

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Lexington County  
Frank R. Addy, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**  
FEB 10 2014  
S.C. Supreme Court

ANN SMITH,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2013-001171

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: Indictment 2006-GS-32-3722, State  
2 versus Ann Baxley Smith, indicted for murder. She is  
3 pleading to voluntary manslaughter. The indictment has  
4 been true-billed and she is represented by Mr. Tetterton.

5 THE COURT: Thank you, ma'am.

6 THE CLERK: Raise your right hand, please,  
7 ma'am.

8 ANN BAXLEY SMITH, after being duly sworn,  
9 testified as follows:

10 THE COURT: Solicitor, I assume the CDR code is  
11 correct?

12 MR. EARGLE: Yes, sir, your Honor.

13 THE COURT: Okay. For manslaughter, not murder?

14 MR. EARGLE: Yes, sir, your Honor.

15 THE COURT: Thank you very much.

16 All right. Mrs. Smith, how old are you?

17 DEFENDANT SMITH: Fifty-two.

18 THE COURT: Fifty-two?

19 DEFENDANT SMITH: Yes, sir.

20 THE COURT: Could you speak up so I could hear  
21 you, please, ma'am?

22 DEFENDANT SMITH: Yes, sir.

23 THE COURT: Just turn that microphone around so  
24 I can hear you, okay?

25 DEFENDANT SMITH: Fifty-two.

1 THE COURT: And what's your date of birth?

2 DEFENDANT SMITH: [REDACTED].

3 THE COURT: Social Security number.

4 DEFENDANT SMITH: [REDACTED].

5 THE COURT: And you live on Kershaw Highway in  
6 Camden; is that correct?

7 DEFENDANT SMITH: Yes, sir.

8 THE COURT: Are you married?

9 DEFENDANT SMITH: No, sir.

10 THE COURT: How far did you go in school?

11 DEFENDANT SMITH: Ninth grade.

12 THE COURT: Ninth grade. Did you complete the  
13 ninth grade?

14 DEFENDANT SMITH: Yes, sir.

15 THE COURT: Have you done any type of work since  
16 you dropped out of school?

17 DEFENDANT SMITH: Yes, sir.

18 THE COURT: Where?

19 DEFENDANT SMITH: I worked as a waitress, worked  
20 as a truck driver and I worked with the Mack plant.

21 THE COURT: Did you drive trucks long distance  
22 or local or both?

23 DEFENDANT SMITH: Long distance.

24 THE COURT: How long did you do that?

25 DEFENDANT SMITH: Five years.

1 THE COURT: Five years. Did you do it as a  
2 couple or a pair or just by yourself?

3 DEFENDANT SMITH: No, a team.

4 THE COURT: A team?

5 DEFENDANT SMITH: Yes, sir.

6 THE COURT: All right. Mr. Tetterton, have you  
7 explained to the defendant the charge contained in the  
8 indictment, the possible punishment, her constitutional  
9 rights including her right to a jury trial?

10 MR. TETTERTON: Yes, your Honor, I have.

11 THE COURT: Did she appear to understand?

12 MR. TETTERTON: Yes, sir.

13 THE COURT: Have you had any difficulty  
14 communicating with her?

15 MR. TETTERTON: None whatsoever, your Honor.

16 THE COURT: How does she wish to plead?

17 MR. TETTERTON: Guilty, your Honor.

18 THE COURT: And do you agree with her decision  
19 to plead guilty?

20 MR. TETTERTON: I do, your Honor.

21 THE COURT: All right. From your investigation  
22 of facts, do you agree that the State could produce  
23 sufficient evidence to convince a jury beyond a reasonable  
24 doubt of voluntary manslaughter?

25 MR. TETTERTON: Yes, sir.

1 THE COURT: Have you had any indication that  
2 Mrs. Smith would need any type of mental evaluation?

3 MR. TETTERTON: Your Honor, she was evaluated by  
4 Dr. Frierson, and we've had that evaluation. She needs no  
5 further evaluation.

6 THE COURT: Okay. And was that okay, the  
7 evaluation?

8 MR. TETTERTON: It shows something in there, but  
9 nothing that would affect her ability to plead guilty.

10 THE COURT: What did it show?

11 MR. TETTERTON: It showed she had depression,  
12 your Honor.

13 THE COURT: Depression?

14 MR. TETTERTON: Yes, sir.

15 THE COURT: Is she on any type of medication for  
16 the depression?

17 MR. TETTERTON: Yes, she is, your Honor.

18 THE COURT: What is she taking?

19 MR. TETTERTON: She's on three antidepressants.  
20 She's on Prozac and Remeron and one other one, I think.

21 DEFENDANT SMITH: Trazodone.

22 MR. TETTERTON: Trazodone, your Honor.

23 THE COURT: Okay. All for depression?

24 MR. TETTERTON: Yes, your Honor.

25 THE COURT: Does she have a prior criminal

1 record?

2 MR. TETTERTON: Your Honor, she has some things.  
3 I stand to be corrected if I misstate it. She has a DUI,  
4 I think three DUIs throughout her lifetime, and one simple  
5 CDV back in Kershaw County many years ago.

6 THE COURT: Okay.

7 MR. TETTERTON: I think that's all she has as a  
8 record.

9 MR. EARGLE: That's correct, your Honor.

10 THE COURT: Is that correct?

11 MR. EARGLE: Yes, sir.

12 THE COURT: Thank you very much.

13 Mrs. Smith, have you had any drugs or alcohol in  
14 the last 24 hours?

15 DEFENDANT SMITH: No, sir.

16 THE COURT: Are you taking any other medications  
17 other than what your attorney has explained to the Court?

18 DEFENDANT SMITH: No, sir.

19 THE COURT: Did you take that medication this  
20 morning?

21 DEFENDANT SMITH: No, sir.

22 THE COURT: Did you take it last night?

23 DEFENDANT SMITH: Yes, sir.

24 THE COURT: Does that medication in any way  
25 affect your thought process here today?

1 DEFENDANT SMITH: No, sir.

2 THE COURT: Do you understand why you're here?

3 DEFENDANT SMITH: Yes, sir.

4 THE COURT: Is there any question as to why  
5 you're here?

6 DEFENDANT SMITH: No, sir.

7 THE COURT: Do you have any children?

8 DEFENDANT SMITH: Yes, sir.

9 THE COURT: How many?

10 DEFENDANT SMITH: Three.

11 THE COURT: What are their ages?

12 DEFENDANT SMITH: I have a son that's 34, a  
13 daughter 27, and a son 21.

14 THE COURT: Okay. Other than what your  
15 attorneys have explained on the depression medication that  
16 you're taking for depression, have you ever been diagnosed  
17 with any other emotional, nervous or mental condition by a  
18 doctor?

19 DEFENDANT SMITH: No, sir.

20 THE COURT: Other than the medication you're  
21 taking, are you taking anything else?

22 DEFENDANT SMITH: No, sir.

23 THE COURT: All right. Do you understand that  
24 for voluntary manslaughter you can receive up to 30 years?

25 DEFENDANT SMITH: Yes, sir.

1 THE COURT: Have any question about the charge  
2 or the maximum time you could receive?

3 DEFENDANT SMITH: No, sir.

4 THE COURT: You also understand that this is a  
5 non-parolable offense; you will never be eligible for  
6 parole. Do you understand?

7 DEFENDANT SMITH: Yes, sir.

8 THE COURT: You'll have to serve at least  
9 85 percent. Do you understand?

10 DEFENDANT SMITH: Yes, sir.

11 THE COURT: Is there any question in your mind  
12 about that concept?

13 DEFENDANT SMITH: No, sir.

14 THE COURT: Are you satisfied with the service  
15 of your attorney?

16 DEFENDANT SMITH: Yes, sir.

17 THE COURT: Has he done everything you've asked  
18 him to do?

19 DEFENDANT SMITH: Yes, sir.

20 THE COURT: Is there anything else that you need  
21 to tell your attorney about your case?

22 DEFENDANT SMITH: No, sir.

23 THE COURT: Have you understood all the talks  
24 that you've had with your attorney?

25 DEFENDANT SMITH: Yes, sir.

1 THE COURT: Is there anything that your  
2 attorney's done that you feel like he should not have  
3 done?

4 DEFENDANT SMITH: No, sir.

5 THE COURT: Are you completely satisfied with  
6 his services?

7 DEFENDANT SMITH: Yes, sir.

8 THE COURT: Solicitor, you're not withholding  
9 any discovery materials as a condition of the plea, are  
10 you?

11 MR. EARGLE: No, sir, your Honor.

12 THE COURT: Mrs. Smith, do you understand that  
13 you're entitled to a jury trial?

14 DEFENDANT SMITH: Yes, sir.

15 THE COURT: At a jury trial, the State would be  
16 required to prove your guilt beyond a reasonable doubt.  
17 All 12 jurors would have to find you or vote to find you  
18 guilty. It would take a unanimous verdict. Do you  
19 understand?

20 DEFENDANT SMITH: Yes, sir.

21 THE COURT: At the jury trial you could call  
22 witnesses on your behalf, your attorney could  
23 cross-examine witnesses, present evidence on your behalf,  
24 you could testify on your behalf if you so choose. Do you  
25 understand that about a jury trial?

1 DEFENDANT SMITH: Yes, sir.

2 THE COURT: All right. Knowing that about a  
3 jury trial, do you want a jury trial?

4 DEFENDANT SMITH: No, sir.

5 THE COURT: Do you understand you have the right  
6 to appeal the guilty plea ten days from today?

7 DEFENDANT SMITH: Yes, sir.

8 THE COURT: Under the fifth amendment of the  
9 constitution you have the right to remain silent. Do you  
10 understand?

11 DEFENDANT SMITH: Yes, sir.

12 THE COURT: No one can make you testify against  
13 yourself. Do you understand?

14 DEFENDANT SMITH: Yes, sir.

15 THE COURT: When you enter a guilty plea, you  
16 will be acknowledging your guilt; therefore, you will be  
17 testifying against yourself. Do you understand?

18 DEFENDANT SMITH: Yes, sir.

19 THE COURT: Are you willing to give up your  
20 fifth amendment rights to remain silent and enter your  
21 guilty plea today?

22 DEFENDANT SMITH: Yes, sir.

23 THE COURT: Ma'am?

24 DEFENDANT SMITH: Yes, sir.

25 THE COURT: Thank you very much.

1 Mrs. Smith, has anybody threatened you, coerced  
2 you, intimidated you to make you plead guilty?

3 DEFENDANT SMITH: No, sir.

4 THE COURT: Any promises been made to you other  
5 than a reduction of the charge from murder to voluntary  
6 manslaughter?

7 DEFENDANT SMITH: No, sir.

8 THE COURT: Have you had enough time to make  
9 your decision to plead guilty?

10 DEFENDANT SMITH: Yes, sir.

11 THE COURT: Are you pleading guilty of your own  
12 freewill and accord?

13 DEFENDANT SMITH: Yes, sir.

14 THE COURT: Have you understood all my  
15 questions?

16 DEFENDANT SMITH: Yes, sir.

17 THE COURT: Have any questions you want to ask  
18 the Court or your attorney?

19 DEFENDANT SMITH: No, sir.

20 THE COURT: Do you need to talk with your  
21 attorney?

22 DEFENDANT SMITH: No, sir.

23 THE COURT: Have you answered all the questions  
24 truthfully and correctly?

25 DEFENDANT SMITH: Yes, sir.

1 THE COURT: All right. Mrs. Smith, I'm going to  
2 ask the State to give me the facts of the case on the  
3 killing of Woodrow Smith on May 17th, 2006 here in  
4 Lexington County and I want you to listen. After he gives  
5 me the facts, I'm going to ask if you agree with the facts  
6 or disagree. Can you do that?

7 DEFENDANT SMITH: Yes, sir.

8 THE COURT: If you disagree with any facts, I  
9 want to know specifically what facts you disagree with.  
10 Can you do that?

11 DEFENDANT SMITH: Yes, sir.

12 THE COURT: Solicitor.

13 MR. EARGLE: Thank you, your Honor.

14 As you know, your Honor, the victim in this  
15 case, Woodrow Smith, was 62 years of age. This occurred  
16 on May 17th, 2006 at [REDACTED] in the Pelion  
17 area of Lexington County.

18 It's the State's contention that Ms. Ann Smith,  
19 who was divorced from Woodrow Smith, I believe they had  
20 been divorced for a couple of months at this time, drove  
21 to his home and around 6:30 p.m. she confronted him. I  
22 believe Woodrow Smith had been out doing some gardening  
23 work.

24 Also at the home was Debra Knight, who was the  
25 victim's live-in girlfriend. She was inside preparing

1 dinner and she heard a gunshot outside. She peeked  
2 outside and she observed Ms. Smith, Ann Smith, holding  
3 what she saw as a pistol. That pistol, your Honor, was a  
4 Derringer style 410/.45 caliber double-barrel pistol that  
5 ejects either 410 shotgun shells or .45 caliber shell  
6 casings. In this case it was a 410 shotgun shell that was  
7 used. Mr. Smith was hit on the right side of his chest.

