when

1 the gun went off, it was just him and the wife at the
2 house.

3 Q So there was no eyewitnesses, actually, to what
4 happened other than him and the wife?

5 A That is correct.

6 Q Okay. And do you believe that it would have been
7 in his best interest to accept that plea offer?

8 A Yes, based on our investigation. Yes, because for
9 the longest, Mr. Smith was hanging his hat on the fact
10 that his wife was not going to testify and was not
11 going to say that he intentionally tried to kill her or
12 anything and that she would acknowledge that this was
13 an accident.

14 But that didn't happen. Once his wife was
15 released from the hospital, she went to a rehab
16 facility for, you know, for the medical issues that she
17 had from the shooting. And for a while, through her
18 daughter, she made it clear to us that she was not
19 going to say that this didn't happen intentionally or
20 that this wasn't an accident. She didn't want to talk
21 to us about anything.

22 And I don't know how much of that was her telling
23 the daughter that and the daughter communicating that
24 to us, or whether that was just what the daughter was
25 communicating to us.

1 Q And did you talk to Mr. Smith about that?

2 A Oh, yes.

3 Q And what was his position when you said, "Hey,
4 man, your wife is not going to say what we think she's
5 going to say"?

6 A He wasn't believing it. I mean, we even had a
7 hearing for a bond reduction in this case or to deal
8 with bond, and his wife came to that hearing. And even
9 then, he was still convinced that she was going to be
10 on his side. And when she spoke in court, it was
11 obvious she was not on our side.

12 Q So when Mr. Smith testified today in this
13 courtroom that he went to trial and you had him
14 believing he was going to win, why do you think he
15 would believe that or testify to that? Do you have any
16 idea?

17 A No. I have no idea why he would think that
18 because I actually tried to convince him to take the
19 plea offer and try to get less time based on the
20 investigation.

21 MR. RICHEY: One moment, Your Honor.

22 No other questions. Thank you.

23 CROSS-EXAMINATION BY MR. SMITH:

24 Q Mr. Young, how many times have you met with
25 Mr. Smith over the course of the case?

1 A It was a lot of times, because I believe this
2 incident happened -- it was in April 2014, and I think
3 we went to trial in November of 2015. I might be wrong
4 on those months, but I met with him a lot, primarily
5 because when I initially met with him, he made it clear
6 to me that he was not able to read and write. And in
7 order for him to know what was going on, what people
8 were saying and things of that nature, I had to read
9 stuff to him because I did not want him to do what he
10 ultimately started doing, which was relying on other
11 inmates to read stuff to him, to write stuff for him,
12 and things of that nature.

13 And the reason I know that he was doing that is
14 because I would get letters from him at times, and,
15 clearly, it would be written in one handwriting, and
16 the signature would be in a different handwriting.

17 And then there was one time that he sent a motion
18 to dismiss counsel to me that was written by this other
19 person. And he signed it on the bottom of it, but he
20 didn't know what the motion said. And when I went over
21 to the jail and read it to him and told him what it
22 said and everything, he immediately wrote me back a
23 letter saying, you know, that he didn't know what this
24 motion said, he didn't say that, that type stuff, and
25 he didn't want to get rid of me as his attorney.

1 That's how I knew he was relying on other people.

2 So I made it a point to either myself or the
3 paralegal in our office, we would go over to him, we
4 would show him the CDs and the videos that we had. We
5 would read the discovery materials to him. The
6 investigator, Mr. Hawkins, went over and met with him
7 as well.

8 Q Okay. Did you go over all of the discovery with
9 him?

10 A Everything that I had, yes.

11 Q Did --

12 A I think the only thing he didn't see all of was
13 all of the photos, and that was his choice. He chose
14 to stop looking at -- there was a CD of some photos
15 from the crime scene and everything that he didn't want
16 to see.

