

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

GERALD SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS
03-GS-40-11511

STATE OF SOUTH CAROLINA

-vs-

GERALD RANDAL SMITH

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TRANSCRIPT OF RECORD
GUILTY PLEA

NOVEMBER 15, 2004
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE CLIFTON NEWMAN, JUDGE.

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

VANESSA COOPER, ASSISTANT SOLICITOR
DAVID ROSS, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

APRIL SAMPSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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E X H I B I T S

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1 (THE DEFENDANT WAS FIRST DULY SWORN.)

2 THE COURT: YES, MADAM SOLICITOR.

3 MS. COOPER: THANK YOU, YOUR HONOR. GOOD MORNING,
4 YOUR HONOR. STANDING BEFORE YOU IS GERALD RANDAL SMITH.
5 HE IS REPRESENTED BY APRIL SAMPSON FROM THE PUBLIC
6 DEFENDER'S OFFICE.

7 MR. SMITH WAS ORIGINALLY INDICTED UNDER INDICTMENT
8 2003-1151 FOR MURDER. IN EXCHANGE FOR HIS GUILTY PLEA THE
9 STATE INTENDS TO PROFFER SOME TESTIMONY FROM THE DEFENDANT,
10 AND WE ARE ALLOWING HIM TO PLEAD GUILTY TO THE LESSER
11 INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER, AND WE WERE
12 ASKING THE COURT TO DEFER SENTENCING IN THIS MATTER UNTIL
13 WE PROSECUTE A CO-DEFENDANT IN THIS CASE.

14 THE COURT: OKAY. DID YOU SWEAR MR. SMITH?

15 CLERK: YES, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU.

17 GOOD MORNING, MR. SMITH, HOW ARE YOU?

18 DEFENDANT: FINE. HOW ARE YOU?

19 THE COURT: I'M FINE, THANK YOU.

20 ARE YOU HERE TO PLEAD GUILTY TO VOLUNTARY
21 MANSLAUGHTER?

22 DEFENDANT: YES, YOUR HONOR.

23 THE COURT: AND YOU'RE REPRESENTED BY COUNSEL, MS.
24 APRIL SAMPSON?

25 DEFENDANT: YES, YOUR HONOR.

STATE V. GERALD R. SMITH

1 THE COURT: MS. SAMPSON, HAVE YOU EXPLAINED TO MR.
2 SMITH THE NATURE OF THIS CHARGE AND DISCUSSED WITH HIM THE
3 POSSIBLE PUNISHMENT, HIS CONSTITUTIONAL RIGHTS, INCLUDING
4 THE RIGHT TO A JURY TRIAL, AND ALSO THE POSSIBLE
5 CONSEQUENCES OF A GUILTY PLEA?

6 MS. SAMPSON: YES, SIR. AND FOR THE RECORD, WE DID
7 THIS NOT ONLY BEFORE TODAY, WE DID IT TODAY WITH MR.
8 STRICKLER, MY SUPERVISOR.

9 THE COURT: IS THAT CORRECT, MR. SMITH?

10 DEFENDANT: YES, YOUR HONOR.

11 THE COURT: AND, MR. SMITH, BEFORE I CAN ACCEPT A
12 GUILTY PLEA, I NEED TO BE CERTAIN THAT YOU UNDERSTAND YOUR
13 CONSTITUTIONAL RIGHTS, YOU UNDERSTAND THE POSSIBLE
14 PUNISHMENT FOR THIS OFFENSE, AND YOU UNDERSTAND THE OTHER
15 POSSIBLE CONSEQUENCES OF YOUR GUILTY PLEA. DO YOU
16 UNDERSTAND, SIR?

17 DEFENDANT: YES, YOUR HONOR.

18 THE COURT: THIS OFFENSE, VOLUNTARY MANSLAUGHTER. DO
19 YOU UNDERSTAND THAT UNDER SECTION 16-3-50 OF THE SOUTH
20 CAROLINA CODE OF LAWS THAT A PERSON GUILTY OF MANSLAUGHTER
21 MUST BE IMPRISONED NOT MORE THAN 30 YEARS NOR LESS THAN --
22 NOT LESS THAN 2, NOT MORE THAN 30 YEARS.

23 DEFENDANT: YES, YOUR HONOR, I UNDERSTAND.

24 THE COURT: SIR, ARE YOU TODAY UNDER THE INFLUENCE OF
25 ANYTHING THAT MIGHT AFFECT YOUR ABILITY TO UNDERSTAND WHAT

1 YOU'RE DOING?

2 DEFENDANT: NO, SIR.

3 THE COURT: DO YOU UNDERSTAND THAT THIS OFFENSE IS
4 CLASSIFIED UNDER THE LAW AS BEING A VIOLENT OFFENSE AND A
5 MOST SERIOUS OFFENSE?

6 DEFENDANT: YES, YOUR HONOR.

7 THE COURT: DO YOU UNDERSTAND THAT IF YOU ARE
8 CONVICTED OF TWO MOST SERIOUS OFFENSES DURING YOUR
9 LIFETIME, YOU WILL BE INCARCERATED FOR LIFE WITHOUT THE
10 POSSIBILITY OF PAROLE?

11 DEFENDANT: YES, YOUR HONOR.

12 THE COURT: SIR, HOW OLD ARE YOU?

13 DEFENDANT: I'M 44.

14 THE COURT: AND WHAT IS YOUR EDUCATIONAL BACKGROUND?

15 DEFENDANT: JUST A HIGH SCHOOL.

16 THE COURT: HAVE YOU EVER BEEN TREATED FOR MENTAL
17 ILLNESS?

18 DEFENDANT: NO, SIR.

19 THE COURT: ARE YOU ON PROBATION OR PAROLE?

20 DEFENDANT: NO, SIR.

21 THE COURT: WHEN YOU PLEAD GUILTY, MR. SMITH, YOU GIVE
22 UP CERTAIN IMPORTANT CONSTITUTIONAL RIGHTS. YOU GIVE UP
23 THE RIGHT TO -- YOUR RIGHT TO REMAIN SILENT CONCERNING THIS
24 MATTER. YOU GIVE UP YOUR PRESUMPTION OF INNOCENCE
25 CONCERNING THIS MATTER.

STATE V. GERALD R. SMITH

1 IF YOU WERE TO HAVE A JURY TRIAL, THE JURY WILL BE
2 INSTRUCTED THAT IF YOU DID NOT TESTIFY IN THE CASE, THAT
3 YOU HAVE THE RIGHT TO REMAIN SILENT, AND THEY COULD NOT
4 HOLD THAT AGAINST YOU IN ANY FORM OR FASHION, COULD NOT
5 DISCUSS THAT IN THE JURY ROOM.

6 THEY WILL ALSO BE INSTRUCTED THAT YOU ARE PRESUMED TO
7 BE INNOCENT. YOU CANNOT BE FOUND GUILTY UNLESS THEY WERE
8 CONVINCED BEYOND A REASONABLE DOUBT OF YOUR GUILT.

9 DO YOU UNDERSTAND THAT WHEN YOU PLEAD GUILTY, YOU GIVE
10 UP YOUR PRESUMPTION OF INNOCENCE?

11 DEFENDANT: YES, YOUR HONOR.

12 THE COURT: YOU GIVE UP THE RIGHT -- YOUR RIGHT TO
13 REQUIRE THE STATE TO PROVE YOUR GUILT BY PRESENTING
14 EVIDENCE THAT CONVINCES THE JURY OF YOUR GUILT BEYOND A
15 REASONABLE DOUBT?

16 DEFENDANT: YES, YOUR HONOR.

17 THE COURT: DO YOU UNDERSTAND THAT YOU GIVE UP YOUR
18 RIGHT TO CONFRONT WITNESSES; THAT IS TO HAVE YOUR LAWYER
19 CROSS EXAMINE ANY OF THE STATE'S WITNESSES AGAINST YOU, TO
20 SUBPOENA WITNESSES, TO HAVE THEM TESTIFY IN YOUR OWN
21 BEHALF, TO PRESENT ANY DEFENSE THAT YOU MAY HAVE TO THESE
22 CHARGES, THE RIGHT TO CHALLENGE ANY INCRIMINATING
23 STATEMENTS THAT YOU MAY HAVE MADE, AND THE RIGHT TO A JURY
24 TRIAL ITSELF.

25 DO YOU UNDERSTAND ALL OF THOSE RIGHTS?

1 DEFENDANT: YES, YOUR HONOR.

2 THE COURT: DO YOU WISH TO GIVE UP THOSE RIGHTS AND
3 ENTER THIS GUILTY PLEA?

4 DEFENDANT: YES, YOUR HONOR.

5 THE COURT: HAS ANYONE PROMISED YOU ANYTHING TO GET
6 YOU TO PLEAD GUILTY TO THIS CHARGE?

7 DEFENDANT: NO, SIR.

8 THE COURT: IS THAT CORRECT, MADAM DEFENSE COUNSEL?

9 MS. SAMPSON: YES, YOUR HONOR.

10 THE COURT: IS THAT RIGHT, MADAM SOLICITOR?

11 MS. COOPER: THAT'S CORRECT.

12 THE COURT: UNDERSTANDING THE NATURE OF THE CHARGE,
13 THE POSSIBLE PENALTIES, THE OTHER CONSEQUENCES OF YOUR
14 GUILTY PLEA, HOW DO YOU PLEAD TO VOLUNTARY MANSLAUGHTER?

