

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE GENERAL SESSIONS COURT

SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
)
)
VS)
)
)
TAMMY SMATHERS,)
)
Defendant.)
_____)

ORDER DENYING MOTION TO
RECONSIDER AND FINDING NO
FACTUAL BASIS FOR GRANTING
EARLY PAROLE

2012-GS-02-00521

This matter came before the Court for a hearing on December 12, 2013 at the Aiken County Courthouse. Present for the hearing were the Defendant and her attorney, James Whittle. The State was represented by Deputy Solicitor David W. Miller. After hearing from the State, counsel for the defense, and fully considering the record offered at the hearing, including the Defendant's sworn testimony, this Court hereby makes the following findings of fact and conclusions of law.

On January 26, 2011, Tammy Smathers shot her husband, Donald Smathers in the back of the head with a large caliber handgun. After the shooting, Tammy called 911 and reported that an associate of hers, Melvin Lowe, was the person who had shot Donald. Subsequent investigation by the Aiken County Sheriff's Office ultimately cleared Melvin Lowe as a suspect in the shooting.

Donald Smathers did not die immediately following the shooting and ultimately began to recover from the gunshot. Eventually, on March 14, 2011, he recuperated sufficiently to speak about the incident with Investigators from the Aiken County Sheriff's Office. Following that interview, warrants were obtained charging Tammy Smathers with attempted murder and possession of a weapon during the commission of a violent crime in this incident.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, clerk of Court, of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that with respect to a true and correct copy of the original documents which have been filed in my office this

JAN 21 2014

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.
Deborah Bell *DB*
Deputy Clerk

Donald Smathers never fully recovered from being shot in the head by his wife. Eventually, he was moved from the hospital to a rehabilitation facility, then back to his home, but shortly thereafter, it became necessary to place him in an assisted living facility where he could get constant medical attention. On January 20, 2012, Donald Smathers died while in the assisted living facility. The subsequent autopsy listed the cause of death as "respiratory failure due to pneumonia due to traumatic brain injury due to a gunshot wound to the head". The manner of death was classified as Homicide. Thereafter, on April 12, 2012, Tammy Smathers was directly indicted by the Aiken County Grand Jury for the Murder of Donald Smathers.

On February 8, 2013, Tammy Smathers pled guilty to the lesser included offense of Voluntary Manslaughter and was sentenced by this Court to a term of confinement in the South Carolina Department of Corrections for a period of fifteen (15) years. Thereafter, counsel for Smathers filed a timely Motion to Reconsider the sentence imposed by this Court. At counsel's request, and with the consent of the State, the matter was not heard until I returned to Aiken County General Sessions for the December 10, 2013 term of Court. At that time, in addition to the Motion to Reconsider, the defense requested that this Court make specific findings of fact on the record as to whether the Defendant suffered domestic violence at hands of Donald Smathers, for purposes of early parole eligibility pursuant to §16-25-90.

Smathers testified at the hearing on her behalf. Under direct examination, she testified that the relationship with her husband was characterized by domestic abuse for many years. She testified that the abuse would occur sometimes as often as two or three times each month from the time she became romantically involved with Donald Smathers in 1988 and continued largely unabated until the incident in their home in January of 2011. Smathers testified that she was always in fear of her husband, particularly when he had been drinking.

On cross examination, Smathers testified that there had been only four reports of any criminal activity in her home since 1989 because a former chaplain for the Aiken County Sheriff's Office had destroyed all of the records. Of the four reports that remained, Smathers acknowledged that one of the reports was from 2004 and involved a verbal disagreement with Don. The second report was from 2006 listed Don as the victim and Tammy was reported as the aggressor. The third and fourth reports, from 2007 and 2008 respectively, both indicated that there was no report of a physical confrontation and no evidence any physical confrontation had taken place. No charges resulted from any of the four proffered reports.

After further questioning on cross examination, Smathers began to cry on the stand and testified that she was not guilty of shooting Don Smathers and that she had lied to this Court when she admitted to the allegations contained in the indictment during the February guilty plea. Smathers additionally testified that she and Don were involved in an illegal gambling business throughout their relationship and that fear of that illegal activity being discovered was the reason she stayed with Don despite his alleged violent nature.

Conclusions of Law and Fact

Voluntary Manslaughter is a "no parole" offense as defined by §24-13-100. However, a person who is convicted of or pleads guilty to an offense against a household member is eligible for parole after serving one-fourth of his or her prison term if the person presents credible evidence of a history of criminal domestic violence, as defined in S.C. Code Ann. § 16-25-20, suffered at the hands of the household member pursuant to § 16-25-90. To establish eligibility for parole under §16-25-90, the alleged history of domestic violence must be proven by a preponderance of the evidence. *State v. Grooms*, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000). Therefore, mere production of evidence does not automatically result in earlier parole eligibility;

instead, the defendant must persuade the Court by presenting proof which leads the trier of fact to find that the existence of the contested fact is more probable than its nonexistence. *Id.* at 253–54, 540 S.E.2d at 101–02 (citing 2 *McCormick on Evidence* § 339 (5th ed.1999)). Moreover, use of the term “credible evidence” indicates the legislature intended the defendant's evidence to be, in fact, trustworthy, not simply plausible. *Id.* at 253, 540 S.E.2d at 101. The Defendant must persuade this Court her evidence is reliable. *Id.*

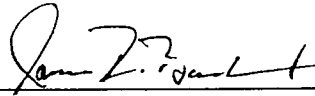
I find the Defendant's testimony at the December 13, 2013 hearing to be completely lacking in credibility. The Defendant denied that the Aiken County Sheriff's Office had only been called to her house four times in over twenty years, instead claiming that a chaplain with the ACSO had purged their incident reports. Additionally, the Defendant offered no corroborating testimony from other family members to support her allegations of near-constant fear of Donald Smathers, despite the fact that her own daughters from a previous relationship lived with her during much of that time. Furthermore, the Defendant's “revelation” at the hearing that she had not, in fact, committed this offense is contrary to the evidence in the case and her own prior, sworn testimony.

The testimony offered by the Defendant in this matter falls well short of being the type of trustworthy evidence that could lead to a finding by this Court that the Defendant is entitled to early parole pursuant to the statute. While it may be plausible that there were isolated incidents of domestic discord between the Defendant and her husband, there was no credible evidence offered to substantiate a history of domestic abuse between the two.

Based on the foregoing, I hereby find the Defendant has failed to produce any *credible* evidence pursuant to §16-25-90 to establish her eligibility for early parole. Additionally, for the

reasons outlined above, I find that the Defendant's motion to reconsider this Court's sentence imposed on February 8, 2013 should also be DENIED.

IT IS SO ORDERED.



James R. Barber, III
Presiding Judge
Second Judicial Circuit

January 14, 2014
Aiken, South Carolina
Chamber