8 Ms. Knight went outside to render assistance, at  
9 which time she tells us that Ms. Ann Smith pointed that  
10 pistol at her but did not fire it. Ms. Knight was able to  
11 drag Woodrow Smith back inside and call 911 for  
12 assistance.

13 Unfortunately, Mr. Smith died later that day  
14 from that gunshot wound, your Honor.

15 THE COURT: Okay.

16 MR. EARGLE: Once Ms. Knight brought Mr. Smith  
17 back into the home, Ms. Smith fled the scene and headed to  
18 Midland, Georgia, where she had family and friends. The  
19 State's contention is there was an assertive effort by  
20 those family and friends in Georgia to conceal Ms. Smith's  
21 location. They attempted to hide her truck as well as the  
22 murder weapon itself.

23 Deputies from the Lexington County Sheriff's  
24 Department tracked her down there and the next day went  
25 down there and arrested her and brought her back to

1 Lexington County. They also recovered the pistol that was  
2 used in this incident, your Honor.

3 THE COURT: And the ballistics matched up?

4 MR. EARGLE: Yes, sir, your Honor.

5 THE COURT: Did she give a statement?

6 MR. EARGLE: She did give a statement, and I'm  
7 sure Mr. Tetterton will elaborate on that. She admitted  
8 that the shooting occurred. Her contention is that she  
9 went there with the intent to commit suicide in front of  
10 Mr. Smith, and as she pulled out the pistol, that he  
11 grabbed it and it went off.

12 THE COURT: It discharged?

13 MR. EARGLE: Yes, sir, your Honor.

14 THE COURT: All right. Mrs. Smith, are those  
15 facts correct?

16 DEFENDANT SMITH: Yes, sir.

17 THE COURT: Any of those facts you disagree  
18 with?

19 DEFENDANT SMITH: No, sir.

20 THE COURT: Thank you very much.

21 I find there's a factual basis for the plea and  
22 she's freely, voluntarily, knowingly, and intelligently  
23 made the decision to plead guilty with the advice of her  
24 attorney and all elements of the charge have been met.

25 I will be glad to hear from the State on

1 sentencing.

2 MR. EARGLE: Yes, sir.

3 THE COURT: Or anyone you would like for me to  
4 hear from.

5 MR. EARGLE: Yes, sir, your Honor. If I may  
6 introduce victims and members of the victim's family in  
7 this case.

8 Standing right here is Ms. Debra Knight who was  
9 there when the actual shooting occurred. This is  
10 Mr. Smith's daughter, Sonya Smith, and also his  
11 granddaughter, Lauren Masanovich, if I'm pronouncing that  
12 correctly, and they would like to address the Court, your  
13 Honor.

14 THE COURT: Okay. Ms. Knight.

15 MS. KNIGHT: Your Honor, thank you very much for  
16 letting me speak.

17 The horrifying day when we were home and she  
18 pulled in and shot Woody, I ran out on the porch and he  
19 was standing on the top step, her on the bottom step, and  
20 she had the most happy, satisfying smirk of satisfaction  
21 on her face. Then Woody said, Call 911; Ann has shot me;  
22 Debbie, run back in the house. And I turned and looked at  
23 her and she pointed the gun at me and I turned and ran.  
24 Woody followed, and as he got in the door he fell down.  
25 He couldn't stand up anymore.

1 I did everything I could to comfort him. I have  
2 so much anguish at watching someone slowly die. Nothing I  
3 could do.

4 I can't get her face out of my mind. I have had  
5 intensive counseling. I have constant nightmares.

6 It didn't have to be this way. Woody and I were  
7 going to be married and we were very happy.

8 What she did, she destroyed my life, Sonya's,  
9 Justin's, Lauren's, his friends, and I will never be  
10 normal again. I'm a half a person and I will never forget  
11 this as long as I live.

12 It's something that I don't, I can't come to  
13 terms with yet, but for justice for Woody, I want justice  
14 for Woody. He didn't have a chance. He didn't have a  
15 chance. He's gone and she's still here, and I want the  
16 maximum sentence for her for what she did deliberately.

17 THE COURT: Thank you, Ms. Knight. I'm sorry  
18 about your loss. It's something you probably will never  
19 forget, but for your benefit, you need to try to live with  
20 it and adjust to it for your own well-being. And I'm  
21 awfully sorry for your loss, and I understand you probably  
22 will never forget about it, but you really need to try to  
23 get over it and move on with your life and adjust to it.  
24 And thank you very much for being here.

25 MS. KNIGHT: Thank you.

1 MR. EARGLE: Your Honor, this is Sonya Smith,  
2 the victim's daughter.

3 THE COURT: Mrs. Smith, I'll be glad to hear  
4 from you.

5 MS. SMITH: Thank you, sir.

6 First, I'd like to say I lost my mother in 2003  
7 due to lung cancer and my dad was right there beside me  
8 the whole step of the way despite his home issues with  
9 her. They were still married at the time.

10 THE COURT: How long had they been married?

11 MS. SMITH: Thirty-two years.

12 THE COURT: Pardon?

13 MS. SMITH: My mother and my dad had been  
14 married for 32 years, and my father had only been married  
15 a year when my mother passed away.

16 THE COURT: Okay.

17 MS. SMITH: On many, many, many occasions, you  
18 know, two to three years worth of police reports, you  
19 know, her stalking my father and everything even during or  
20 before my mother got divorced from my father. It's just  
21 years of just torment from this woman between me and my  
22 family, and she harassed us constantly.

23 I tried to get a restraining order against her.  
24 We had no address for her so I could not get a restraining  
25 order to keep her from coming by my house.

1           Numerous threats on my mother's house, my  
2           deceased mother. She threatened to burn my mother's house  
3           down. She tried to destroy her property. She tried --  
4           she threatened my life, she threatened my children's  
5           lives.

6           I fear so much for my children that if she gets  
7           out, that she's going to come after us like she did my  
8           daddy.

9           My daddy was the best man in the world. When  
10          they stood at his funeral and they asked if anyone wanted  
11          to come speak, people came from Las Vegas, they came from  
12          Hilton Head, they came from Florida, people that didn't  
13          even know him for a few months came and spoke for my  
14          daddy.

15          He was at every football game, every practice,  
16          every cheerleading practice, everything for my children.

17          My son graduated in 2007. He was not there for  
18          my son's graduation. He was not there for my son's last  
19          year of playing football. And he could not escort my  
20          daughter on the football field anymore for her homecoming  
21          anymore. And he was just ripped away from us. And now  
22          all I have is his memory and the pain is all we have left.

23          We will never have the chance to see him smile  
24          or laugh again, and we'll constantly live in fear of her  
25          coming after us.

1 THE COURT: Is this a picture of your father  
2 that you're holding?

3 MS. SMITH: It's my mom and my dad and me when I  
4 was little.

5 THE COURT: I'm sorry for your loss, Ms. Smith.  
6 I want to thank you for being here.

7 MS. SMITH: Thank you.

8 MR. EARGLE: Your Honor, this is Lauren  
9 Masanovich, his granddaughter.

10 MS. MASANOVICH: Well, my grandpop, he was the  
11 only grandfather I had.

12 THE COURT: Is this a picture of your  
13 grandfather?

14 MS. MASANOVICH: Yes, sir.

15 He is the only role model and the only guy I  
16 looked up to.

17 Knowing that he's not there for my football  
18 games or cheerleading or all my school activities, I used  
19 to look down and he would always be there. And now  
20 knowing that he's not going to be there, I can't look down  
21 and see him.

22 She just came and put such a big dent in our  
23 lives. She could come home, me and my brother would be  
24 staying with my grandpop. She came home one night drunk,  
25 slamming doors.

1 THE COURT: Who came home drunk? I'm sorry.

2 MS. MASANOVICH: Ann.

3 THE COURT: The defendant here?

4 MS. MASANOVICH: Yes.

5 THE COURT: Okay. Did you live with her and  
6 your granddad?

7 MS. MASANOVICH: No, sir.

8 THE COURT: You were just visiting?

9 MS. MASANOVICH: Yes, sir.

10 THE COURT: Okay.

11 MS. MASANOVICH: And then one day me and my  
12 grandpa were over at my grandma's house and she was there  
13 in the road and she was cussing and yelling. I had  
14 nothing to do with it. They were kicking the mailbox  
15 down.

16 THE COURT: Well, Lauren, I'm awful sorry this  
17 happened. There's a lot of bad things that happen in  
18 life. I'm sorry it happened to you and your granddad.

19 You help take care of your mom, okay? You all  
20 take care of each other.

21 And that's a good picture of you and your  
22 granddad.

23 Thank you very much.

24 Mr. Tetterton, I'll be glad to hear from you or  
25 anyone you would like for me to hear from.

1 MR. TETTERTON: Thank you, your Honor.

2 Your Honor, standing to my left here is Stanford  
3 Owens. Stanford was her fourth husband.

4 Your Honor, as we do this business and have some  
5 experience in standing before judges with clients like Ann  
6 Smith, I think it's incumbent upon us to do our duty and  
7 to tell the judge the type of person that we're defending.  
8 And, you know, the older we get, your Honor, sometimes we  
9 try figure out why these things happen. And I think, your  
10 Honor, if you would indulge me a few minutes, I would like  
11 to give you some background on who you're getting ready to  
12 sentence and maybe the family of Sonya and Debra Knight  
13 can understand maybe why these things happen in today's  
14 society.

15 First of all, I'd like to give my condolences  
16 and my sympathy to Debra Knight and Sonya Smith. They  
17 have lost their father. They have lost a grandfather.

18 Your Honor, Ann Smith was raised by an abusive  
19 mother who abused alcohol. She had a father who abused  
20 she and her sisters when they were very young.

21 At the age of 16 she got married, dropped out of  
22 school, dropped out of tenth grade, had a child. And all  
23 this, your Honor, you'll understand why I'm telling you  
24 this, because a year after she got married, a year after  
25 she had that child she was abandoned by her husband and

1 she became a single parent. That started the road to her  
2 being here today.

3 She felt empty, she felt abandoned, and then she  
4 married another person. Shortly after they got married he  
5 abandoned her. Then she married someone else, had two  
6 children by him, he abandoned her. And these were men  
7 that she loved in her life and wanted to be the mother for  
8 their children and to live with them for the rest of her  
9 life.

10 Each time she had these relationships she was  
11 suicidal. She had three psychiatric hospitalizations,  
12 your Honor, to try to get her straightened out so she  
13 could go back and be a mother to her children and try to  
14 cope with why these men in her life that she wanted to  
15 spend the rest of her life with, why they would not do  
16 what they vowed to do when they got married and why they  
17 would abandon her. That started her life, your Honor.

18 She started drinking. She had alcohol  
19 dependence. She got a couple DUIs. She turned to  
20 alcohol. They had her on some medication in her early  
21 life to try to help her cope. That helped her. She went  
22 through some counseling sessions. That helped her.

23 Then she met Stan Owens. Stan was a truck  
24 driver. They were married, your Honor, 18 years.  
25 Stanford Owens lives in Kershaw County. He raised her

1 three children by these other men who had abandoned her.

2 They had a happy marriage. They lived outside  
3 the county, I mean outside the city up on Highway 521  
4 going towards Kershaw. Stan was a truck driver.

5 She got a job when Mack Truck came to Winnsboro.  
6 That created a lot of job opportunities for the Kershaw  
7 County people and she went to work over there. She worked  
8 in inspection to start off with. Woodrow Smith worked  
9 there. He was a supervisor in the shop.

10 Stan was out on the road delivering these Mack  
11 trucks that had been completed to their destinations. Ann  
12 was transferred from inspection to the shop where Woody  
13 was a supervisor. Mr. Smith, she called him Woody. They  
14 started a relationship, your Honor. Stan didn't know  
15 about it.

16 Shortly after they became very well acquainted,  
17 this is while, if I understand the facts correctly, he was  
18 still married to his wife who eventually died of cancer.  
19 He, in fact, came into the yard of Stan Owens where the  
20 marital residence was, got Ann and drove out the gate  
21 while her three children were left with Stan.

22 She went to live with Mr. Smith over here. They  
23 lived together for two years. He would disappear for  
24 weeks at a time and come back and she'd take him back.

25 THE COURT: She would disappear or he would?

1           MR. TETTERTON: He would. He would disappear  
2 for a couple of weeks.

3           They lived together for two years, your Honor.  
4 Of course, Sonya Smith was her stepdaughter. She didn't  
5 approve of Ann, didn't particularly like Ann. That  
6 created some problems in the marriage. It was before they  
7 got married. Problems in the relationship.

8           Then they got married. Again, a short term  
9 marriage and he abandoned her.

10          She went back. Stan Owens, being her husband of  
11 18 years, took her back into his home and let her live  
12 there during the separation.