15 DEFENDANT: GUILTY.

16 THE COURT: ARE YOU IN FACT GUILTY OF THAT OFFENSE?

17 DEFENDANT: YES.

18 THE COURT: DO YOU BELIEVE THE STATE COULD PRODUCE
19 SUFFICIENT EVIDENCE TO CONVICT YOU, AND THAT IF YOU WERE TO
20 HAVE A JURY TRIAL, YOU WOULD MOST LIKELY BE FOUND GUILTY OF
21 MANSLAUGHTER AND/OR MURDER?

22 DEFENDANT: YES, YOUR HONOR.

23 THE COURT: HAS ANYONE PROMISED YOU ANYTHING TO GET
24 YOU TO PLEAD GUILTY?

25 DEFENDANT: NO.

1 THE COURT: ANY PLEA NEGOTIATIONS OTHER THAN REDUCING
2 THE CHARGE FROM MURDER TO MANSLAUGHTER?

3 DEFENDANT: REDUCE THE CHARGE.

4 THE COURT: THAT'S THE ONLY ---

5 DEFENDANT: YES.

6 THE COURT: HAVE YOU HAD ENOUGH TIME TO MAKE UP YOUR
7 MIND AS TO WHETHER OR NOT YOU WANT TO PLEAD GUILTY?

8 DEFENDANT: YES.

9 THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF
10 YOUR ATTORNEY IN THIS MATTER?

11 DEFENDANT: YES.

12 THE COURT: HAS SHE DONE EVERYTHING THAT YOU THINK SHE
13 COULD OR SHOULD HAVE DONE TO ASSIST YOU?

14 DEFENDANT: YES.

15 THE COURT: HAVE YOU UNDERSTOOD ALL OF MY QUESTIONS?

16 DEFENDANT: YES.

17 THE COURT: HAVE YOU ANSWERED THEM TRUTHFULLY?

18 DEFENDANT: YES.

19 THE COURT: MADAM SOLICITOR.

20 MS. COOPER: THANK YOU, YOUR HONOR. YOUR HONOR, THIS
21 INCIDENT HAPPENED ON NOVEMBER 9, 2002 HERE IN RICHLAND
22 COUNTY AT 1519 BROOKHURST (PHONETIC) COURT, WHICH IS
23 LOCATED NEAR PERCIVAL ROAD AND ALPINE ROAD IN NORTHEAST
24 COLUMBIA.

25 THAT MORNING ABOUT 10:00 O'CLOCK IN THE MORNING RONNIE

1 EDWARDS, A FRIEND OF THE VICTIM, H.B. SHARPE, WAS CONCERNED
2 ABOUT HIS FRIEND BECAUSE HE HAD CALLED HIM A FEW TIMES THAT
3 MORNING AND HIS FRIEND DID NOT ANSWER THE PHONE.

4 THE REASON WHY RONNIE EDWARDS WAS CONCERNED FOR MR.
5 SHARPE'S WELL-BEING, IS THAT MR. SHARPE HAD A SERIOUS HEART
6 CONDITION. HE HAD AN ENLARGED HEART, AND HE ALSO HAD A
7 PACEMAKER IN HIS HEART, TOOK SEVERAL MEDICATIONS FOR HIS
8 CONDITION.

9 SO BECAUSE MR. EDWARDS COULD NOT GET THROUGH TO HIM ON
10 HIS PHONE -- HE HAD A KEY TO THIS MOBILE HOME PARK --
11 MOBILE HOME RESIDENCE AT THIS ADDRESS. HE WENT OVER THERE
12 AND NOTICED TWO WHITE MEN SEATED IN A VAN PARKED AT THE
13 DRIVEWAY OF MR. SHARPE'S RESIDENCE.

14 HE WALKED UP TO THE DOOR, KNOCKED... NO ONE ANSWERED.
15 AND SO AT THAT POINT HE USED HIS KEY TO GO INSIDE TO SEE
16 WHAT WAS WRONG WITH HIS FRIEND.

17 AS HE ENTERED THE LIVING ROOM AREA OF THIS MOBILE
18 HOME, HE NOTICED IMMEDIATELY THAT HIS FRIEND HAD BEEN
19 BLUDGEONED TO DEATH, LAYING ON THE FLOOR FACE DOWN.

20 AT FIRST, YOUR HONOR, HE THOUGHT HE HAD BEEN SHOT
21 BECAUSE THE BACK OF HIS HEAD APPEARED TO BASICALLY BE
22 MISSING, AS IT WOULD BE APPARENT FROM A SHOTGUN WOUND, IF
23 SOMEONE WERE TO SHOOT THEMSELVES. NO ONE REALLY KNEW WHAT
24 HAD HAPPENED, WHETHER HE WAS SHOT IN THE BACK OF THE HEAD
25 WITH A SHOTGUN OR WHETHER THIS WAS A POSSIBLE SUICIDE.

1 IN FACT, THE FIRST RESPONDING OFFICER WHEN 911 IS
2 CALLED IMMEDIATELY WROTE DOWN IN HER REPORT THAT THIS WAS A
3 POSSIBLE SUICIDE DUE TO THE WAY THAT MR. SHARPE WAS LAYING
4 ON TOP OF HIS ARMS, POSSIBLY LAYING ON TOP OF A WEAPON, AND
5 THE BACK OF HIS SKULL WAS BASICALLY MISSING. AND THERE WAS
6 ONLY BRAIN MATTER.

7 RONNIE EDWARDS IMMEDIATELY CALLED THE POLICE, YOUR
8 HONOR, AND ASKED THOSE TWO WHITE MEN SITTING IN THE VAN --
9 WE LATER FIND OUT ARE DONNIE CARTER AND JIMMY LAWSON -- TO
10 GO TO THE CORNER OF BROOKHURST AND PERCIVAL ROADS TO WAIT
11 FOR THE AMBULANCE, SO THAT THEY COULD DIRECT THE AMBULANCE
12 TO THE PROPER STREET AND ADDRESS.

13 WHEN MR. LAWSON AND CARTER WERE WAITING FOR THE
14 AMBULANCE ON THE CORNER, THEY BASICALLY SEE THE DEFENDANT
15 RANDY SMITH -- GERALD RANDY SMITH AND HIS CO-DEFENDANT JOHN
16 EARHART PULL UP INTO THE STREET, AS IF THEY WERE PULLING UP
17 TO GO TO H.B. SHARPE'S RESIDENCE.

18 ACCORDING TO DONNIE AND JIMMY THEY TELL THE DEFENDANT
19 AND HIS FRIEND JOHN EARHART, WHO INCIDENTLY, YOUR HONOR, IS
20 RIGHT NOW ONLY CHARGED WITH ACCESSORY AFTER THE FACT OF
21 MURDER. THEY ASKED -- THEY TELL THEM THAT H.B. HAD BEEN
22 SHOT.

23 ACCORDING TO THESE TWO WITNESSES, THE DEFENDANT
24 IMMEDIATELY SAYS, LET'S GET THE HELL OUT OF HERE.

25 AND JOHN EARHART APPEARS TO BE SURPRISED.

1 THE TWO, THE DEFENDANT AND THE OTHER MAN, JOHN
2 EARHART, LEAVE RIGHT AWAY AND GO DOWN PERCIVAL ROAD. AND
3 AT THAT POINT DONNIE CARTER AND JIMMY LAWSON, THE TWO MEN
4 IN THE VAN DECIDE TO LEAVE BECAUSE THEY KNOW THE POLICE ARE
5 IN ROUTE. AND MR. LAWSON REALIZED HE WAS DRIVING WITHOUT
6 HIS DRIVER'S LICENSE.

7 ALSO, THEY FREELY ADMITTED THAT THEY WERE AT H.B.
8 SHARPE'S RESIDENCE TO BUY OXYCOTIN. WE HAVE LEARNED THAT
9 HE WAS A DEALER OF OXYCOTIN, AND THAT ALSO THIS DEFENDANT,
10 GERALD RANDY SMITH, AND HIS CO-DEFENDANT, JOHN EARHART,
11 WERE ALSO FREQUENT CUSTOMERS OF MR. SHARPE. THEY WOULD GO
12 THERE FREQUENTLY TO BUY OXYCOTIN FROM MR. SHARPE.

13 AT THAT POINT, YOUR HONOR, THE POLICE ARRIVE ON THE
14 SCENE. AND INVESTIGATOR RAY LIVINGSTON RECREATES WHAT HE
15 CAN OF THE SCENE. HE NOTICES A LOT OF BLOOD IN THE
16 RESIDENCE, YOUR HONOR.

