

RECEIVED

JAN - 2 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

JERRY JEROME SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001041

APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
RECORD ON APPEAL.....	1
APPLICATION FOR POST-CONVICTION RELIEF	104
RETURN	115
POST-CONVICTION RELIEF HEARING TRANSCRIPT	120
ORDER OF DISMISSAL	142
INDICTMENTS	153

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY JEROME SMITH,

APPELLANT

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
fax (843) 740-5858
(843) 958-1900

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
INDICTMENTS.....	90
SENTENCING SHEETS.....	96
CERTIFICATE OF COUNSEL	99

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 07-GS-10-4286 et al
	)	
Jerry Jerome Smith, Jr.,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing was held on December 5th, 2008, before
The Honorable R. Markley Dennis, Jr., in Courtroom 4D of the Charleston County
Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel,
as follows:

APPEARANCES:

Bruce Durant, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
100 Broad Street, 4th Floor
Charleston, South Carolina 29401
Appearing for State of South Carolina

John Knobeloch, Esq.
808 Johnnie Dodds Blvd
Mount Pleasant, SC 29464
Appearing for Defendant Jerrard A. Smith

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

2

1 (DEFENDANT PRESENT)

2 (OFF RECORD BENCH CONFERENCE)

3 THE COURT: What we will do rather
4 than to have everybody standing -- I don't care
5 what order that you'all want to agree to but
6 rather than everybody standing up together
7 speaking, I will take them one at a time if you
8 want me to ---

9 MR. DURANT: That's at the end part.

10 THE COURT: Right, that's at the end
11 part, not during the victim's presentation and
12 not during the plea qualification. Do we have
13 some Indictments?

14 CLERK: Yes, sir.

15 MR. DURANT: I have something that has
16 all the indictment numbers on it -- (tenders).

17 THE COURT: Thank you.

18 MR. DURANT: Where is Rashard Rivers?

19 MR. DUPREE: Here, Your Honor.

20 THE COURT: Mr. Durant, you represent
21 him?

22 MR. DUPREE: I do, Your Honor.

23 THE COURT: Why don't we do this?
24 I am going to call out the defendant and the
25 attorney representing each defendant. I think

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

3

1 that I have it down but for the court reporter's
2 benefit and the Court's benefit, please give
3 your name.

4 DEFENDANT RASHARD RIVERS: Rashard
5 Rivers.

6 THE COURT: No, sir. Your lawyer's
7 first.

8 MR. DUPREE: Mike Dupree, Your Honor.
9 I represent Rashard Rivers.

10 THE COURT: Thank you. Where is
11 Jerry Jerome Smith?

12 DEFENDANT JERRY SMITH: That's me.

13 THE COURT: Who is your lawyer?

14 MR. KNOBELOCH: I represent him,
15 Your Honor. John Knobeloch.

16 THE COURT: All right, Mr. Knobeloch.
17 Thank you. Where is Jerrard Smith?

18 MR. BROWN: Right here, Your Honor.
19 Peter Brown representing Jerrard Smith.

20 THE COURT: Thank you, sir. Tocara
21 Smith? (No response). Ms. Mulvaney, do you
22 represent Miss Smith?

23 MS. MULVANEY: Yes. I am Mary
24 Beth Mulvaney and I represent Tocara Smith.

25 THE COURT: Thank you. Gwenetta

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

4

1 Duckett?

2 MR. BOWLER: Right here, Your Honor.
3 John Bowler, I represent Miss Duckett.

4 THE COURT: Thank you. Let me have
5 all of your attention, please. We will do this,
6 part of this, as a group.

7 Each of you is standing with your
8 attorney who has now stated their representation
9 of you for the record.

10 I have been presented with three
11 indictments that charge you with various crimes.
12 Each of you have also submitted to me, and I now
13 have for each indictment a sentencing sheet.
14 That sentencing sheet bears the signature of the
15 Solicitor, Mr. Durant, your signature and your
16 attorney's signature. By signing this sheet,
17 you are stating to the court that it is your
18 desire to enter a plea to the indictment that it
19 references.

20 When you state that, you are indicating
21 to me that you've had a sufficient opportunity
22 to have this matter investigated by your lawyer,
23 you've had a chance to review that investigation
24 that he has conducted or the results of that
25 investigation that he has conducted for you --

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

5

1 he or she; -- that based on your conversations
2 with your lawyer and the review of the
3 information that has been provided to you, you
4 have made a conscious decision for yourself to
5 enter a plea to that particular indictment and
6 that particular charge.

7 You also state that you have had an
8 opportunity to discuss with your lawyer what
9 that means; in other words, what your plea
10 signifies and the possible consequences and
11 results of your plea and that your lawyer has
12 explained to you the possible sentence that
13 could be imposed in each particular case.

14 Mr. Rashard Rivers, is all of that
15 correct, sir, concerning you -- as to Mr.
16 DuPree's representation?

17 DEFENDANT RASHARD RIVERS: Yes, sir.

18 THE COURT: Mr. Jerrard Smith, is all
19 of that true in connection with Mr. Brown's
20 representation?

21 DEFENDANT JERRARD SMITH: Yes, Your
22 Honor.

23 THE COURT: Mr. Jerry Jerome Smith,
24 is all of that correct as to you with respect
25 to Mr. Knobeloch's representation?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

6

1 DEFENDANT JERRY SMITH: Yes, sir,

2 Your Honor.

3 THE COURT: Miss Gwenetta Duckett, is
4 all of that correct as to you with respect to
5 Mr. Bowler's representation?

6 DEFENDANT GWENETTA DUCKETT: Yes, sir.

7 THE COURT: And Miss Tocara Smith,
8 is all of that correct as to you with respect
9 to Ms. Mulvaney's representation?

10 DEFENDANT TOCARA SMITH: Yes, sir,
11 it is.

12 THE COURT: Mr. Rivers, the three
13 indictments that have been presented to me for
14 you, concerning you, are Indictments 07-4249,
15 07-4250 and 07-4251. Indictment 07-4259 is an
16 Indictment which charges you with murder. Do
17 you understand that?

18 DEFENDANT RASHARD RIVERS: Yes, sir.

19 THE COURT: According to the
20 sentencing sheet you've indicated a desire to
21 plead to the lesser-included offense of
22 involuntary manslaughter; is that correct?

23 DEFENDANT RASHARD RIVERS: Yes, sir.

24 THE COURT: Your lawyer has explained
25 to you the nature of that crime, the elements of

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

7

1 that offense?

2 DEFENDANT RASHARD RIVERS: Yes, sir.

3 THE COURT: Has he explained to you
4 the possible punishment for that offense?

5 DEFENDANT RASHARD RIVERS: Yes, sir.

6 THE COURT: What has he indicated to
7 you is the potential sentence, the maximum?

8 DEFENDANT RASHARD RIVERS: On
9 involuntary?

10 THE COURT: Yes.

11 DEFENDANT RASHARD RIVERS: Life.

12 THE COURT: Understanding the nature
13 of the offense and the possible punishment, what
14 is your plea?

15 DEFENDANT RASHARD RIVERS: Guilty.

16 THE COURT: Indictment 07-4250
17 charges you with the offense of grand larceny;
18 do you understand that?

19 DEFENDANT RASHARD RIVERS: Yes, sir.

20 THE COURT: Based on the amount
21 alleged, it is greater than a thousand but less
22 than five; do you understand that?

23 DEFENDANT RASHARD RIVERS: Yes, sir.

24 THE COURT: Has your lawyer explained
25 to you the nature of that offense?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

8

1 DEFENDANT RASHARD RIVERS: Yes, sir.

2 THE COURT: And he has explained to
3 you the possible punishment?

4 DEFENDANT RASHARD RIVERS: He has.

5 THE COURT: And what has he indicated
6 to you is the maximum?

7 DEFENDANT RASHARD RIVERS: Five years.

8 THE COURT: Indictment 07-4251 is an
9 indictment charging you with Burglary 1st; do
10 you understand that?

11 DEFENDANT RASHARD RIVERS: Yes, sir.

12 THE COURT: Your lawyer has explained
13 to you the nature of that offense and the
14 possible punishment?

15 DEFENDANT RASHARD RIVERS: Yes.

16 THE COURT: What has he explained to
17 you is the maximum punishment?

18 DEFENDANT RASHARD RIVERS: Life.

19 THE COURT: And what is the minimum
20 punishment?

21 DEFENDANT RASHARD RIVERS: Fifteen.

22 THE COURT: Understanding, Mr.
23 Rivers, the nature of each of the offenses, how
24 do you plea as to that offense?

25 DEFENDANT RASHARD RIVERS: Guilty.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

9

1 THE COURT: And how do you plead as
2 to the grand larceny?

3 DEFENDANT RASHARD RIVERS: Guilty.

4 THE COURT: Are you satisfied with
5 your lawyer?

6 DEFENDANT RASHARD RIVERS: Yes, I am.

7 THE COURT: Any complaints about the
8 way that he has handled your case?

9 DEFENDANT RASHARD RIVERS: None at
10 all.

11 THE COURT: Solicitor, other than
12 permitting him to plead to the lesser-included
13 offense in the murder indictment, are there any
14 other agreements with the State?

15 MR. DURANT: No, sir.

16 THE COURT: Is that your understand-
17 ing, Mr. Rivers?

18 DEFENDANT RASHARD RIVERS: Yes, sir.

19 THE COURT: And do you concur with
20 that statement, Mr. Dupree, as it pertains to
21 Mr. Rivers?

22 MR. DUPREE: I do, Your Honor.

23 THE COURT: Okay. Mr. Jerrard Smith,
24 you just heard me talk with Mr. Rivers. You,
25 too, have had a conversation with your lawyer?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

10

1 DEFENDANT JERRARD SMITH: Yes, Your
2 Honor.

3 THE COURT: And he has explained to
4 you that Indictment 07-4289 charges you with
5 Burglary 1st?

6 DEFENDANT JERRARD SMITH: Yes, Your
7 Honor.

8 THE COURT: He has explained to you
9 the nature of that offense?

10 DEFENDANT JERRARD SMITH: Yes, sir.

11 THE COURT: And the possible
12 punishment?

13 DEFENDANT JERRARD SMITH: Yes, sir.

14 THE COURT: What do you understand to
15 be the maximum, sir?

16 DEFENDANT JERRARD SMITH: Life.

17 THE COURT: And what do you
18 understand to be the minimum?

19 DEFENDANT JERRARD SMITH: Fifteen
20 years.

21 THE COURT: Understanding the nature
22 of the offense and the possible punishment, how
23 do you plead?

24 DEFENDANT JERRARD SMITH: Guilty.

25 THE COURT: Indictment 07-4288

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

11

1 charges you with murder; do you understand that?

2 DEFENDANT JERRARD SMITH: Yes, sir.

3 THE COURT: Your lawyer has explained
4 that charge to you?

5 DEFENDANT JERRARD SMITH: Yes, sir.

6 THE COURT: Has he explained to you
7 the lesser-included offense of involuntary
8 manslaughter?

9 DEFENDANT JERRARD SMITH: Yes, he
10 has.

11 THE COURT: And he has explained to
12 you the elements of that offense?

13 DEFENDANT JERRARD SMITH: Yes, sir.

14 THE COURT: Has he explained to you
15 the maximum punishment possible?

16 DEFENDANT JERRARD SMITH: Yes, sir.

17 THE COURT: And what is that?

18 DEFENDANT JERRARD SMITH: Five years.

19 THE COURT: Understanding the nature
20 of the offense and understanding the possible
21 punishment, how do you plead?

22 DEFENDANT JERRARD SMITH: Guilty.

23 THE COURT: Indictment 07-4286 is
24 an indictment that charges you with the crime
25 of grand larceny, do you understand that?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

12

1 DEFENDANT JERRARD SMITH: Yes, Your
2 Honor.

3 THE COURT: Your lawyer has explained
4 that charge to you?

5 DEFENDANT JERRARD SMITH: Yes, sir.

6 THE COURT: And he has explained to
7 you the possible punishment for the offense of
8 grand larceny of more than a thousand but less
9 than five?

10 DEFENDANT JERRARD SMITH: Yes, sir.

11 THE COURT: What do you understand
12 the maximum to be?

13 DEFENDANT JERRARD SMITH: Five years,
14 Your Honor.

15 THE COURT: Understanding the nature
16 of that offense and the possible punishment, how
17 do you plead?

18 DEFENDANT: Guilty, Your Honor.

19 THE COURT: And are you satisfied
20 with your lawyer?

21 DEFENDANT JERRARD SMITH: Yes, Your
22 Honor.

23 THE COURT: Do you have any
24 complaints at all about how he has handled your
25 case?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

13

1 DEFENDANT JERRARD SMITH: No, sir.

2 THE COURT: Solicitor, again it
3 appears on the sentencing sheet with respect to
4 Mr. Smith that the only agreement is permitting
5 him to plead to the lesser-included offense of
6 involuntary manslaughter?

7 MR. DURANT: That's correct, Your
8 Honor.

9 THE COURT: Is that your understand-
10 ing, Mr. Smith?

11 DEFENDANT JERRARD SMITH: Yes, sir.

12 THE COURT: Mr. Brown, do you concur
13 with that statement by the Solicitor?

14 MR. BROWN: Yes, Your Honor.

15 THE COURT: Jerry Jerome Smith,
16 you've heard the previous but I need to ask you,
17 as well. Indictment 07-4266 charges you with
18 the offense of grand larceny. Mr. Knobloch has
19 explained that to you?

20 DEFENDANT JERRY SMITH: Yes, Your
21 Honor.

22 THE COURT: He's explained the
23 possible punishment for that crime when the
24 amount was greater than a thousand but less than
25 five?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

14

1 DEFENDANT JERRY SMITH: Yes, Your

2 Honor.

3 THE COURT: And what do you
4 understand the maximum sentence to be?

5 DEFENDANT JERRY SMITH: Five years.

6 THE COURT: Understanding the nature
7 of that crime and the possible punishment, how
8 do you plead?

9 DEFENDANT JERRY SMITH: Guilty.

10 THE COURT: Indictment 07-4267
11 charges you with the offense of Burglary 1st,
12 do you understand that?

13 DEFENDANT JERRY SMITH: Yes, Your

14 Honor.

15 THE COURT: Your lawyer has explained
16 that offense to you?

17 DEFENDANT JERRY SMITH: Yes, Your

18 Honor.

19 THE COURT: Has he explained to you
20 the possible punishment?

21 DEFENDANT: Yes, sir.

22 THE COURT: What do you understand
23 the maximum sentence to be?

24 DEFENDANT JERRY SMITH: Life, Your

25 Honor.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

15

1 THE COURT: And the minimum sentence?

2 DEFENDANT JERRY SMITH: Fifteen
3 years, Your Honor.

4 THE COURT: Understanding, sir, the
5 nature of that offense and the possible
6 punishment, how do you plea?

7 DEFENDANT JERRY SMITH: Guilty,
8 Your Honor.

9 THE COURT: Indictment 07-4268 is an
10 indictment that charges you with murder; do you
11 understand that?

12 DEFENDANT JERRY SMITH: Yes, Your
13 Honor.

14 THE COURT: Your lawyer has explained
15 that offense to you?

16 DEFENDANT JERRY SMITH: Yes, Your
17 Honor.

18 THE COURT: And he has explained
19 the lesser-included offense of involuntary
20 manslaughter?

21 DEFENDANT JERRY SMITH: Yes, Your
22 Honor.

23 THE COURT: Has he explained to you
24 the maximum sentence for involuntary
25 manslaughter?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

16

1 DEFENDANT JERRY SMITH: Yes, Your
2 Honor.

3 THE COURT: And what do you under-
4 stand that to be?

5 DEFENDANT JERRY SMITH: Five years,
6 Your Honor.

7 THE COURT: Understanding the nature
8 of the offense and the possible sentence, what
9 is your plea?

10 DEFENDANT JERRY SMITH: Guilty,
11 Your Honor.

12 THE COURT: Are you, Mr. Smith,
13 satisfied with your lawyer?

14 DEFENDANT JERRY SMITH: Yes, sir,
15 Your Honor.

16 THE COURT: Do you have any
17 complaints at all about the way that he has
18 handled your case?

19 DEFENDANT JERRY SMITH: No, Your
20 Honor.

21 THE COURT: Mr. Durant, as to Mr.
22 Smith, the same applies?

23 MR. DURANT: That's correct, Your
24 Honor, no negotiations.

25 THE COURT: No negotiations other

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

17

1 than allowing him to plead to the involuntary?

2 MR. DURANT: That's correct.

3 THE COURT: Is that your under-
4 standing of the plea agreement, Mr. Smith?

5 DEFENDANT JERRY SMITH: Yes, Your
6 Honor.

7 THE COURT: Mr. Knobloch, do you
8 concur with that decision?

9 MR. KNOBLOCH: Yes, sir, Your
10 Honor.

11 THE COURT: Gwenetta Duckett. Miss
12 Duckett, Mr. Bowler has explained these charges
13 to you, as you have already indicated?