17 Q You gave him the opportunity to see those?

18 A Oh, most definitely. I gave him a copy of his
19 discovery, and I went over it with him. But the reason
20 I went over it with him is because I didn't want him to
21 have other inmates reading his stuff and then turning
22 around and benefitting off of that at his expense or
23 anything.

24 Q Okay. And I'm going to ask you about some of
25 these people he's mentioned today. And you tell me

1 what you remember about them as witnesses.

2 So what about David Hogg?

3 A We did not call David Hogg as a witness. David
4 Hogg gave a statement to law enforcement. He was the
5 one that was, I believe, the roommate of his son. He
6 was not able to say anything directly relating to the
7 incident. He didn't have anything to add to our case,
8 so I did not call him as a witness. But he was
9 interviewed by the investigator, and we found out
10 pretty much what he said in the written statement is
11 his same story that he told our investigator.

12 Q Okay. What about -- I think you mentioned Chris
13 earlier, but you didn't say a last name. Guthrie. So
14 what about Chris Guthrie?

15 A We did not call him as a witness either. He was
16 not there on that day. He was the guy, I believe, that
17 either lived across the street or somewhere --
18 somewhere close by to Mr. Smith.

19 And he spoke about an incident when the son, Billy
20 Paul Smith, David Hogg, and himself were at his house,
21 working on a boat, and Mr. Smith came over there to
22 them, and he had been drinking. And he, you know,
23 talked to them for a little while. Then he left and
24 went back to his house.

25 He didn't have anything to add to the defense

1 based on the statement that he gave to law enforcement.
2 And on a few occasions when Scott went out to interview
3 him, he kept dodging him. So the investigator was
4 never able to talk with him.

5 Q And Mr. Smith's brother, Nathan Smith, was here to
6 testify today. Did you ever talk to him?

7 A I don't remember talking to him directly about the
8 case, about the facts of the case. I had talked with
9 him and, I want to say, his wife early on in the case
10 about Billy Ray and the status of everything.

11 But my investigator had talked with him, had
12 confirmed that he had spoken to them earlier that day
13 about, you know, getting pricing on the gun or what the
14 gun would be worth or anything.

15 He was present at the trial, and we chose not to
16 call him as a witness because he was not there. I
17 mean, there was a gap of time between when he spoke
18 with them and when this incident occurred.

19 And I didn't think that that gap of time could
20 have been justified because, you know, he could have
21 talked with them an hour, 30 minutes earlier, and an
22 argument erupted, and this incident occurred, and it
23 would not have helped our case as being able to
24 establish the accidental shooting.

25 Q Did you ever try to track down any behavioral

1 health records for Mr. Smith?

2 A No, I did not. He informed me of his stays at
3 AnMed, but based on my -- routinely, what I do at the
4 beginning of cases, I ask certain questions of clients
5 to make a determination based on my experience whether
6 or not there is an issue of them being competent or
7 not.

8 Based on his responses to it, I knew that, you
9 know, he had a limited education level. He shared with
10 me that he could not read and write. But when we
11 talked about the rest of the court proceedings and
12 things of that nature, there was never any indications
13 that he had an issue of understanding or not
14 understanding what was going on.

15 He was able to talk with me about the facts of the
16 case. He asked me very intelligent questions as far as
17 what was going on, and he had a criminal history that
18 indicated that he was familiar with the processes and
19 everything.

20 So nothing -- nothing jumped out to me that
21 warranted me getting him evaluated, either
22 independently or through the State, and therefore I
23 would not have requested any records.

24 Q And his wife did testify at trial; right?

25 A She did.

1 Q And she testified that he shot her in the
2 forehead?

3 A She did.

4 Q And that then he left her?

5 A Correct. I believe she made reference to her
6 seeing him walk out the door.

7 Q Okay. And she also testified that she had to get
8 a bathrobe or towel to cover the bullet hole in her
9 head, I believe was the testimony?