17 I HAVE A MAP OR A LAYOUT OF THE RESIDENCE OF MR.
18 SHARPE'S THAT WAS DEVELOPED BY RAY LIVINGSTON, THE
19 INVESTIGATOR, CRIME SCENE INVESTIGATOR.

20 ACCORDING TO WHAT WE COULD GATHER FROM THE BLOOD
21 SPATTER EVIDENCE AT THIS CRIME SCENE, YOUR HONOR, WE
22 BELIEVE THAT THE INCIDENT HAPPENED IN THE KITCHEN AREA,
23 WHICH IS RIGHT -- RIGHT HERE, YOUR HONOR. THERE'S A STOVE
24 AND A SINK AND A COUNTER TOP AND A TABLE.

25 THE REASON WHY THAT WE BELIEVE THAT THE CRIME -- THE

1 ASSAULT ON MR. SHARPE BEGAN IN THIS KITCHEN IS BECAUSE WE
2 FIND 90 DEGREE BLOOD SPATTER ON THE FLOOR OF THE KITCHEN,
3 INDICATED TO INVESTIGATOR LIVINGSTON THAT MR. SHARPE WAS
4 STANDING AND THAT THE BLOOD WAS DROPPING -- DRIPPING FROM
5 HIS HEAD.

6 ALSO WE FOUND BLOOD ON THIS TABLE -- ON THE TABLE
7 CLOTH HERE AND THEN BLOOD ON THE FLOOR RIGHT BELOW THE
8 TABLE. WE BELIEVE THAT AT THAT POINT MR. SHARPE WAS STRUCK
9 IN THE HEAD WITH A BLUNT OBJECT. AND WE LEARNED LATER,
10 YOUR HONOR, THAT THE MURDER WEAPON IN THIS CASE IS A REBAR.
11 THE REBAR CAME FROM THE BACK OF THE FRONT DOOR WHERE MR.
12 SHARPE KEPT THIS. EVERYONE WHO CAME TO HIS HOUSE KNEW HE
13 HAD THIS REBAR THERE.

14 YOUR HONOR, THE VICTIM FELL IN THIS LOCATION. WE CAN
15 DETERMINE THAT FROM ALSO HIS GLASSES WERE FOUND IN THE
16 KITCHEN AND A LENS MISSING FROM HIS GLASSES WAS FOUND IN A
17 BOX IN THE KITCHEN.

18 WE WERE THEN ABLE TO RECREATE THE SCENE, BECAUSE WE
19 FOUND A GARBAGE CAN THAT HAD BEEN TURNED OVER RIGHT BY THE
20 KITCHEN AREA GOING INTO THE DEN. AND THAT TRASH CAN HAD
21 BEEN KNOCKED OVER, WE BELIEVE BY THE VICTIM RUNNING FOR HIS
22 LIFE.

23 WE ALSO FOUND A SHOE MISSING FROM MR. SHARPE'S FOOT IN
24 THE KITCHEN AS HE -- IN THE DIRECTION OF THE DEN. WE DO
25 BELIEVE HE LOST THAT SHOE WHILE HE WAS FLEEING FOR HIS

1 LIFE.

2 EVENTUALLY, YOUR HONOR, THE VICTIM MAKES IT TO THIS
3 AREA RIGHT HERE. AND THIS IS ACTUALLY WHERE HIS BODY IS
4 FOUND. HE IS FOUND ON HIS STOMACH. PART OF HIS BODY IS
5 OVER A PILLOW. PART OF THE PILLOW IS EXPOSED, YOUR HONOR.
6 THE OTHER PART IS UNDERNEATH HIM.

7 AFTER HIS BODY IS REMOVED, WE REALIZED THAT HE HAD
8 BEEN LAYING ON THAT PILLOW FOR QUITE SOME TIME AFTER BLOWS
9 WERE STRUCK DUE TO THE FACT THAT THERE WAS EXTRA BLOOD
10 SATURATED INTO THE PORTION OF THE PILLOW EXPOSED.

11 WE ALSO FOUND BLOOD SPATTER ON THE WALL. AND
12 ACCORDING TO INVESTIGATOR LIVINGSTON, THERE WAS CAST OFF
13 BLOOD, MEANING THAT THE BLOOD WAS PUT THERE BY AN OBJECT,
14 BEING CAST OFF FROM AN OBJECT AS IT WAS BEING STRUCK
15 AGAINST MR. SHARPE'S HEAD.

16 YOUR HONOR, THERE IS SEVERAL PIECES OF BLOOD --
17 EVIDENCE OF BLOOD IN THIS AREA WHERE INVESTIGATOR
18 LIVINGSTON BELIEVES THAT THE MURDER -- THE MURDER BASICALLY
19 HAPPENED BY THIS REBAR BEING USED AND REPEATEDLY STRIKING
20 MR. SHARPE WHILE HE WAS DOWN, AND THE PERSON HAD TO BE
21 RIGHT HANDED BECAUSE THERE WAS A TRAIL OF BLOOD IN THIS
22 ROOM INDICATING THE FLOW OF THE WEAPON.

23 EVENTUALLY, YOUR HONOR, THE BODY IS RECOVERED, TAKEN
24 TO THE RICHLAND MEMORIAL HOSPITAL FOR AN AUTOPSY. DR. CLAY
25 NICHOLS WAS PREPARED TO TESTIFY IN THIS CASE THAT THIS MAN

1 DIED FROM BLUNT TRAUMA TO THE HEAD -- BLUNT FORCE TRAUMA TO
2 THE HEAD, AND THAN WHEN ASKED WHETHER IT WOULD BE
3 CONSISTENT WITH A REBAR, HE SAID IT WOULD BE CONSISTENT
4 WITH A REBAR.

5 WHEN ASKED, HOW MANY APPROXIMATE BLOWS WERE STRUCK TO
6 MR. SHARPE'S HEAD HE BEING CONSERVATIVE SAID, NO LESS THAN
7 A DOZEN TIMES.

8 AND I DO HAVE PHOTOGRAPHS -- IF I MAY SHARE WITH THE
9 COURT -- SHOWING SEVERAL BLOWS TO THE HEAD, FOREHEAD, AND
10 REAR OF MR. SHARPE'S HEAD, AND ALL THOSE WOUNDS ARE
11 CONSISTENT WITH A REBAR BEING USED TO STRIKE MR. SHARPE IN
12 THE HEAD.

13 BASICALLY, THE REASON WHY THEY WERE MISTAKEN AT FIRST
14 THAT THIS WAS A GUNSHOT WOUND IS BECAUSE THERE WAS NO MORE
15 SKULL TO THE BACK OF MR. SHARPE'S HEAD LEFT.

16 DR. CLAY NICHOLS HAS NO QUESTION IN HIS MIND THAT HE
17 DIED FROM HEAD INJURIES, NOT HEART FAILURE.

18 ACCORDING -- EVENTUALLY, YOUR HONOR, WHILE THE POLICE
19 ARE TRYING TO FIGURE OUT WHAT HAS HAPPENED IN THIS CASE AND
20 WHO IS RESPONSIBLE, THEY INTERVIEW NEIGHBORS AROUND. NO
21 ONE HEARS ANYTHING OR SEES ANYTHING EXCEPT FOR ONE
22 INDIVIDUAL, MARK HORNSBY, WHO LIVES AT THE TRAILER RIGHT
23 BELOW THIS TRAILER.

24 AND HE INDICATES TO THE POLICE THAT HE WAS WALKING BY
25 THE RESIDENCE AND THAT HE NOTICED A GRAY TRUCK -- TOYOTA

1 PICKUP TRUCK PARKED RIGHT IN FRONT OF THE APARTMENT, BY THE
2 FRONT DOOR OF THE MOBILE HOME PARK, YOUR HONOR, EXCUSE ME.
3 AND WHEN ASKED WHETHER HE HAD SEEN IT BEFORE, HE SAID, THAT
4 THERE WAS A -- IT WAS A HIGH TRAFFIC AREA, A LOT OF PEOPLE
5 WERE COMING AND GOING FROM THIS RESIDENCE. AND SO HE WAS
6 NOT SURE WHETHER HE HAD SEEN IT BEFORE OR NOT.

7 WHEN ASKED, THE INDIVIDUAL WHO FOUND THE BODY, RONNIE
8 EDWARDS WAS ASKED BY THE INVESTIGATORS, DO YOU HAVE ANY
9 IDEA WHO COULD BE RESPONSIBLE FOR THIS?

10 MR. EDWARDS SAYS, WELL, YOU SHOULD PROBABLY TALK TO
11 RANDY SMITH ABOUT THIS.

12 AND SO BASED ON THAT INFORMATION AND THEN THE FACT
13 THAT THEY RAN THE DEFENDANT GERALD RANDY SMITH'S NAME IN
14 THE DMV, AND SURE ENOUGH A VEHICLE MATCHING THE DESCRIPTION
15 PROVIDED BY MARK HORNSBY CAME BACK THE DEFENDANT DOES OWN A
16 GRAY IN COLOR TOYOTA PICKUP TRUCK.