13          That should have been the end of it, your Honor.  
14 They should have gone ahead and gotten their divorce and  
15 gone their merry way and he could have done whatever he  
16 was doing when he was gone for several weeks at a time.  
17 But he didn't do that.

18          In my investigation, and I have interviewed her  
19 co-employees at the Waffle House and they were prepared to  
20 come here today. In fact, the manager wrote a letter.  
21 Woodrow Smith would drive all the way to Kershaw County.  
22 He would call her on her job two or three times a week.  
23 He would come to Kershaw County while she was working and  
24 she would take time and he would sit down at the table  
25 with her and they would have a cup of coffee and he would

1 reach across the table and hold her hands. She had hopes  
2 of them getting back together. He led her on to believe  
3 there was hope of them getting back together.

4 The sheriff's department and Solicitor's office  
5 have been very cooperative, your Honor, in giving me a  
6 tremendous amount of discovery. They have done a good job  
7 and I commend them for that. They didn't want to hide  
8 anything, because they knew when Ann said, I went there to  
9 kill myself, that rang of some truth.

10 The letters they got from his residence or  
11 wherever they got them from, Debra Smith or whoever,  
12 speaks very loudly that Ann said, Woodrow, either turn me  
13 loose or get back together with me. Give me an answer.  
14 Give me an answer. It's all throughout her letters to  
15 him. Not one threatening word is in those letters that  
16 she left on the windshield of his job, not one threatening  
17 word in those communications between she and him.

18 Yes, she was an angry person; yes, she'd go over  
19 there and mess the house up. She was angry at him because  
20 he was leading her on.

21 She thought they were going to get back  
22 together. That's what he led her to believe.

23 Then after he was coming to Kershaw County, and  
24 I'm not talking about once or twice, your Honor, I'm  
25 talking about on a frequent basis, telephone calls. The

1 girls in the Waffle House would watch him drive off and  
2 Ann would be happy and they thought she thought they were  
3 getting back together.

4           Then she got divorce papers served on her on her  
5 job. She went into the restroom, locked herself in there,  
6 and her supervisor had to talk to her. Her world had come  
7 apart. I think that's in one of the letters or in her  
8 statement or maybe to Dr. Frierson she said her world had  
9 come apart because here she thought they were trying to  
10 salvage their marriage, but yet her world had come apart  
11 and he was now living with Debra Knight.

12           Stan continued to let her live with him and she  
13 tried to cope with it. Even before he served divorce  
14 papers on her, he would come over on their anniversary and  
15 he would take her out to eat, wine and dine her even  
16 during the separation with these high hopes.

17           She had visions of what had happened to her  
18 since she was 17 years old when the father of her child  
19 left her. She started drinking again, drinking fairly  
20 heavy.

21           If we look at what Dr. Frierson says about her,  
22 Your Honor, she has chronic feelings of emptiness, chronic  
23 feelings of depression and past suicide attempts.

24           When she realized that Mr. Smith had led her on,  
25 they were not going to get back together, she wanted to do

1 what she had attempted to do on prior occasions, take her  
2 own life.

3 Stan Owens had a year or so before that  
4 purchased this little Derringer, a double-barrel  
5 Derringer, a cheap gun. He bought it there in Camden and  
6 somehow or another she got it.

7 She went over to Mr. Smith's house where the  
8 marital residence was, because what had happened was when  
9 they started living together they had rented a trailer and  
10 together the two of them bought a home together thinking  
11 that was going to be their life the rest of her life.  
12 That's what she wanted. She wanted finally somebody and  
13 had left a good man for Woodrow Smith.

14 She went over there that morning perhaps with  
15 the intention of shooting herself. She was not familiar  
16 with the gun.

17 And, your Honor, I can tell you, the Solicitor's  
18 office have given me all the forensics. They've given me  
19 the ballistic report, they've given me the pathology and  
20 the autopsy, and they've given me the gunshot residue  
21 reports, and we have carefully examined each and every one  
22 of those reports, and that gun is a difficult gun to fire  
23 a second shot. When you pull the hammer back and fire the  
24 first shot, the second -- you have to move a little slide  
25 over the second time, and I'm convince, your Honor, if she

1 had knew how to work that second shot, we wouldn't be here  
2 today. We'd have two funerals instead of one. She  
3 couldn't get it to work or else she would have shot  
4 herself.

5 She went over there, and from the forensics,  
6 your Honor, it's not like she walked up to him in the yard  
7 and shot him. In fact, after talking with Otto Simmons at  
8 SLED, the forensic scientist that did the gunshot residue  
9 and looking at the autopsy report and analyzing the angle  
10 of the gunshot wound and the wadding that comes out of  
11 there, it was a very, very close shot. And looking at the  
12 gunshot residue inside of his left hand, on the back of his  
13 left hand, it was a very, very close range shot.

14 The wadding on the 410 shell came out and didn't  
15 even have time to expand before it entered his body, so it  
16 could not have been very far or else you'd have had pedal  
17 slaps on his body. That was not present in the autopsy or  
18 the examination of his body. It was a very close range  
19 shot.

20 THE COURT: All right. Did they find any, what  
21 is it, stippling?

22 MR. TETTERTON: They did find some tattoo  
23 patterning on the inside of his left hand like maybe he  
24 had attempted to get the gun.

25 The point I'm trying to make, it wasn't like she

1 walked up to him and shot him, your Honor. It's like she  
2 did go up to him like she said in her statement, I went  
3 there to get an answer one way or the other, turn me loose  
4 or I'm going to kill myself right here in front of you to  
5 show you how much you've hurt me. That's in her letters  
6 that the Solicitor's office provided me, your Honor. It's  
7 a tragic, tragic thing.

8 It's not like she went over there, and never  
9 once in her letters and her notes to Mr. Smith did she  
10 say, if I can't have you, no one else can have you.  
11 That's not there. That was not her frame of mind. She  
12 was, I think, your Honor, of the frame of mind that she  
13 was, like Dr. Frierson found, very much depressed. She  
14 was empty, she was lonely, and she was abandoned.  
15 Unfortunately, it didn't turn out that she killed herself.  
16 It turned out with Mr. Smith being shot and killed.

17 She did go to Georgia. She had relatives down  
18 there. She panicked. But with the discovery that the  
19 Solicitor's office gave me, and this follows her  
20 statement, she called her sister, Linda Knight. She  
21 called Stan and said: I've shot Woody, Woody's been shot.  
22 I don't know what to do. I'm panicking. I say she's  
23 panicking. Those are my words. She went down there where  
24 she thought she had a safe haven with her family and get  
25 some consolation from them or just meet with them and

1 they'd tell her what to do.

2 Stan Owens said, I'm sending you money, you turn  
3 around and come back, turn yourself in and we'll hire a  
4 lawyer for you. Unfortunately, she didn't have time to do  
5 that because they did go to Georgia and some of her family  
6 members did not in good thinking call the police. They  
7 did attempt, not Ann but one of her family members did  
8 attempt to hide the gun.

9 When they came and got her, she cooperated, your  
10 Honor. She said she told them exactly what happened. And  
11 in her statement she said that she had gone over there.

12 I mean, one letter is, Woody, I know you have a  
13 new love now and I have to move on but please see me just  
14 one last time, and she was looking for some closure and  
15 some answers from him that he never gave her when he came  
16 over to the Waffle House in Camden and held her hand and  
17 drank coffee with her and made her happy and then served  
18 her at her job with divorce papers.

19 She told the officer, I went there for an answer  
20 and to shoot myself. And, unfortunately, your Honor,  
21 that's what happened.

22 She is not a bad person. She was a good wife to  
23 Stan Owens for 18 years. She was a good mother to those  
24 children.

25 The children now live in Florida and they

1 couldn't be here today for other reasons, your Honor, but  
2 Mr. Owens is here to stand and tell you that for 18 years  
3 before Woodrow Smith came into her live he had a happy  
4 marriage there in Kershaw County.

5 Your Honor, it's often said that -- I know this  
6 Court will listen to Mr. Owens and in its best wisdom do  
7 what justice requires in this case.

8 THE COURT: Thank you very much.

9 I'll be glad to hear from you.

10 MR. OWENS: Yes, sir, your Honor.

11 I didn't come here to bash nobody. I came here  
12 to talk about Ann.

13 I was married to Ann for 18 years. Ann and I  
14 got married in North Carolina. I was driving a truck. I  
15 taught Ann how to drive the truck. I was the one that she  
16 was riding teams with.

17 Ann is not a bad person. And I regret what  
18 happened; that if I had been home that day, it wouldn't  
19 have happened. I would have talked her out of it. I  
20 could talk her out of anything.

21 I raised her children. Ann and I got along fine  
22 until Woody come into the picture.

23 Woody was a womanizer. He couldn't leave women  
24 alone. He had a very bad reputation of being a womanizer.  
25 Even at Mack Truck where we worked at, he would go around

1 bragging about the women that he had conquered. He  
2 destroyed families. He wanted the wife but he didn't want  
3 the kids.

4 He come to my house, got in my car and drove out  
5 the yard with her and left the kids sitting on the couch.  
6 He didn't want the kids, he wanted her.

7 Well, she went and stayed with him. That went  
8 on and we were divorced in July of 2003. And I kept the  
9 kids.

10 I raised the kids. I quit running on the road  
11 and I started running local so I could be there. They  
12 went to school during the day and I was there at night for  
13 them. I done everything for them.

14 Every time she would try to talk to the kids, he  
15 wouldn't let her. She couldn't do that. You're mine, I  
16 don't want your kids. And that went on and on and on and  
17 finally they started having problems. Woody would stay  
18 gone sometimes weeks at a time and walk back in the door  
19 and say, Honey, I'm home, and she's supposed to walk up to  
20 him with open arms and all. And that went on and she kept  
21 putting up with it and putting up with it.

22 She called me and told me what was going on and  
23 I said, well, you can come on back home then. She come  
24 back to the house. And we were getting long fine and  
25 then, you know, everything was evening itself out. We was

1 actually talking about getting back together and  
2 everything, and every time we'd do that Woody would pop up  
3 and he would destroy all that. It would start all over  
4 again. All over again.

5 And it's just like I'm saying, Ann's a good  
6 woman. She's a good woman. She was a good mother. She  
7 went to church. She took part in all of the weekly Bible  
8 study course and everything when we was married and  
9 everything. Then all this abuse started and it just went  
10 downhill from there on.

11 THE COURT: Thank you so very much.

12 Ms. Smith, anything you would like to say?

13 DEFENDANT SMITH: Yes, sir. I just would like  
14 to say I'm very sorry Woody's dead. I never meant for him  
15 to be hurt. I'd give anything if I could take that day  
16 back, but I can't, and it hurts me that he's gone.

17 THE COURT: Thank you very much.

18 Anything else, Mr. Tetterton?

19 MR. TETTERTON: Nothing, your Honor. I just ask  
20 that you temper your justice with mercy.

21 THE COURT: Okay. Anything else from the State?

22 MR. EARGLE: One thing, your Honor.

23 Just for the record, as part of this plea, the  
24 State is nol-prossing Indictment 2006-GS-32-3721, the  
25 State versus Ann Baxley Smith which was the possession of

1 a firearm during commission of a violent crime.

2 THE COURT: Okay.

3 MR. TETTERTON: Your Honor, I'd be remiss.

4 There was a letter that her employer wrote and I had it  
5 right here in front of me. They did say that Ann was a  
6 good person and that she was a good employee and that her  
7 job would always be open for her if she ever got back to  
8 Kershaw County where she could work, and I just wanted to  
9 bring that to the Court's attention.

10 THE COURT: Thank you, sir.

11 Mrs. Smith, Indictment 3722, you're sentenced to  
12 the State Department of Corrections for a period of 25  
13 years.

14 Thank you very much.

15 MR. TETTERTON: Thank you, your Honor.

16 (The proceedings were concluded.)

17 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

18

19

20

21

22

23

24

25



*de Herten*

WITNESSES

LCSD  
Richardson

DOCKET NO. *2006-GS-32-37222*

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2006

THE STATE

vs.

Ann Baxley Smith

A-2006-32-01336

9/18/2006 9:36 AM

ARREST WARRANT NUMBER

J145046

TRUE BILL

ACTION OF GRAND JURY

*Greg A. Lucas*  
Foreperson of Grand Jury  
Date: *16 Oct 06*

VERDICT

CDR# 0116

Indictment for

Murder

\$16-3-10

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

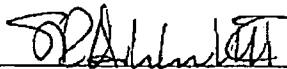
INDICTMENT FOR  
Murder

§16-3-10

At a Court of General Sessions, convened on OCTOBER, 2006, the Grand Jurors of Lexington County present upon their oath:

That Ann Baxley Smith did in Lexington County on or about May 17, 2006, willfully, feloniously, and with malice aforethought kill one Woodrow Smith by means of a gun shot wound to the chest with a pistol, and Woodrow Smith died in Lexington County on or about May 17, 2006, as a proximate result thereof, 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.