10 A I don't remember if she said that or not. I
11 remember -- I remember Mr. Smith sharing with me that
12 he provided some assistance, and then he left to go
13 over to his son's house in order to get help.

14 Q So would you agree that there were no people there
15 that day other than -- at the time of the shooting --
16 other than Mr. Smith and his wife?

17 A That's correct. Just him and her.

18 Q Okay. And Mr. Nathan Smith, he did speak at the
19 sentencing hearing, didn't he?

20 A He did.

21 Q And his contradiction then was that he didn't
22 think his brother would do something like this?

23 A Correct.

24 Q Okay. And did he also say at the time of
25 sentencing that he was not present at the time of the

1 shooting?

2 A That I don't recall.

3 Q Okay.

4 MR. SMITH: Just one moment, Your Honor.

5 No more questions, Your Honor. Thank you.

6 THE COURT: Anything else, Mr. Richey?

7 MR. RICHEY: No questions.

8 THE COURT: Okay. You can step down.

9 THE WITNESS: Thank you, Your Honor.

10 MR. SMITH: Your Honor, may Mr. Young be excused?

11 MR. RICHEY: No. No. We need him.

12 MR. SMITH: Okay.

13 THE COURT: No? Stick around, then.

14 Call your next witness, Mr. Richey.

15 MR. RICHEY: No other witnesses.

16 THE COURT: What you got, Mr. Smith?

17 MR. SMITH: Your Honor, the State has no

18 witnesses.

19 THE COURT: Okay. I'm going to review the record,

20 the application, read the records also, and I'll let

21 y'all know what I decide.

22 MR. SMITH: Thank you.

23 MR. RICHEY: Thank you, Your Honor.

24 THE COURT: All right.

25 (WHEREUPON, proceedings concluded at 11:03 a.m.)

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END OF REQUESTED TRANSCRIPT OF RECORD

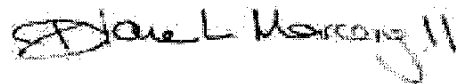
1 CERTIFICATE

2
3 STATE OF SOUTH CAROLINA

4 COUNTY OF ANDERSON

5
6 I, Diane L. Marcengill, the officer before whom
7 the foregoing proceeding was taken, do hereby certify
8 that said hearing, pages 1 through 45 inclusive, is a
9 true, correct, and verbatim transcript of said
10 proceedings.11 I further certify that I am neither
12 counsel for, related to, nor employed by any of the
13 parties to the action in which this proceeding was
14 heard; and further, that I am not a relative or
15 employee of any attorney or counsel employed by the
16 parties thereto, and am not financially or otherwise
17 interested in the outcome of the action.

18 This 12th day of January 2023.

19
20 21
22 Diane L. Marcengill, RPR, CRR,
23 CRC
24 Official Resident Court
25 Reporter
Judicial District 30B

DOCKET NO. 2014-GS-04-01278

WITNESSES

Kevin G Marsee, Williamston Police Dept.

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUL 22 2014

Term

ARREST WARRANT NUMBER

2014A0420900041 & 2014A0420900043

THE STATE

vs.

Billy Ray Smith

A TRUE COPY
AUG 28 2017
Richard R. Kinty
ANDERSON CLERK OF COURT

ACTION OF GRAND JURY

TRUE BILL

JUL 22 2014

Foreperson of Grand Jury
Date:

VERDICT

Guilty

KWR

Indictment for
Murder/Attempted Murder

SC Code: 16-03-0029

CDR Code: 3410

Possession of a Firearm during the commission
of a violent crime

SC Code: 16-23-490

CDR Code: 0549

COMMITMENT

Foreperson of Petit Jury

Date: 11-18-2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on JUL 22 2014, the Grand Jurors of Anderson County present upon their oath:

Murder/Attempted Murder

That Billy Ray Smith did in Anderson on or about April 22, 2014, did unlawfully with malice aforethought and with the intent to kill, attempted to kill Sandra Smith. This is in violation of 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Possession of a Firearm During the Commission of a Violent Crime