17 THEY THEN WERE IN ROUTE TO GO INTERVIEW THIS MAN AT
18 HIS RESIDENCE. APPARENTLY, HE LIVES OUT IN GASTON, YOUR
19 HONOR.

20 WHILE THEY WERE IN ROUTE TO GO INTERVIEW HIM, THEY GET
21 AN ANONYMOUS -- OR THEY GET A PHONE CALL, A TIP AT THE
22 SHERIFF'S DEPARTMENT FROM HIS CO-DEFENDANT, JOHN EARHART.
23 AND BASICALLY JOHN EARHART TELLS THE POLICE THAT HE WAS
24 HOME SLEEPING THAT MORNING, THE MORNING OF NOVEMBER 9, THE
25 BODY IS DISCOVERED AT 10:00 O'CLOCK THAT MORNING. I DON'T

1 KNOW IF I EXPLAINED THAT TO YOU EARLIER. BUT THAT THE
2 DEFENDANT SHOWED UP AT HIS HOUSE AROUND 7:30 OR 8:00 IN THE
3 MORNING, SO TWO HOURS BEFORE THE BODY IS DISCOVERED BY MR.
4 SHARPE'S FRIEND, RONNIE EDWARDS.

5 AND JOHN EARHART TELLS THE POLICE THAT HE WAS AWAKENED
6 BY A COMMOTION IN THE BACK YARD, AND THAT HE WOKE UP AND
7 SAW THE DEFENDANT BURNING WHAT -- ITEMS IN HIS BACK YARD.
8 AND HE ASKED THE DEFENDANT, WHAT ARE YOU BURNING?

9 THE DEFENDANT TOLD HIM HE WAS BURNING HIS WIFE'S
10 CLOTHES. APPARENTLY, HE WAS ESTRANGED FROM HIS WIFE. AND
11 THAT HE WAS BURNING HER CLOTHES IN THE BACK YARD OF JOHN
12 EARHART'S HOUSE.

13 JOHN EARHART ALSO HAS A THREE CAR GARAGE IN THE BACK
14 OF HIS RESIDENCE, WHICH IS SIGNIFICANT, YOUR HONOR, BECAUSE
15 THE DEFENDANT ASKS JOHN EARHART IF HE COULD HIDE HIS TRUCK
16 IN THE GARAGE AND CLAIMING HE HAD WARRANTS OUT ON HIM FOR
17 BAD CHECKS, WHICH IS WHY HE WAS HIDING FROM THE POLICE.

18 JOHN EARHART BASICALLY TELLS THE OFFICERS THAT HE THEN
19 GOT IN THE VEHICLE WITH THE DEFENDANT, HIS PICKUP TRUCK,
20 AND THAT THEY WENT TO GO BUY OXYCOTIN FROM MR. SHARPE. AND
21 THAT WHEN THEY ARRIVED, THEY ENCOUNTERED TWO MEN IN A VAN
22 WHO TELL THEM THAT THE VICTIM HAD BEEN SHOT, AND SO THAT
23 THEY THEN LEAVE BECAUSE RANDY FREAKED OUT AND DIDN'T WANT
24 TO GO THERE TO SEE WHAT WAS GOING ON. AND THAT THEY THEN
25 LEAVE AND GO CHECK HIM OUT FROM HIS MOTEL 6 ROOM, WHICH IS

1 LOCATED VERY NEAR TO WHERE THE VICTIM RESIDED.

2 AND THEY END UP GOING TO HIS RESIDENCE -- BACK TO JOHN
3 EARHART'S RESIDENCE WHERE THE DEFENDANT BEGINS TO CLEAN OUT
4 HIS CAR AND WASHING OUT HIS CAR WITH FOAM FROM INSIDE THE
5 GARAGE. AND THAT WHEN HE WAS DRIVING, HE WAS DRIVING SO
6 ERRATICALLY, YOUR HONOR, THAT HE RAN OVER A WELL NEAR THE
7 GARAGE OF MR. JOHN EARHART.

8 THEY HAD TO CALL A PLUMBER OUT, YOUR HONOR, TO COME
9 FIX THAT WELL. AND I'VE INTERVIEWED THE PLUMBER, AND HE
10 INDICATED THAT WHEN HE GOT THERE, HE SAW PILES OF MATTER
11 BURNING IN THE YARD, AND HE ASKED BOTH OF THEM WHAT WERE
12 THEY DOING OR WHAT WERE THEY BURNING.

13 AND IT WAS JOHN EARHART THAT SAID, WE'RE BURNING YARD
14 DEBRIS.

15 AND SO, YOUR HONOR, AT FIRST THE POLICE FELT THAT THEY
16 DID NOT HAVE ENOUGH EVIDENCE TO CHARGE JOHN EARHART WITH
17 THE ACTUAL MURDER IN THIS CASE. BUT BECAUSE OF HIS
18 INFORMATION, THEY WERE ABLE TO GO PICK UP RANDY SMITH.
19 THEY TOWED HIS TRUCK.

20 INSIDE THEY FOUND A SEAT MASSAGER, A JACKET, AND THEY
21 TESTED IT FOR DNA. THEY WERE UNABLE TO LINK EITHER
22 DEFENDANT TO THIS CRIME WITH ANY DNA OR FORENSIC EVIDENCE,
23 BECAUSE THEY HAD TIME TO DISPOSE OF THE MURDER WEAPON.
24 THEY BOTH SAID THAT THE MURDER WEAPON WAS DISPOSED OF BY
25 THROWING IT OFF THE BRIDGE OVER BROAD RIVER ROAD ON I-20,

1 AND WE WERE UNABLE TO RECOVER THAT. THE REBAR WAS NEVER
2 LOCATED. AND THAT IT WAS DUMPED IN A MEDICAL BAG THAT THE
3 VICTIM KEPT ALL HIS MEDICINE IN.

4 YOUR HONOR, WHEN THEY EVENTUALLY PICK UP RANDY SMITH,
5 THEY ARREST HIM AT THE HOLIDAY INN, WHICH IS LOCATED RIGHT
6 BEHIND JOHN EARHART'S RESIDENCE. AND SO WE DON'T THINK
7 THAT THAT WAS COINCIDENCE EITHER, THAT HE WAS STAYING AT A
8 HOTEL RIGHT NEAR HIS CO-DEFENDANT'S RESIDENCE.

9 YOUR HONOR, WHEN HE WAS PICKED UP, THE DEFENDANT TELLS
10 -- GIVES FIVE STATEMENTS. THE FIRST STATEMENT HE DENIES
11 ANY KNOWLEDGE WHATSOEVER IN THIS CASE.

12 THE SECOND STATEMENT HE SAYS HE WENT TO THE RESIDENCE
13 WITH JOHN EARHART, THAT HE STAYED IN THE CAR AND JOHN WENT
14 IN. AND HE HEARD A LOUD NOISE AND JOHN CAME RUNNING OUT --
15 BASICALLY POINTING THE FINGER AT HIS CO-DEFENDANT.

16 THE THIRD STATEMENT HE PUTS HIMSELF INSIDE OF THE
17 MOBILE HOME PARK.

18 HE'S EVEN GIVEN A POLYGRAPH AND HE FAILS THE
19 POLYGRAPH.

20 AND THEN FINALLY IN HIS FIFTH STATEMENT, YOUR HONOR,
21 HE RE-INITIATES CONTACT WITH THE POLICE AFTER HE INVOKED
22 HIS RIGHT TO AN ATTORNEY -- AND WE HAVE FIVE WITNESSES THAT
23 HEARD HIM. AND THEY GAVE STATEMENTS THAT THEY HEARD HIM
24 GIVING UP HIS RIGHT TO AN ATTORNEY AND THAT HE RE-INITIATED
25 CONTACT WITH THE INVESTIGATORS. AND, SO THERE'S NO DOUBT

1 IN MY MIND THAT WE SATISFY THE VOLUNTARINESS OF HIS
2 STATEMENT.

3 AND THEN AT THAT POINT HE FINALLY SAYS THAT HE AND
4 JOHN WENT TO GO SEE H.B. TO BUY OXYCOTIN THAT MORNING. AND
5 THAT WHEN THEY GOT INSIDE TO THE MOBILE HOME, THAT JOHN,
6 HIS CO-DEFENDANT, GOT INTO AN ARGUMENT WITH THE VICTIM, MR.
7 SHARPE, AND THAT IT WAS OVER OXYCOTIN. AND THE VICTIM
8 WOULD NOT SELL HIM ANY MORE OXYCOTIN BECAUSE HE OWED HIM
9 MONEY ALREADY AND HE WOULD NOT GIVE IT TO HIM WITHOUT
10 PAYMENT, AND THAT THE ARGUMENT ESCALATED.