14 DEFENDANT GWENETTA DUCKETT: Yes,
15 sir.

16 THE COURT: He has explained
17 indictment 07-4257 which charges you with
18 Burglary 1st; is that correct?

19 DEFENDANT GWENETTA DUCKETT: Yes,
20 sir.

21 THE COURT: Has he explained to you
22 the possible punishment for that offense?

23 DEFENDANT GWENETTA DUCKETT: Yes,
24 sir.

25 THE COURT: And what do you

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

18

1 understand the maximum sentence to be?

2 DEFENDANT GWENETTA DUCKETT: Life.

3 THE COURT: And what do you under-
4 stand the minimum sentence to be?

5 DEFENDANT GWENETTA DUCKETT:
6 Fifteen years.

7 THE COURT: Understanding the nature
8 of the offense and the possible punishment, how
9 do you plead to Indictment 07-4257?

10 DEFENDANT GWENETTA DUCKETT: Guilty.

11 THE COURT: Indictment 07-4263
12 charges you with the offense of grand larceny;
13 do you understand that?

14 DEFENDANT GWENETTA DUCKETT: Yes,
15 sir.

16 THE COURT: Your lawyer has explained
17 that charge?

18 DEFENDANT GWENETTA DUCKETT: Yes,
19 sir.

20 THE COURT: Has he explained the
21 possible punishment for when the amount is
22 greater than a thousand but less than five?

23 DEFENDANT GWENETTA DUCKETT: Yes,
24 sir.

25 THE COURT: And what do you under-

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

19

1 stand the maximum potential sentence to be?

2 DEFENDANT GWENETTA DUCKETT: Five
3 years.

4 THE COURT: Understanding the nature
5 of that offense and the possible punishment, how
6 do you plead?

7 DEFENDANT GWENETTA DUCKETT:
8 Guilty.

9 THE COURT: Indictment 07-4261 is an
10 indictment that charges you with the offense of
11 murder; do you understand that?

12 DEFENDANT GWENETTA DUCKETT: Yes, sir.

13 THE COURT: Your lawyer has explained
14 that charge to you?

15 DEFENDANT GWENETTA DUCKETT: Yes,
16 sir.

17 THE COURT: And has explained the
18 lesser-included offense of involuntary
19 manslaughter?

20 DEFENDANT GWENETTA DUCKETT: Yes,
21 sir.

22 THE COURT: What do you understand
23 the maximum penalty to be for involuntary
24 manslaughter?

25 DEFENDANT GWENETTA DUCKETT: Five

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

20

1 years.

2 THE COURT: Understanding the nature
3 of the offense and the possible punishment for
4 that offense, what is your plea?

5 DEFENDANT GWENETTA DUCKETT:
6 Guilty.

7 THE COURT: Are you satisfied with
8 your lawyer?

9 DEFENDANT GWENETTA DUCKETT: Yes,
10 sir.

11 THE COURT: Any complaints about the
12 way that he has handled your case?

13 DEFENDANT GWENETTA DUCKETT: No,
14 sir.

15 THE COURT: I want to be sure, I
16 think I asked you but -- Mr. Jerry Smith, you're
17 totally satisfied with your lawyer, as well?

18 DEFENDANT JERRY SMITH: Yes, sir.

19 THE COURT: And no complaints about
20 the way that he has handled your case?

21 DEFENDANT JERRY SMITH: No, sir.

22 THE COURT: And Mr. Durant, as to
23 Miss Duckett, the same agreement applies of
24 allowing her to plead to the lesser-included
25 offense of involuntary manslaughter, but no

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

21

1 other agreements?

2 MR. DURANT: That's correct, Your
3 Honor.

4 THE COURT: Is that your understand-
5 ing of the plea agreement, Miss Duckett?

6 DEFENDANT GWENETTA DUCKETT: Yes,
7 sir.

8 THE COURT: Mr. Bowler, do you agree
9 with that?

10 MR. BOWLER: I do, Your Honor.

11 THE COURT: Tocara Smith, you've also
12 indicated that you have discussed the matter
13 fully with your lawyer?

14 DEFENDANT TOCARA SMITH: Yes,
15 sir.

16 THE COURT: Indictment 07-5324
17 charges you with the offense of Burglary 1st.
18 Your lawyer has explained that charge to you?

19 DEFENDANT TOCARA SMITH: Yes, sir.

20 THE COURT: And the possible
21 punishment?

22 DEFENDANT TOCARA SMITH: Yes, sir.

23 THE COURT: What do you understand
24 the maximum sentence to be?

25 DEFENDANT TOCARA SMITH: Zero to

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

22

1 five.

2 THE COURT: For Burglary 1st?

3 DEFENDANT TOCARA SMITH: Life.

4 THE COURT: Ma'am?

5 DEFENDANT TOCARA SMITH: Life.

6 THE COURT: Life?

7 DEFENDANT TOCARA SMITH: (Affirma-
8 tive nod).

9 THE COURT: Okay.

10 DEFENDANT TOCARA SMITH: And for
11 Burglary 1st, what do you understand the minimum
12 sentence to be?

13 DEFENDANT TOCARA SMITH: Fifteen.

14 THE COURT: Understanding the nature
15 of the offense of Burglary 1st and the possible
16 punishment for Burglary 1st, what is your plea?

17 DEFENDANT TOCARA SMITH: Guilty.

18 THE COURT: I'm sorry?

19 DEFENDANT TOCARA SMITH: Guilty.

20 THE COURT: All right. Indictment
21 07-4264 is an indictment that charges you with
22 murder; do you understand that?

23 DEFENDANT TOCARA SMITH: Yes, sir.

24 THE COURT: According to the
25 sentencing sheet you want to plead to the

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

23

1 lesser-included offense of involuntary
2 manslaughter?

3 DEFENDANT TOCARA SMITH: Yes, sir.

4 THE COURT: Has Ms. Mulvaney
5 explained to you both of those charges?

6 DEFENDANT TOCARA SMITH: Yes, sir.

7 THE COURT: The nature of both of the
8 charges?

9 DEFENDANT TOCARA SMITH: Yes, sir.

10 THE COURT: She has explained to you
11 the possible punishment for involuntary
12 manslaughter?

13 DEFENDANT TOCARA SMITH: Yes, sir.

14 THE COURT: What do you understand
15 the maximum sentence to be?

16 DEFENDANT TOCARA SMITH: Five.

17 THE COURT: Understanding the nature
18 of that offense and the possible punishment,
19 what is your plea?

20 DEFENDANT TOCARA SMITH: Guilty.

21 THE COURT: Indictment 07-4265 is an
22 indictment which charges you with the offense of
23 grand larceny, do you understand that?

24 DEFENDANT TOCARA SMITH: Yes, sir.

25 THE COURT: Your lawyer has explained

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

24

1 that charge to you?

2 DEFENDANT TOCARA SMITH: Yes, sir.

3 THE COURT: And she has explained to
4 you the possible punishment when the amount is
5 greater than a thousand but less than five; is
6 that correct?

7 DEFENDANT TOCARA SMITH: Yes, sir.

8 THE COURT: What do you understand
9 the maximum sentence to be?

10 DEFENDANT TOCARA SMITH: Five years.

11 THE COURT: Understanding the nature
12 of that offense and the possible punishment,
13 what is your plea?

14 DEFENDANT TOCARA SMITH: Guilty.

15 THE COURT: Are you satisfied with
16 your lawyer?

17 DEFENDANT TOCARA SMITH: Yes.

18 THE COURT: Any complaints about the
19 way that she has handled your case?

20 DEFENDANT TOCARA SMITH: No, sir.

21 THE COURT: Solicitor, as it pertains
22 to Miss Smith, from the sentencing sheet it
23 appears that the only agreement is permit her to
24 plead to the lesser-included offense of murder,
25 being involuntary manslaughter? Is that

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

25

1 correct?

2 MR. DURANT: Yes, sir.

3 THE COURT: Is that your under-
4 standing, Miss Smith?

5 DEFENDANT TOCARA SMITH: Yes, sir.

6 THE COURT: Ms. Mulvaney, do you
7 concur with the Solicitor's statement?

8 MS. MULVANEY: Yes, Your Honor.

9 THE COURT: Mr. Dupree, you have as
10 your client has indicated investigated this
11 matter on Mr. River's behalf; is that correct?

12 MR. DUPREE: That's correct, Your
13 Honor.

14 THE COURT: And you have had a
15 chance to discuss with him the results of the
16 investigation, answered his questions and, as
17 he has indicated, he at some point indicated a
18 desire to plead to the various indictments?

19 MR. DUPREE: Yes, Your Honor.

20 THE COURT: Did you fully advise him
21 of the rights that he would be relinquishing and
22 the consequences of his decision?

23 MR. DUPREE: I have gone over that
24 with him in great detail.

25 THE COURT: And in your opinion does

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

26

1 he fully understands those rights?

2 MR. DUPREE: He does, Your Honor.

3 THE COURT: Is there anything that
4 has occurred prior to today or occurred this
5 morning that would suggest to you that Mr.
6 Rivers does not fully appreciate what he is
7 doing here today?

8 MR. DUPREE: No, Your Honor.

9 THE COURT: Based on your investiga-
10 tion, do you concur with the decision to enter a
11 plea?

12 MR. DUPREE: I do, Your Honor.

13 THE COURT: Mr. Rivers, is all of
14 that correct, sir?

15 DEFENDANT RASHARD RIVERS: Yes, sir.

16 THE COURT: Mr. Rivers, are you
17 today, sir, under the influence of any alcohol,
18 any medication of any kind?

19 DEFENDANT RASHARD RIVERS: No, sir.

20 THE COURT: Have you, sir, been
21 treated for any emotional illness, any mental
22 illness in the past?

23 DEFENDANT RASHARD RIVERS: No, sir.

24 THE COURT: Mr. Peter Brown, you
25 have, as your client has indicated, discussed

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

27

1 this matter fully with Mr. Smith?

2 MR. BROWN: Yes, sir. I have, Your
3 Honor.

4 THE COURT: You have investigated it
5 on his behalf?

6 MR. BROWN: Absolutely.

7 THE COURT: And after sharing the
8 results of your investigation, in fully
9 consulting with you, he has indicated to you his
10 desire to plead to the indictment, as already
11 stated on the record?

12 MR. BROWN: Yes, sir, he has.

13 THE COURT: Did you -- have you
14 advised him prior to today of the rights that he
15 would be relinquishing and the consequences of
16 his decision?

17 MR. BROWN: Yes, I have, Your Honor.

18 THE COURT: And he understands those
19 fully?

20 MR. BROWN: He does, Your Honor.

21 THE COURT: Today, or prior to today,
22 do you have anything that would suggest that
23 your client is functioning, has any disability
24 or any problem understanding and fully
25 appreciating what he is doing?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

28

1 MR. BROWN: No, sir, Your Honor.

2 THE COURT: Based on your investiga-
3 tion, do you agree with his decision to enter
4 the pleas?

5 MR. BROWN: Yes, sir, I do, Your
6 Honor.

7 THE COURT: Mr. Smith, is all of that
8 correct, sir?

9 DEFENDANT JERRY SMITH: Yes, sir,
10 Your Honor.

11 THE COURT: Are you today under the
12 influence of any alcohol, any medication of any
13 kind?

14 DEFENDANT JERRY SMITH: No, Your
15 Honor.

16 THE COURT: Have you in the past ever
17 been treated for any emotional problems, any
18 mental illness?

19 DEFENDANT JERRY SMITH: No, Your
20 Honor.

21 THE COURT: Mr. Knobloch, as your
22 client has indicated, you have discussed the
23 matter fully with him?

24 MR. KNOBELOCH: I have.

25 THE COURT: You have investigated it

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

29

1 on his behalf?

2 MR. KNOBELOCH: That's correct.

3 THE COURT: After sharing the results
4 of your investigation, sir, in answering his
5 questions he has indicated a desire to enter the
6 pleas to each of these indictments; is that
7 correct?

8 MR. KNOBELOCH: It is.

9 THE COURT: Did you, sir, advise him
10 fully of the rights that he would be
11 relinquishing as well as the consequences of his
12 decision?

13 MR. KNOBELOCH: I have.

14 THE COURT: Based on your investiga-
15 tion, do you agree with the decision to enter
16 the plea?

17 MR. KNOBELOCH: I do.

18 THE COURT: And have you, sir, had
19 anything to indicate to you or suggest to you
20 that Mr. Smith's decision is anything other than
21 one that he makes knowingly, intelligently,
22 freely and voluntarily?

23 MR. KNOBELOCH: No, Your Honor.

24 THE COURT: Mr. Smith, is all of that
25 correct?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

30

1 DEFENDANT JERRY SMITH: Yes, Your Honor.

2 THE COURT: Are you today, sir, under
3 the influence of any alcohol or any medication?

4 DEFENDANT JERRY SMITH: No, sir.

5 THE COURT: Have you in the past been
6 treated for any emotional problems, any mental
7 illness?

8 DEFENDANT JERRY SMITH: No, sir.

9 THE COURT: Thank you, sir. Mr.
10 Bowler, you also, as your client has indicated
11 have investigated this matter fully on her
12 behalf?

13 MR. BOWLER: I have, yes, sir.

14 THE COURT: And after fully
15 consultation with you and in the discussions of
16 your investigation, she has indicated a desire
17 prior to today to plead guilty to these
18 indictments?

19 MR. BOWLER: Yes, Your Honor.

20 THE COURT: You have advised her
21 fully of the rights that she would be
22 relinquishing, as well as the consequences of
23 her decision?

24 MR. BOWLER: Yes, Your Honor.

25 THE COURT: In your opinion, does

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

31

1 she fully appreciate and understand those?

2 MR. BOWLER: Yes, Your Honor.

3 THE COURT: Based on your
4 investigation, do you agree with the decision
5 that she has indicated; that is, pleading guilty
6 to these charges?

7 MR. BOWLER: Yes, sir.

8 THE COURT: And has she at any time
9 indicated or suggested to you or shown anything
10 other than the fact that she knows exactly what
11 she is doing here today?

12 MR. BOWLER: No, sir.

13 THE COURT: Okay. Miss Duckett, is
14 that correct?

15 DEFENDANT GWENETTA DUCKETT: Yes,
16 sir.

17 THE COURT: Are you today under the
18 influence of any medication, any type of drugs
19 or any alcohol?

20 DEFENDANT GWENETTA DUCKETT: No,
21 sir.

22 THE COURT: Have you been treated at
23 any point in the past for any type of emotional
24 problems, any mental illness or the like?

25 DEFENDANT GWENETTA DUCKETT: No,

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

32

1 sir.

2 THE COURT: Ms. Mulvaney, as your
3 client has already indicated in the record, you
4 have discussed this matter fully with her?

5 MS. MULVANEY: Yes, Your Honor, I
6 have.

7 THE COURT: And you have investigated
8 the matter fully on her behalf?

9 MS. MULVANEY: Yes, Your Honor, I
10 have.

11 THE COURT: After fully consulting
12 with you, reviewing the results of your
13 investigation, she has indicated a desire to
14 plead to the indictment as indicated on the
15 record?

16 MS. MULVANEY: Yes, Your Honor.

17 THE COURT: Have you had the
18 opportunity to fully advise her of the rights
19 that she would be relinquishing and the
20 consequences of her decision?

21 MS. MULVANEY: Yes, sir.

22 THE COURT: And in your opinion she
23 fully understands and appreciates both?

24 MS. MULVANEY: Yes, sir.

25 THE COURT: Based on your investiga-

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

33

1 tion as to your client, do you agree with her
2 decision to enter the pleas?

3 MS. MULVANEY: I do, Your Honor.

4 THE COURT: And has at any point she
5 indicated to you or suggested to you, by actions
6 or otherwise, that she does not fully understand
7 and appreciate what she is doing and that this
8 is anything other than a decision that she has
9 made freely and voluntarily?

10 MS. MULVANEY: No, Your Honor. She
11 has indicated that she knows exactly what she is
12 doing.

13 THE COURT: Okay. Miss Smith, is
14 that correct?

15 DEFENDANT TOCARA SMITH: Yes, sir.

16 THE COURT: Are you today under the
17 influence of any alcohol, any medication?

18 DEFENDANT TOCARA SMITH: No, sir.

19 THE COURT: Have you in the past been
20 treated for any emotional problems or any mental
21 illness?

22 DEFENDANT TOCARA SMITH: No, sir.

23 THE COURT: Okay. All right. Let me
24 ask each of you to raise your right hand as far
25 as you can -- (defendants comply) -- do each of

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

34

1 you solemnly swear or affirm that your responses
2 to my questions will be the truth and nothing
3 but the truth, so help you, God?

4 DEFENDANT TOCARA SMITH: Yes, sir.

5 DEFENDANT RASHARD RIVERS: I do.

6 DEFENDANT JERRARD SMITH: I do.

7 DEFENDANT GWENETTA DUCKETT: Yes,

8 Your Honor.

9 DEFENDANT JERRY SMITH: I do.

10 THE COURT: Okay. This I will ask
11 you as a group and then I will go down the line
12 with each of you responding. Do each of you
13 fully understand that if I accept your pleas
14 that you will give up your right to have a jury
15 trial, that you will give up your right to
16 require the State to prove your guilt in each
17 case because you're admitting you're guilty here
18 today?