That Billy Ray Smith did in Anderson on or about April 22, 2014 possess a firearm during the commission of a violent crime, to wit: Attempted Murder. This is in violation of 16-23-490 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.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson
STATE VS.
Billy Ray Smith
AKA:
Race: W Sex: M Age: 53
DOB: 1960 SS#:
Address: 604 S Hamilton St
City, State, Zip: Williamston, SC 29697-2011
DL#: SID#: SC00191845
*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Murder / Attempted Murder

INDICTMENT/CASE#: 2014-GS-04-01278
A/W#: 2014A0420900041
Date of Offense: 4/22/2014
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

CONVICTED OF or PLEADS

RT

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Campbell, Name Kristin Reeves SC Bar# Defendant 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. 574 Days 7 1/2
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

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 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, § 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 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Clerk of Court/ Deputy Clerk Richard A. Shirley
Court Reporter: R. Tollison
SCCA/217 (03/2011)

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

\$ to Public Defender Fund
A TRUE COPY
AUG 28 2017
Appointed PERSON CLERK/ Clerk/usher counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge
Judge Code: #2752
Sentence Date: 11-8-15

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson
STATE VS. Billy Ray Smith
AKA:
Race: W Sex: M Age: 53
DOB: 1960 SS#:
Address: 604 S Hamilton St
City, State, Zip: Williamston, SC 29697-2011
DL#: SID#: SC00191845

INDICTMENT/CASE#: 2014-GS-04-01278
A/W#: 2014A0420900043
Date of Offense: 4/22/2014
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Campbell, Raine Lambert SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 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. 574 Days T/S
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 PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 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, § 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 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

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: A TRUE COPY
AUG 28 2017
Appointer or other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Richard A. Shirley
Court Reporter: R. Tollison
SCCA/217 (03/2011)

Presiding Judge:
Judge Code: #2152
Sentence Date: 11-18-15

ARREST WARRANT

2014A0420900041

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamston

THE STATE 201400979 against

Billy Ray Smith

Address: 604 S Hamilton St

Williamston, SC 29697-2011

Phone: (0)-x SSN: Sex: M Race: W Height: 6 2 Weight: 185 DL State: SC DL #: DOB: /1960 Agency ORI #: SC0040500 Prosecuting Agency: Williamston Police Department Prosecuting Officer: Kevin G Marsee - 0822 Offense: Murder / Attempted Murder

Offense Code: 3410 Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on B.R. Smith 6/27/17

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 100 South Main Street Po Box 8002 Anderson, SC 29622

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA) County/ Municipality of Williamston)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant Kevin G Marsee who being duly sworn deposes and says that defendant Billy Ray Smith did within this county and state on or about 4/22/2014 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Williamston) in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 4/22/14 the Defendant fired a .22 pistol which struck the Victim, Sandra Smith, also his wife, in the head. The Defendant fled the scene leaving the Victim to die while he met with his son, Billy Smith, to hide the weapon from authorities. The Defendant returned with his son at a later time to report the crime to authorities as an accident or drive by shooting. The Victim did not die and is in critical condition at Greenville Hospital. The Affiant and other officers recovered the weapon in Pelzer, SC, that was used in the shooting. The offense occurred within the Town Limits of the Town of Williamston.