11 AND IN HIS STATEMENT, WHICH WE PLAN TO PROFFER
12 TESTIMONY SHORTLY, YOUR HONOR, HE PROCEEDS TO ADMIT IN HIS
13 STATEMENT THAT HE HIT THE VICTIM ONCE IN THE HEAD WITH THE
14 REBAR, AND THAT SOMEHOW JOHN TOOK OVER THE REBAR AND
15 FINISHED HIM OFF, AND THAT HE WAITED FOR HIM IN THE CAR.

16 AND SO AT THIS POINT, YOUR HONOR, I THINK I'VE LAID
17 ENOUGH FOUNDATION FOR THE VOLUNTARY MANSLAUGHTER CHARGE.
18 AND MY CO-COUNSEL, DAVID ROSS, WOULD BE AVAILABLE TO DO THE
19 PROFFER OF THE TESTIMONY.

20 I DID WANT TO JUST PUT ONE LAST THING ON THE RECORD,
21 YOUR HONOR, THAT TESTIMONY FROM THE AUTOPSY, THAT THIS IS
22 CLEARLY NOT A CASE OF SELF-DEFENSE. THE VICTIM WAS STRUCK
23 OVER 12 TIMES IN THE HEAD. AND THERE'S ALSO DEFENSIVE
24 WOUNDS FOUND ON HIS HANDS WHERE HE WAS TRYING TO COVER HIS
25 HEAD FROM BEING STRUCK FURTHER.

1 AND I BELIEVE THAT COVERS EVERYTHING.

2 THE COURT: BEFORE HEARING FROM CO-COUNSEL, LET ME
3 HEAR FROM MR. SMITH. MR. SMITH, DO YOU AGREE WITH
4 EVERYTHING THE SOLICITOR SAID?

5 DEFENDANT: YES.

6 THE COURT: TELL ME WHAT YOU DID?

7 DEFENDANT: STARTING WHEN I FIRST WENT TO HIS HOUSE?

8 THE COURT: YES.

9 DEFENDANT: I HAD LEFT MOTEL 6 OFF TWO NOTCH ROAD. I
10 REALLY DON'T KNOW THE NAME OF THE ROAD THE MOTEL WAS ON,
11 BUT IT WAS OFF OF TWO NOTCH ROAD.

12 I WENT TO JOHN EARHART'S HOUSE BECAUSE -- I WAS AT THE
13 MOTEL BECAUSE I HAD WRITTEN -- SIGNED MY WIFE'S NAME TO ONE
14 OF HER CHECKS. AND I HAD SPOKEN WITH THE PRESIDENT OF FORT
15 JACKSON FEDERAL CREDIT UNION SEEING IF I COULD MAKE SOME
16 RESTITUTION.

17 AND HE SAID, WELL, I'LL NEED YOU TO TALK TO AN
18 INVESTIGATOR.

19 SO I TALKED WITH AN INVESTIGATOR, AND SHE SAID SHE HAD
20 A WARRANT OUT FOR ME.

21 SO I LEFT WORK AND WENT AND GOT THE MOTEL ROOM. THE
22 NEXT MORNING I LEFT THE MOTEL ROOM AND PROCEEDED TO JOHN
23 EARHART'S HOUSE. I ARRIVED AT JOHN EARHART'S HOUSE 7:00 OR
24 7:30. I'M NOT TOO SURE ON THE TIME, BUT I'M PRETTY SURE
25 THAT'S WHAT TIME IT WAS. IT'S BEEN TWO YEARS.

1 I KNOCKED ON THE DOOR. JOHN COME TO THE DOOR. HE
2 SAID, WHAT'S GOING ON, RANDY?

3 I SAID, I'VE GOT A WARRANT OUT FOR ME IN LEXINGTON
4 COUNTY. DO YOU MIND IF I STAY HERE?

5 HE SAID, NO, I DON'T MIND. HE SAID, WHAT ARE YOU
6 DOING?

7 I SAID, WELL -- YOU KNOW, I HAD A MOTEL ROOM IN
8 NORTHEAST COLUMBIA, BUT -- YOU KNOW, IF I COULD STAY HERE,
9 I'D APPRECIATE IT.

10 HE SAID, WELL, I DON'T HAVE ANY HOT WATER. THEN HE
11 MADE A COMMENT, LET'S RIDE OUT TO H.B.'S.

12 I WAS HESITANT TO DO SO BECAUSE I KNEW HIM AND H.B.
13 HAD HAD SOME ARGUMENTS IN THE PAST OVER MONEYS. BUT I DID
14 GO RIDE TO H.B.'S HOUSE. WE WALKED UP TO H.B.'S DOOR,
15 KNOCKED ON THE DOOR. H.B. -- I COULD HEAR HIS DOG BARKING.
16 HE COME TO THE DOOR, LET US IN. HE GIVE ME THIS WEIRD
17 LOOK. AND I KNEW THAT, YOU KNOW, HE WAS -- YOU KNOW, HE
18 WAS TEED THAT I HAD BROUGHT JOHN OUT THERE.

19 AND H.B. SAYS, JOHN, WHAT ABOUT THE HOUSE?

20 AND JOHN SAYS, I'M SUPPOSED TO BE SELLING THE HOUSE.

21 HE SAID, WELL, THAT CHECK DIDN'T CLEAR AND I NEED MY
22 MONEY.

23 AND THEY KIND OF HAD SOME HEATED WORDS. AND BEFORE I
24 KNEW IT, THEY WERE WRESTLING. AND H.B. HAD HAD HIM. AND
25 -- AND H.B. HAD MENTIONED SOMETHING ABOUT HE WAS GOING TO

1 GET HIS GUN AND SHOOT JOHN.

2 SO IN MY STATEMENT I SAID, I HIT H.B. TO TRY TO GET
3 HIM OFF OF JOHN. WHEN I DONE THAT, I WALKED TO THE DOOR
4 AND I POINTED ---

5 MS. SAMPSON: JUST TELL THEM.

6 DEFENDANT: OKAY. I WALKED TO THE DOOR AND WALKED
7 OUT. SO WHEN HE SAID, GUN, I KNEW THE HISTORY -- YOU KNOW,
8 WHAT I'VE BEEN TOLD THAT, YOU KNOW, SOMEBODY'S GOING TO GET
9 SHOT, SOMETHING'S GOING TO HAPPEN. SO I WALKED OUTSIDE,
10 GOT IN MY TRUCK. I SIT THERE FOR A FEW MINUTES. IT SEEMED
11 LIKE FOR A FEW MINUTES. AND I SAID, WELL, I NEED TO GO
12 BACK.

13 WHEN I WALKED BACK UP THERE, THAT'S WHEN I SEEN JOHN
14 STRIKING HIM SOME MORE IN THE LIVING ROOM. IT'S BEEN SO
15 LONG I CAN'T REMEMBER EVERYTHING ELSE THAT HAPPENED. BUT
16 THEY HAVE THE STATEMENTS THAT I MADE TO THE POLICE, MY LAST
17 ONE.

18 WE GOT IN MY TRUCK AND LEFT, AND WE PROCEEDED WEST ON
19 I-26 TOWARD HIS HOUSE. WE CAME TO BROAD RIVER BRIDGE.
20 JOHN WAS VERY ANXIOUS AND YELLING AND CUSSING, AND I HAD
21 SOME CLOTHES IN THE MIDDLE OF MY TRUCK, I DIDN'T WANT HIM
22 MESSING THEM UP. SO I PULLED OVER. WE BOTH GOT OUT. AND
23 HE PROCEEDED TO THROW SOMETHING OFF THE BRIDGE.

24 I'M NOT A HUNDRED PERCENT SURE IT WAS THE WEAPON. I'M
25 NOT SURE. BUT AT THE TIME I THOUGHT IT WAS THE WEAPON.

1 BUT NOW, I MEAN, I DON'T -- I CAN'T SIT HERE AND SAY I'M A
2 HUNDRED PERCENT SURE IT WAS.

3 BUT AFTER THAT WE PROCEEDED TO GO TOWARD HIS HOUSE.
4 AND I SAID, NO, I'VE GOT TO GO BACK AND CHECK OUT OF THAT
5 ROOM.

6 HE SAID, NO, I'M NOT GOING BACK THERE.

7 I SAID, WELL, I NEED TO GO BACK, JOHN. I GOT TO GO
8 CHECK OUT OF THAT ROOM. SO WE TURNED AROUND. I HEAD BACK.
9 HE'S RAISING CANE BECAUSE I'M GOING BACK. I COME DOWN
10 PERCIVAL ROAD, BECAUSE I'M GOING TO TAKE ALPINE TO GO BACK
11 WHERE MY ROOM WAS AT. I WORKED OFF ALPINE ROAD AT FRANK
12 AND D'S PLUMBING.