19 That you are giving up your right to
20 remain silent because in answering my questions
21 thus far you have admitted your guilt, and the
22 court will be relying on that admission in
23 finding you guilty. That is what this process
24 is all about.

25 Is that your complete and full under-

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

35

1 standing, Mr. Rivers?

2 DEFENDANT RASHARD RIVERS: Yes, sir.

3 THE COURT: And is that what you want
4 to do, Mr. Rivers?

5 DEFENDANT RASHARD RIVERS: Yes, sir.

6 THE COURT: Is that your complete and
7 full understanding, Mr. Smith?

8 DEFENDANT JERRARD SMITH: Yes, sir.

9 THE COURT: And is that what you wish
10 to do?

11 DEFENDANT JERRARD SMITH: Yes, sir.

12 THE COURT: Is that your understand-
13 ing, Mr. Jerry Smith?

14 DEFENDANT JERRY SMITH: Yes, sir.

15 THE COURT: And is that what you want
16 to do?

17 DEFENDANT JERRY SMITH: Yes, Your
18 Honor.

19 THE COURT: Is that your understand-
20 ing, Miss Duckett?

21 DEFENDANT GWENETTA DUCKETT: Yes,
22 sir.

23 THE COURT: And is that what you wish
24 to do?

25 DEFENDANT GWENETTA DUCKETT: Yes,

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

36

1 sir.

2 THE COURT: Is that your understand-
3 ing, Miss Smith?

4 DEFENDANT TOCARA SMITH: Yes, sir.

5 THE COURT: And is that what you wish
6 to do?

7 DEFENDANT TOCARA SMITH: Yes, sir.

8 THE COURT: Are each of you making
9 this decision because you are guilty and not
10 because someone has threatened you in some way
11 or promised you something to get you to plead
12 guilty? Is that correct as to you, Mr. Rivers?

13 DEFENDANT RASHARD RIVERS: Yes, sir.

14 THE COURT: Is that correct as to
15 you, Mr. Jerrard Smith?

16 DEFENDANT JERRARD SMITH: Yes, sir.

17 THE COURT: Is that correct as to
18 you, Mr. Jerry Smith?

19 DEFENDANT JERRY SMITH: Yes, sir.

20 THE COURT: Is that correct as to
21 you, Miss Duckett?

22 DEFENDANT GWENETTA DUCKETT: Yes,
23 sir.

24 THE COURT: Is that correct as to
25 you, Miss Smith?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

37

1 DEFENDANT TOCARA SMITH: Yes, sir.

2 THE COURT: Solicitor, if you would,
3 please tell me the facts?

4 MR. DURANT: Yes, sir, Your Honor.

5 On August 24th of 2006, the victim in this case,
6 Mr. Danny Johnson, was found dead in his home
7 over west of the Ashley by his home healthcare
8 aide, who worked for the Veteran's Administra-
9 tion.

10 Mr. Johnson, the victim, was a
11 quadriplegic. He required assistance to eat, to
12 maintain his hygiene, to take his medication(s),
13 to basically perform the functions of living.
14 His nurse came over every day, spent the day
15 with him and then would come back at night to
16 put him in bed.

17 When she arrived that morning, she
18 noted when she went in -- when she opened the
19 door she noticed that the home had been
20 ransacked and that all of Mr. Johnson's
21 electronic equipment -- stereos, the TV, VCR,
22 computers, printers, all of that was missing.

23 She located Mr. Johnson, the victim,
24 in the bathroom on his back in his wheelchair,
25 which had been overturned, and he was deceased.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

38

1 Also his credit cards were missing and
2 some other things were missing out of the house.

3 There was no sign of forced entry. She
4 ran outside, talked to the cab driver who called
5 the police. The City police responded and
6 undertook an investigation led by Detective
7 Goldstein, who is present in the courtroom.

8 During the course of their investiga-
9 tion, the detectives learned that the last
10 person that the victim was known to have been
11 with the previous night was the Defendant Tocara
12 Smith. She was located by the police -- I
13 believe that she was working at the time as a
14 detention officer at the jail. She was located
15 by the police and questioned. She originally
16 gave the police a statement to the effect that,
17 yes, she knew the victim, that she had been at
18 his home that night, that she'd been over there
19 and they had been burning CD's, that she had
20 gone out briefly to her car and that when she
21 returned that there were two unknown black males
22 in the apartment that had come in while she was
23 gone, who proceeded to rape her at gunpoint,
24 abduct her, drove her up into the area of
25 College Park Road and abandoned her and her car.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

39

1 The police were suspicious from the
2 beginning. The description of the unknown black
3 males was very vague, she refused to get a rape
4 kit done. So they continued with their
5 investigation.

6 They got a break a couple of days later
7 when a witness came forward that had had a
8 conversation with Miss Tocara Smith and had
9 gotten a completely different version of what
10 had gone on that night. According to this
11 witness, Miss Smith had told her that, yeah, she
12 knew the victim, that she had been with the
13 victim the day before, that they had been at a
14 grocery store over west of the Ashley, that
15 while they were over there that they encountered
16 the victim's daughter and some sort of
17 altercation or argument ensued between Tocara
18 Smith and the daughter. That after she left
19 there she was angry because she thought that the
20 daughter had disrespected her, and she contacted
21 her brothers and she cooked up this scheme to
22 rob Danny Johnson, the victim, to get even.

23 They did in fact conspire to do that.
24 They went over there. She went in the home
25 first, she left the door open to them, they came

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

40

1 in and the victim was pushed into the bathroom.
2 His stuff was taken, put in the car, then
3 subsequently they went to Wal-Mart where the
4 brothers went in and bought some stuff using the
5 victim's credit cards.

6 After getting this information, they
7 followed up on that and basically confirmed
8 everything that this lady had told them. They
9 had the surveillance videos showing the brother
10 using the victim's credit card at Wal-Mart.

11 So they went back, got warrants and
12 picked up Tocara Smith again. They questioned
13 her again and at this point she gave them a
14 confession, which was pretty much what they had
15 told the other person. She told them that she
16 had been with Mr. Johnson earlier in the day at
17 the Bi-Lo grocery store over west of the Ashley,
18 that they had run into the victim's daughter and
19 she and the daughter had gotten into an
20 argument, that she was angry. That she met up
21 with her brothers after the fact, told them what
22 happened and they agreed that they were going to
23 rob the victim that night.

24 That night, she went to the victim's
25 home with her codefendants -- Jerry Smith,

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

41

1 Jerrard Smith, Rashard Rivers and Gwenetta
2 Duckett. She went into the apartment first.
3 While she was in there, she was called by her
4 brothers. She went and opened the door and left
5 it ajar. At that point her brothers came in,
6 uh, the four of them came in -- the four
7 codefendants.

8 The victim, I believe, was coming out
9 of a back room and saw them and they pushed him
10 into a hallway bathroom to get him out of the
11 way or to keep him from seeing them, whatever.
12 During -- when they were putting him in the
13 bathroom, his wheelchair overturned and he was
14 on his back and one of them either put a towel
15 or a piece of cloth over his head to prevent him
16 from seeing anything.

17 At that point they went through his
18 apartment, stole everything and loaded it into
19 cars and left.

20 Subsequent to her confession, the four
21 codefendants were all picked up and they all
22 confessed, as well; they all gave pretty similar
23 accounts of what went on that night.

24 There was some -- some of them did
25 state that during the course of the robbery that

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

42

1 the victim was struck or kicked but the medical
2 -- by virtue of the medical examiner, it is
3 clear that the cause of death in this case was
4 positional asphyxia.

5 THE COURT: Okay.

6 MR. DURANT: Apparently the victim had
7 a backpack on the back of his wheelchair and
8 when it was pushed over on its back his legs and
9 torso was elevated up above the level of his
10 head and he essentially strangled. He couldn't
11 breathe.

12 They all stated that the victim was
13 alive when they left, and they all stated that
14 the -- that they didn't intend to hurt the
15 victim or to kill the victim. The State
16 believes that and that is why they are allowing
17 them to enter the plea to the lesser included
18 charge.

19 I don't know if you want me to go into
20 their records now or ---

21 THE COURT: Let me -- let's do that
22 in stages if we could.

23 MR. DURANT: Very well.

24 THE COURT: Thank you very much.

25 Rashard Rivers, you've heard the Solicitor tell

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

43

1 me the factual recitation. Are those facts
2 correct as to you?

3 DEFENDANT RASHARD RIVERS: Yes, sir.

4 THE COURT: Mr. Jerrard Smith, you've
5 heard the solicitor tell me the facts. Are
6 those facts correct as to you?

7 DEFENDANT JERRARD SMITH: Yes, sir.

8 THE COURT: Mr. Jerry Smith, you've
9 heard the solicitor tell me the facts. Are
10 those facts correct as to you?

11 DEFENDANT JERRY SMITH: Yes, Your
12 Honor.

13 THE COURT: Miss Gwenetta Duckett,
14 you've heard the solicitor tell me the facts.
15 Are those facts correct as to you?

16 DEFENDANT GWENETTA DUCKETT: Yes,
17 sir.

18 THE COURT: Miss Tocara Smith, you've
19 heard the Solicitor tell me the facts. Are
20 those facts correct as to you?

21 MS. MULVANEY: Judge, if I could
22 make just one minor -- the only thing is that
23 my client worked as a nurse, not as a detention
24 officer.

25 THE COURT: Okay.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

44

1 MS. MULVANEY: Other than that, all
2 of those facts are correct.

3 DEFENDANT TOCARA SMITH: Yes, sir.

4 THE COURT: All right. I would like
5 to hear records now, please.

6 MR. DURANT: Miss Tocara Smith has no
7 record.

8 THE COURT: Okay.

9 MR. DURANT: Mr. Jerry Smith only has
10 a minor violation for interfering with the
11 operation of a school bus in 2001.

12 THE COURT: Okay.

13 MR. DURANT: Miss Gwenetta Duckett has
14 no record.

15 THE COURT: Okay.

16 MR. DURANT: Jerrard Smith has no
17 record. Rashard Rivers has a disorderly conduct
18 conviction in 2003.

19 THE COURT: All right. Rashard had
20 the disorderly?

21 MR. DURANT: Yes, sir.

22 THE COURT: Is that correct as to
23 you, Mr. Rivers?

24 DEFENDANT RASHARD RIVERS: Yes, sir.

25 THE COURT: Jerrard Smith, you have

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

45

1 no record; is that correct?

2 DEFENDANT JERRARD SMITH: Right.

3 THE COURT: Mr. Jerry Smith, you have
4 the interference with a school bus?

5 DEFENDANT JERRY SMITH: Yes, Your
6 Honor.

7 THE COURT: Miss Gwenetta Duckett,
8 you have no record?

9 DEFENDANT GWENETTA DUCKETT: No,
10 sir.

11 THE COURT: And Miss Tocara Smith,
12 you have no record?

13 DEFENDANT TOCARA SMITH: No, sir.

14 THE COURT: Okay. Solicitor, at this
15 point I will allow the defendants to be seated
16 if they wish. I will hear from the victims or
17 anyone who wishes to speak.

18 MR. DURANT: Thank you, Your Honor. I
19 do want to tell the court that there are a
20 number of people in the victim's family that are
21 here today; consisting of his wife, Tracy
22 Johnson, his daughters Danielle and Brittany
23 Johnson, aa sister Beverly Varns, a sister
24 Jacquelyn Heyward, a brother-in-law Herman
25 Heyward, a nephew Mark Varns, a cousin April

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

46

1 Mack and there may be one or two others. I do
2 know that four of them would like to address the
3 court, Your Honor, and I would ask that they be
4 allowed to do so.

5 THE COURT: I will be delighted to
6 hear from them. I would just simply ask that
7 they give me their full names, for the court
8 reporter's benefit.

9 MR. DURANT: Thank you.

10 THE COURT: Yes, sir.

11 BRITTANY JOHNSON: My name is
12 Brittany Johnson -- can you hear me?

13 THE COURT: Yes, ma'am.

14 BRITTANY JOHNSON: I am the
15 daughter of Danny Johnson -- (emotional).
16 I really don't know what to say. I mean, this
17 was something that I was kind of hoping, you
18 know, it's been two years and it's just like,
19 you know, 'it's over, just forget about it.'
20 But obviously I'm here.

21 So basically -- I mean, this is our
22 dad and to sit here and see these five people.
23 These five people -- sir, my father was in a
24 wheelchair and -- I'm twenty-three years old.
25 That was my only parent. My mother was killed

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

47

1 when I was four, so this is the second parent
2 that I've had that was taken from me at the hand
3 of other people and this is something that I am
4 going to have to fight with my whole life.

5 These people can be in jail for fifteen
6 years, twenty years, it doesn't matter. They
7 can come out and have a life. I am going to
8 have to struggle with this -- my father was my
9 best friend. I'm not just one of those people
10 saying that. Me and my father, we argued like
11 friends, I called him at 8:00 in the morning
12 when I was walking to class.

13 My father was killed one week before my
14 birthday my senior year in college. The day of
15 his funeral was my first day of classes. I've
16 graduated on time and everything. I'm in
17 graduate school right now but that -- these are
18 the hard things that I am going to have to go
19 through. Every milestone that I'd had, my
20 father had been there for me. When it looked
21 like I wasn't even going to be able to stay in
22 school because of grades and finances, my father
23 was there. My father was my alarm clock. He
24 was the person fussing me out because I was at
25 the clubs instead of at the library, that type

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

48

1 of thing. My senior year I had to face all of
2 that by myself. My graduation, I had to do that
3 by myself.

4 I went through a period that was almost
5 like, okay, now what? My father, because of his
6 lifestyle, he was always there when I called. I
7 could call him at 3:00 in the morning and he was
8 there. I could call him at 8:00 o'clock. It
9 doesn't matter, he was there. I spoke with him
10 about everything. I don't have that anymore. I
11 don't have that ear where I could just express
12 myself and not have to worry about bringing
13 somebody down. Because as long as I was happy,
14 my father was happy. When I was upset, my
15 father was upset. I don't have that anymore.

16 They have kids and -- probably. I
17 don't know, but if they do, their kids can write
18 them, their kids can go to the jail and see
19 them. I don't have that, and I never will have
20 that again. I don't have either one of my
21 parents. But I do have kids and -- my kids
22 don't even have grandparents. My father spoiled
23 me and spoiled -- I mean, you know, even though
24 we were friends, I was spoiled. But all of that
25 is gone.

State of South Carolina v. Jerry Jerome Smith, Jr.

49

Case No. 07-GS-10-4249 et al

Guilty Plea Hearing of December 5, 2008

before The Honorable R. Markley Dennis, Jr.

1 I graduated -- will graduate from
2 graduate school in May. When I pledged a
3 sorority -- I used to talk about that ever since
4 high school. My father didn't even know from
5 Adam and Eve what a sorority was, but because I
6 was happy about it he was happy about it. When
7 I finally got the chance to do it, the first
8 person that I would usually call, my friend, to
9 share my excitement my father, I couldn't ever
10 do that.

11 I don't know what else to say. All I
12 can say is -- not to be spiteful because I try
13 over and over in my head, you know, no matter
14 what they get, it will not bring my father back.
15 I will not have what I had before.

16 My father is buried. I haven't been to
17 his graveside yet because I cannot get used to
18 the fact that he is in the ground, that he is
19 not in South Carolina. I cannot call -
20 and hear his voice. I can't call just to
21 hear his voice, he's in the ground, he's not
22 really here.

23 It's a struggle. And I want to say,
24 not to be spiteful but I want their lives to
25 begin when my father's ended. My father was

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

50

1 forty-six years old. Their lives should begin
2 when his ended. They need to see what could
3 have been or, you know, what is missing.

4 Me and my sister, we are not thugs, we
5 are not -- we're actually successful people in
6 everything that we do, and my father is not here
7 to experience the success that we have. I got a
8 scholarship to go to Ohio (phonetic) University,
9 graduated with a Master's degree in one year. I
10 am going to get my Ph.D. and my father is not
11 here to witness that.

12 THE COURT: Thank you, ma'am.

13 DANIELLE JOHNSON: My name is
14 Danielle Johnson. I am also -- I am the second
15 daughter of Danny Johnson. I know that nothing
16 we can do will bring him back or bring closure
17 to us but -- I mean, all he wanted was for us to
18 be happy and successful -- (emotional). I mean,
19 he wanted each of us to go to college and we
20 wanted to do that not only for a better life but
21 to also make him happy.

22 He never did nothing wrong. My father
23 never did nothing wrong. He never taught us to
24 be wrong people. All the bad things that they
25 say about him, all I can remember is my Dad

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

51

1 saying that he -- he did not believe in abortion
2 and he did not believe in killing people either.

3 My grand -- I mean, my daughter is not
4 going to be able to see her grandfather, which
5 would have definitely, definitely have been
6 exciting for him.

7 Also, I am graduating in May and he is
8 not going to be able to see that.

9 Even though I did not see my father a
10 lot because we lived in two different states,
11 even when I want to call him or speak to him now
12 -- now I can't do so, because he's gone.