Signature of Affiant

STATE OF SOUTH CAROLINA) County/ Municipality of Williamston)

Affiant's Address 100 Town Square Dr Williamston, SC 29697- Affiant's Telephone (864)847-5987

A TRUE COPY AUG 28 2017 RICHARD S. SMITH CLERK OF COURT

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/22/2014 defendant Billy Ray Smith did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Williamston) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 4/24/2014

Signature of Issuing Judge (L.S.) C Sherman Woodson (Williamston Municipi Judge Code: 6900

Judge's Address Williamston, SC 29697-1402 Judge's Telephone (864)847-5698 Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS



2014A0420900043

STATE OF SOUTH CAROLINA

County/ Municipality of Williamston

THE STATE 201400797

against

Billy Ray Smith

Address: 604 S Hamilton St
Williamston, SC 29697-2011

Phone: (0)-x SSN: [REDACTED]

Sex: M Race: W Height: 6 2 Weight: 185

DL State: SC DL #: [REDACTED]

DOB: [REDACTED]/1960 Agency ORI #: SC0040500

Prosecuting Agency: Williamston Police Department

Prosecuting Officer: Kevin G Marsee - 0822

Offense: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole

Offense Code: 0549

Code/Ordinance Sec: 16-23-(0490)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Billy Ray Smith on 4-24-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
100 South Main Street
P.O. Box 8002
Anderson, SC 29622

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of Williamston

AFFIDAVIT ORIGINAL Form Approved by S.C. Attorney General April 23, 2003 SCCA 516

Personally appeared before me the affiant Kevin G Marsee who being duly sworn deposes and says that defendant Billy Ray Smith did within this county and state on or about 4/22/2014 State of South Carolina (or ordinance of County/ Municipality of Williamston) violate the criminal laws of the in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 4/22/14 the Defendant fired a .22 pistol which struck the Victim, Sandra Smith, also his wife, in the head. The Defendant fled the scene leaving the Victim to die while he met with his son, Billy Smith, to hide the weapon from authorities. The Defendant returned with his son at a later time to report the crime to authorities as an accident or drive by shooting. The Victim did not die and is in critical condition at Greenville Hospital. The Affiant and other officers recovered the weapon in Pelzer, SC, that was used in the shooting. In the commission of the crime the defendant did possess and use a firearm, a .22 caliber pistol. The incident did occur within the Town Limits of the Town of Williamston, SC.

Signature of Affiant Kevin Marsee

STATE OF SOUTH CAROLINA

County/ Municipality of Williamston

Affiant's Address 100 Town Square Dr
Williamston, SC 29697-

Affiant's Telephone (864)847-5987

A TRUE COPY AUG 28 2017 ANDERSON CLERK OF COURT

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 4/22/2014 defendant Billy Ray Smith did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Williamston) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 4/24/2014

Signature of Issuing Judge (L.S.) C Sherman Woodson (Williamston Municipality)

Judge Code: 6900

Judge's Address Williamston, SC 29697-1402

Judge's Telephone (864)847-5698

Issuing Court: Magistrate Municipal Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
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Telephone: _____

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Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

2014/0420900043

DOCKET NO. 2014GS04 01276

WITNESSES

Kevin G Marsee, Williamston Police Dept.

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

JUL 22 2014

Term

ARREST WARRANT NUMBER

2014A0420900040

THE STATE

vs.

Billy Ray Smith

A TRUE COPY
AUG 28 2017
Clerk of Court
ANDERSON COUNTY CLERK OF COURT

ACTION OF GRAND JURY

TRUE BILL

JUL 22 2014

Foreperson of Grand Jury
Date:

KWR

Indictment for

VERDICT

Guilty

OBSTRUCTING/OBSTRUCTING JUSTICE

SC Code: C/L, 17-25-0030
CDR Code: 0118

Samuel H. Stales
Foreperson of Petit Jury
Date: 11-18-2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF Anderson)

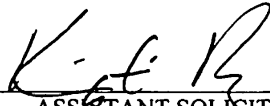
INDICTMENT

At a Court of General Sessions, convened on JUL 22 2014, the Grand Jurors of Anderson County present upon their oath:

OBSTRUCTING/OBSTRUCTING JUSTICE

That Billy Ray Smith did in Anderson County, on or about April 22, 2014, unlawfully act in a manner which prevents, obstructs, impedes or hinders the administration of justice. This is in violation of the Common Law of the State of South Carolina, Section 17-25-30, 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.