13 SO AS I'M COMING DOWN PERCIVAL ROAD, I SEE A VAN WITH
14 TWO GENTLEMEN IN IT AT THE CORNER, THE STOP SIGN OF
15 BROOKHURST, I BELIEVE THE NAME OF THE ROAD IS, AND ALPINE.
16 AND I RECOGNIZE IT'S DONNIE CARTER, A GENTLEMAN I WENT TO
17 SCHOOL AND KNOW HIM FOR QUITE A NUMBER OF YEARS. SO I
18 PULLED UP RIGHT THERE.

19 AND HE LEANS OVER AND HE SAYS H.B. HAD COMMITTED
20 SUICIDE.

21 AND I SAID, WHAT?

22 HE SAID, YEAH, HE SHOT HIMSELF.

23 THAT'S WHEN I LOOKED AT JOHN AND THEN JOHN MADE SOME
24 MORE THINGS. AND I SAID, YOU KNOW, WE TOOK OFF.

25 WHAT WAS SAID PRECISELY, I DON'T REMEMBER. BUT I KNOW

1 WE EXCHANGED WORDS WHEN WE TOOK OFF.

2 I WENT UP BROOKHURST TO THE STOP SIGN, TOOK A RIGHT,
3 AND WENT -- TOOK A LEFT AND WENT DOWN ALPINE AND HEADED
4 TOWARD THE MOTEL TO GO CHECK OUT.

5 I WENT TO THE MOTEL, GOT OUT OF THE TRUCK, LEFT HIM IN
6 THE TRUCK, AND WALKED INTO THE MOTEL AND CHECKED OUT.

7 THIS WAS -- I IMAGINE THEY HAVE THE TIME I CHECKED
8 OUT, SO IT WAS SOME TIME MAYBE AROUND 11:00, I'M NOT SURE.
9 BUT AFTER I LEFT THE MOTEL, WE PROCEEDED TO MR. EARHART'S
10 HOUSE, WHICH IS IN WEST COLUMBIA ON LEAPHART ROAD.

11 AS I PULLED IN THE YARD, JOHN SAYS, PULL TO THE BACK
12 OF THE HOUSE. HIS YARD HAS GOT A LOT OF TREES IN IT. SO I
13 PROCEEDED TO PULL AROUND THE TREES AND PULL BACK TO HIS
14 GARAGE.

15 AS I WAS PULLING BACK, I HIT HIS WELL. HIS WELL STOOD
16 MAYBE 6 INCHES OUT OF THE GROUND. IT'S A 4 INCH WELL. AND
17 IT WAS MAYBE 6 INCHES OUT OF THE GROUND.

18 I KNEW HE HAD A WELL IN HIS BACK YARD. AND THE REASON
19 I HIT IT, BECAUSE HE WAS CONSTANTLY YELLING AT ME AND
20 EVERYTHING, AND I WAS JUST DISTRACTED WITH WHAT ALL HAD
21 JUST TAKEN PLACE.

22 SO I HIT THE WELL. HE TELLS ME TO PULL MY TRUCK ON
23 INTO THE GARAGE. I PUT MY TRUCK INTO THE GARAGE.

24 AND THEN AFTER THAT HE'S WANTING TO GO INSIDE. HE
25 GOES INSIDE HIS HOUSE AND THEN COMES BACK OUT AND HE'S --

1 THERE'S LIKE A SEAT COVER ON MY TRUCK. HE TAKES IT OFF.
2 AND THEN THERE'S A PILE WHERE HE ALWAYS BURNS -- BURNS
3 STUFF. HE PROCEEDED TO BURN THIS.

4 AND HE BROUGHT ANOTHER BAG OUT FROM HIS HOUSE TO BURN.
5 WHAT WAS IN THAT BAG, I'M JUST ASSUMING IT WAS HIS CLOTHES
6 THAT HE HAD ON, BECAUSE HE DID HAVE SOME BLOOD ON THEM DUE
7 TO THE INCIDENT THAT HAPPENED AT H.B.'S.

8 D.W. SHOWED UP. AND WE STARTED TO FIX THE WELL --
9 BECAUSE I HAD TO HOLD THE WELL WHILE WE GLUED THEM FITTINGS
10 ON IT. I KNOW D.W. FROM BEING IN THE PLUMBING BUSINESS FOR
11 QUITE A NUMBER OF YEARS. I HELPED HIM GET STARTED OVER
12 THERE DOING PLUMBING WORK. BUT WE FIXED THE WELL.

13 AND JOHN'S UP ON THE PORCH UP THERE YELLING MORE
14 PROFANITIES. AND THERE'S A CAR THAT PULLS UP, A RED CAR.
15 I DON'T -- I DON'T KNOW WHO THE CAR IS. I THINK D.W. MAKES
16 A STATEMENT THAT I TALK WITH THEM. BUT I THINK HE -- HE
17 MEANT JOHN. BUT JOHN TALKED TO THEM, BECAUSE I LOOKED
18 BACK, I SEEN JOHN IN THERE TALKING TO THEM. WHAT HE WAS
19 TALKING TO THEM ABOUT OR WHO IT WAS, I HAVE NO IDEA.

20 THEN AFTER THAT I TOLD D.W. IF HE WOULD TAKE ME TO GET
21 A ROOM. AND I SAID, YOU CAN TAKE ME TO THE HOLIDAY INN,
22 IT'S RIGHT BEHIND MR. EARHART'S HOUSE. AND THE REASON I
23 STAYED AT THE HOLIDAY INN WAS BECAUSE YOU CAN WALK THE
24 PROXIMITY FROM HIS HOUSE TO THE HOLIDAY INN IS MAYBE 200
25 YARDS AND YOU CAN JUST KIND OF CUT THROUGH THE WOODS AND

1 CUT THROUGH A FEW BUILDINGS AND YOU'RE RIGHT THERE AT THE
2 MOTEL.

3 I LEFT MY TRUCK THERE AT HIS HOUSE IN THE GARAGE.

4 LET'S SEE. I GOT THE ROOM. I DON'T THINK I WENT
5 ANYWHERE. BUT I WENT BACK TO HIS HOUSE THE NEXT DAY. AND
6 I DON'T BELIEVE HE WAS THERE. BUT THEN HE COMES TO MY
7 ROOM, WANTS SOME OXYCOTIN. I SAID, WELL, JOHN, I'VE ONLY
8 GOT A COUPLE.

9 HE SAID, WELL, LET ME -- YOU KNOW.

10 I SAID, WELL, HERE. HERE'S \$40. BECAUSE, I MEAN,
11 HE'S GOTTEN TO THE POINT THAT OXYCOTIN IS A VERY ADDICTIVE
12 DRUG. IT'S VERY ADDICTIVE. SO, YOU KNOW, HE WAS NEEDING
13 SOME OXYCOTIN. AND I KNOW WHAT HE MUST HAVE BEEN. SO I
14 GIVE HIM \$40.

15 HE LEFT. AND I DON'T KNOW, I THINK IT MIGHT HAVE BEEN
16 LATER THAT NIGHT I WENT TO HIS HOUSE TO GET MY TRUCK. AND
17 MY TRUCK WASN'T THERE. AND I ASKED HIM, I SAID, JOHN,
18 WHERE'S MY TRUCK.

19 HE SAYS, I DON'T KNOW WHERE YOUR TRUCK IS.

20 I SAYS, YOU DON'T KNOW WHERE MY TRUCK IS? I SAYS, YOU
21 KNOW, JOHN, WHERE'S MY TRUCK? THEN I KNEW, YOU KNOW -- I
22 KNEW, YOU KNOW, I KNEW WHAT HAS JUST TAKEN PLACE THE HOURS
23 EARLIER.

24 SO I WENT BACK TO THE ROOM AND I GRABBED OUT THE PHONE
25 BOOK. AND I BELIEVE I WAS GOING TO CALL ROBBIE -- SHE

1 WORKS FOR CENTRAL DISPATCH I THINK WITH COLUMBIA POLICE
2 DEPARTMENT OR RICHLAND COUNTY. I WAS GOING TO CALL HER TO
3 FIND OUT IF SHE KNEW WHERE MY TRUCK WAS.

4 I BELIEVE SHE WAS AT WORK AND SHE COULDN'T REALLY TAKE
5 ANY CALLS ON THAT NATURE, YOU KNOW, TO BE PERSONAL CALLS
6 AND IT BEING HER JOB, I THINK, YOU KNOW, AS FAR AS GIVE OUT
7 ANY INFORMATION. SO I JUST STARTED LOOKING THROUGH THE
8 PHONE BOOK. AND I SAID, I'M JUST GOING TO CALL THE
9 SHERIFF'S DEPARTMENT.

10 NOW, IT WAS THE NEXT MORNING -- I DON'T KNOW IF IT WAS
11 THAT MORNING, THAT'S THE TIME -- IT'S BEEN TWO YEARS AND I
12 JUST CAN'T REMEMBER THE TIMES, YOUR HONOR. BUT -- BUT HE
13 CAME TO MY -- TO MY ROOM. JOHN EARHART HAD COME TO MY
14 ROOM. THERE WAS A KNOCK. I HAD JUST GOT THROUGH EATING.
15 I HAD ORDERED SOMETHING FROM TAKEOUT FROM THE MOTEL. I HAD
16 JUST GOT THROUGH EATING.