  
\_\_\_\_\_  
ASSISTANT SOLICITOR and  
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON  
STATE VS.

INDICTMENT/CASE#: 2006-GS32-3722  
AW#: J-145046  
Date of Offense: MAY 17, 2006  
S.C. Code §: 16-3-10  
CDR Code #: 0116

ANN BAXLEY SMITH  
AKA:  
Race: W Sex: F Age: 52  
DOB: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
DL# \_\_\_\_\_ SID# SC01078042

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: VOLUNTARY MANSLAUGHTER

in violation of §16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217

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

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

ATTEST: [Signature] Asst. Solicitor Ann Baxley Smith Defendant [Signature] Attorney for Defendant Tetterton

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

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 set by SCOPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_  
 Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.

Recipient:	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§35.13 (Public Del/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$25.00
§33.7, 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)	\$ _____
TOTAL	\$125

Beth A. [Signature]  
Clerk of Court/ Deputy Clerk  
Court Reporter: [Signature]

PRESIDING JUDGE: [Signature]  
Judge Code: \_\_\_\_\_  
Sentence Date: 11/31/06

GPJ ✓ G  
SC

FORM 5

STATE OF SOUTH CAROLINA FILED

IN THE COURT OF COMMON PLEAS

County of Lexington

1:02

Ann Baxley Smith 2008 JUL 21 326579  
Full name and prison number (if any) of Applicant

2008CP3202962

State of South Carolina

APPLICATION FOR  
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Camille G. Corra Dinst - 4450 Broad River Rd - Columbia SC 29210
2. Name and location of Court which imposed sentence Lexington County Judicial Center, 205 E. Main St - Lexington SC 29072
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 06-65-32-3722
  - (b) \_\_\_\_\_

JRW Newsoms FCR/CA/SVP file

ATTORNEY GENERAL'S OFFICE

RECEIVED 09/17/2008

ADMINISTRATIVE INSTRUCTIONS

FILE  OPEN  END

HAVE  COPIES MADE

ROUTE TO \_\_\_\_\_

ORDER  TRANSCRIPT

OPEN RECORDS  CLERK RECORDS

OTHER: Cal: 60 days

Appoint Atty \_\_\_\_\_

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 01/31/08 25 years

(b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty (plea bargain)

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

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

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

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

(b) the result in each such Court to which you appealed:

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

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

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

(c) the date of each such result:

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

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

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

(d) if known, citations of any written opinion or orders entered pursuant to such results:

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

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

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

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Being ignorant of the law

(b) Ineffective assistance of counsel

(c) \_\_\_\_\_

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

- (a) (see #9 a & b above)
- (b) Was never told about an appeal process
- (c) \_\_\_\_\_

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

- (a) (see #10 above)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

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

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

*no - did not know how to or if I could appeal or not*

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) (see #9, #10 & #11 above)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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. William Totterton, Esquire  
608 Lafayette Ave.
  - ii. Camden SC 29020
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. (#17a-c above)
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

2008CP3202962

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

A sentence reduction.

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

NO

ORIGINAL

STATE OF SOUTH CAROLINA )  
County of Lexington )

VERIFICATION

I, Ann Bailey Smith 326549, 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.

Ann Bailey Smith

SWORN to and subscribed before me this 3<sup>rd</sup> day of July, 2008.

Kathy R. Barnes (L.S.)  
Notary Public

My Commission Expires: \_\_\_\_\_ My Commission Expires August 12, 2015

BETH A. ARRIGG  
CLERK OF COURT  
LEXINGTON SC

2008 JUL 21 2 1:02

FILED

ORIGINAL

2008CP3202962

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

I, Ann Baxley Smith 326549, 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.

Ann Baxley Smith  
Applicant

SWORN or affirmed to and subscribed before me this  
3<sup>rd</sup> day of July, 2008.

Kathy R. Barnes  
Notary Public

My Commission Expires: My Commission Expires August 12, 2015

BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON SC

2008 JUL 21 9 1:02

FILED

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 Ann Baxley Smith, #326549, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE 11TH JUDICIAL CIRCUIT  
 Case No.: 2008-CP-32-2962

**RETURN**

Respondent, making its Return to the application for post conviction relief (PCR) filed July 21, 2008, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the October 2006 term of the Lexington County Grand Jury for murder. William S. Tetterton, Esquire, represented the Applicant. On January 31, 2008, Applicant pled guilty as indicted. The Honorable J. C. Nicholson, Jr. sentenced her to a period of confinement for twenty-five (25) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

In her current application, Applicant alleges that she is being held in custody

unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel never told her about appeal process;

III.

In her allegation, the Applicant alleges that Counsel was ineffective for failing to consult with her about an appeal. The State submits this allegation is without merit. Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known. Id. Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id. There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed.

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore

expressly admitted, qualified or explained is hereby denied.

v.

**WHEREFORE**, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

GREGORY P. JONES, JR.  
Assistant Attorney General

By:   
**ATTORNEYS FOR RESPONDENT**

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

December 15, 2008.

STATE OF SOUTH CAROLINA            )  
   ) COURT OF COMMON PLEAS  
 COUNTY OF LEXINGTON                ) 2011-CP-32-04590  
   ) **2008-CP-32-2962**

ANN B. SMITH                            )  
   ) APPLICANT                            )  
   ) vs.                                    ) TRANSCRIPT OF RECORD  
   )                                        )  
 STATE OF SOUTH CAROLINA            )  
   ) DEFENDANT                            )  
 \_\_\_\_\_

November 30, 2010  
 Lexington, South Carolina

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

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

F. ARNOLD BEACHAM, ESQ.  
 Attorney for the Applicant

A. WEST LEE, ASSISTANT ATTORNEY GENERAL  
 Attorney for the State

CAROL M. THUEME, RPR  
 Official Court Reporter

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## EXHIBITS

(There were no exhibits produced.)

1 THE COURT: Ann B. Smith.

2 MR. LEE: Yes, Your Honor.

3 THE COURT: All right. Go ahead.

4 MR. LEE: This is Ann Baxley Smith versus the  
5 State of South Carolina. It's 2008-CP-32-2962. And it  
6 comes to the Court by way of application for  
7 post-conviction relief filed July 21, 2008.

8 The applicant was indicted at the October 2006  
9 term of the Lexington County Grand Jury for murder, and  
10 she was represented by Mr. William Tetterton. On  
11 January 31, 2008, the applicant pled guilty as indicted  
12 and was sentenced by the Honorable J.C. Nicholson, Jr., to  
13 a period of confinement for 25 years. The applicant did  
14 not appeal her conviction or sentence.

15 In her current application for post-conviction  
16 relief, the applicant made an allegation for ineffective  
17 assistance of counsel, in that counsel never told her  
18 about the appeal process.

19 At this time I will turn it over to the  
20 applicant's attorney to expand upon those claims.

21 Thank you.

22 I'm sorry. There's a misstatement. She pled  
23 guilty to manslaughter, Your Honor. I apologize.

24 THE COURT: Mr. Beacham.

25 MR. BEACHAM: If it please the Court, Your

1 Honor.

2 THE COURT: Yes, sir.

3 MR. BEACHAM: And I'm appointed on this case to  
4 represent Ms. Smith. And we've discussed this, Your  
5 Honor, and there may be a few issues.

6 I've spoken with her counsel at the time,  
7 Mr. Tetterton, and there may be a couple of issues that  
8 may need to be brought forward on testimony just to  
9 clear -- just to put on the record.

10 Of course, there's a conflict between the two as  
11 to whether or not there was discussion about the right to  
12 appeal and how to go about an appeal, but other than that,  
13 Your Honor, she just indicated to me she was not made  
14 aware of the appeal issue.

15 Mr. Tetterton, on the other hand, indicated to  
16 me that he went through a standard -- Judge Kinard -- in  
17 fact, Judge Kinard's plea. It's a plea sheet  
18 questionnaire that Judge Kinard uses. So I think that's  
19 the only -- the issue regarding that.

20 Of course, I've gone through the plea, Your  
21 Honor, the transcript. It appears it was qualified. I  
22 didn't find any issues there.

23 My client would like to, I think, at least put  
24 on the record her position regarding the right to appeal.

25 THE COURT: All right. Ms. Smith, you want to

1 come up and testify?

2 THE APPLICANT: Yes, sir.

3 THE COURT: All right. Come up and let the  
4 clerk swear you, please, ma'am.

5 ANN B. SMITH, after being duly sworn, testified  
6 as follows:

7 THE CLERK: Have a seat and state your name for  
8 the record, please.

9 THE APPLICANT: My name is Ann Baxley Smith.

10 DIRECT EXAMINATION

11 BY MR. BEACHAM:

12 Q And, Ms. Smith, we're here on a PCR, a  
13 post-conviction relief hearing, and you were represented  
14 by Mr. William Tetterton; is that correct?

15 A Yes, sir.

16 Q And we've discussed this, but could you, for the  
17 Court, explain what the issue regarding the right to  
18 appeal and your understanding of that, what Mr. Tetterton  
19 had -- what you remember from Mr. Tetterton telling you  
20 regarding your right to an appeal after this plea.

21 A I don't remember anything, him telling me anything  
22 about an appeal.

23 Q Okay. Do you remember him before the plea discussing  
24 the plea and whether you would accept the plea or not?

25 A For manslaughter?

1 Q Yes, ma'am.

2 A Yes, sir.

3 Q What did you all talk about?

4 A He said that they had an offer of a plea for  
5 manslaughter, but he was ready to go to trial if I wanted  
6 to go to trial.

7 He said -- we discussed in length the things  
8 that -- the events that had happened, and he had told me  
9 that I think it was Judge McMahon or one of the judges was  
10 supposed to be the presiding judge, and he had researched  
11 him, and that if I took the plea I wouldn't receive over  
12 ten years. So he said -- he told me he didn't think I was  
13 ready to be on the witness stand at that time.

14 Q Did you agree -- did you agree that a plea was the  
15 right course of action considering everything and  
16 considering what he had found in his -- in his  
17 investigation and preparation?

18 A I don't really know because I just wanted it over  
19 with. I mean, I know -- I know what happened, and I  
20 really thought that everything was going to be all right,  
21 that it was going to come out what happened, and it  
22 didn't, and I needed to -- I need to state my case.

23 THE COURT: You need to what now?

24 THE APPLICANT: State -- state what happened,  
25 because nothing was right.

1           And I told him that I didn't do it. I told  
2 Mr. Tetterton, I said, I did not shoot him on purpose.  
3 And he said, I know that. He said, But we've got for this  
4 plea, you've got to -- I said, I'm not going to say that,  
5 and I never said I shot him.

6           MR. BEACHAM: One minute, Your Honor.

7           (Pause.)

8 BY MR. BEACHAM:

9 Q       How long did you have to speak with your counsel,  
10 Mr. Tetterton, prior to -- did you have as much time as  
11 you thought you needed to speak with him prior to this  
12 plea?

13 A       I really don't know. I mean --

14 Q       When did you first hear about the plea?

15 A       About what?

16 Q       The plea. When did you first find out about it?

17 A       It was like three or four days before trial.

18 Q       And they were -- they were offering a manslaughter --

19 A       Yes, sir.

20 Q       -- reduced from murder to manslaughter; is that  
21 correct?

22 A       Right.

23 Q       All right. And now primarily what the issue on  
24 appeal is -- on PCR is whether or not you were informed of  
25 your right to appeal. And do you remember what

1 Mr. Tetterton told you about during that time? Do you  
2 remember if he mentioned the right to appeal the plea?

3 A No, sir.

4 Q Okay. Before or after the plea?

5 A No, sir. I thought that was it. I didn't know  
6 anything.

7 Q Okay. Do you remember the judge -- what about during  
8 the time that the judge -- because the judge mentions the  
9 right to appeal in the plea. Do you remember that or is  
10 that a blur to you?

11 A I really don't remember too much of that day at all,  
12 not really. I mean, I know I was in court and I know  
13 things were being said, but I don't really know what was  
14 being said. And I was told all I had to do was say yes,  
15 sir, yes, sir, and that's all I did. I didn't really -- I  
16 didn't know what was going on.

17 Q Pretty stressful?

18 A Yes, sir.

19 Q And hard to take in everything that's happening  
20 because it was a big deal, it's -- murder to manslaughter  
21 is about as big as it gets.

22 And so that kind of -- so you don't recall  
23 Mr. Tetterton talking about it.

24 Do you recall him afterwards clarifying about  
25 the ten days right to appeal or anything like that?

1 A No, sir.

2 Q Are you pretty sure he did not do it?

3 A No. You mean at court after every --

4 Q Right.

5 A No, sir. He -- when after the judge said everything,  
6 the bailiff called me over there and he said, I'll see you  
7 later, and he went out the door, and then when I tried to  
8 find out where he was at, they said he'd went on vacation.

9 Q Do you know where he went on vacation?

10 A No, sir.

11 Q When did you try to find out where he was?

12 A Later on that day. I wanted to talk to him.

13 Q Do you remember what you wanted to talk to him about?

14 A Trying to find out what's going on, what's happening  
15 because I don't remember any -- don't remember too much,  
16 and I wanted him to tell me.