13 I mean, -- (pause) -- just the thought
14 of a shopping spree at Wal-Mart? That's just
15 like -- (negative gesture). To kill somebody
16 for that is not right, it's just not fair.

17 THE COURT: I understand. Thank you,
18 ma'am.

19 BEVERLY BARNES: Good morning,
20 everyone. Good morning, Judge.

21 THE COURT: Good morning. My name is
22 Beverly Barnes and Danny Johnson was my brother.
23 I won't say much because his daughters have
24 already said some of what I wanted to say and I
25 want his wife to have a chance to talk.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

52

1 THE COURT: Yes, ma'am.

2 BEVERLY BARNES: But the point I want
3 to get across is that I want you to take into
4 consideration when you decide the sentence is
5 that my brother had a heart of gold. He was
6 paralyzed from his neck down, he couldn't do
7 much of anything. The sad part of this all is
8 that all they would have had to do was to ask
9 him for it. He would have gave it to them.
10 Just like that, he would have given them the
11 shirt off his back. This is all so sad that
12 they have to do time for a tragedy that they
13 committed and have to put the pressure on their
14 family, not to mention the pressure it has put
15 on our family. If they'd have just asked him,
16 he would have gave it to them. Thank you.

17 THE COURT: Thank you, ma'am.

18 TRACY JOHNSON: Good morning. My
19 name is Tracy Johnson and I am the widow of
20 Danny Johnson.

21 THE COURT: Good morning, Ms.
22 Johnson.

23 TRACY JOHNSON: We were separated.
24 When he first came down here, we were separated.
25 We separated at least three times. I worked, I

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

53

1 worked as law enforcement officer and I tried at
2 least three times to get a transfer to
3 Charleston, South Carolina so that we could --
4 we were considering getting back together. Even
5 though it never went through, he always begged
6 me to come home and I always told him 'no'
7 because I thought he would always be safe in
8 this part of South Carolina.

9 As my sister-in-law stated, for them to
10 rob him, it makes no sense. If you'd asked him
11 for anything, he would have gave it to you even
12 though he was paralyzed. My daughters and I
13 never suffered for anything, anything.

14 Even though he was a quadriplegic he
15 had been married, had children, a twenty-three
16 year relationship. When I was pregnant with my
17 daughter -- I was one month pregnant and he had
18 been in the hospital, and when he came home it
19 was like I was taking care of two babies and he
20 could do nothing. He could not feed himself, he
21 could not take care of himself. Nothing. He
22 had grew to the point to where he had had -- to
23 know -- for Tocara, to know that she is a nurse,
24 why would she even think of doing anything like
25 that? And out of five people no one had the

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

54

1 brain to say, 'Hey, this is wrong. This doesn't
2 make any sense'?

3 I know that they have family that are
4 hurting, they have kids. I've talked to
5 Gwenetta's attorney, I feel for her, for the
6 pain of her child. But you all did something
7 that was senseless and you all need to pay for
8 that. It's not going to bring him back but if
9 we continue to let people get away with things
10 that they do, that's why the country is in the
11 state that it is in. I ask you as the judge --
12 I don't anything about penalties or anything but
13 I ask that they serve the time for, you know,
14 what they have done. It was senseless.

15 I want you all to know that you took a
16 man from this earth that wouldn't have did any
17 harm to none of you. You could have been a
18 complete stranger and he would have fed you, he
19 would have done anything that you wanted him to.
20 I am not saying that because he was my husband,
21 I am not saying that because he was the father
22 of my child. If you look up his obituary,
23 you'll see in his obituary that he had a heart
24 of gold and he would give you the shirt off his
25 back. That is the last I have to say.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

55

1 THE COURT: Thank you, ma'am.

2 MR. DURANT: I believe that is all
3 from the victim's family, Your Honor.

4 THE COURT: Thank you very much,
5 Solicitor. All right. They can all remain
6 seated during this next line of questioning.

7 I need to know if each of you now do
8 two things, affirm and restate your desire to
9 enter pleas to each of these indictments and
10 confirm that each -- that you have each fully
11 understood my questions of you this morning and
12 that you've given a complete and truthful answer
13 to each of those questions.

14 Is that correct as to you, Mr. Rivers?

15 DEFENDANT RASHARD RIVERS: Yes, sir.

16 THE COURT: Is that correct as to
17 you, Mr. Jerrard Smith?

18 DEFENDANT JERRARD SMITH: Yes, sir.

19 THE COURT: Is that correct as to
20 you, Mr. Jerry Smith?

21 DEFENDANT JERRY SMITH: Yes, Your
22 Honor.

23 THE COURT: Is that correct as to
24 you, Miss Duckett?

25 DEFENDANT GWENETTA DUCKETT: Yes,

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

56

1 sir.

2 THE COURT: And is that correct as to
3 you, Miss Tocara Smith?

4 DEFENDANT TOCARA SMITH: Yes, sir.

5 THE COURT: Very well. I find that
6 there is a sufficient factual basis to support
7 the pleas in each case. I further find that
8 each of the defendants have been represented by
9 very competent counsel in this case. They have
10 demonstrated by their responses and through
11 their attorneys that they fully understand and
12 appreciate what they are doing, they fully are
13 satisfied with their representation. I find
14 therefore that there is a sufficient factual
15 basis in each case to support the pleas to each
16 offense. I will therefore accept the pleas.

17 Mr. Dupree, I will be delighted to hear
18 from you and Mr. Rivers at this time, and anyone
19 else that you wish to have speak.

20 MR. DUPREE: Your Honor, I think that
21 Ms. Mulvaney wanted to speak first.

22 THE COURT: That's fine.

23 THE COURT: Whatever order that
24 you'all want to go in is fine. Ms. Mulvaney,
25 I will be happy to hear from you and Miss Tocara

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

57

1 Smith.

2 MS. MULVANEY: Thank you, Your
3 Honor. May it please the court, I would like to
4 tell you a little bit about my client, Tocara
5 Smith. She is a twenty-two year old girl. She
6 graduated from high school in Colleton County
7 and after high school she went to Beta Tech for
8 one year where she got a certified medical
9 assistant's degree. She is a single mother, she
10 has a five-year-old son.

11 She actually lived with Miss Duckett
12 and Miss Duckett's child at the time.

13 Miss Smith worked at the jail as a CMA.
14 She started that job in May of 2005, and she
15 worked with detox inmates: changing diapers,
16 dialysis, emptying bedpans, administering to the
17 needs of sick inmates.

18 I am just going to go into a little bit
19 of the relationship between Miss Smith and Mr.
20 Johnson, just to give Your Honor a frame of the
21 state of mind that led to this event, the day of
22 this terrible tragedy.

23 Miss Smith met Mr. Johnson in the jail
24 while he was an inmate in the jail. I believe
25 that he was there for approximately five months

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

58

1 and Miss Smith took care of him, bathed him and
2 they developed a close relationship.

3 When Mr. Johnson was released, he
4 contacted Miss Smith. Even when he was in the
5 jail, while Miss Smith was taking care of him
6 he had, uh, he was trying to pursue a sexual
7 relationship with my client, Miss Smith. She,
8 of course, declined.

9 Then when he got out of the jail he
10 contacted her again and said he wanted to be
11 friends, struck up a friendship and, again, he
12 wanted a sexual relationship. My client
13 declined but then eventually acquiesced and they
14 became involved in a sexual and very exploitive
15 relationship.

16 What happened -- essentially it was
17 almost a relationship based on sex for gas
18 money. My client, he would give her money to
19 fill up her tank and -- on the day that this
20 happened, they had met at the Food Lion, after
21 they had been together the night before. She
22 had filled up her gas tank and they were going
23 to meet at the Food Lion and she was going to
24 give him back his card. At the Food Lion was
25 Miss Duckett, her son, my client, and I believe

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

59

1 Mr. Johnson's fifteen-year-old nephew and also
2 one of Mr. Johnson's daughter. I don't believe
3 that she was there the whole time but she came
4 later.

5 Essentially what happened is that Mr.
6 Johnson had offered Miss Smith his fifteen-year-
7 old nephew and had implied that the relationship
8 that he shared with Miss Smith could also be
9 shared with his fifteen-year-old nephew.

10 I believe that Mr. Johnson's daughter
11 also was very angry and felt like Miss Smith,
12 you know, was exploiting Mr. Johnson; because
13 they were similar in age and she felt like Miss
14 Smith was actually exploiting him.

15 So there was a big argument, a huge
16 argument that ensued. Tocara felt betrayed, she
17 felt cheap, she felt like she had lost her
18 dignity, she felt like this, uh, you know, she
19 -- it just made her feel terrible about herself.
20 I think that Miss Duckett was there to witness
21 this. There were high emotions and they felt
22 that because she had been hurt so deeply by Mr.
23 Johnson that she was going to try to hurt him
24 deeply. She never meant to physically hurt but
25 she wanted to take away his TV set, his

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

60

1 computer, his -- to show him that she was
2 hurting and that he had overstepped his bounds.

3 I realize, Your Honor, that she should
4 never have done that. Emotions were high. She
5 turned to people that cared about her the most,
6 her brother and her close family friends, in her
7 view to step up for her dignity. I think at
8 several points they actually planned on doing
9 it, then planned on calling it off, then planned
10 on doing it, and this all happened within a
11 twenty-four hour period.

12 Miss Smith was over at his house that
13 night, they went -- it was whether they were
14 going to do it or not do it, and at one point
15 they were going to call it off and Mr. Smith
16 came around the corner -- excuse me. Mr.
17 Johnson came around the corner in his wheelchair
18 and I think things obviously got out of control.

19 Tocara never ever meant to hurt him.
20 It was a stupid plan and she is incredibly
21 remorseful. When I go to the jail to visit her,
22 all the officers at the jail ask about her, tell
23 me how much they like her, what a great worker
24 that she is, what a great person she was as a
25 medical assistant and also as an inmate and

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

61

1 their hearts go out to her and they inquire
2 about her.

3 During the time that she has been in
4 jail, they have suffered. Tocara's mother who
5 is here, her father, the one sibling that they
6 have that is not incarcerated, her grandmother
7 and aunts are all here to show support for the
8 family. But during the time she has been
9 incarcerated, her mother has battled with breast
10 cancer and her father has gone through open
11 heart surgery. She has not been able to be
12 there for her mother or to show support in any
13 other way except than to send letters and phone
14 calls.

15 Every time that I've talked with Tocara
16 she is remorseful and feels terrible about what
17 she did. She never meant for this to happen.

18 She has never been in trouble before,
19 Your Honor, and I am going to ask you to please
20 impose the minimum sentence of fifteen years. I
21 think that a very severe punishment. As it is,
22 she will never really get to raise her son or be
23 with her son. I can assure you that Your Honor
24 will never see Tocara again in a courtroom. I
25 know that she apologizes to the family and I

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

62

1 would ask Your Honor to please consider the
2 minimum sentence here.

3 THE COURT: Thank you, Ms. Mulvaney.
4 Does Miss Smith wish to speak at all at this
5 point?

6 MS. MULVANEY: Tocara, do you ---

7 DEFENDANT TOCARA SMITH: I just want
8 to -- (emotional).

9 THE COURT: Ma'am, please stand up.

10 DEFENDANT TOCARA SMITH: I just want
11 to apologize to the victim's family. I'm so
12 sorry. I don't know what else to say --
13 (emotional/crying).

14 THE COURT: Okay. Thank you, Ms.
15 Mulvaney. Which one wishes to go next?

16 MR. KNOBELOCH: Your Honor, I
17 represent Jerry Smith in this case. He has
18 spent his entire life in the Charleston area
19 except one brief year in Walterboro, but still
20 in the lowcountry.
21 He has an eight-year-old daughter. He
22 was living with his daughter and the mother at
23 the time, supporting the family. He also has a
24 two-year-old son, Minor , that was born
25 while he was incarcerated and whom he has never

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

63

1 met.

2 He was supporting his family, he had
3 a good job, he worked for about two years as a
4 bridge inspector for the Department of
5 Transportation. At the time of his arrest he
6 was in the National Guard and was about to be
7 called up on active duty. In fact, he was only
8 a week away from being deployed to Iraq at the
9 time that he was arrested.

10 One of the things that he had asked me
11 to do while he was incarcerated was to contact
12 his Captain and initiate an other-than-honorable
13 discharge. Even though he realized that this --
14 this was probably a year ago, but he realized at
15 the time that he was probably going to serve a
16 fair amount of time in jail. He was concerned
17 that if there was any way that the case could
18 turn out -- and this is probably not the right
19 word but -- "beneficial" to him, he wanted to
20 be able to re-enlist and serve in the military
21 again. I did do that for him.

22 THE COURT: Sure.

23 MR. KNOBELOCH: In addition to being
24 in the military and supporting his family, he
25 was also active in the St. Mary's AME Church in

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

64

1 Green Pond. Again, like I said, there was some
2 connection with the family to the Walterboro
3 area. He was the first vice-president of the
4 Beaufort District in attending the church
5 conference and was active in other ways with the
6 church.

7 I believe that Ms. Mulvaney has already
8 pointed out that he has a father and mother who
9 are in poor health and that with the exception
10 of one sibling the entire immediately family is
11 before you today for sentencing.

12 He is remorseful. This was obviously
13 a tragedy, obviously something that should have
14 never happened.

15 As far as the sentence rehabilitating
16 the defendant, I feel that if he was released
17 today that he would contribute to his family and
18 would contribute to society. I don't believe
19 that you would see him in the courtroom again
20 for any criminal matter.

21 THE COURT: Thank you, sir. Mr.
22 Smith, is there anything that you want to say?

23 DEFENDANT JERRY SMITH: Your Honor,
24 first I want to tell the family that I
25 apologize. It's been hard, it's been real hard

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

65

1 on everyone, everyone in all the families. I
2 ask that the court have mercy on me and my
3 family.

4 THE COURT: Thank you, sir. Mr.
5 Dupree?

6 MR. DUPREE: Thank you, Your Honor,
7 may it please the court?

8 THE COURT: Yes, sir.

9 MR. DUPREE: Your Honor, Rashard is
10 the only person involved in this case who is not
11 related to the other individuals. Rashard was
12 there at the apartment with the other two
13 codefendants when they received the phone call
14 and went over there with them, but he never
15 intended for anybody to be harmed; which I think
16 is indicative by the offer by the State.

17 Your Honor, he is a graduate of Baptist
18 Hill High School out in Hollywood.

19 He has a minor disorderly conduct,
20 which was in '03 where he had to do, you know,
21 some community service.

22 He was gainfully employed at two jobs.
23 He worked for the Charleston County School
24 District part-time and he worked at the Nike
25 outlet. He was a productive member of society.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

66

1 He was a member of the St. John's
2 Baptist Church. He has attended Bible study
3 while he has been in the County jail. His
4 preacher is here today, the Rev. Charles Linen,
5 who has counseled him throughout the time while
6 he has been incarcerated.

7 Your Honor, Rashard is -- you know, he
8 is a good person. This is a tragic event. I
9 don't think anyone ever intended for any harm to
10 come to the victim in this case.

11 I think, like Mr. Knobeloch said, that
12 should he be released today that he would be a
13 productive member of society. He was before he
14 was incarcerated and he -- he is very
15 remorseful, Your Honor.

16 I would ask, as I am certain all the
17 attorneys will ask, -- fifteen years is an
18 appropriate sentence. It is very long. None
19 of these individuals have any record. It is a
20 very long for a tragic mistake.

21 I think that Mr. Rivers wanted to
22 address the court also.

23 THE COURT: Thank you. Mr. Rivers,
24 yes, sir, I will be happy to hear from you, sir.

25 DEFENDANT RASHAD RIVERS: I would

State of South Carolina v. Jerry Jerome Smith, Jr.

67

Case No. 07-GS-10-4249 et al

Guilty Plea Hearing of December 5, 2008

before The Honorable R. Markley Dennis, Jr.

1 like to say that I apologize to the victim's
2 family. I've been incarcerated since 2006.
3 It's been hard, it's been hard on my family and
4 I understand the pain that you are going
5 through. Two years might not seem like a long
6 time but it's a long time to be away from your
7 family. I understand what you'all are going
8 through and I ask -- from my heart, I really
9 apologize from the bottom of my heart. I ask
10 the Lord Jesus Christ to forgive me and I ask
11 that you'all forgive me also. As to my family
12 and friends that are here for me today, you have
13 my heart. Nobody intended for this to happen
14 and I appreciate you all being here. I'd like
15 to apologize to the court and to everyone here
16 for being here.

17 THE COURT: Thank you, sir. Mr.
18 Brown?

19 MR. BROWN: Your Honor, Peter Brown
20 on behalf of Jerrard Smith.

21 THE COURT: Yes, sir.

22 MR. BROWN: Jerrard has also been in
23 jail this entire time, eight hundred (800) days.

24 THE COURT: Okay.

25 MR. BROWN: He is the youngest of the

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

68

1 family members. He was twenty at the time and
2 he is now twenty-two. He graduated high school
3 in 2004 and played a little football for them
4 his junior year and a little basketball.