17 AND HE COMES IN AND HE'S ACTING REAL, YOU KNOW --
18 JUST, YOU KNOW REAL THING. HE SAYS, WHAT ARE YOU DOING?

19 I SAID, WELL, I'M GOING TO CALL THE SHERIFF'S
20 DEPARTMENT BECAUSE I WANT TO -- YOU KNOW -- YOU KNOW. AND
21 HE JUST ACTED -- ABOUT THAT TIME THERE WAS ANOTHER KNOCK.
22 AND I LOOK OUT, AND I SEE IT'S SOME PLAIN CLOTHES -- I
23 MEAN, SOME GENTLEMEN IN SUITS. I KNEW WHAT WAS GOING ON.
24 I KNEW IT WAS THE POLICE.

25 AND I LET THEM ON IN. AND THEY LOOKED AROUND AND

1 PULLED THE MATTRESSES AND STUFF, AND LOOKED AROUND. AND
2 ASKED ME IF I WOULD COME DOWN TO THE POLICE STATION.

3 AND I SAID, YES, I'D COME DOWN.

4 AND I WENT DOWN AND THEY TALKED WITH ME FOR A LITTLE
5 WHILE. AND I BELIEVE -- THE FIRST THING I DID WAS GIVE A
6 POLYGRAPH TEST. AND THEN THEY QUESTIONED ME SOME MORE.

7 AND FINALLY I TOLD THEM ON THE LAST STATEMENT WHAT HAD
8 HAPPENED. WHY DIDN'T I TELL THEM RIGHT OFF? I WAS SCARED.
9 I JUST -- YOU KNOW, I'VE NEVER BEEN IN ANYTHING -- I'VE
10 NEVER BEEN IN ANYTHING LIKE THAT. SO HERE I AM TWO YEARS
11 LATER.

12 THE COURT: MADAM SOLICITOR.

13 MS. COOPER: THANK YOU, YOUR HONOR. AT THIS TIME MR.
14 ROSS WOULD HAVE SOME FOLLOW-UP QUESTIONS FROM WHAT HE JUST
15 TOLD THIS COURT.

16 THE COURT: ALL RIGHT.

17 MR. ROSS: COULD I HAVE THE DEFENDANT TAKE THE STAND,
18 YOUR HONOR.

19 THE COURT: YES, SIR.

20 (THE DEFENDANT TAKES THE WITNESS STAND.)

21 THE COURT: YOU'RE STILL UNDER OATH, SIR.

22 DIRECT EXAMINATION BY MR. ROSS:

23 Q MR. SMITH, I'M SHOWING YOU WHAT'S BEEN MARKED STATE'S
24 EXHIBIT NO. 1. THIS IS A STATEMENT THAT YOU GAVE ON
25 NOVEMBER 12, 2002, 23:00 HOURS. THIS IS A FOUR-PAGE

1 STATEMENT. AND ALSO ALONG WITH THAT IS A DIAGRAM. LET ME
2 HAVE YOU LOOK AT THAT.

3 A CAN YOU TAKE MY GLASSES? I ONLY USE THEM TO SEE FAR
4 AWAY. THANK YOU.

5 (PAUSE.)

6 Q DO YOU RECOGNIZE THIS?

7 A YES.

8 Q THIS IS A STATEMENT. DO YOU RECOGNIZE YOUR SIGNATURE
9 ON THE BOTTOM OF EACH PAGE?

10 A YES.

11 Q AND YOU RECOGNIZE YOUR SIGNATURE ON THE DIAGRAM?

12 A YES.

13 Q OKAY. I'M GOING TO GO THROUGH THIS STATEMENT. CAN
14 YOU READ AND WRITE?

15 A YES.

16 Q OKAY. I'M GOING TO GO THROUGH THIS STATEMENT. AND
17 I'M GOING TO GO THROUGH IT LINE BY LINE. AND IF THERE'S A
18 PART OF THE STATEMENT THAT YOU DO NOT AGREE WITH, I WANT
19 YOU TO STOP ME. OKAY? STATEMENT OF GERALD RANDAL SMITH,
20 139 BEAVER CREEK ROAD, SWANSEA, SOUTH CAROLINA 29160. MADE
21 AT COLUMBIA, SOUTH CAROLINA THIS 12TH DAY OF NOVEMBER 2002
22 AT 23:00 HOURS, IN THE PRESENCE OF INVESTIGATOR ISENHOWARD
23 OF THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

24 I, GERALD RANDAL SMITH, UNDERSTAND THAT I HAVE THE
25 RIGHT TO REMAIN SILENT. ANYTHING I SAY CAN BE USED AGAINST

1 ME IN COURT. I HAVE THE RIGHT TO TALK TO A LAWYER FOR
2 ADVICE BEFORE YOU ASK ME ANY QUESTIONS, AND TO HAVE A
3 LAWYER WITH ME DURING ANY QUESTIONING. IF I CANNOT AFFORD
4 A LAWYER, ONE WILL BE APPOINTED FOR ME BEFORE ANY
5 QUESTIONING, IF I WISH. IF I DECIDE TO ANSWER QUESTIONS
6 NOW WITHOUT A LAWYER PRESENT, I STILL HAVE THE RIGHT TO
7 STOP ANSWERING AT ANY TIME. I ALSO HAVE THE RIGHT TO STOP
8 ANSWERING AT ANY TIME UNTIL I TALK TO A LAWYER.

9 DO YOU MAKE THE FOLLOWING STATEMENT -- I DO MAKE THE
10 FOLLOWING STATEMENT:

11 QUESTION: INVESTIGATOR ISENHOWARD.

12 ANSWER: GERALD RANDAL SMITH.

13 QUESTION. DESCRIBE THE EVENTS THAT TOOK PLACE ON
14 NOVEMBER 9, 2002 AT 1519 BROOKHURST COURT INVOLVING H.B.
15 SHARPE?

16 ANSWER. I WORKED FRIDAY AND HAD SPOKE TO MY WIFE FROM
17 THE OFFICE. SHE SAID THAT THE BANK WAS GOING TO DROP THE
18 CHARGES ON ME. I TOLD HER I WAS GOING TO TAKE OFF HALF A
19 DAY. I GOT A HOTEL ROOM AT THE MOTEL 6. I CHECKED IN
20 AROUND 11:30 IN THE AFTERNOON. I LEFT THE ROOM AT AROUND
21 7:15, 7:30 A.M. ON SATURDAY. I DROVE TO MY HOUSE. I LEFT
22 MY HOUSE AND WENT TO JOHN'S HOUSE.

23 JOHN ASKED ME TO TAKE HIM TO H.B.'S HOUSE. HE TOLD ME
24 THAT H.B. HAD A CHECK FOR \$650 AND WOULD GIVE HIM SOME
25 OXYCOTINS. WE WENT OUT THERE IN MY PICKUP TRUCK. IT WAS

1 AROUND 8:30 A.M. WHEN WE GOT THERE. JOHN GOES UP TO THE
2 DOOR AND KNOCKS. H.B. LETS HIM IN.

3 AFTER A FEW MINUTES I FIGURED THAT IT WAS COOL, SO I
4 WENT IN. WHEN I GOT IN, H.B. AND JOHN ARE ARGUING. H.B.
5 PULLS A PISTOL. IT WAS A SMALL CHROME SEMI-AUTOMATIC
6 PISTOL. H.B. TOLD JOHN, I AIN'T FRONTING YOU A MOTHER
7 FUCKING THING, GET OUT. THEN H.B. WENT AFTER JOHN POINTING
8 THE PISTOL AND TELLING HIM TO GET OUT.

9 I WAS AT THE DOOR AND I GRABBED THE PIECE OF REBAR AND
10 WALKED OVER TO WHERE THEY WERE AT. H.B. AND JOHN WERE
11 ARGUING. H.B. PUSHED JOHN. I HIT H.B. ON THE HEAD WITH A
12 REBAR. H.B. FELL FORWARD BUT NOT DOWN. HE DIDN'T STOP AND
13 LUNGED AT JOHN AGAIN. I GRABBED HIM AND TRIED TO HOLD HIM.
14 HE THREW ME BACK.

15 JOHN PICKED UP THE REBAR AND HIT H.B. HE HIT HIM A
16 COUPLE OF TIMES. H.B. FELL INTO THE LIVING ROOM NEAR THE
17 FIREPLACE AND A WOOD BOX.

18 I SAID, JOHN, YOU ABOUT KILLED THE MAN.

19 JOHN SAID, FUCK H.B. HE RIPPED US OFF SO MUCH HE
20 DESERVED IT.

21 I GRABBED A BROWN ZIPPER BAG OFF THE KITCHEN TABLE,
22 WHICH ONLY HIS HEART PILLS IN IT. I WENT OUT THE FRONT
23 DOOR.