ASSISTANT SOLICITOR

COUNTY OF Anderson
STATE VS. Billy Ray Smith

INDICTMENT/CASE#: 2014-GS-04-01276
A/W#: 2014A0420900040
Date of Offense: 4/22/2014
S.C. Code §: 17-25-0030
CDR Code #: 0118

AKA:
Race: W Sex: M Age: 53
DOB: 1960 SS#:
Address: 604 S Hamilton St
City, State, Zip: Williamston, SC 29697-2011
DL#: SID#: SC00191845

SENTENCE SHEET

Handwritten initials 'RT' in a circle.

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Obstructing / Obstructing justice

CONVICED OF or PLEADS

in violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0118
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kristin Reeves, SC Bar# Defendant; Campbell, Rainie Damber, SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 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. 574 Days T/S
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

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Conv. Surcharge, DUI Surcharge, etc. Total: \$133.90

Clerk of Court/ Deputy Clerk: Richard A. Miller
Court Reporter: R. Tollison
SCCA/217 (03/2011)

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

TRUE COPY
AUG 28 2017

Appointed or appointed other counsel,
§ 17-12 requires \$500 to be paid to Clerk
during probation.

Presiding Judge: [Signature]
Judge Code: #2752
Sentence Date: 11-18-15

ARREST WARRANT

2014A0420900040

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamston

THE STATE 201400979

against

Billy Ray Smith

Address: 604 S Hamilton St

Williamston, SC 29697-2011

Phone: (0)-x SSN: [REDACTED]

Sex: M Race: W Height: 6 2 Weight: 185

DL State: SC DL #: [REDACTED]

DOB: [REDACTED]/1960 Agency ORI #: SC0040500

Prosecuting Agency: Williamston Police Department

Prosecuting Officer: Kevin G Marsce - 0822

Offense: Obstructing / Obstructing justice

Offense Code: 0118

Code/Ordinance Sec: 17-25-0030

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Billy Ray Smith on 4-23-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
100 South Main Street
Po Box 8002
Anderson, SC 29622

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
County/ Municipality of
Williamston

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant Kevin G Marsce who
being duly sworn deposes and says that defendant Billy Ray Smith
did within this county and state on or about 4/22/2014 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Williamston)
in the following particulars:

DESCRIPTION OF OFFENSE: Obstructing / Obstructing justice

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 4/22/14 between 9:30 PM and 10:00 PM the Defendant shot his wife, Sandra Smith in the head at 604 S Hamilton Street. The
Defendant removed the firearm used in the shooting from the premises and concealed the same in the residence of his son in Pelzer,
SC. The defendant returned to 604 S Hamilton Street with his son and gave false information regarding the shooting of his wife to
law enforcement officers of the Williamston Police Department. On the date of 4/22/14 at around 10:00 PM and continuing to
4/23/14 at around 3:00 AM the Defendant gave several false versions of the infliction of the gunshot wound to law enforcement. At
around 3:00 AM, Defendant agreed to cooperate and surrender the weapon to Anderson County Sheriff's Office. This offense
occurred within the Town Limits of the Town of Williamston, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA
County/ Municipality of
Williamston

Affiant's Address 100 Town Square Dr
Williamston, SC 29697-
Affiant's Telephone (864)847-5987

A TRUE COPY
AUG 28 2017
ANDERSON COUNTY CLERK OF COURT

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/22/2014 defendant Billy Ray Smith
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of Williamston) as set forth below:

DESCRIPTION OF OFFENSE: Obstructing / Obstructing justice

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me
on 4/23/2014
Judge's Address
Williamston, SC 29697-1402
Judge's Telephone (864)847-5698
Issuing Court: Magistrate Municipal Circuit

Signature of Issuing Judge
C Sherman Woodson (Williamston Municipi
Judge Code: 6900