5 His fiancée, Rudy Mills (phonetic),
6 works for the South Carolina Highway Patrol.
7 She has a child of her own and they share twins
8 together; the twins that she carried before he
9 was arrested, the twins that he has never held
10 since they've been and they'll be two years old
11 in a couple of months.

12 He had a good work record working with
13 a heating-and-air company for over a half a
14 year, had worked at a furniture store for two
15 years, had worked at the Nike outlet store for a
16 period of time and he'd worked as a stocker at
17 Wal-Mart for over a year. Again, no criminal
18 record. He held a job.

19 I have to say, Your Honor, that in my
20 twenty-one years of practicing law this is truly
21 an absolute tragedy, and a tragic loss of life
22 not only for the victim's family but for the
23 Smith family and Miss Duckett's family and Mr.
24 River's family.

25 There was never any intent for this to

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

69

1 happen. We appreciate the fact that Mr. Durant
2 has acknowledge that. They investigated it
3 thoroughly and they have not gone forward with
4 the murder charge, and we appreciate that.

5 I think that this is something was that
6 was obviously intended to be financially hurtful
7 to Mr. Johnson, and that it went tragically
8 wrong because of his fragile physical situation
9 and tragically resulted in his death.

10 I saw, as I am sure Your Honor did
11 also, that during the presentation by the
12 Johnson family the tears by the defendants and
13 the defendants' family were sincere tears.

14 Again, when they left they did not
15 realize the precarious nature of Mr. Johnson's
16 condition. He was alive, he was breathing.
17 If they had any idea that this would have led to
18 his death, they would never have left him on his
19 back.

20 My client is truly remorseful and he is
21 here today to accept responsibility for what
22 happened. Your Honor, and of course I am an
23 advocate for Jarrod but I would like to point
24 out that it is not often that we have people
25 with no criminal record who are before the court

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

70

1 on murder charges, or for involuntary
2 manslaughter charges, or for Burglary 1st
3 charges.

4 I am asking that you be as lenient as
5 you can for Jerrard because his family does need
6 his help. His mom's cancer and his father had
7 heart surgery. If he has to do fifteen years,
8 they might not be around and he might very well
9 be in the same position that the Johnson
10 daughters are in, living without their parents.

11 I think the Smith parents raised
12 hardworking, close-knit, law abiding children.
13 I think -- and I am going to echo what the other
14 attorneys have said -- they would return to that
15 position if given that opportunity. If they
16 were able to walk out of court today with a
17 stiff sentence with probation over their heads,
18 I feel you would not see them in court again.
19 I know that is not going to happen. That being
20 said, fifteen years will resolve in more than a
21 decade from where we are today. They would have
22 to re-enter society at a time when their
23 children would unfortunately be grown and --
24 these are the formative years for the children
25 and I think fifteen years is a staggering amount

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

71

1 of time.

2 THE COURT: Thank you. Does Mr.
3 Smith wish to say anything?

4 DEFENDANT JERRARD SMITH: Yes, Your
5 Honor. I would like to say I am so sorry to the
6 family, I do apologize. Me and my family didn't
7 mean to hurt anybody. I know that my saying I
8 am sorry isn't enough and I ask that God will
9 forgive me and I ask that all of you will
10 forgive me. I also apologize to my family.

11 I am guilty of the acts done but we
12 didn't mean to hurt anyone.

13 THE COURT: All right. Mr. Bowler?

14 MR. BOWLER: May it please the court?

15 THE COURT: Yes, sir.

16 MR. BOWLER: Your Honor, I guess I
17 have been doing this perhaps longer than any
18 of these attorneys -- and it doesn't get any
19 easier, and this is probably the hardest case
20 that I've ever handled. It's hard because of
21 the loss of a life and it's hard because of the
22 destruction of five other lives.

23 Miss Duckett has -- these are four
24 children, four children who essentially will be
25 "orphaned" -- she has a six-year-old son.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

72

1 I know that everybody has come up here
2 and told you that if these folks were not in
3 jail that they would be pretty good citizens.
4 My client has had one advantage in that she
5 appeared before you in this case early on and
6 you were thoughtful enough to consider giving
7 her an opportunity to bond out of jail, so that
8 she could organize her affairs and prepare for
9 her children's care. She spent eight months in
10 prison -- in jail before that. She did get out,
11 she went right to work. She was working before
12 this happened, she worked after getting out on
13 bond. In fact, she worked right up until
14 yesterday. She has been taking care of her son.
15 She's lived the kind of life that she did before
16 this horrendous thing occurred.

17 One thing I would ask you to consider,
18 she has not had a particularly easy life. I am
19 not trying to excuse her conduct in this case
20 but I think that Your Honor needs to be aware
21 that her mother had to raise her and her two
22 siblings pretty much without the help of a
23 father, and it was very hard on them all.
24 She ended up basically dropping out of school
25 at the age of sixteen, and of course drugs were

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

73

1 behind that.

2 THE COURT: Sure.

3 MR. BOWLER: The day that this
4 happened she had been drinking and smoking
5 marijuana and taking a drug called Ecstasy and
6 while her judgment of knowing right from wrong
7 was still present, she obviously was impaired
8 in terms of making smart choices and the right
9 choice. She made the wrong choice.

10 Her involvement was the most minimal
11 of all. Basically she never even saw the
12 victim. She came in the house and removed the
13 TV. Your Honor, in court with her today is her
14 mother, Yvonne Jackson, her sister Natasha Smith
15 and she's got a couple of her friends here with
16 her, Tanya Horry (phonetic) and Sheena Brown
17 (phonetic). Of course, this has been hard on
18 the family.

19 We certainly acknowledge the pain of
20 the Johnson family and she regrets this deeply.
21 I can tell you, based on what she has done since
22 she has been out that I think she will continue
23 to do well; whenever you believe that it is fair
24 for her to have that opportunity to do so again.
25 She has never been before a court before. By

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

74

1 her conduct, she had demonstrated the kind of
2 person that she is and she -- she is profoundly
3 remorseful. I've talked with her many times and
4 I know that it hurts her to the depths of her
5 heart that this man died and the feelings that
6 she has for the family is profound, deep sorrow.

7 I would ask you to consider, please,
8 fifteen years sufficient punishment for my
9 client. I would ask that you please consider
10 that.

11 THE COURT: Thank you, Mr. Bowler.
12 Does your client wish to say anything?

13 MR. BOWLER: Would you like to say
14 something to the jail?

15 DEFENDANT GWENETTA DUCKETT: I just
16 want to say that I am deeply, deeply sorry to
17 the family. And I want you all to know that we
18 never had any intent of hurting anybody and I
19 hope that one day that you'all will be able to
20 forgive us. My family, I love you'all. I'm
21 sorry to put you all through this.

22 THE COURT: Thank you. All right,
23 let me inquire of each defendant at this point
24 -- and they may remain seated. I failed to
25 discuss it and frankly it has been recited in

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

75

1 the statements made on behalf of each of them,
2 and I don't disagree with anything and that is
3 probably why I didn't address it because I don't
4 think really that it is going to make a
5 difference what I am about to say to these folks
6 when they finish serving the sentence that is
7 going to be imposed. But do each of you
8 understand that each of the offenses, certainly
9 burglary is the main one, that Burglary 1st is
10 a Violent offense, a Most Serious offense, and
11 that it is a nonparoleable offense? Do you
12 understand that, Mr. Rivers?

13 DEFENDANT RASHAD RIVERS: Yes, sir.

14 THE COURT: Do you understand that,
15 Mr. Jerry Smith?

16 DEFENDANT JERRY SMITH: Yes, sir.

17 THE COURT: Mr. Jerrard Smith?

18 DEFENDANT JERRARD SMITH: Yes, Your
19 Honor.

20 THE COURT: Miss Duckett?

21 DEFENDANT GWENETTA DUCKETT: Yes,
22 sir.

23 THE COURT: Miss Tocara Smith?

24 DEFENDANT TOCARA SMITH: Yes, sir.

25 THE COURT: Anything else, Solicitor?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

76

1 MR. DURANT: No, sir.

2 THE COURT: Very well. I agree --
3 yes, sir?

4 MR. BOWLER: I believe that the mother
5 and father may want to say something.

6 THE COURT: I will be happy to hear
7 from them. I ---

8 MR. BOWLER: And perhaps other members
9 of the family.

10 THE COURT: I will be happy to hear
11 from them, briefly.

12 MR. BOWLER: Very briefly, Your Honor.

13 THE COURT: I don't -- I am sure they
14 -- what is the most disturbing thing for all the
15 persons here, as has already been referenced in
16 each of their statements, this is not what these
17 folks were taught. It's not what they learned
18 in their community, and it's not what their
19 support staff wanted them to ever do; it departs
20 from that, and I understand how just totally --
21 probably aggravating to some extent, but just
22 sad that is and tragic that it is. It truly is
23 but it -- as Mr. Bowler just said, there is
24 tragedy on both sides of the room here today.
25 Yes, sir? I will be glad to hear from you.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

77

1 Please give me your name.

2 JERRY JEROME SMITH, SR.: I am Jerry
3 Jerome Smith, Senior. I would like to express
4 my apology to the Johnson Family, and my family
5 too and everybody here in the courtroom. It is
6 -- (emotional) -- I'm praying for everybody.
7 It's tragic it happened. Just tragic.

8 THE COURT: Thank you, Mr. Smith.

9 SARA SMITH: My name is Sara Smith,
10 the mother. I would like to say to the family
11 that my heart is just torn, very torn. I hurt
12 for you'all and also for our family, my children
13 here and for Rashad Rivers, who could be a son
14 of mine also. I am asking that you please have
15 mercy and find it somewhere in your hearts to
16 forgive my children, because this is a tragedy
17 but I don't think that they realized -- they had
18 no intention of a life being lost. I am so very
19 sorry, but -- I ask that you please, one day if
20 you can find it in your hearts to forgive them.

21 MR. DUPREE: Your Honor, I believe
22 that Rashad's mother would like to speak on his
23 behalf, as well as Rev. Linen.

24 THE COURT: All right, sir.

25 BARBARA WASHINGTON: My name is

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

78

1 Barbara ---

2 THE COURT: I'm sorry but you're
3 going to have to speak up, ma'am.

4 BARBARA WASHINGTON: My name is
5 Barbara Washington, I am Rashad's mother.
6 First of all, I give you my apology to the
7 family, to you all, the Johnson family. My son,
8 he's the only son that I have. He'd never been
9 in no trouble before. This is the first time
10 he's ever been in a situation like this. And
11 I ask the Lord each and every day to please
12 forgive him, and I ask the Lord to forgive all
13 of them for this tragedy that took place. I
14 ask the Johnson family from the bottom of my
15 heart to forgive my son for what he has done.
16 My son ain't never been in no trouble before,
17 he's been no trouble, he go to school, he go to
18 work, he's always been in the church and he was
19 a good kid, ain't never give me no problem. I
20 ask that you find it in your hearts one day to
21 just forgive him. Thank you.

22 THE COURT: Thank you, ma'am.

23 MR. BOWLER: Your Honor, very briefly,
24 Miss Duckett's mother, Ms. Jackson.

25 THE COURT: All right.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

79

1 MR. BOWLER: Very briefly.

2 YVONNE JACKSON: My name is Yvonne
3 Jackson. I am Gwenetta Duckett's mother. I do
4 what to say that I am sorry for what she has
5 done. I can understand what you'all are going
6 through because I lost my parents --
7 (emotional). Like you said your father was your
8 best friend, that's (indicating Rashard) my best
9 friend. I can understand what you're going
10 through because I've been through it this whole
11 time. I ask that you find it in your hearts to
12 forgive her so that we can all get through it, I
13 ask that you do. Thank you.

14 THE COURT: Thank you, ma'am.

15 REV. CHARLES LINEN: Good morning,
16 Your Honor.

17 THE COURT: Good morning, sir.

18 REV. CHARLES LINEN: My name is
19 Charles Linen, I am Rashad's pastor. My heart
20 is overwhelmed listening to the Johnson Family
21 and all the tragedy that they have been through.
22 In counseling with Rashard and in spending time
23 with him during this year he has been in the
24 jailhouse, he has repented and God has already
25 forgiven him.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

80

1 THE COURT: Absolutely.

2 REV. CHARLES LINEN: Listening to
3 the family, and I heard the daughter today that
4 their lives should begin where her father's
5 ended. I like that. We realize that the
6 negative that these three (sic) young people
7 have contributed to this city, we can't erase
8 it. But one of the things that we can look at,
9 wouldn't it be great if five individuals --
10 five individuals -- were given a second chance
11 over the death of one Brother Daniel Johnson?

12 BRITTANY JOHNSON: Danny Johnson.

13 REV. CHARLES LINEN: Danny Johnson.
14 We realize that we can't erase it and life must
15 go on. I believe that they are sorry and that
16 it was a tragedy, but we pray that they would
17 learn, and not just them but that other young
18 folks would learn, from what has happened here
19 this morning.

20 Rashad is a good kid, but then at the
21 same time that particular day had poor judgment.
22 Your Honor, I pray that you would grant mercy
23 not just on him but all of these young people.

24 THE COURT: Thank you, sir.

25 REV. ROBERT K. WHITE: Your Honor?

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

81

1 THE COURT: Yes, sir?

2 REV. ROBERT K. WHITE: I am Robert K.
3 White, I'm the pastor of the Smith Family. I
4 would just like to say to the Johnson Family
5 that we are going to continue to pray for you.
6 We have and will continue to pray for you.

7 I have been in counsel with the Smith
8 Family ever since their incarceration and I will
9 continue to do so. The Smith children, they
10 were raised very well. At the church at St.
11 Mary's, they were well-active and very
12 progressive, loving young people and we all just
13 were disappointed and hurt by it.

14 As far as Jerry is concerned, he had
15 just received his license as a local minister in
16 the A.M.E. Church and we were so proud of him.

17 This has devastated all of us. We know
18 that bad things do happen and we would ask this
19 court to have mercy on them. We are going to
20 continue to pray and pray that God will bless
21 this family, the Johnson Family, to carry on.
22 Thank you very much.

23 THE COURT: Thank you, sir.

24 SHELIA BROWN: Good morning, my
25 name is Shelia Brown. I would first like to

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

82

1 say to the family that I do apologize, I do
2 sincerely offer my sympathy. These young
3 people, they are all sorry. Unfortunately, it
4 was a very tragic accident that never should
5 have happened. If everybody could turn back the
6 hands of time, they would. She is very loyal,
7 she was dedicated, I've known her since 2003.
8 She would do anything, anything for you and I
9 just wish that you could find it in your heart
10 to forgive her and may God have mercy on every-
11 body's soul.

12 THE COURT: Thank you.

13 CARL WHITE: Good morning. My name
14 is Carl White and this is my grandson here and
15 I want to apologize to the Johnson Family for
16 whatever it is that he has done and ---

17 THE COURT: Let me stop you, sir.
18 I want to say something here. It's nice to
19 apologize to these folks but you'all don't have
20 to be in this courtroom to apologize to these
21 folks. You can do that outside and that's what
22 community is all about. I don't need to hear
23 any more apologies, they don't need to hear any
24 more apologies.

25 BRITTANY JOHNSON: Thank you.

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

83

1 THE COURT: They know you're sorry.
2 We all are sorry. That doesn't do anything,
3 that doesn't help anything. It is nice to be
4 sorry. I mean, I'm glad that everybody is not
5 here saying 'we're glad that happened.' Of
6 course you're sorry. I understand that. You
7 all are supportive, and I understand that. We
8 could sit here all day and you'all can tell what
9 fine people that they are but that doesn't have
10 a thing to do with what is being done here
11 today.

12 CARL WHITE: Okay.

13 THE COURT: So thank you very much,
14 sir. Appreciate it. I've allowed you an
15 opportunity, folks. It's time for us to move
16 on with this, and let me tell you why. Quite
17 frankly -- and it's what I was taught, it's what
18 I believe, it's part of what I've tried to
19 impart to my children, it's what I've heard you
20 say, each of you say -- not so directly but
21 indirectly. You're taught to make good
22 decisions. Unfortunately -- and the Bible
23 speaks to this, it speaks very clearly. I am
24 paraphrasing it but, "to whom much is given,
25 much is expected." You know what I think that

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

84

1 means? When you are given and you have the
2 support that is in this room that you had the
3 opportunity, the chance that a lot of people
4 have never had, to be raised in the church, to
5 be nurtured by a community. You're held to a
6 higher standard, you're expected to do more.
7 You should be. We all should expect that. Our
8 Lord expects that, no question.

9 So when you do something and you say
10 "I'm sorry", I understand that. When you say
11 "I didn't intend it", I understand that. That
12 is why we are here with involuntary manslaughter
13 instead of murder.

14 But there is no question about one
15 thing. There is no question that each one of
16 you made a conscious decision to do something,
17 and you intended that. You went in that house
18 to steal something from that man. You may have
19 been motivated all by the wrong reasons but that
20 was intended, no ifs, ands or buts about it.
21 The rationale was, 'I wanted to hurt him.'
22 That's pretty bad. Didn't want to kill him, I
23 know that. You didn't want him to die. But you
24 intended to inflict on him emotional hurt. You
25 know what that is? That is vengeance and we

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

85

1 know what the Bible says about that, too.