17 Q Did you understand what the judge's sentencing was  
18 when he gave you the sentence?

19 A The only thing I remember the judge saying is 25  
20 years in the Department of Corrections.

21 Q And so after the plea did you -- can you tell the  
22 Court as best you recall what happened right after the  
23 plea happened? You said that you were taken by the  
24 bailiff?

25 A Yeah, they told me to come on. I turned around and

1 he and the bailiff told me to come on, they had to go, and  
2 Mr. Tetterton had left. I just -- I don't -- just a lot  
3 of commotion going on up there, a lot of attorneys and  
4 people and things.

5 Q Where were you housed before the plea? Were you out  
6 on bond?

7 A No, I was in Lexington County.

8 Q Lexington County. And when did you try to get in  
9 touch with him, how did you try to get in touch with him?

10 A Mr. Tetterton? By phone.

11 Q From the County?

12 A Uh-huh.

13 Q Did you speak with someone in his office?

14 A No, I called my sister and asked her where he was,  
15 and they told me that they had spoken to him after court,  
16 and I said, well, I need him to come up here, and she  
17 said -- she told me Mr. Owens had said to tell me he had  
18 went on vacation.

19 Q Who is Mr. Owens?

20 A Stanford Owens, my ex-husband.

21 Q All right. Okay. So you didn't speak with him after  
22 the plea. But before the plea, do you remember covering  
23 like a list of rights you were giving up by pleading, like  
24 the right to remain silent, or the right to confront  
25 witnesses, things like that, trial rights? Do you

1 remember going over that?

2 A If we went to trial. I guess if I went to trial. I  
3 don't --

4 Q Do you remember him talking about that?

5 A He said there's going -- present a lot of -- he said  
6 they're going to look at those pictures in court.

7 Q I'm sorry?

8 A He said I had to look at the pictures.

9 Q If you went to trial?

10 A If I went to trial.

11 Q Did he mention about confronting witnesses or about  
12 testifying against yourself, you're giving up the right to  
13 remain silent, all that?

14 A I don't remember that.

15 Q You said that -- now, you said that he had -- you  
16 said he was prepared to go to trial. He said you could go  
17 to trial if you wanted to; is that right?

18 A Yes.

19 Q Do you remember looking at the things he had  
20 prepared?

21 A He said something about we have a 50/50 because you  
22 never know what a jury's going to do. And he said, But I  
23 don't think I can put you on the witness stand because I  
24 don't think you can hold up, you're not at this time  
25 really capable, or something like that, of being on the

1 stand.

2 Q How did you feel about that?

3 A I don't think I was.

4 Q Okay. The fact of the issue of going through the  
5 rights -- and I had spoken with Mr. Tetterton as I told  
6 you, and he had -- he had indicated that he had gone  
7 through a checklist of sorts that Judge Kinard uses in  
8 Richland County for certain hearings, transfer court,  
9 things like that, and it contains all the rights regarding  
10 pleas that you're giving up essentially.

11 And do you remember him going over kind of --  
12 and I don't know whether there had been a checklist, but  
13 he had mentioned that he goes by that when he discusses  
14 things like this, and I wanted to ask if you remembered --  
15 either specifically did remember or did not remember?

16 A I don't remember that.

17 Q And it would be like the right to remain silent, or  
18 to do it again, the right to confront witnesses, the right  
19 to present evidence, and if certain evidence, you know,  
20 wasn't available, that you waived the right to object to  
21 it, things like that if you went through with the plea?

22 A I don't remember that, no.

23 Q And you said you weren't able to speak with him after  
24 the plea?

25 A No, sir.

1 Q Did you want to appeal at the time or did you want to  
2 at least know about it, the right to appeal?

3 A Yeah, I would have liked to have known about it.. I  
4 would have liked to at least been given the opportunity  
5 because I was trying to figure out what happened. Because  
6 the last thing he said to me, he walked over as I was  
7 sitting over there, he told me, he said, we've got a  
8 change in judges, and this is going to be your lucky day,  
9 and he walked over there and sat down. That's the last  
10 thing he said to me.

11 Q Is there anything else you would like the Court to  
12 know about regarding this that I haven't asked you?

13 A No.

14 Q Anything else you -- is there anything else that you  
15 can think of?

16 A I don't know.

17 MR. BEACHAM: One minute, Your Honor.

18 THE COURT: Yes, sir.

19 (Pause.)

20 MR. BEACHAM: Nothing further, Your Honor.

21 THE COURT: Cross-examination.

22 MR. LEE: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. LEE:

25 Q Ms. Smith, you stated several times that you don't

1 really recall anything that happened during the guilty  
2 plea; is that your testimony?

3 A Yes, sir.

4 Q Okay. But if it was reflected in the transcript of  
5 the guilty plea, would you agree that it actually  
6 happened?

7 A If it's in writing I would have to, yeah.

8 Q So if the transcript reflected that you had stated  
9 that you were satisfied with the services of your attorney  
10 and didn't want him to do anything else, would you agree  
11 to that?

12 A If I said that.

13 Q If the transcript reflected that the judge told you  
14 about your right to appeal, would you agree to that?

15 A Yes.

16 Q Okay. If the transcript reflected that you were told  
17 how much time you could receive, that you could receive up  
18 to 30 years, would you agree to that?

19 A Yes, sir.

20 Q Okay. If it reflected that you said that you were  
21 pleading guilty of your own free will and accord, would  
22 you agree to that?

23 A If I said that, yes, sir.

24 Q And if the State gave a -- if the State recited the  
25 facts of the case and then the Court asked you if those

1 facts were correct and you said yes, would you agree to  
2 that?

3 A I did say that I don't know what was said. I was  
4 just agreeing to everything.

5 MR. LEE: Beg the Court's indulgence one moment  
6 Your Honor.

7 THE COURT: Yes, sir.

8 (Pause.)

9 BY MR. LEE:

10 Q Was it your testimony a few minutes ago that your  
11 attorney told you that he was ready to go to trial if you  
12 wanted to, but there was a plea offer on the table?

13 A Yes.

14 Q And I believe it was also your testimony that he said  
15 he thought you had at least a half and half shot of  
16 winning at trial, correct?

17 A Right.

18 Q Okay. You said he said he was ready to go to trial.  
19 Did you ultimately end up deciding to plead guilty?

20 A Did I ultimately?

21 Q Yes.

22 A When he told me he couldn't put me on the stand and  
23 he said he needed me on the stand, it was vital that I be  
24 on the stand.

25 Q Did you just testify that you didn't think you were

1 capable of getting on the stand?

2 A I can't -- no, I wasn't capable of getting on the  
3 stand. He said he needed me on the stand.

4 Q And you testified just now that you were not capable  
5 of getting on --

6 A No, I -- no, I wasn't.

7 MR. LEE: Okay. No further questions. Thank  
8 you.

9 THE COURT: Redirect.

10 MR. BEACHAM: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. BEACHAM:

13 Q Regarding the things that occurred during the plea  
14 and the admonitions by the judge regarding rights, would  
15 you agree that -- would you agree that the plea went by  
16 like a blur? Do you recall individually what occurred,  
17 what was being said?

18 A What do you mean?

19 Q When you were in front of the judge, and we have  
20 discussed this, but how would you describe what occurred  
21 and how you -- how you processed that at the plea?

22 A I just -- I figured everything was going to be okay,  
23 I mean, and I didn't -- I wasn't really -- I don't know.  
24 I don't even know -- you know, I just agreed to everything  
25 the judge said.

1 Q Were you able to discern and understand what the  
2 judge was saying to you?

3 A Well, I guess. I don't know because I don't remember  
4 everything he said.

5 Q No, I don't mean -- I mean when it happened, you said  
6 you were just saying okay?

7 A Yeah, I was agreeing. That's all I needed to say.  
8 That's all Mr. Tetterton said I needed to do is to agree.

9 Q So were you processing individually each of the  
10 things or were you just answering rotely from memory?

11 A I was just answering.

12 Q Would you've liked the opportunity to discuss the  
13 opportunity to appeal or to -- what happened after you  
14 received the sentence?

15 A Yes, sir.

16 MR. BEACHAM: Nothing further, Your Honor.

17 THE COURT: Any other questions of the witness?

18 MR. LEE: Nothing further from the State, Your  
19 Honor.

20 THE COURT: Thank you, ma'am. You may step  
21 down.

22 Anything further from the applicant?

23 MR. BEACHAM: Nothing, Your Honor.

24 THE COURT: Anything from the State?

25 MR. LEE: Yes, sir, Your Honor. The State would

1 call William Tetterton to the stand.

2 THE COURT: Come around.

3 WILLIAM TETTERTON, after being duly sworn,  
4 testified as follows:

5 THE CLERK: Have a seat and state your name for  
6 the record, please.

7 THE WITNESS: My name is William Tetterton.

8 DIRECT EXAMINATION

9 BY MR. LEE:

10 Q Mr. Tetterton, how did you come into the  
11 representation of Ms. Smith?

12 A I was approached by Stanford Owens.

13 Stanford Owens lives in Kershaw County, he and I  
14 went to high school together. He was the former husband  
15 of Ann Smith. I had represented him in a wreck case  
16 earlier, maybe a year or so before that. He and I were  
17 friends.

18 Q So were you retained?

19 A I was retained by Mr. Owens, yes.

20 Q And subsequent to your being retained in the case,  
21 did you have the occasion to meet with Ms. Smith?

22 A On many occasions.

23 Q And during those meetings, did you discuss things  
24 like the charges she was facing, the potential punishments  
25 for those charges?

1 A I did.

2 Q Did you discuss her constitutional rights?

3 A I did.

4 Q Such as her right to a jury trial?

5 A I did.

6 Q Her right to confront the accusers?

7 A Absolutely, yes, sir.

8 Q Her right to appeal?

9 A Yes, sir.

10 Q So it's your testimony that you did discuss with  
11 Ms. Smith her right to appeal the case?

12 A Yes, sir. And I can give you the circumstances under  
13 which we discussed those matters if you'd like me to put  
14 it in the record.

15 Q Please do.

16 A I had many visits with Mrs. Smith. We had originally  
17 gone up for a bond hearing and Judge Goode denied her  
18 bond.

19 Mrs. Smith had made some statements, and her  
20 statements were that she had shot Woody and she had called  
21 several people. She called her sister, Mrs. Knight, and  
22 another sister in Georgia, said, I have shot Woody, and  
23 I'm scared, I don't know what to do. One of the sisters  
24 went and got \$600 from her employer and Mrs. Smith left  
25 the crime scene and fled to Georgia where Angela

1     Robertson, her other sister, and her other family members  
2     helped her hide the pickup truck and hid the gun.

3             In the written statement signed by Stanford  
4     Owens, she said, My hand was on -- my finger was on the  
5     trigger and I shot Woody and I was going to shoot myself,  
6     and I think she indicated she couldn't find the selective  
7     switch on the little 14 Derringer.

8             So when I discussed that with her before going  
9     to the bond hearing, and after Judge Goode heard that  
10    testimony that she had in fact made the statement she had  
11    shot the deceased and had fled to Georgia, I feel that's  
12    why bond was denied.

13            So she was staying in the Lexington County jail  
14    and I had to come from Kershaw County to visit her there.  
15    Each time I would get different pieces of discovery from  
16    Rick Hubbard of the Solicitor's office, and I'm going to  
17    say that he cooperated fully and had given me everything  
18    he had, I would come and meet with her and I would go over  
19    the discovery with her.

20            Now, as the discovery piled up, there was  
21    several issues that we had to confront. The first of them  
22    was whether or not the deceased grabbed the pistol and  
23    there was an accidental shooting.

24            Prior to the case being called for trial, I had  
25    accumulated all the discovery. I had gone and spoken with

1 Otto Simmons at SLED who had done the -- I think that  
2 person did the residue test. I sat down with her, and  
3 when I first started seeing Mrs. Smith, I had to speak  
4 through the little window there. But when I had prepared  
5 for trial and was going to show her what we were going to  
6 do and all the testimony and evidence against her, I asked  
7 for a room with a long table so I could spread all that  
8 material out. The jail accommodated me and gave me a room  
9 with a big table, and she and I went back into the inner  
10 parts of the jail there and I laid all the different  
11 documents out and we started from start to finish about  
12 the trial, what's going to be presented against her at  
13 trial.

14 We started with the statements of the eye  
15 witness, Debra Knight, who was there when she came into  
16 the yard and approached her ex-husband who was out  
17 watering something in his garden. Mrs. Knight was inside  
18 preparing some hamburger meat, and she had her glasses on,  
19 she said, so she could read the label of the hamburger  
20 meat, and she saw Mrs. Smith with the gun in her hand and  
21 Woody crawling to the steps hollering, Ann shot me. We  
22 started there showing the eye witness testimony.