BAIL set by

Judge William K. Lane
on 1/24/2014
Type and Amount: \$0,000.00 5
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
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Telephone: _____

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Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



WITNESSES

Williamston Police Dept.
Kevin G. Marsee

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY
TRUE BILL

SEP 29 2015

Foreperson of Grand Jury
Date:

Foreperson

VERDICT

Guilty

Foreperson of Grand Jury
Date:

11-18-2015

DOCKET NO. 2015-GS-04-01382

The State of South Carolina
County of Anderson

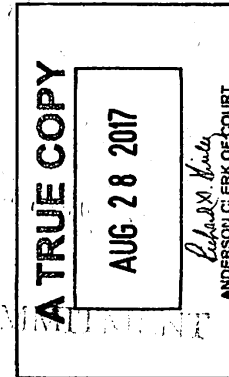
COURT OF GENERAL SESSIONS
SEP 29 2015, TERM

THE STATE
VS.
BILLY RAY SMITH

INDICTMENT FOR

UNLAWFUL SALE OR DELIVERY OF
PISTOL TO AND POSSESSION BY
CERTAIN PERSONS

SC Code: § 16-23-0030
CDR Code: 2364



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

SEP 29 2015

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

UNLAWFUL SALE OR DELIVERY OF PISTOL TO AND POSSESSION BY CERTAIN PERSONS

The defendant, Billy Ray Smith, did on or about April 22, 2014, in Anderson County, South Carolina, unlawfully possess or acquire a handgun after having been convicted of a crime of violence in any court of the United States, the several states, the commonwealths, territories, possessions or the District of Columbia or is otherwise a fugitive from justice. All in violation of 16-23-0030 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.



KRISTIN W. REEVES
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS,

COUNTY OF ANDERSON

STATE VS.

BILLY RAY SMITH

AKA:
Race: White Sex: M Age: 55
DOB: 1960 SS#:
Address: 115 Edgewood Drive
City, State, Zip: Williamston, SC 29697
DL# SID# SC00191845

INDICTMENT/CASE#: 2015GS0401382
A/W: 2015GS0401382
Date of Offense: 04/22/2014
S.C. Code §: 16-23-0030
CDR Code #: 2364

SENTENCE SHEET

Handwritten initials 'RT'

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or PLEADS

TO: Unlawful Sale Or Delivery Of Pistol To And Possession By Certain Persons

In violation of § 16-23-0030 of the S.C. Code of Laws, bearing CDR Code # 2364

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

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Negotiated Sentence, Recommendation by the State.

ATTEST:

Kristin W. Reeves, Assistant Solicitor SC Bar # 69673 Defendant Attorney for Defendant SC Bar # 7013

WHEREFORE, the Defendant is committed to the State Department of Corrections for a determinate term of 5 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 Service 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. 574 Days TJ

The Defendant is to be placed on 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 PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment
Payment Terms: Obtain GED

Set by SCDPPPS

Recipient:

*Fine: \$

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211 (A)(1)(Conv. Surcharge) \$100, §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, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.90

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

A TRUE COPY
AUG 28 2017
Richard A. Shirley
ANDERSON CLERK OF COURT

Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Richard A. Shirley
Court Reporter: R. Tolison
SCCA/217 (03/2011)

Presiding Judge:
Judge Bar ID:
Sentence Date: 11-18-15
Judge Code: #2752

Billy R. Smith #274409
Perry Correctional Inst.
430 Oaklawn Road - Q1A-110
Pelzer, SC 29669

GREENVILLE
SC 296
22 AUG '17
PM 2 11

Honorable Richard A. Shirley
Clerk of Court
P.O. Box 8002
Anderson, SC 29622

FILED-CLERK'S OFFICE
ANDERSON SC

2017 AUG 28 AM 9:50

COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
AUG 28 2017
Richard A. Shirley
ANDERSON CLERK OF COURT

8000
AUG 28 17
COBOLGARY

AUG 21 2017

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