2 Well, you -- you chose to do something
3 and you're going to suffer the consequences of
4 it.

5 Quite frankly, Mr. Bowler, I was glad
6 to hear you say it. I don't know if I've heard
7 a more difficult case than this case, because
8 these young people are people that absolutely I
9 agree with what everybody has said. They are
10 going to do into the community and I believe
11 that they will do exactly what each one of these
12 good folks have given up their time, their
13 energy. They are going to be the kind of people
14 that they were taught to be, I am confident of
15 that.

16 But I don't believe that I have seen a
17 case that warrants punishment any more than this
18 one, because these people thought about
19 stopping, wrestled with the decision. Not
20 spontaneous. No, heavens no. 'I don't know.'
21 'Yeah, we will', 'No, we won't.' At some point
22 some of this training that you've talked about
23 had to step in and say, 'Wait a minute. This is
24 crazy. We can't do that, that's that man's
25 house, that is his castle.' He is entitled to

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

86

1 the privacy of his home. He may be despicable
2 -- and I am not saying that he was, I am just
3 saying in your minds he may have been
4 despicable, he may "deserve" to hurt but you
5 didn't have the right to bring that to him.
6 That is not your call. That is somebody else's,
7 no question a bigger judge than I am.

8 So what am I faced with? I am faced
9 with an absolute intentional Burglary 1st. No
10 if, and or but about it.

11 So now I look at the range, fifteen or
12 life. Well, your records tell me that fifteen
13 is warranted -- lack of record, no question
14 about it. That's a tough sentence and maybe
15 that would be appropriate, but I can't in good
16 conscience bring myself to that do that because
17 something happened during that burglary. Nobody
18 intended for him to die, but he did. He's gone.
19 All of the sorrow and all the wishing ain't
20 going to bring him back, and I cannot in good
21 conscience from the standpoint of fashioning a
22 sentence fashion a sentence of fifteen years.
23 It changes the dynamics of the burglary.

24 So I've used it as a basis and I've
25 decided what I think is appropriate. I think

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

87

1 an appropriate punishment for the Burglary is
2 fifteen years. I think the appropriate
3 punishment for the involuntary manslaughter,
4 which was horrible -- and let me say this, and
5 I am not trying to lay any guilt or blame on
6 any one of you moreso than the other but, Miss
7 Smith, as a nurse, I'm sorry, that just -- you
8 had knowledge that the others did not have.
9 That needed -- somebody needed to say, 'Wait a
10 minute. We've got an incapacitated man' -- and
11 you knew him, you knew what his situation was.
12 All of you are part of that. So I think the
13 five years ought to be paid for that, too.

14 The good thing about this, for the
15 purpose of fashioning a sentence, and I know
16 the lawyers are not going to like this, but I
17 believe that fifteen years ought to be served
18 for that and I believe that five years ought to
19 be served for that and I can make the
20 calculations, and I've done it. What this
21 sentence will result in, if you're good, is
22 19.95 years as punishment for the fifteen and
23 the five. So the sentence of the court on each
24 of your Burglary 1st, and I am not going to read
25 all the indictments because the record has those

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

88

1 clearly stated. On all the Burglary 1st, and
2 everybody is treated the same, is twenty-three
3 years. You're given credit for the time that
4 you've served.

5 On each of the other indictments, it is
6 five years on each one and you are -- that is
7 concurrent. You're given credit for the time
8 that you've served on each of those, as well.

9 Good luck to you. You will be out, if
10 you're good, in your forties. Just as was
11 stated, you will start your life at forty.
12 Thank you.

13 (CONCLUDED)
14
15
16
17
18
19
20
21
22
23
24
25

State of South Carolina v. Jerry Jerome Smith, Jr.
Case No. 07-GS-10-4249 et al
Guilty Plea Hearing of December 5, 2008
before The Honorable R. Markley Dennis, Jr.

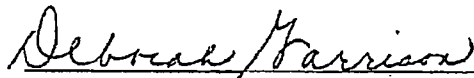
89

CERTIFICATE OF REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the guilty
pleas entered before The Honorable Markley
Dennis, Jr., on December 5, 2008;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

February 19, 2009

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.JERRY JEROME SMITH, JR.

AKA: _____

Race: B Sex: M Age: 24DOB: _____ SS#: 248-59-2187

Address: _____

CHARLESTON, SC 29403DL#: _____ SID#: SC01400062

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1004266A/W#: H913826Date of Offense: 8/23/2006 - 8/24/2006S.C. Code § : 16-13-0030(B)(1)CDR Code #: 0478

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

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

TO: Grand Larceny, >\$1,000 but <\$5,000in violation of § 16-13-0030(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0478☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or Lewd Act)

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

ATTEST: _____

DuRant, D. BruceJERRY J. SMITH, JR.
Defendant[Signature]
Attorney for Defendant66478
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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35-13 (Public Def/Prob)

§ 73-3, 1B TP (Law Enforce. Funding)

§ 33-7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90-11 TP (SCCJA Surcharge)

TOTAL

\$

\$

\$100

\$

\$12

\$

\$500

\$

\$25

\$

\$50

\$

\$40/ea

\$

\$3.75

\$

\$5

\$

\$5.00

\$

\$133.75

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2101010Sentence Date: 12/15/08

SOCA/217 (07/2008)

Clerk of Court/ Deputy Clerk

Court Reporter: Deb Garrison

JULIE J. ARMSTRONG (SEAL)

CLERK, C.P., D.S. & F.C.

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.JERRY JEROME SMITH, JR.

AKA: _____

Race: B Sex: M Age: 24

DOB: _____ SS#: _____

Address: CHARLESTON, SC 29403DL#: _____ SID#: SC01400062

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1004267A/W#: H913866Date of Offense: 8/23/2006 - 8/24/2006S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Burglary, 1st degree☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser-Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

DeRant, D. BryceJerry J. Smith
Defendant66498
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 23.5 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 31-13 (Public Def/Prob)

§ 71-3, 1B TP (Law Enforce. Funding)

§ 31-7, 1B TP (Drug Court Surcharge)

§ 59-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90-11 TP (SCC/A Surcharge)

TOTAL

Face

Clerk of Court/Deputy Clerk

Court Reporter: Deb Garrison

PRESIDING JUDGE

Judge Code: 2Sentence Date: 12/3/08

SECA/217 (07/2008)

JULIE J. ARMSTRONG (SEAL)

CLERK, C.P., G.S. & F.C.

By: Mark Kenton

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.JERRY JEROME SMITH, JR.

AKA: _____

Race: B Sex: M Age: 24

DOB: _____ SS#: _____

Address: _____

CHARLESTON, SC 29403DL#: _____ SID#: SC01400062

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1004268A/W#: H913867Date of Offense: 8/23/2006 - 8/24/2006S.C. Code §: 16-03-0010.0020CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSIn disposition of the said indictment comes now the Defendant who was
TO: Involuntary Manslaughterin violation of § 16-03-0060 of the S.C. Code of Laws, bearing CDR Code # 0218
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

AT TEST:

DuRant, D. BruceDefendantAttorney for DefendantSC 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

To total \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fina. _____

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35-13 (Public Def/Prob)	\$500	\$
§ 733, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 337, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75
§ 90-11 TP(SCCIA Surcharge)	\$5	\$ 5.00
TOTAL	\$	\$ 133.75

Dea Garrison

Clerk of Court/ Deputy Clerk

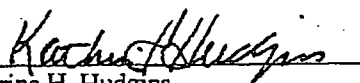
Court Reporter: Dea GarrisonJULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.B. & F.C.PRESIDING JUDGE R. M. HallJudge Code: 2Sentence Date: 12/15/08

SCCA/217 (07/2008)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 13th, 2009


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

FORM 5

STATE OF SOUTH CAROLINA)

County of CHARLESTON)2011-CP-10-6129
IN THE COURT OF COMMON PLEASJERRY JEROME SMITH #382155)

Full name and prison number (if any) of Applicant)

v.)

9TH CIRCUIT COURT)
State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

BY
JULIE G. CLARK, CLERK
2011 AUG 29 PM 12:55INSTRUCTIONS - 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 LIEBER CORRECTIONS FACILITY
P.O. BOX 205 RIDGEVILLE, S.C. 29472
2. Name and location of Court which imposed sentence 9TH CIRCUIT
COURT CHARLESTON, S.C. 29401
3. Name(s) of co-defendant(s) (if any) TOLARA SMITH, GWENNETTE
DUCKETT, JERARD SMITH AND BASHARD RIVERS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-10-04266

- (b) 2007-GS-10-04267
- (c) 2007-GS-10-04268
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) DECEMBER 5, 2008
- (b) SENTENCED TO 23 YEARS
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
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 SOUTH CAROLINA COURT OF APPEALS
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. THE COURT OF APPEALS AFFIRMED CONVICTION
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. SEPTEMBER 2, 2010
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED OPINION NO. 2010-UP-389.
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) DEFENDANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE COUNSEL
- (b) MISCARRIAGE OF JUSTICE: VIOLATION OF PROCEDURAL RIGHTS
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL DENIED DUE PROCESS.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) DEFENDANT'S INITIAL ATTORNEY REFUSED HERSELF. LAURA KNOBELOCH WENT AWAY TO WORK AS A SOLICITOR TWO WEEKS (CONTINUED: SEE ADDENDUM)
- (b) COUNSEL FAILED TO STRATEGIZE WITH DEFENDANT BY NOT DISCUSSING DISCOVERY PACKAGE WHICH (CONTINUED: SEE ADDENDUM)
- (c) COUNSEL'S INEFFECTIVE ASSISTANCE OF SAID CASE IS ENHANCED BY CLEARLY VIOLATING THE RULES OF DUE PROCESS (CONTINUED SEE ADDENDUM)
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 EXCEPT LINE 7
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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?

~~YES~~ NO

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

- (a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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) DEFENDANT HAD TO WAIT UNTIL DIRECT APPEAL ENDED.
 (b) N/A
 (c) N/A

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

(a) your arraignment and plea? YES
 (b) your trial, if any? N/A
 (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? YES

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. JOHN KNOBELDCH: 808 JOHNNIE DODDS BLVD.
MOUNT PLEASANT, S.C. 29464
 ii. KATHRINE H. HIDDGINS: DIVISION OF APPELLATE
DEFENSE.
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. PLEA AND ARRAIGNMENT; AND SENTENCING.
 ii. DURING DIRECT APPEAL (KATHRINE HIDDGINS REPRESENTED)
 iii. _____

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

DEFENDANT SEEKS THE 15 YEAR RECOMMENDED PLEA OFFERED
BY THE PROSECUTOR OR BELIEF AT HEARING, JUDGE'S
DISCRETION.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, JERRY J SMITH 532155, 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.

[Signature]

SWORN to and subscribed before me this 23rd
 day of August, 2011.

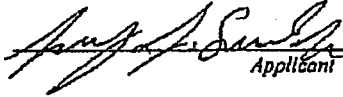
[Signature] (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

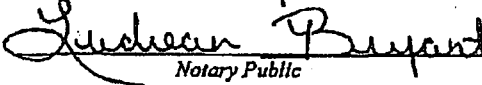
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, SERRY J. SMITH, 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.


Applicant

SWORN or affirmed to and subscribed before me this
23rd day of August, 2011.


Notary Public

My Commission Expires: May 26, 2020

ADDENDUM: CONTINUED FROM PAGE 3, LINE 10. 2, b, c.

10. (a) (1) PRIOR TO TRIAL. HER HUSBAND, JOHN KNOBELOCH TOOK OVER WIFE'S CASE. JOHN KNOBELOCH ADVISED DEFENDANT TO PLEA TO THE PROSECUTOR'S RECOMMENDED 15 YEAR SENTENCE BECAUSE, HE OTHERWISE HAD NO STRATEGY TO PROCEED TO TRIAL. DEFENDANT RECEIVED 23 YEARS INSTEAD OF AGREED UPON 15 YEARS. APPLICANT ARGUES THAT COUNSEL SHOULD HAVE MOTIONED FOR ENOUGH TIME TO ADEQUATELY REPRESENT DEFENDANT, COUNSEL'S FAILURE TO MOTION FOR AN CONTINUANCE RENDERED HIM INADEQUATE AND INEFFECTIVE. COUNSEL FAILED TO PERFORM REASONABLY AND WITHOUT PREJUDICE 8 TWO WEEKS INTO A CASE IS NOT ENOUGH TIME TO ADEQUATELY AND EFFECTIVELY REPRESENT A CLIENT. COUNSEL TOLD DEFENDANT 15 YEARS IS BETTER THAN A LIFE SENTENCE.

(2) COUNSEL FAILED TO ADEQUATELY INVESTIGATE THE FACTS AND CIRCUMSTANCES SURROUNDING THE VICTIM. FAILURE TO CONDUCT SUCH AN INVESTIGATION DENIED DEFENDANT OF RELEVANT INFORMATION WHICH COULD HAVE ESTABLISHED HIS INNOCENCE. THEREFORE DEFENDANT'S SENTENCE IS UNRELIABLE AND INVALID.

ADDENDUM CONTINUED: 10. (B) (1) AND (2)

10(B)(1) SUPPLIED AN INCREDIBLE WITNESS'S STATEMENT IMPLICATING DEFENDANT. COUNSEL GROSSLY ERRED BY NOT QUESTIONING THE TRUTH OF STATE'S WITNESS. DEFENDANT ASKED FOR DISCOVERY BUT DID NOT RECEIVE SAID. SAID DISCOVERY UNTIL DEPARTMENT OF CORRECTIONS REMANDED. THUS, THE DEFENDANT PROCEDURAL RIGHTS GRANTED BY THE FEDERAL CONSTITUTION WERE DEPRIVED. THE RESULT OF THIS CASE WOULD HAVE BEEN DIFFERENT. COUNSEL'S INEFFECTED AND INADEQUATE ASSISTANCE CAUSED APPLICANT TO NOT OBTAIN THE PROSECUTOR'S RECOMMENDED 16 YEAR SENTENCE. HENCE SENTENCE IS INVALID AN UNCONSTITUTIONAL.

(2) DEFENDANT ARGUES THE INEFFECTIVENESS OF HIS COUNSEL IS FURTHER ILLUSTRATED BY COUNSEL'S FAILURE TO WEIGH THE PROS AND CONS OF GOING TO TRIAL. COUNSEL ERRED BY COERCING DEFENDANT TO PLEA BY THREATENING A LIFE'S SENTENCE IF HE DID NOT ACCEPT PROSECUTOR'S OFFERED PLEA. IT IS ILLEGAL TO OBTAIN CONVICTIONS BY THREATS. DEFENDANT FURTHER ARGUES THAT HE WAS DEPRIVED OF PROCEDURAL RIGHTS BY COUNSEL'S ERRORS. AND

CONTINUED....

ADDENDUM CONTINUED: 10.(C)(1) AND (2)

.....
OMISSIONS. AS A RESULT, SENTENCE IS INVALID
AND UNRELIABLE.

10.(C)(1) TRAIL JUDGE REPEATEDLY STATED THAT THE
PROSECUTOR'S 15 YEARS RECOMMENDATION WAS
WARRANTED BUT, HE ~~HE~~^{HE} MUST REJECT SAID
RECOMMENDATION. COUNSEL ERRED WITH-
DRAWING DEFENDANT'S PLEA. DEFENDANT
ARGUES THAT HE MISTAKENLY UNDERSTOOD
THESE PROCEEDINGS TO THE EXTENT THAT HE
THOUGHT HIS SENTENCE WAS 15 YEARS. COUNSEL'S
FAILURE TO EXPLAIN, IN LAYMAN'S TERMS,
THAT DEFENDANT HAS THE RIGHT TO WITHDRAW
PLEA IF THE TRAIL JUDGE REJECTED PROSEC-
UTOR'S RECOMMENDATION. IF COUNSEL HAD
WITHDREW PLEA, DEFENDANT POSSIBLY
COULD HAVE OBTAINED 15 YEARS OR LESS
INSTEAD OF 23 YEARS. THUS DUE PROCESS WAS
DENIED.

(2) COUNSEL'S FAILURE TO SUBMIT, DEVELOPE,
AND PRESENT ALL RELEVANT AND MITIGATING
EVIDENCE WHICH WOULD HAVE CAUSED AN
ENTIRELY DIFFERENT RESULTING OUTCOME
GROSSLY VIOLATES THE FEDERALLY GRANTED
RIGHT TO DUE PROCESS. THEREFORE.....

COUNTINUED

ADDENDUM CONTINUED: 10.(C)(3)

.....
SENTENCE IS UNLAWFUL.

(3) COUNSEL FAILED TO QUESTION THE IRRELEVANT EVIDENCE PRESENTED BY THE PROSECUTION.

