

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

RECEIVED
NOV 13 2013

SC Court of Appeals

SEAN PHILLIP SMITH,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212664

PETITION FOR CONSENT ORDER
TO REMAND FOR A NEW HEARING OF
APPELLANT'S HEARING ON HIS
MOTION TO RECONSIDER HIS SENTENCE

On August 6, 2013, undersigned counsel requested an order requiring the parties to reconstruct the record of Appellant's hearing concerning his motion to reconsider his sentence held on July 23, 2012 before the Honorable Edgar W. Dickson. On August 9, 2013, Salley Elliott, Senior Assistant Deputy Attorney General, responded by letter that Respondent had no objection to the petition. On October 1, 2013, this Court granted the petition for reconstruction. Specifically, the Court ordered the matter remanded to the

Honorable Edgar W. Dickson for the scheduling of “such hearings as the circuit judge deems appropriate to accomplish the reconstruction.”

On October 31, 2013, Peggy T. Smith, Judge Dickson’s administrative assistant, emailed undersigned counsel, Ms. Elliott, and Tommy Scott, the deputy solicitor. In the email, Judge Dickson stated: “Rather than reconstruct the record, I have no objection to just doing a new hearing on the reconsideration.” Ms. Elliott deferred to the deputy solicitor, who was in agreement with Judge Dickson’s proposal. Undersigned counsel spoke with Appellant by phone on November 7, 2013. Appellant agreed with Judge Dickson’s proposal as well.

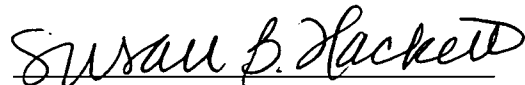
Inasmuch as all the parties are in agreement that a new hearing would be in the interests of justice, Appellant respectfully moves this Court for a consent order remanding this case to Judge Dickson for a new hearing on Appellant’s motion for reconsideration of his sentence. Appellant also respectfully requests this Court or the Orangeburg County Clerk of Court appoint counsel to represent him at the hearing on his motion for reconsideration.¹ Finally, Appellant asks this Court to hold Appellant’s appeal in abeyance pending Judge Dickson’s decision on Appellant’s motion to reconsider his sentence following the new hearing. When Judge Dickson issues his decision, Appellant’s counsel appointed for the new hearing will notify Susan B. Hackett with the Office of Appellate Defense immediately. Ms. Hackett will notify this Court, and the matter will proceed in the normal course.

WHEREFORE, the undersigned requests this Court issue a consent order remanding this case to Judge Dickson for a new hearing on Appellant’s motion for

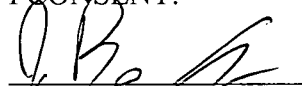
¹ Appellant’s counsel at the guilty plea proceeding and the motion for reconsideration was Pete Kumala, who was retained for those proceedings.

reconsideration of his sentence. Appellant also respectfully requests this Court appoint counsel to represent him at the hearing on his motion for reconsideration. Finally, Appellant asks this Court hold the appeal in abeyance pending a decision from Judge Dickson on the motion for reconsideration.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

I CONSENT:


for Salley Elliott, Esquire

November 13, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

SEAN PHILLIP SMITH,

APPELLANT,

V.

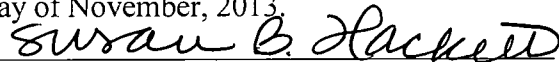
STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212664

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition for consent order to remand for a new hearing of Appellant's motion to reconsider his sentence in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant General, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, and Sean Phillip Smith, # 347944, at Lieber Correctional Institution, PO. Box 205, Ridgeville, SC 29472, this 13th day of November, 2013.



Susan B. Hackett
Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 13th day of November, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

November 13, 2013

RECEIVED
NOV 13 2013
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Sean Phillip Smith, Appellate Case No. 2012-212664

Dear Ms. Kitchings,

Enclosed please find the original and six copies of the petition for consent order to remand for a new hearing of Appellant's motion to reconsider his sentence in the above case.

If you have any questions concerning this matter, please contact me.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/

Enclosure

cc: Honorable Edgar W. Dickson (w/ enclosure)
Sean Phillip Smith (w/ enclosure)
Salley Elliott, Esquire (w/ enclosure)
Tommy Scott, Esquire (w/ enclosure)