23 We also went through the coroner's report, went  
24 through the autopsy. We discussed the angle of the  
25 bullet. He was shot with his shirt on that had the name

1 "Woody" right over the outside of his pocket. She and I  
2 examined the photographs and we can look at the powder  
3 tattooing on the outside of the shirt and what we  
4 determined to be the angle of the bullet -- the angle of  
5 the shots and the number of shots and that wadding that  
6 was removed from his body so we could try to come to a  
7 determination of whether or not she actually pulled the  
8 trigger or whether or not the trigger -- he had his hand  
9 on the trigger when it went off.

10 We went over the different numbers on the  
11 residue test that showed that, and I explained to her that  
12 I had interviewed the witnesses who were going to testify  
13 against her, that it was a defensive wound with the left  
14 palm rather than his hand over the weapon. I went over  
15 all that with her.

16 I went over the testimony that we expected, of  
17 course, like I said, from the eye witness, Debra Knight.  
18 The other witnesses they may or may not have been able to  
19 get into evidence about a prior instance where she had  
20 threatened to do bodily harm to different -- to other  
21 family members.

22 And we went over all the testimony, all the  
23 forensics, and I explained to her that if she got on the  
24 stand and testified as she had told me from the beginning  
25 that she was wanting an answer from Woody, her ex-husband

1 who had just divorced her, he was still telling her and  
2 coming to Kershaw County to try to, just in her words,  
3 encourage her that they would eventually get back  
4 together. I said the only way that story would get before  
5 the jury is for you to take the stand, and I had already  
6 interviewed other witnesses that -- at Huddle House where  
7 she worked and would testify that Woody had in fact come  
8 over there and they had observed Woody and Mrs. Smith  
9 sitting at the table drinking coffee, laughing and cutting  
10 up together and holding hands. I said, I can put those  
11 witnesses on the stand, but you're going to have to tell  
12 your story, and she said she didn't really want to take  
13 the stand.

14 I said, Well, they are going to probably offer  
15 us manslaughter. In fact, she had already mentioned prior  
16 to that that other inmates in the detention center, other  
17 females, had mentioned to her and they had discussed that  
18 the Solicitor's office is going to offer us manslaughter.  
19 And how she knew that before I did I don't know, but I  
20 guess they knew more about what was going on in the  
21 Solicitor's office than I did.

22 So I met with Rick Hubbard after I -- later on  
23 before I got ready for trial, and he did in fact offer me  
24 manslaughter and also to dismiss possession of a firearm  
25 during the commission of a violent crime.

1           I asked him if he could talk about making a  
2 recommendation. He said, no, that would be without a  
3 recommendation.

4           Well, at the same time that I had gone over all  
5 the evidence, all the forensics with Ann Smith in that  
6 back room, I made her aware that there was manslaughter on  
7 the table.

8           At no time did I tell her that she was going to  
9 get ten years. I explained to her what the possible  
10 punishment was. I explained to her that the Solicitor's  
11 office was not going to be making a recommendation, and  
12 that I could not tell her what the judge would do. It  
13 would be entirely up to her. I told her that our strong  
14 suit was explaining that she was depressed, she was  
15 dejected, she had been led astray by Woody about getting  
16 back together, and that would probably go towards some  
17 sentiment from the judge.

18           Well, we discussed at length the possibility of  
19 going to trial and taking the plea. At that time I told  
20 her if I went to trial and there were some errors made  
21 about some of the testimony that we had anticipated being  
22 made about prior incidents, prior events, that we could  
23 possibly file -- we could file an appeal depending on what  
24 the judge let in evidence, and that our appeal would have  
25 to be filed after the verdict came back in, after

1 sentencing within ten days, if we had issues to go up on  
2 appeal, that we had to have issues to file an appeal. A  
3 decision was made to take the plea, and I explained to her  
4 the same thing.

5           And I took a personal interest in this case  
6 because Stanford Owens was a friend of mine, and I came to  
7 like Ann Smith. And I believed her that she had a life  
8 of -- and it's in the transcript -- she had a life of  
9 being jilted by several other husbands that she had  
10 children by. They would live with her a while and then  
11 they would dump her and she'd go and they'd go about their  
12 business. And she did -- we had her examined by Dr.  
13 Frierson at the Department of Mental Health, and she did  
14 have periods of depression caused by being jilted.

15           But I didn't see that as a defense to getting up  
16 in Kershaw County one morning after drinking five or six  
17 beers, driving to Lexington County with a gun that she had  
18 stolen from her husband that she went back to live with --  
19 Stanford Owens who took her back in after Woody dumped  
20 her -- stole a gun from him and drove all the way from  
21 Kershaw County to Lexington County, approached her  
22 ex-husband in the yard and a gunshot was fired.

23           So I told her I didn't have -- I didn't have an  
24 insanity defense, I didn't have a self-defense defense,  
25 and I explained that, and I said maybe we could go to

1 trial and instead of a murder conviction, the jury would  
2 find you guilty of manslaughter; in my opinion, that the  
3 jury's not going to let her off entirely, but there was a  
4 50/50 chance we could get from murder to manslaughter.

5 I said, if you're going to take the plea, here's  
6 the way a plea happens in the courtroom. It was my  
7 experience as a former prosecutor for 16 years and a  
8 defense lawyer, I was able to go over everything I had  
9 observed in my experience in court and what judges expect  
10 the defendant to answer and what a defendant's basically  
11 being told, and I started at the beginning.

12 I said, you know, first of all, you have the  
13 right to a trial, and I think this is a guideline  
14 published by Court Administration and adopted by most of  
15 the circuit judges -- I know Judge Kinard uses it over in  
16 the Fifth Circuit -- you have a right to a trial, and I  
17 went over all her basic rights, the right not to have to  
18 testify against yourself if you don't want to, the right  
19 for me to call witnesses, confront witnesses,  
20 cross-examination, object to testimony, all her  
21 constitutional rights, unanimous verdict by a jury that we  
22 would select, and I explained all that to her. And most  
23 importantly, I had to cut up with her -- not really cut up  
24 with her, but I told her, I said, Now, the judge is going  
25 to ask you if you're satisfied with my representation and

1 I hope you're going to say yes, because if you don't, that  
2 means we're going to have to start all over again. And  
3 she said, No, no, I'm perfectly satisfied with everything  
4 you've done for me and you've done a thorough job, so I  
5 told her then that the judge would sentence her after she  
6 pled guilty. She may not agree with the sentence, but the  
7 judge did not have a recommendation, he had a wide range,  
8 and that he was to do whatever he thought was appropriate.

9 The plea was set for a particular day, and I was  
10 informed by Rick Hubbard that he was not going to be able  
11 to take the plea because he was in a trial that was set  
12 before Judge Knox McMahon. And I had defended some cases  
13 against McMahon when he was a prosecutor over in the Fifth  
14 Circuit, and I knew him. And I said that would be a  
15 good -- you know, Judge McMahon would be a good fair  
16 judge. He'd been around the criminal courts for a long  
17 time, he'd be a good fair judge.

18 But then Rick Hubbard told me that Judge McMahon  
19 would be in trial and would not be taking any pleas, that  
20 we would be going to Judge Nicholson. I told Ann, Look, I  
21 know Judge Nicholson because he grew up in Camden and  
22 played football for the Camden football team, hadn't seen  
23 him in a while, but I had always known him to be a fair  
24 judge, and that's what I told her about Judge Nicholson.

25 Prior to us taking the plea, the -- Al Eargle

1 was the assistant solicitor that was assigned to take the  
2 plea. He and I went back and spoke to Judge Nicholson,  
3 just to give him a heads-up on what the case was going to  
4 be about, said it would be a plea to manslaughter. Judge  
5 Nicholson was very cordial to me, he said, Good to see you  
6 again, and after all that was said, he said, Let's go do  
7 the plea. We went out and took the plea.

8 I had a chance to talk -- Ann was sitting in  
9 the -- I think it might have been the petit jury box or  
10 the grand jury box with several other inmates that day.  
11 She was seated on the end or next to the end and I was  
12 able to go through the gate right there and go over and  
13 talk to her prior to the plea and make sure she was ready,  
14 still wanted to go forward with it.

15 I explained to her that the plea had to be  
16 freely and voluntarily. She had to understand the plea.  
17 I mentioned to her again to be sure you listen to exactly  
18 anything the judge asks of you and speak up and say yes,  
19 sir or no, sir. And she indicated to me that she wanted  
20 to go ahead and go through with the plea, she wanted to  
21 get it over with. We went ahead and took the plea.

22 I think one thing that probably upset her a  
23 little bit was the girlfriend who was standing in the  
24 window when Woody was shot was in the courtroom behind the  
25 solicitors -- standing behind the solicitor and was going

1 to have some words to say to the Court.

2 The daughter, Sonya Smith, was in the courtroom,  
3 and Sonya Smith and Ann Smith did not get along at all.  
4 In fact, Ann blames Sonya for Woody breaking up with her.  
5 I think that might have unnerved her a little bit.

6 And there was a granddaughter there with a big  
7 framed photograph of the deceased, her ex-husband Woody,  
8 and I think that might have unnerved her a little bit. So  
9 she was -- I could tell she was not happy that these three  
10 people were in the courtroom ready to say something.

11 Judge Nicholson took the plea as indicated in  
12 the transcript. Then Debbie Knight, the girlfriend, got  
13 to say something about the past experiences with Ann  
14 Smith. Sonya Smith, the daughter, explained to the judge  
15 how they had had problems after Ann had threatened them  
16 before with bodily harm. Then the granddaughter spoke  
17 about how she would not be able to have her granddaddy at  
18 the cheerleading, football games, and that sort of stuff.  
19 And Judge Nicholson thanked them for that.

20 And then he asked if there's anything I wanted  
21 to say, and then I went into detail about how Ann had had  
22 four different husbands, had been abandoned by those four  
23 husbands with three children, how she had periods of  
24 depression. I explained to the judge how we had had her  
25 evaluated by the South Carolina Department of Mental

1 Health, and all that's in the transcript, and how in my  
2 opinion I thought she understood the plea and wanted to  
3 go -- in my opinion that if we'd gone to trial, that there  
4 was enough evidence there for a conviction by a jury of 12  
5 men and women unanimously.

6 We went through all that and I felt like that I  
7 had relayed to the judge -- related to the judge, told the  
8 judge just about everything that happened in Ann's life  
9 that led her to the unfortunate incident in May of 2006  
10 when she shot Woody.

11 And then, of course, the judge asked if there's  
12 anything she had to say. And I had told her before that  
13 if there's anything you want to tell the judge, make  
14 sure -- this is your day in court, make sure you tell the  
15 judge anything you want to tell him.

16 The judge passed sentence. She stood there. I  
17 spoke to her. I said, Now -- I told Ann, said Ann, I  
18 wasn't expecting that severe sentence. I really wasn't.  
19 I thought maybe we'd draw sympathy from the Court, but we  
20 didn't. We got five years knocked off of it, and I said,  
21 Now, we have the right to appeal as he told you. You've  
22 got to let me know within ten days, but we're pleading  
23 pretty straightforward. And her comment to me was -- the  
24 only comment she made was, No, I just wanted to get it  
25 over with, and I wish I could have told my side of the

1 story, which I thought was sort of unusual that she said  
2 that because she was given every opportunity in the world  
3 to tell her side of the story, either taking the stand at  
4 trial or either speaking to the judge during the plea.

5 The bailiff had come over to get her and I had  
6 asked the bailiff can I have a few words with Ann before  
7 you take her, and that's when I talked to her about her  
8 right to appeal the judge's sentence. I said, I don't  
9 know if we have anything to appeal on, but think about it.

10 Prior to us going to court that day, Ann had  
11 written me any time she had questions. I have many  
12 letters from Ann, phone calls. I'd get collect phone  
13 calls from Ann, always took my phone calls.

14 Stanford Owens was standing there, and I  
15 discussed with Stan -- and let the record show, too, that  
16 Stanford was always a part of our negotiations or  
17 discussions because I felt an obligation to him, to  
18 explain to him what was going on with Ann's case because  
19 he's the one that retained me, he was a friend, and he  
20 still thought the world of Ann Smith. So he knew about --  
21 I explained to him about her right to appeal also, and I  
22 didn't hear from Ann so we didn't appeal the case.

23 And I don't think there's any issues that we  
24 could have appealed from. The plea was straightforward.  
25 I had explained to her all her rights, all the

1 consequences of her plea. The judge had done the same  
2 thing, so it was a straightforward plea, so I don't see  
3 any issues I could have appealed from.

4 MR. LEE: Thank you. I don't think I have any  
5 further questions at this time.

6 THE WITNESS: I didn't mean to be so  
7 long-winded.

8 THE COURT: Cross.

9 MR. BEACHAM: Very briefly, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. BEACHAM:

12 Q Mr. Tetterton, we met at your office the week before  
13 last, I think, and went over your file. The only real  
14 issue here is your conversation and discussion with her  
15 prior to and then subsequently.