DEFENDANT ARGUES THAT NONE OF HIS FINGER PRINTS WERE IN VICTIMS DWELLING. AS, A RESULT OF THE INEFFECTIVE AND INADEQUATE ASSISTANCE THE CONVICTION AND SENTENCE IS UNRELIABLE. SINCE THESE FACTORS WERE NOT EVEN DISCUSSED BETWEEN COUNSEL AND DEFENDANT, DEFENDANT ARGUES THAT HIS REPRESENTATION WAS TOTALLY INEFFECTIVE AND INADEQUATE. JUSTICE IS DENIED WHEN COUNSEL FAILS TO ADHERE TO A DEFENDANT'S CONSTITUTIONAL RIGHTS. DEFENDANTS MAINTAINS THAT COUNSEL'S OMISSIONS AND ERRORS ARE REFLECTED IN TRANSCRIPT. THE OUTCOME, APPLICANT FURTHER ARGUES, SHOULD HAVE AT LEAST BEEN 15 YEARS INSTEAD OF 23 YEARS.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2011-CP-10-6129
Jerry J. Smith, #332155,	)	
	)	
Applicant,	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 29, 2011, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the March 2007 term of the Charleston County Grand Jury for grand larceny (\$1000-\$5000) (2007-GS-10-4266), murder (2007-GS-10-4268), and burglary – 1st degree (2007-GS-10-4267). John Knobeloch, Esquire, represented Applicant. On December 5, 2008, the Applicant pled guilty to the lesser-included offense of involuntary manslaughter and as indicted to grand larceny and burglary – 1st degree. The Honorable R. Markley Dennis, Jr. sentenced him to confinement for twenty-three (23) years for burglary – 1st degree, five (5) years for involuntary manslaughter, and five (5) years for grand larceny. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals

dismissed Applicant's appeal. State v. Smith, Op. No. 2010-UP-389 (S.C. Ct. App. filed August 25, 2010). The Remittitur was issued on September 10, 2010.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction, the records of the South Carolina Department of Corrections, the Record on Appeal, the Final Anders Brief, the Court of Appeals' Opinion dismissing the appeal, and the Remittitur dated September 10, 2010.

II.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of plea counsel in that:
 - a. Applicant's initial attorney recused herself. Laura Knobloch went to work as a Solicitor two weeks prior to trial. Her husband, John Knobloch, took over the case. John Knobloch advised Applicant to plea to the prosecutor's recommended 15 year sentence because he otherwise had no strategy to proceed to trial. Applicant received 23 years instead of agreed upon 15 years. Applicant argues that counsel should have motioned for enough time to adequately represent Applicant. Counsel's failure to motion for a continuance rendered him inadequate and ineffective.
 - b. Counsel failed to adequately investigate the facts and circumstances surrounding the victim. Failure to conduct such investigation denied Applicant of relevant information which could have established his innocence.
 - c. Counsel failed to strategize with Applicant by not discussing discovery package which supplied an incredible witness's statement implicating Applicant. Counsel grossly erred by not questioning the truth of State's witness.
 - d. Counsel failed to weigh the pros and cons of going to trial. Counsel erred by coercing Applicant to plea by threatening a life's sentence if he did not accept prosecutor's offered plea.
 - e. Counsel's ineffective assistance of said case is enhanced by clearly violating the rules of due process.
 - f. Counsel failed to explain to Applicant that Applicant has the right to withdraw plea if trial judge rejected prosecutor's recommendation.
 - g. Counsel's failure to submit, develop, and present all relevant and mitigating evidence which would have caused an entirely different resulting outcome grossly violates the federally granted right to due process.
 - h. Counsel failed to question the irrelevant evidence presented by the prosecution.

III.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either 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. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return, the State requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

December 12, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JERRY J. SMITH

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

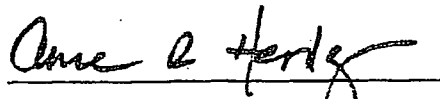
2011-CP-10-6129

AFFIDAVIT OF SERVICE BY MAIL

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:

Charles T. Brooks III

Law Office of Charles T. Brooks, III
 309 Broad St.
 Sumter, SC 29150

DATED this 12th day of December 2011


Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2011-CP-10-06129

JERRY JEROME SMITH,
Plaintiff

V.

STATE OF SOUTH CAROLINA,
Defendant.

TRANSCRIPT OF RECORD

July 24, 2012
Charleston, South Carolina

B E F O R E :

THE HONORABLE STEPHANIE P. McDONALD, JUDGE

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

Mr. Ashleigh Wilson, Asst. Attorney General
Representing the State

Mr. Charles T. Brooks, Esquire
Representing the Applicant

Anne Bouley Meyer, RPR
Circuit Court Reporter

I N D E X

WITNESSES

Page

JERRY SMITH

Direct Examination by MR. BROOKS

4:5

Cross-Examination by MS. WILSON

9:23

JOHN KNOBELOCH

Direct Examination by MR. BROOKS

13:1

Cross-Examination by MS. WILSON

16:7

1 THE COURT: This is Jerry Smith versus State of
2 South Carolina, correct?

3 MS. WILSON: Yes, Your Honor.

4 THE COURT: Okay. I'm happy to hear you all.

5 MS. WILSON: May it please the Court. Mr. Smith
6 was originally indicated for murder, first degree
7 burglary and grand larceny. He pled guilty to
8 involuntary manslaughter, first degree burglary and
9 grand larceny.

10 He was sentenced to confinement for 5 years for
11 both the grand larceny and the involuntary
12 manslaughter, and 23 years for the first degree
13 burglary. Both those sentences -- well, all three of
14 those sentences to be served concurrently.

15 At this time I will turn it over to Mr. Brooks

16 THE COURT: Okay.

17 Yes, sir.

18 MR. BROOKS: May it please the Court. Judge, we
19 are ready to proceed.

20 THE COURT: Okay.

21 MR. BROOKS: I will call Mr. Smith to the stand.

22 THE COURT: All right. Mr. Smith.

23 JERRY SMITH,

24 after having first been sworn to tell the truth, the
25 whole truth and nothing but the truth testified on her

JERRY SMITH

1 oath as follows:

2 MR. BROOKS: Ready, Judge.

3 THE COURT: I am.

4 DIRECT EXAMINATION

5 BY MR. BROOKS:

6 Q Mr. Smith?

7 A Yes, sir.

8 Q All right. You are here today for your PCR,
9 post conviction relief?

10 A Yes, sir.

11 Q You want you a new trial; isn't that correct?

12 A Yes, sir.

13 Q And you had Mr. Knobeloch representing you?

14 A Knobeloch.

15 Q Knobeloch?

16 A Yes, sir.

17 Q Okay. And he represented you and you pled
18 guilty to these charges; is that correct?

19 A Yes, sir.

20 Q Now, you filed this application saying that your
21 plea was involuntarily given and not freely given. Do
22 you understand that?

23 A Yes, sir.

24 Q Now, you understand that if we convince the
25 judge here today to give you a new trial, you

JERRY SMITH

1 understand what that could mean for you?

2 A Yes, sir.

3 Q You understand you could potentially face a life
4 sentence?

5 A Yes, sir.

6 Q I explained that to you?

7 A Yes, sir.

8 Q And you said you still wanted to go forward,
9 right?

10 A Yes, sir.

11 Q Okay. Now, you ended up pleading guilty. Why
12 did you plead guilty?

13 A Because I was told that I -- when he came to me
14 he said that we could get 15 years. So I was like,
15 okay. He told me to answer yes to everything that the
16 judge said. Just answer yes and that we would get 15
17 years.

18 Q Okay. Now, do you feel like you were tricked
19 into doing that?

20 A Honestly, yes.

21 Q Okay. And why did you feel that way, Jerry?

22 A Because I got more time than what he said. I
23 mean, he said I was going to get 15 years. I got 23
24 years.

25 I didn't find out about the 23 years until I was

JERRY SMITH

1 already in Columbia at Kirkland getting processed.

2 Q Okay. Now, do you remember that day you stood
3 up in front of Judge Dennis?

4 A Yes, sir.

5 Q And you remember Judge Dennis asking you those
6 questions?

7 A Yes, sir.

8 Q And what you are saying is that your attorney
9 told you how to answer those questions?

10 A My trial attorney told me to answer yes to each
11 question. He said, just answer yes and that I would
12 get 15 years.

13 Q Okay. Now, and what you are asking Judge
14 McDonald here today is to give you this new trial. And
15 from what you know now, would you have gone to trial?

16 A I would have.

17 Q Okay. And you feel you would have been
18 successful?

19 A Yes, sir.

20 Q Okay. Now, is there anything else we need to
21 tell the judge here today right now why you should get
22 this PCR granted that I haven't asked you or we haven't
23 covered?

24 A I just feel like when they came -- I had his
25 wife first.

JERRY SMITH

1 Q You had the wife first?

2 A Right. And when she came to me, she told me 15
3 years. And when I met Mr. Knobloch, it was two weeks
4 before I was supposed to come in front of Judge Dennis
5 and he didn't have no way of helping me. There was no
6 way of helping me. None.

7 Q Okay. Is there anything else you want to tell
8 the Judge here today? Today is your day to complain
9 about it.

10 THE PETITIONER: Your Honor, for this proceeding
11 also I had wrote my PCR counsel to amend some things in
12 my PCR so that I would have a fair bite at the apple
13 here.

14 THE COURT: Okay. Yes, sir.

15 THE PETITIONER: And I haven't got those
16 amended, so.

17 THE COURT: Well, what are the other issues that
18 you need decided?

19 THE PETITIONER: The Supreme Court order
20 pursuant to Article 4 of the South Carolina
21 Constitution, it's ordered for all criminal cases in
22 South Carolina shall be disposed of within 180 days
23 from the date of the defendant's arrest.

24 Provided, however, that Circuit Court may
25 continue the criminal case beyond 180 days by written

JERRY SMITH

1 order of the Court to determine that the expedition
2 (sic) of the circumstances existed in the case.

3 This order does not create, define a rightful
4 defendant to a speedy trial. It is further ordered
5 that -- of the order of Chief Justice Lewis dated
6 August 17, 1983 and January 13, 1984 which appears on
7 page -- this order here.

8 And I had some other things. As far as the
9 charges, how the elements -- how I was charged on the
10 evidence, how it conflicted.

11 THE COURT: Did you give that information to
12 your attorney?

13 THE PETITIONER: Yes, ma'am. I sent a letter to
14 him with all this information that I have. I also --
15 after I didn't get a response I wrote disciplinary
16 counsel. Disciplinary counsel wrote me back and told
17 me that they would notify him and I did write with him.

18 THE COURT: Okay.

19 THE PETITIONER: And I haven't -- I didn't get
20 no answer back from him. So I don't feel like it's
21 been -- I don't feel like it's everything that I want
22 to argue I can't argue unless I have trial counsel do
23 it because he is representing me. So I don't feel like
24 I got a fair bite at the apple.

25 THE COURT: Sir, do you understand that in order

JERRY SMITH

1 to have your application granted, you need to prove
2 that the guilty plea that you entered was not knowing,
3 intelligent and voluntary. Do you understand that?

4 THE PETITIONER: Yes, ma'am.

5 THE COURT: Okay. And that's the issue before
6 the Court today. Do you understand that?

7 THE PETITIONER: Yes, ma'am.

8 THE COURT: Okay. Anything further?

9 MR. BROOKS: Unless Mr. Smith has something
10 else, I don't have any other questions, Judge.

11 THE COURT: Okay. Anything further?

12 THE PETITIONER: No, ma'am, I just -- I didn't
13 understand when we went to trial. We was young. He
14 told me to answer yes so I just followed by what he
15 told me to answer because he was my trial attorney.

16 That's all I got to say.

17 THE COURT: Okay, thank you.

18 Just so you all know, I have reviewed the full
19 transcript of the guilty plea.

20 I'm happy to hear from the State.

21 MS. WILSON: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. WILSON:

24 Q So, Mr. Smith, today you are saying that you
25 pled guilty because Mr. Knobloch told you that you

JERRY SMITH

1 would get 15 years?

2 A Yes, ma'am.

3 Q Okay. Do you recall at your guilty plea
4 proceeding the judge going over the maximum penalties
5 for all of the charges that you were facing?

6 A Yes, ma'am.

7 Q Do you recall him, the judge saying that the
8 maximum penalty for first degree burglary, one of the
9 charges that you were facing, was life?

10 A Yes, ma'am.

11 Q And you are saying today that you didn't find
12 out about the 23 years that you were sentenced for the
13 first degree burglary until you returned back to
14 Columbia and I guess were entering SCDC; is that
15 correct?

16 A Yes, ma'am.

17 Q Well, do you recall at the end of that
18 proceeding the judge announcing the sentence?

19 A No, ma'am

20 Q Okay. So you don't recall the judge at the end
21 of the proceeding telling you how long you were going
22 to be in jail for?

23 A All I remember the judge saying that I would
24 serve 15 years for burglary, 5 years for involuntary
25 manslaughter, and 5 years for grand larceny.

JERRY SMITH

1 Q Okay, that's what --

2 A And he said it was going to be running
3 concurrent. And my understanding was that it was going
4 to be 15 years. That I would serve 15 years. That was
5 my understanding.

6 When I got to Kirkland Correctional Institution,
7 that's when I found out I got 23 years.

8 Q You realize that had you gone to trial instead
9 of pleading guilty you would have been facing up to
10 life?

11 A Yes, ma'am.

12 Q Also during the hearing do you recall the judge
13 saying that he -- despite the fact that all of the
14 defendants had requested that they be sentenced to a 15
15 year minimum, that because of what happened during the
16 crime that he could not sentence to 15 years?

17 A I don't remember.

18 Q You don't recall that?

19 A No.

20 Q And do you also recall filing a direct appeal?

21 A I didn't know that he filed a direct appeal
22 until I was at Leiber Correctional Institution I got a
23 paper saying that a direct appeal was filed. I wasn't
24 in the courtroom when he did that.

25 Q Okay. Do you recall what the subject matter of

JERRY SMITH

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JERRY SMITH

1 your direct appeal was?

2 A My direct appeal was.

3 Q Do you know what it was about?

4 A If I recall correctly my appellate lawyer was
5 filed that I had got an excessive 8-year sentence on
6 involuntary manslaughter.

7 When I talked to my appellate lawyer then, I --
8 she didn't state to me anything. She just sent me the
9 paperwork. I talked to her twice. She just sent me
10 the paperwork.

11 Q Okay. Thank you.

12 MS. WILSON: No further questions, Your Honor.

13 THE COURT: Anything further?

14 MR. BROOKS: No, ma'am.

15 THE COURT: Okay.

16 MR. BROOKS: Call Mr. Knobloch to the stand.

17 THE COURT: Mr. Knobloch, you can come forward
18 to be sworn.

19 JOHN KNOBELOCH,
20 after having first been sworn to tell the truth, the
21 whole truth and nothing but the truth testified on her
22 oath as follows:

23 MR. BROOKS: Ready, Judge?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

JOHN KNOBELOCH

1 By MR. BROOKS:

2 Q Mr. Knobloch, you represented Mr. Smith?

3 A Correct.

4 Q Can you give us a brief summary of what the
5 State's evidence was against Mr. Smith?

6 THE COURT: Do you want to ask something to move
7 us forward?

8 MR. BROOKS: Yes ma'am.

9 THE COURT: Okay.

10 Q (By Mr. Brooks) Were you retained or appointed?

11 A Appointed.

12 Q Right. Do you remember talking with him about
13 the plea process?

14 A I do. As to the evidence, I believe it was that
15 the defendant's sister was the last one seen with the
16 victim, which was within 24 hours prior.

17 Some of the codefendants, I don't remember if he
18 was one of them, had used a credit card belonging to
19 the victim. And there was stolen property belonging to
20 the victim that was in some of the codefendants
21 possession.

22 Q Okay. How did it come about that this turned
23 into a guilty plea?

24 A In general, in any case the first thing I would
25 do is discuss the elements of each charge. And then if

JOHN KNOBELOCH

1 there is a plea offer, the second thing I will do is
2 just the math of what is the difference between the
3 sentencing on the charges as charged on the indictment
4 and what is the sentence if the offer is accepted.

5 Q Now, he was originally charged with murder?

6 A Correct.

7 Q And obviously that was reduced down to
8 involuntary manslaughter?

9 A Right.

10 Q And you discussed that with him?

11 A Correct.

12 Q Did you all at any point talk about going to
13 trial?

14 A At some point we would have discussed the
15 strength of his case. But I don't recall specifically
16 conversations.

17 Q Okay. Do you recall discussing with him about
18 pleading guilty to these charges in front of Judge
19 Dennis?

20 A Not specifically. I wouldn't recall that
21 conversation specifically. I do have a cheat sheet
22 comparing the sentencing of the offer and the
23 sentencing of the charge. It's in my file, so I know
24 that would have been discussed.

25 I also do usually, if we are discussing a plea,

JOHN KNOBELOCH

1 go over the litany of questions that a trial judge or a
2 circuit judge will ask.

3 Q You went over that with him?

4 A I don't recall specifically, but that's
5 typically what I would do in preparing for a plea.

6 MR. BROOKS: Beg the Court's indulgence, Your
7 Honor.

8 Q (By Mr. Brooks) Did you ever talk to him about
9 a 15-year plea?

10 A Again, I don't recall specific conversations
11 with him. But I know I would not discuss a specific
12 sentence unless there is a recommendation by the
13 solicitor.