16 You just testified that you actually discussed  
17 the possibility or the issue of appeal after the plea?

18 A Yes, I did.

19 Q You discussed that you thought -- I think your  
20 testimony was that you thought she might -- she might have  
21 gotten a little bit of mitigation or sympathy from the  
22 Court because of the circumstances and you were not -- you  
23 were a little surprised by that, but yet --

24 A I was a little surprised by the severity of the  
25 sentence, but I think Ann -- in fact, Ann and I -- before

1 she was carried off by the bailiff, she and I discussed  
2 that, and I said, One reason I think the judge -- and I  
3 used the word "hammered" -- hammered you was because of  
4 what Debbie Knight said and the granddaughter said.

5 I think the granddaughter made a bigger impact  
6 on Judge Nicholson than maybe Debbie Knight, and Debbie  
7 Knight just was the girlfriend that probably helped break  
8 up the marriage.

9 But I think the granddaughter who -- and I told  
10 Ann that after she was sentenced, I said, I think the  
11 granddaughter, who had the framed picture of her  
12 granddaddy there in the courtroom, I think that probably  
13 added something to the sentence, I don't know.

14 Q And you discussed this with her afterwards?

15 A Oh, yes. In fact, we talked about how long we  
16 thought the sentence was, the sentence as severe as it  
17 was, because I didn't expect it to be quite that severe.

18 Q And is it your testimony that during that  
19 conversation after the sentence that you mentioned that if  
20 she wanted to appeal it --

21 A Yes.

22 Q -- to let you know within ten days?

23 A Yes. And I also mentioned to her that, you know, I  
24 thought she'd -- that the plea was free and voluntary, you  
25 know, you did a free and voluntary plea, and I don't know

1 if I have any issues to appeal, but if you want to talk  
2 about it, let me know, we'll make that decision later on,  
3 but I never heard from Ann or Stanford Owens.

4 Q Or Stanford. And did you mention that fact to  
5 Stanford as well?

6 A I did. I mean, he was my -- he was the one that  
7 retained me.

8 Q Right.

9 A I mean, I didn't work for him, I represented Ann, but  
10 I felt an obligation or a duty to keep Stanford Owens  
11 apprised of everything, and I did, everything that went on  
12 in this case.

13 MR. BEACHAM: One minute, please.

14 (Pause.)

15 BY MR. BEACHAM:

16 Q Just out of an overabundance of caution here --

17 A No problem.

18 Q -- prior to the plea, you had plenty of time to  
19 discuss with her like her rights and the rights she was  
20 waiving by taking the plea and -- and basically you -- you  
21 did discuss what you thought your probability of success  
22 at trial would be?

23 A Absolutely. I mean, you know, in my experience I've  
24 seen pleas sometime fall apart and embarrass the defense  
25 lawyer, embarrass the solicitor, and sometimes the judge

1 gets frustrated when a plea's not taken smoothly, so I  
2 wanted to avoid that.

3 I wanted to make sure that Ann Smith was  
4 comfortable with the plea, that she totally understood the  
5 consequences of pleading guilty to manslaughter. I wanted  
6 her to understand that the judge had a discretion in  
7 sentencing, that this was not a negotiated plea nor a  
8 recommended sentence. And I went over all the rights with  
9 her and what to expect, what to expect in the courtroom,  
10 how she was supposed to be polite to the Court. I went  
11 over that with her at least two or three times because the  
12 worse thing that could have happened was -- in fact, at  
13 that time I thought I was going to be in front of Judge  
14 McMahon and I didn't want to do -- anything to go wrong  
15 with the plea. I wanted it to be done smoothly.

16 I wanted everybody to understand what they were  
17 doing under the consequences of the plea, and she wanted  
18 to go ahead and get it over with, and I said, no, we're  
19 going to take our time and do it right.

20 Q And after the plea, you discussed again -- and I  
21 think we went over this, but you discussed the sentence  
22 that she received as opposed to what you thought you were  
23 hoping that she might have gotten, and then in that  
24 context you discussed the issue of appeal?

25 A I did.

1 Q And that you didn't think she had a right to -- you  
2 didn't think she had an issue, any issues for appeal --

3 A Right.

4 Q -- if she wanted to, and you all discussed that?

5 A Yes. I said, The plea went down as expected. The  
6 sentence was a little severe, but I don't see any issues I  
7 can appeal on.

8 And I don't recall going on vacation. I know  
9 where I went on vacation in 2008, but that was not until  
10 August. I went out of the country then, but I didn't go  
11 on vacation in my recollection in January or February of  
12 2008. I was in my office.

13 And at no time did I recall getting a collect  
14 call from her, and at no time did I get written  
15 correspondence from her, and -- nor did I -- I think  
16 Stanford Owens came to see me sometime later on just to  
17 let me know how she was doing at R&E or whatever she was.

18 Q And I think she mentioned that maybe she had spoken  
19 with Stanford.

20 MR. BEACHAM: Just one moment.

21 (Pause.)

22 BY MR. BEACHAM:

23 Q And when did you mention -- she said -- she had  
24 indicated during her testimony that she had spoken with  
25 her sister and with Stanford.

1           Did you speak with Stanford in court that day  
2 about -- do you remember discussing going on vacation or  
3 her right to appeal or anything like that with Stanford?

4       A     I don't recall discussing going on vacation. I don't  
5 recall going on vacation the first of February of 2008 at  
6 all. I know in August I went out to the country, but I  
7 don't remember going on vacation in February.

8           Did I discuss with him the possibility of  
9 appeal? Yes, I did.

10       Q     And that was -- would that -- was that later or was  
11 that -- I take it that was right after the plea?

12       A     That was right after. Everything was right after the  
13 plea because I had to -- I felt like I had to explain to  
14 Ann why the sentence might have been severe, and I  
15 remember telling her particularly about the granddaughter.

16           And if I remember correctly, the  
17 granddaughter -- and I talked to Al Eargle about this --  
18 the granddaughter had a shoebox and she took the shoebox  
19 and punched Al Eargle in the back with it, and at that  
20 time I panicked and got concerned that granddaddy was in  
21 the courtroom in the shoebox cremated, because we had  
22 gotten information that he had been cremated. And after  
23 the plea, I approached Al Eargle about it, and he said,  
24 No, William, I didn't know anything about that, I didn't  
25 know she was going to bring the shoebox in the courtroom.

1           So we don't know if granddaddy -- in fact, Judge  
2 Nicholson asked the granddaughter and said is that your  
3 granddaddy with the framed picture, so I explained to Ann  
4 Smith, I said, I think the granddaughter's testimony or  
5 comments to the Court really hurt us.

6           And I think -- of course, I told her I thought  
7 Debbie Knight's testimony to the Court hurt us a little  
8 bit, about Ann pointed the gun at her after she shot Woody  
9 also. But I felt like -- I explained that to Ann, yes,  
10 that I thought the sentence was severe.

11 Q       And was this in the courtroom?

12 A       In the courtroom before the bailiff -- because, see,  
13 the bailiff -- when they plead, the bailiff comes right  
14 over then and you have to tell the bailiffs, no, just wait  
15 a minute and let me have some words with my client, and I  
16 did, I remember distinctly doing that.

17           MR. BEACHAM: Nothing further, Your Honor.

18           THE COURT: Anything further of the witness?

19           MR. LEE: Nothing on redirect, Your Honor.

20 Thank you.

21           THE COURT: Thank you, sir. You may step down.

22           Anything further from the State?

23           MR. LEE: No further witnesses from the State.

24           THE COURT: Any reply?

25           MR. BEACHAM: No, Your Honor.

1 THE COURT: You all wish to make any argument or  
2 just close the hearing?

3 MR. BEACHAM: No, we'll just close the hearing.

4 THE COURT: All right.

5 MR. LEE: We rest.

6 THE COURT: I'll notify you of my decision in  
7 writing. Thank you very much.

8 (The proceedings were concluded.)

9 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

I, CAROL M. THUEME, RPR, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 30th day of November, 2010.

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

September 13, 2013

*Carol M. Thueme*

CAROL M. THUEME, RPR  
Circuit Court Reporter

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
Ann B. Smith, # 326549, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT  
Case No.: 2008 CP 32-2962

**ORIGINAL**

**ORDER OF DISMISSAL**

*W. Lee*

FILED  
COURT CLERK  
LEXINGTON, S.C.

*W. Lee #1*

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 21, 2008. The Respondent made its Return on December 9, 2009. An evidentiary hearing into the matter was convened on September 15, 2010, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Arnold Beacham, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Respondent presented testimony from the Applicant's Plea Counsel, William Tetterton, Esquire. This Court also had before it a copy of the transcript from the Applicant's guilty plea proceedings, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Application for Post-Conviction Relief, the State's Return, and evidence presented at the hearing.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the October 2006 term of the Lexington County Grand Jury for Murder (2006-GS-32-

ATTORNEY GENERAL'S OFFICE

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ADMINISTRATIVE INSTRUCTIONS

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3722). He was represented by William S. Tetterton, Esquire. On January 31, 2008, the Applicant pled guilty to voluntary manslaughter. She was sentenced by the Honorable J.C. Nicholson, Jr., to confinement for a period of twenty-five (25) years. The Applicant did not appeal her guilty plea or sentence.

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

- 1) Ineffective assistance of Counsel
  - a. "Counsel never told Applicant about appeal process."

#### APPLICABLE LAW

##### *Ineffective Assistance of Counsel*

*WPA #2*  
This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that Counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating 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." Cherry, 300 S.C. at 117, 385 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).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An Applicant who enters a plea on the advice of Counsel may only attack the voluntary and intelligent character of the plea by showing that trial Counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial Counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of Counsel, and it will be treated as such.

### *Involuntary Guilty Plea*

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

*WPM #4*  
The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975) *overruled on other grounds by U.S. v. Whitley*, 759 F.2d 327 (4<sup>th</sup> Cir. 1985). This Court finds that Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's

errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### *Failure to Advise Applicant of Appellate Rights*

With respect to this claim, this Court finds that the Applicant has failed to meet her burden of proof. Applicant testified that she was not advised of her appeal rights. Counsel testified that because it was a guilty plea he did not see that there were any appealable issues, but that he advised her of her appeal rights nonetheless, as did the court during the course of the Applicant's guilty plea. This Court finds Counsel's testimony on this issue to be credible, as it is supported by the transcript of the guilty plea hearing. During her colloquy with the plea court, the judge asked the Applicant if she understood that she had the right to appeal her guilty plea within ten days of the hearing, and the Applicant replied that she understood. (Tr. p. 12, lines 4-7). Therefore, this Court finds Applicant's testimony on this issue not to be credible. As such, this Court finds that the Applicant is unable to prove either ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

### *Ineffective Assistance of Counsel Generally*

With respect to any other assertions with regard to ineffective assistance of counsel which may have brought forth through the Applicant's testimony at the PCR Hearing, this Court again finds that the Applicant has failed to meet her burden of proof. Counsel testified that there was a

wealth of evidence against the Applicant. He testified that this evidence included eyewitness testimony, her statement, the fact that the Applicant called her sister after the incident instead of calling police, and the fact that the Applicant fled. However, Counsel testified that despite that, if the Applicant had chosen to go to trial, he would have been prepared to do so. Counsel further testified that he felt a plea to voluntary manslaughter had a benefit for his client, but indicated that he in no way pressured or coerced her into entering a guilty plea. He also stated that he never told the Applicant that she would not receive over ten years if she pled guilty, despite her assertion to the contrary. Counsel admitted that he did not feel the Applicant should take the witness stand, but asserted that it was because the Applicant was in an emotional state and he did not want her to harm her case on the stand. Finally, Counsel testified that he met with Applicant on multiple occasions, and discussed the charges against her, her constitutional rights, and the discovery in the case. This Court finds Counsel's testimony on these issues to be credible, while simultaneously finding Applicant's testimony on these issues not to be credible. As such, this Court finds that the Applicant is unable to prove either ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

*All Other Claims*

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is

reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Cl. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

### CONCLUSION

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

*WPC*  
*#7*  
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by Counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate Counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR Counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

- 1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
- 2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 29<sup>th</sup> day of MARCH, 2011.

William P. Keesley  
 William P. Keesley  
 Presiding Judge  
 Eleventh Judicial Circuit

Edgefield, South Carolina.