14 I may have discussed it in the terms of that if
15 we plead that's going to be the minimum sentence.
16 Because that, of the three charges, 15 years was the
17 minimum.

18 Q Did your wife have any handling with his case?

19 A She was originally appointed to this case and I
20 took over the file because she took a job in the
21 solicitor's office. So at some point she would have
22 had something to do with the file, yes.

23 Q Did she have anything to do with it after she
24 went on with the solicitor's office?

25 A Once I took over the file, no, she had no more

JOHN KNOBELOCH

1 involvement with the file.

2 MR. BROOKS: Beg the Court's indulgence.

3 THE COURT: Certainly.

4 MR. BROOKS: No other questions, Judge.

5 THE COURT: Thank you.

6 CROSS-EXAMINATION

7 BY MS. WILSON:

8 Q So, Mr. Knobeloch, there were never any
9 recommendations from the solicitor about what sentence
10 they would recommend to the judge?

11 A There was not a sentencing recommendation.
12 There was an agreement to plea to the charge of
13 involuntary manslaughter instead of the charge of
14 murder.

15 Q Do you think that the applicant was pleading
16 freely and voluntarily that day?

17 A I do.

18 Q It was his decision to plead guilty that day?

19 A Correct.

20 Q Did you inform the applicant of his
21 constitutional rights that he was waiving if he pleads
22 guilty?

23 A Again, I don't specifically recall my
24 conversations with him. But once a decision is made to
25 plea, I do usually go through the litany of questions a

JOHN KNOBELOCH

1 circuit court will ask which includes the
2 constitutional rights.

3 Q And throughout the colloquy, did he ever
4 indicate that he didn't understand what was going on?

5 A No, ma'am.

6 Q And at the end of the plea proceeding, was it
7 your understanding that the applicant knew what
8 sentence he had been given by the judge?

9 A I had no reason to think otherwise, so, yes.

10 MS. WILSON: No further questions.

11 THE COURT: Thank you, ma'am.

12 Anything further?

13 MR. BROOKS: That's it, Judge.

14 THE COURT: Okay, thank you.

15 THE WITNESS: Thank you.

16 MR. BROOKS: That's the applicant's case, Judge.

17 THE COURT: Thank you.

18 Anything further from the state?

19 MS. WILSON: Your Honor, I also just want to put
20 on the record that we have some victims present in the
21 courtroom in this case.

22 THE COURT: Okay, I appreciate that.

23 Anything further?

24 MR. BROOKS: Judge, briefly my client, as he has
25 testified, would like to have post conviction relief

1 granted and give him a new trial.

2 THE COURT: Okay, thank you.

3 MS. WILSON: Your Honor, briefly the record
4 reflects that Mr. Smith was advised of all his rights
5 on the -- through the plea colloquy, that he indicated
6 what sentence he would receive.

7 And also the record reflects, as you know from
8 reading it, that Judge Dennis did discuss the 15-year
9 potential of giving the defendant a minimum sentence
10 but he didn't because of the circumstances of the
11 crime. So, that's it, Your Honor.

12 THE COURT: Okay, thank you. The application
13 for post conviction relief is denied.

14 The petitioner has presented absolutely no
15 evidence that his pleas were not knowingly,
16 intelligently and voluntarily entered.

17 I have reviewed the transcript and Judge Dennis
18 was very careful to ask each of the individuals that
19 pled, this was a group plea, of all of the individuals
20 that were involved in the burglary first, involuntary
21 manslaughter and grand larceny that evening.

22 The petitioner was indicted for murder. Part of
23 the deal, I guess, with the solicitor's office was that
24 they permitted him to plead to the offense of
25 involuntary manslaughter, but no recommendation was put

1 on the record that I was able to find in the
2 transcript.

3 He also pled guilty to grand larceny and
4 burglary first, which as you all know carries a
5 mandatory minimum of 15 years. That was explained
6 multiple times in the transcript. Multiple questions
7 were answered of each individual who pled that day to
8 make sure that they understood the constitutional
9 rights that they were waiving, as well as the sentences
10 that they faced.

11 And at the very end of the transcript when he
12 sentenced everyone, specifically pages 86 through 88,
13 the judge even explained why he couldn't give them, in
14 good conscience, 15 years. And explained that he was
15 treating them all the same.

16 Everyone is treated the same. The sentence is
17 23 years. You're given credit for the time that you've
18 served.

19 And then he went into additional points
20 throughout the transcript with each individual
21 defendant that made it abundantly clear to this Court
22 that everything was explained.

23 So I simply do not find it credible today that
24 anybody who participated in that plea did not
25 understand that they were going to get 23 years that

1 day. And they were facing life imprisonment.

2 So, I appreciate Mr. Brooks asking at the
3 beginning of the hearing if the applicant really
4 understood what he was asking the Court to do today.

5 For those reasons, and because I do not find
6 ineffective assistance of counsel, and I do find that
7 the pleas were voluntary, knowing and intelligent as
8 reflected in the transcript, the application is denied.

9 Thank you.

10 Ms. WILSON: Thank you, Your Honor. I will
11 submit a proposed order.

12 (Whereupon, the proceedings in the matter before
13 the Court were adjourned.)

14 * * * * *

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
PARTIAL transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

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

-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

1424
AT
SOL

ES STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Jerry J. Smith, #332155

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-10-6129

ORDER OF DISMISSAL

FILED
2013 APR 30 AM 10:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 29, 2011. The Respondent made its Return on December 12, 2011. An evidentiary hearing into the matter was convened on July 24, 2012, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, John Knobloch, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Applicant's Record on Appeal, the PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the March 2007 term of the Charleston County Grand Jury for grand larceny (\$1000-\$5000) (2007-GS-10-4266), murder (2007-GS-10-4268), and first degree burglary (2007-GS-10-4267). John Knobloch, Esquire,

DM
-1-

represented Applicant. On December 5, 2008, the Applicant pled guilty to the lesser-included offense of involuntary manslaughter and as indicted to grand larceny and first degree burglary. The Honorable R. Markley Dennis, Jr. sentenced him to confinement for twenty-three (23) years for first degree burglary, five (5) years for involuntary manslaughter, and five (5) years for grand larceny. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Smith, Op. No. 2010-UP-389 (S.C. Ct. App. filed August 25, 2010). The Remittitur was issued on September 10, 2010.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of plea counsel in that:
 - a. Applicant's initial attorney recused herself. Laura Knobeloch went to work as a Solicitor two weeks prior to trial. Her husband, John Knobeloch, took over the case. John Knobeloch advised Applicant to plea to the prosecutor's recommended 15 year sentence because he otherwise had no strategy to proceed to trial. Applicant received 23 years instead of agreed upon 15 years. Applicant argues that counsel should have motioned for enough time to adequately represent Applicant. Counsel's failure to motion for a continuance rendered him inadequate and ineffective.
 - b. Counsel failed to adequately investigate the facts and circumstances surrounding the victim. Failure to conduct such investigation denied Applicant of relevant information which could have established his innocence.
 - c. Counsel failed to strategize with Applicant by not discussing discovery package which supplied an incredible witness's statement implicating Applicant. Counsel grossly erred by not questioning the truth of State's witness.
 - d. Counsel failed to weigh the pros and cons of going to trial. Counsel erred by coercing Applicant to plea by threatening a life's sentence if he did not accept prosecutor's offered plea.
 - e. Counsel's ineffective assistance of said case is enhanced by clearly violating the rules of due process.

- f. Counsel failed to explain to Applicant that Applicant has the right to withdraw plea if trial judge rejected prosecutor's recommendation.
- g. Counsel's failure to submit, develop, and present all relevant and mitigating evidence which would have caused an entirely different resulting outcome grossly violates the federally granted right to due process.
- h. Counsel failed to question the irrelevant evidence presented by the prosecution.

At the hearing, Applicant waived all grounds for relief except ineffective assistance of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

At the evidentiary hearing, the Applicant testified that his plea was entered involuntarily because he pled guilty with the understanding that he would receive a fifteen year sentence for his first degree burglary charge. He testified that he felt tricked into pleading guilty and that he did not know that he was sentenced to twenty-three years until he reached the Department of Corrections. He testified that he recalled being told the maximum sentence for first degree burglary was life, but did not recall the plea judge telling him that he would not be sentenced to the fifteen year minimum sentence. The Applicant further testified that he did not recall hearing the plea judge say that he was being sentenced to twenty-three years for first degree burglary. The Applicant stated that plea counsel told him to answer "yes" to all of the judge's questions. Lastly, the Applicant testified that he would have gone to trial had he known we was not getting a fifteen year sentence.

At the evidentiary hearing, plea counsel testified that he was appointed to represent the Applicant. He testified that he discussed the elements of each charge with the Applicant, the differences

between the charges he was indicted for and the charges he was pleading guilty to, and the strength of the State's case. Plea counsel also testified that during plea discussions with the State, the Applicant was offered a plea to involuntary manslaughter instead of murder. He testified that there were no specific sentences discussed with the State and that he does not recall receiving a fifteen year plea offer from the State. He also testified that the State was not willing to make any sentence recommendation. Lastly, plea counsel testified that it was the Applicant's decision to plead guilty, and that he believed the plea was entered freely and voluntarily. The Applicant never indicated to plea counsel that he did not understand the plea proceeding or the sentence given by the plea judge.

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland,

APM
-4-

466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leake, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that plea counsel is a practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and

APM
-5-

possible defenses or lack thereof. The record reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. This Court finds that the Applicant understood his sentence.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that plea counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges his guilty plea was involuntary because he thought that he would receive a fifteen year sentence for first degree burglary. This Court finds that the Applicant's plea was entered freely, knowingly, and intelligently. This Court further finds that the Applicant was thoroughly advised of his constitutional rights and the potential sentences for all of his charges prior to pleading guilty. The South Carolina Supreme Court has held that any misconceptions that a defendant may have about the terms of his guilty plea or sentence may be cleared up by the Judge's colloquy. Knox v. State, 340 S.C. 81, 530 S.E.2d 827 (2000).

Here, the Applicant was not only advised of all his constitutional rights and the potential sentences he was facing, but the judge stated on the record why he would not sentence the Applicant to fifteen years. The plea judge stated to all the co-defendants "your records tell me that fifteen is warranted...but I can't in good conscience bring myself to do that because something happened during

AM
6-

that burglary." (T. 86). In addition, the plea judge clearly stated at the end of the plea proceeding that the Applicant's sentence for first degree burglary would be twenty-three years.

The Applicant stated at the plea proceeding that he was explained the charges and that he understood the possible punishments. (T.13-17). The Applicant also stated during the plea proceeding that he understood the plea agreement to be "no negotiations other than allowing him to plead to the involuntary." (T. 16-17). The Applicant also testified that he was satisfied with his attorney. (T. 16). The Applicant's response to the judge's questioning during the plea colloquy further demonstrated his understanding that there were no sentencing recommendations from the State.

This Court finds further that the Applicant's claim, that he was told to answer "yes" to all of the plea judge's questions, does not affect the voluntariness of the Applicant guilty plea. In Moorehead, the Court stated that the Applicant's explanation that he answered the trial judge in the affirmative on counsel's alleged advice that the questions were meaningless does not support the granting of PCR. Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1997). A statement that questions are "routine" is not an invitation to answer then untruthfully, nor does it constitute reason to believe the questions and statement of the judge during the guilty plea mean nothing. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). Despite any discussion regarding the plea proceeding with plea counsel, the Applicant had a duty to answer the questions truthfully. His claim that plea counsel told him to answer "yes" at the plea proceeding does not affect the nature of the plea and does not warrant granting of his post-conviction relief application.

This Court also finds that plea counsel's testimony was credible, and that the Applicant testimony was not credible. Plea counsel testified that the Applicant was never offered a plea of fifteen years and that he reviewed the potential sentences with the Applicant prior to the plea. This Court finds that the Applicant's allegations are without merit, that the Applicant failed to carry his burden of

am
-4-

proving that plea counsel was ineffective, and that but for plea counsel's performance he would have proceeded to trial instead of pleading guilty.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that plea counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violation or deprivation before or during his guilty plea and sentencing proceedings. Plea counsel was not deficient in any manner, nor was the Applicant prejudiced by plea counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

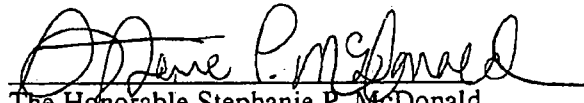
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

am
-8-

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29th day of April, 2013


The Honorable Stephanie P. McDonald
Presiding Judge, 9th Judicial Circuit

Charleston, South Carolina.

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW
IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

May 6, 2013

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Jerry Jerome Smith v State of S. C.
Case No. 2011-CP-10-6129

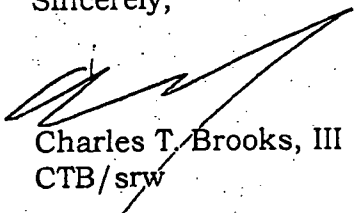
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/srw

Enclosed as stated

Cc: Ashleigh R. Wilson, Office of Attorney's General
South Carolina Office of Appellate Defense
Jerry Jerome Smith, 332155

RECEIVED

MAY 08 2013

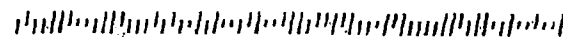
S.C. SUPREME COURT

THE BROOKS LAW OFFICES, LLC
309 BROAD STREET
P.O. BOX 3512
SUMTER, S.C. 29151



South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

2921131330-6099



SAW20060902126

DOCKET NO. 2007GS1004266

WITNESSES

Berry Goldstein
Charleston City Police Department

AGENCY CASE NUMBER
0617020

ARREST WARRANT NUMBER
H913826

DATE OF ARREST

September 1, 2006

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury
Date: 9/1/06

VERDICT

Forfeiture of Petit Jury
Date:

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

March 2007 Term

THE STATE

vs.

JERRY JEROME SMITH

Indictment for
GRAND LARCENY

SC Code: 16-13-0030(B)(1)

FILED

MAR 21 2007

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

WMA

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

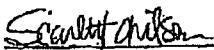
INDICTMENT

At a Court of General Sessions, convened on March 5, 2007 the Grand Jurors of Charleston County present upon their oath:

GRAND LARCENY

That in Charleston County, South Carolina, on or about August 23, 2006, to August 24, 2006, in concert with others, the Defendant, Jerry Jerome Smith, did take or carry away the personal property of Damie Johnson, valued in excess of \$1000, with intent to deprive the owner permanently of such property; all in violation of Sections 16-01-80 and 16-13-30(b)(1), 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.


SCARLETT WILSON
CHIEF DEPUTY SOLICITOR

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

H913866

DATE OF ARREST

September 1, 2006

ACTION OF GRAND JURY

(TRUE BILL)

Foreperson of Grand Jury

Date: *PN Williams*

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March 2007 Term

THE STATE

vs.

JERRY JEROME SMITH

Indictment for

BURGLARY - FIRST DEGREE

SC Code: 16-11-0311

FILED

MAR 21 2007

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.*MKT*

APPROVED A SIGNED COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By *M. K. Williams*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 5, 2007 the Grand Jurors of Charleston County present upon their oath:

BURGLARY - FIRST DEGREE

That in Charleston County, South Carolina, on or about August 23, 2006, to August 24, 2006, in concert with others, the Defendant, Jerry Jerome Smith, did enter the residence of Dannie Johnson at _____, Charleston, South Carolina, without the consent of the owner and with the intent to commit a crime therein; and did cause physical injury to Dannie Johnson, a non-participant in the crime. This is in violation of Section 16-11-311 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.

Scarlett Wilson
SCARLETT WILSON
CHIEF DEPUTY SOLICITOR

ATTEST:
JULIE J. ARMSTRONG (BEAL)
CLERK C.P. & S.C.
Julie J. Armstrong

SAW20060902126

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

0617020

ARREST WARRANT NUMBER

H913867

DATE OF ARREST

September 1, 2006

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: *M. W.*

VERDICT

Foreperson of Petit Jury
Date:

INDICT.DOT

DOCKET NO. 2007GS1004268

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March 2007 Term

THE STATE

vs.

JERRY JEROME SMITH

Indictment for

MURDER

SC Code: 16-03-0010, 0020

FILED

MAR 21 2007

JULIE J. AS. STRONG
CLERK, CR & GA*MMA*

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

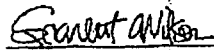
INDICTMENT

At a Court of General Sessions, convened on March 5, 2007 the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about August 23, 2006, to August 24, 2006, with malice aforethought and in concert with others, Jerry Jerome Smith did kill and murder victim Dannie Johnson by means of turning over the victim's wheelchair while the victim, a paraplegic, was confined to the wheelchair, and that Dannie Johnson did die in Charleston County as a proximate result thereof between August 23, 2006, and August 24, 2006; in violation of Section 16-3-10 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.


SCARLETT WILSON
CHIEF DEPUTY SOLICITOR