#8

2011 MAR 29 11:00 AM  
 CLERK OF COURT  
 11th JUDICIAL CIRCUIT

FORM 5

FILED

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

Ann Smith # 326549

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2011-1-17-49

APPLICATION FOR

POST-CONVICTION RELIEF

2011CP3204590

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Camille Graham Correctional Institution
2. Name and location of Court which imposed sentence Lexington Co. Court of General Session
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2006-65-32-3722-VMS
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 5-24-06
  - (b) 25 yrs

A TRUE COPY

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made: **FILED**  
 (a) after a plea of guilty  **201 DEC - 1 P 4:49**  
 (b) after a plea of not guilty \_\_\_\_\_  
 (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
8. If you answered "yes" to (7), list:  
 (a) the name of each Court to which you appealed:  
 i. \_\_\_\_\_  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (b) the result in each such Court to which you appealed:  
 i. \_\_\_\_\_  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (c) the date of each such result:  
 i. \_\_\_\_\_  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (d) if known, citations of any written opinion or orders entered pursuant to such results:  
 i. \_\_\_\_\_  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:  
 (a) was not informed that I could appeal  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Additional evidence surrounding circumstances not presented
- (b) mis-information provided to me by attorney
- (c) \_\_\_\_\_

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

- (a) Evidence of abuse
- (b) was told I would only get 10 yrs if I took plea bargain
- (c) \_\_\_\_\_

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

- (a) any petition in a State Court under South Carolina Law? YES
- (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. PCR
- ii. Lexington County
- iii. In-effectiveness of counsel
- iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. Lexington Co. Court of Common Pleas
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. Dismissed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

b7c  
 b7d  
 b7e  
 b7f  
 b7g  
 b7h  
 b7i  
 b7j  
 b7k  
 b7l  
 b7m  
 b7n  
 b7o  
 b7p  
 b7q  
 b7r  
 b7s  
 b7t  
 b7u  
 b7v  
 b7w  
 b7x  
 b7y  
 b7z

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

(d) the date of each such disposition:

FILED

i. 12-6-10

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

27th DEC - 1 2 4 49

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

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

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

i. From order - although I was not provided with this until months later.

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

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

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

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

yes

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

(a) which grounds have been presented:

i. Right to appeal

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

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

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

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

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

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

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

(a) was not given opportunity by PCE attorney

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? 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: @ plea
  - i. William Tetterton
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you: @ PCR
  - i. Arnold Beacham
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

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

no

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STATE OF SOUTH CAROLINA )  
 )  
County of )

VERIFICATION

I, , 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.

Ann B Smith

SWORN to and subscribed before me this 30<sup>th</sup>  
day of November, 2011.

Kellen J. Jones (L.S.)  
Notary Public

My Commission Expires: 3-2-2016

2011CP3204590

FILED  
NOV 1 11 49

2011CP3204590

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

Ann  
I, 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.

*Ann B. Smith*

Applicant

SWORN or affirmed to and subscribed before me this  
30<sup>th</sup> day of November, 2011.

*Keller J. Sowers*  
Notary Public

My Commission Expires: 3-2-2016

2011 DEC -1 2 49 PM '11

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	Case No.: 2011-CP-32-4590
	)	
Ann Smith, #326549,	)	
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN AND</b>
	)	<b>PARTIAL MOTION TO DISMISS</b>
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

---

Respondent, making its Return and Partial Motion to Dismiss to the application for Post-Conviction Relief filed December 1, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The State Grand Jury indicted the Applicant at the October term 2006 for Murder (2006-GS-32-3722). The Applicant was represented by William S. Tetterton. On January 31, 2008, Applicant pled guilty as indicted. The Honorable J.C. Nicholson, Jr. sentenced her to a period of confinement for twenty five (25) years. The Applicant did not appeal her conviction or sentence.

The Applicant subsequently filed an application for post-conviction relief (2008-CP-32-2962) on July 21, 2008 alleging ineffective assistance of counsel in that counsel never told her about the appeal process. The Respondent filed its Return on December 15, 2008. An evidentiary hearing into the matter was convened on September 15, 2010 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Arnold Beacham, Esquire. On March 29, 2011, the Honorable William P. Keesley issued an Order

denying and dismissing Applicants application with prejudice.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior PCR proceeding.

## II.

In her current application for post-conviction relief the Applicant alleges that she being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. "Was not informed that I could appeal."
  - b. "Additional evidence surrounding circumstances not presented."
  - c. "Misinformation provided to my by attorney."

## III.

The Applicant alleges that she was denied the right to appeal the dismissal of her previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing solely on this ground for relief. Sharper, Id.; Austin, 305 S.C. 453, 409 S.E.2d 395.

## IV.

Except for the Applicant's belated Austin appeal allegation, the Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the

sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on January 31, 2008. The Applicant was therefore required to file his application before February 1, 2009. This Application was filed on December 1, 2011, well beyond the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act, except for the allegation concerning a belated Austin appeal.

#### V.

Except for the Applicant's belated Austin appeal allegation, the Respondent submits that the current Application for PCR must be summarily dismissed because it is successive to Applicant's prior applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2010) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in

the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980). Respondent submits that Applicant has failed to meet this burden. Accordingly, Respondent moves for a summary dismissal of said allegation because it is successive.

#### VI.

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

#### VII.

The State therefore requests that this Court convene an evidentiary hearing solely on the on the issue of ineffective assistance of PCR counsel for failure to file an appeal. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

## VIII.

WHEREFORE, having made its Return, the State requests that a hearing be held solely on the issue of ineffective assistance of PCR counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Senior Assistant Deputy Attorney General

KAELOE E. MAY  
Assistant Attorney General

By: Kaelon E. May  
ATTORNEYS FOR RESPONDENT

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

May 29, 2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 )  
 )  
 ANN SMITH, #326549, )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2011-CP-32-4590

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 and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Carter A. Martling, Esquire**  
**P.O. Box 3187**  
**Irmo, SC 29063**

DATED this 31<sup>st</sup> day of May, 2012

*Lena Pelishenko*

Lena Pelishenko, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON )

Ann Smith, )  
 )  
 ) PLAINTIFF, ) Post-Conviction  
 ) Relief Hearing  
 ) -VS- ) 2011-CP-32-4590  
 )  
 ) State of South Carolina, )  
 )  
 ) DEFENDANT. )  
\_\_\_\_\_ )

BEFORE THE HONORABLE FRANK R. ADDY, JR., JUDGE

APRIL 18, 2013 .

LEXINGTON, SOUTH CAROLINA

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

Douglas E. Lidbier, Esq.  
For the Plaintiff

J. Walt Whitmire, Esq.  
For the Defendant

REMA K. GANTT THOMAS  
CIRCUIT COURT REPORTER

I N D E X

PAGE NO.

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Opening Statements . . . . .	4
Certificate of Court Reporter. . . . .	8

## E X H I B I T S

7

THERE WERE NO EXHIBITS INTRODUCED AT THIS HEARING.

1 (The applicant,  
2 together with counsel, was personally present in the  
3 courtroom.)

4 THE COURT: Solicitor, if you want to go  
5 ahead and call your first case for the morning,  
6 please.

7 MR. WHITMIRE: Your Honor, may it please  
8 the Court, I'm going to give you some brief  
9 procedural history on this case. The State first  
10 calls Ann Smith versus State of South Carolina, Case  
11 Number 2011-CP-32-4590.

12 Ms. Smith is presently confined in the  
13 Department of Corrections pursuant to an order of  
14 commitment by the Lexington County Circuit Court.  
15 The State Grand Jury indicted the applicant in the  
16 October term of 2006 for murder. The applicant was  
17 represented by William Tedderton.

18 In January 2008, the applicant pled  
19 guilty. The Honorable Judge Nicholson sentenced to  
20 a period of confinement for 25 years. Ms. Smith did  
21 not appeal her conviction or sentence. Ms. Smith  
22 subsequently filed her first application for post-  
23 conviction relief July 23, 2008.

24 Ms. Smith had a hearing. The judge denied  
25 that relief subsequently. Ms. Smith filed another

1 application for post-conviction relief alleging  
2 failure to file an appeal pursuant to Austin v.  
3 State. At this time, the State moves to dismiss  
4 anything else outside of the Austin issue.

5 The State consents to the belated Austin  
6 appeal. And at this time, I turn matters over to  
7 opposing counsel.

8 THE COURT: All right, Mr. Lidbier.

9 MR. LIDBIER: Thank you, Your Honor. I'm  
10 Doug Lidbier on behalf of the applicant.

11 THE COURT: Yes, sir.

12 MR. LIDBIER: Your Honor, may it please  
13 the Court, we would just join in the consent order  
14 as stated by the Assistant Attorney General to allow  
15 Ms. Smith to have her Austin appeal. That's the  
16 only issue that really survives the PCR for the  
17 second PCR application that she had. There are no  
18 other issues to determine.

19 It was the sole issue here today on the  
20 Austin appeal. We've had discussions with the  
21 attorney that represented Ms. Smith at the first PCR  
22 hearing, and there was an issue concerning whether  
23 or not the notice of that first order by Judge  
24 Keesley -- whether or not she was given that in time  
25 and whether or not she voluntarily -- knowingly and

1 voluntarily waived her right to appeal that first  
2 PCR decision.

3 And the State, as you've heard already,  
4 has consented to that. And we'd just ask the Court  
5 to enter an order granting her the right to have her  
6 Austin appeal.

7 MR. WHITMIRE: And, Your Honor, for the  
8 record, we have victims present in this case who  
9 have come to observe today. The State has agreed  
10 with the Austin relief pursuant to numerous  
11 conversations with Mr. Beacham regarding  
12 correspondence, paralegals, and have come to a  
13 conclusion in this case.

14 THE COURT: All right, very good. It  
15 appears that everybody has taken a look at the  
16 situation and concluded that Ms. Smith is entitled  
17 to a belated appeal. And the belated appeal is  
18 solely on the PCR issue. It is not on a direct  
19 appeal issue?

20 MR. LIDBIER: That's correct.

21 THE COURT: All right. So the order will  
22 reflect, Attorney General, if you will, that this  
23 is, of course, a consent order on behalf of the  
24 State and the applicant and that the issues will be  
25 limited to the matters addressed in the prior PCR

7

1 hearing before -- it was Judge Keesley, I think you  
2 said. So if you'll prepare me a brief order to that  
3 effect, I'll be more than happy to sign it.

4 MR. WHITMIRE: Thank you, Your Honor.

5 I'll prepare that order.

6 THE COURT: Very good, thank you.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

**COURT REPORTER'S CERTIFICATION**

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON APRIL 16, 2013, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE TWELFTH DAY OF JULY, 2013.



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REMA K. GANTT THOMAS  
OFFICIAL COURT REPORTER  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 11/21/2013

ORIGINAL

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 Ann B. Smith, )  
 S.C.D.C. No. 326549 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 ELEVENTH JUDICIAL CIRCUIT

2013 JUN 25 4 03 PM  
 Case No. 2011-CP-32-4590

BETH A. GAINES  
 CLERK OF COURT  
 LEXINGTON, SC

**CONSENT ORDER OF DISMISSAL  
 GRANTING APPELLATE REVIEW  
 PURSUANT TO AUSTIN v. STATE**

This matter comes before the Court by way of an Application for post-conviction relief (PCR) filed December 1, 2011. The Respondent made its Partial Return and Motion to Dismiss on May 31, 2012. The matter was scheduled for an evidentiary hearing on May 18, 2013 at the Lexington County court house. Applicant was present and represented by Douglas E. Leadbitter, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the Office of The Attorney General.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to order of the Lexington County Clerk of Court. Applicant was indicted for murder (2006-CP-32-3722). Applicant was represented by William Tetterton, Esquire. Applicant pled guilty to voluntary manslaughter. She was sentenced by the Honorable J.C. Nicholson, Jr., to confinement for a period of twenty-five years. Applicant did not appeal her guilty plea or sentence.

The Applicant filed her first PCR application on July 21, 2008 (2008-CP-32-2692). An evidentiary matter was held on September 15, 2010. Applicant was present and was represented

**ORIGINAL**

by Arnold Beacham, Esquire, The Respondent was represented by A. West Lee, Esquire. The Honorable William P. Keesley denied the PCR Application in an order filed March 29, 2011. Applicant did not appeal.

In Applicant's current PCR application, she argues her PCR attorney failed to file a timely notice of appeal from Judge Keesley's order filed on March 29, 2011. Applicant's second PCR attorney, Douglas E. Leadbitter, addressed this issue at the April 18, 2013 hearing. This Court finds that all parties agree the Applicant is entitled to an appeal from the denial of her first PCR application (2008-CP-32-2692).

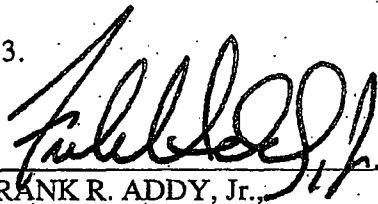
**II.**

It appearing that counsel for both parties consent to the dismissal of his Application for Post-Conviction Relief and the grant of an appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Applicant withdrew any and all other allegations.

**IT IS THEREFORE ORDERED:**

1. That this current Application for Post-Conviction Relief be dismissed.
2. That the Applicant is granted an appeal from the denial of her first PCR application – filed March 29, 2011 and captioned 2008-CP-32-2692.

**AND IT IS SO ORDERED** this 14<sup>th</sup> day of June, 2013.

  
 FRANK R. ADDY, Jr.  
 Presiding Judge  
 Eleventh Judicial Circuit

Greenwood, South Carolina