24 JOHN WENT THROUGH H.B.'S POCKETS AND I GUESS GOT
25 OXYCOTIN. HE HAD IT LATER. THE KEYS TO THE CADILLAC WERE

1 ON THE FLOOR AND JOHN WANTED TO TAKE IT.

2 I SAID, NO. WE GOT INTO MY TRUCK AND LEFT.

3 JOHN BROUGHT THE REBAR IN THE TRUCK. I THINK BECAUSE
4 WHEN WE GOT TO BROAD RIVER BRIDGE HE ASKED ME TO PULL OVER
5 AND THROW IT ALL OUT. WE WENT BACK TO JOHN'S HOUSE. JOHN
6 GOT OUT AND WENT INSIDE. I STAYED IN THE TRUCK. WHEN JOHN
7 CAME BACK OUTSIDE, HE HAD CHANGED CLOTHES. THE ONES HE HAD
8 ON WERE COVERED WITH BLOOD. JOHN WANTED TO RIDE BACK TO
9 H.B.'S. I ARGUED A LITTLE, BUT I HAD TO GO CHECK OUT OF
10 THE HOTEL AND AGREED.

11 WHEN WE GOT THE PERCIVAL ROAD WE NOTICED A WHITE VAN
12 WITH DONNIE IN IT. I MET UP WITH THE VAN AND DONNIE TOLD
13 ME THAT H.B. HAD BEEN SHOT. I WENT DOWN PERCIVAL ROAD TO
14 ALPINE ROAD. WHEN WE WERE DRIVING DOWN ALPINE WE PASSED A
15 DEPUTY. HE HIT THE BREAKS LIKE HE WAS GOING TO STOP US. I
16 KEPT GOING.

17 JOHN MADE A COMMENT THAT I DRIVE TOO SLOW.

18 I WENT TO THE MOTEL 6 AND CHECKED OUT. WE WENT BACK
19 TO JOHN'S HOUSE. JOHN RAN AND OPENED HIS GARAGE DOOR AND
20 TOLD ME TO PARK IN IT. I PULLED BACK THERE AND WHEN I
21 TRIED TO BACK IN, I RAN OVER HIS WELL. JOHN WAS CUSSING
22 AND RAISING HELL. I TOLD JOHN THAT IT LOOKED LIKE BLOOD ON
23 THE SEAT COVER. I TOLD HIM TO HELP ME GET IT OFF AND BURN
24 IT.

25 WE BURNED IT NEXT TO HIS SHED. JOHN BURNED SOME OTHER

1 THINGS, I THINK IT WAS THE CLOTHES THAT HE HAD ON. JOHN
2 MADE ME MOVE THE PILE BECAUSE HE THOUGHT THAT I WAS GOING
3 TO SET THE GARAGE ON FIRE.

4 I CALLED D.W. OF D.W.'S PLUMBING AND HE COMES OUT AND
5 FIXES THE WELL. I ASKED D.W. TO GIVE ME A RIDE TO A HOTEL
6 ROOM. HIS DAUGHTER WAS IN THE TRUCK AND SHE SAID THAT SHE
7 WOULD GET THE ROOM. WE WENT TO THE HOLIDAY INN AND SHE GOT
8 THE ROOM. I WAS SCARED THAT I WAS GOING TO GET ARREST FOR
9 SOME CHECK WARRANTS.

10 THE NEXT DAY, SUNDAY, I READ THE PAPER AND SAW THE
11 ARTICLE ABOUT H.B. DYING. JOHN CAME TO MY ROOM CRYING. HE
12 SAID THAT HE NEEDED SOME OXYCOTIN AND I GAVE HIM \$40. HE
13 NEVER CAME BACK.

14 I WENT OVER TO JOHN'S HOUSE AND FOUND HIM SHOOTING UP
15 HEROINE. I THOUGHT THAT HE HAD QUIT THAT. I CALLED HIS
16 BROTHER AND HIS BROTHER SAID HE DIDN'T WANT TO SEE JOHN AT
17 THE GARAGE.

18 I TOLD HIM I WAS GOING BACK TO THE ROOM. I CAME BACK
19 OVER THERE THAT NIGHT AROUND 8:30 OR 9:00 O'CLOCK. I
20 KNOCKED ON THE DOOR, BUT HE NEVER CAME TO THE DOOR. I WENT
21 OUT BACK TO GET MY TRUCK BUT IT WASN'T THERE. I WENT BACK
22 TO THE ROOM.

23 THE NEXT MORNING I CALLED WORK AND TOLD THEM THAT I
24 WASN'T GOING TO MAKE IT. ABOUT 10:00 O'CLOCK I CALLED D.W.
25 AND ASKED HIM TO ME TO GET THE ROOM THAT WAS THE DAY OF THE

1 STORMS. HE TOOK ME TO THE RAMADA, BUT THE POWER WAS OUT.
2 HE TOOK ME BACK TO THE HOLIDAY INN.

3 I WENT OVER TO JOHN'S HOUSE. I TALKED TO JOHN AND HE
4 TOLD ME THAT THE SHERIFFS CAME BY AND QUESTIONED HIM ABOUT
5 H.B. I ASKED HIM WHERE MY TRUCK WAS AND HE SAID HE DIDN'T
6 KNOW. I WENT BACK TO MY ROOM; THAT'S WHEN I CALLED MY
7 BROTHER TO TALK TO HIS WIFE, ROBBIE, WHO WORKS FOR THE
8 POLICE DEPARTMENT. I ASKED HIM TO CALL HER AND ASK HER
9 WHERE THE TRUCK WAS. HE WOULDN'T TELL ME. HE TOLD ME THAT
10 SHE COULD NOT TELL ME AND TO CALL THE LOCAL JURISDICTION.

11 THAT'S WHEN JOHN CAME OVER AND STARTED TELLING ME TO
12 CALL TOW SERVICES IN THE PHONE BOOK. SHORTLY AFTER THAT IS
13 WHEN YOU GUYS KNOCKED ON THE DOOR. I TOLD JOHN NOT TO OPEN
14 THE DOOR AND TO CHILL OUT. I TOLD HIM THAT IF I WENT DOWN,
15 HE WAS GOING DOWN TOO. THAT WAS IT.

16 QUESTION: WHERE ARE THE CLOTHES THAT YOU WERE WEARING
17 WHEN H.B. WAS KILLED?

18 ANSWER: YOU HAVE THEM. IT WAS THE SAME CLOTHES I
19 CAME IN HERE WITH.

20 QUESTION: HOW MANY TIMES DID YOU STRIKE H.B.?

21 ANSWER: ONCE HARD NEAR THE TOP OF THE FOREHEAD. IT
22 HARDLY DID ANYTHING.

23 QUESTION: HOW MANY TIMES DID JOHN STRIKE H.B.?

24 ANSWER: A NUMBER OF TIMES. EVERY TIME THAT JOHN
25 WOULD HIT HIM, HE KEPT FIGHTING AND FINALLY HE FELL TO HIS

1 KNEES LIKE HE HAD A HEART ATTACK.

2 QUESTION: DID ANYONE HIT HIM WHILE HE WAS LYING DOWN?

3 ANSWER: NO.

4 QUESTION: WHO WENT THROUGH HIS POCKETS?

5 ANSWER: JOHN.

6 QUESTION: WHY DIDN'T YOU CALL THE SHERIFF'S
7 DEPARTMENT WHEN IT HAPPENED?

8 ANSWER: BECAUSE OF THE DRUGS.

9 QUESTION: DESCRIBE HOW H.B. WAS LAYING WHEN YOU LEFT?

10 ANSWER: OUT OF THE KITCHEN DOWN BY THE BACKSIDE OF
11 THE POKER TABLE IN THE LIVING ROOM NEAR THE FAR WALL.

12 QUESTION: WHY DID YOU LIE BEFORE THIS?

13 ANSWER: BECAUSE JOHN IS THE ONE WHO BEAT HIM
14 UNMERCIFULLY, BUT I DID HIT HIM TOO.

15 QUESTION: DESCRIBE THE CLOTHES THAT JOHN HAD ON WHEN
16 H.B. WAS KILLED?

17 ANSWER: I WANT TO SAY KHAKI SHORTS AND DOCKSIDER
18 SHOES. I CAN'T REMEMBER WHAT SHIRT.

19 QUESTION: WHAT WAS THROWN INTO THE RIVER?

20 ANSWER: THE BAG THAT HAD H.B.'S HEART MEDICINE IN IT.

21 QUESTION: WHERE DID YOU DESTROY THE EVIDENCE OF
22 H.B.'S KILLING?

23 ANSWER: WE WENT THREW THE BAG IN THE BROAD RIVER. WE
24 BURNED THE SEAT COVER AND SOME CLOTHES IN JOHN'S YARD. I
25 ALSO BURNED SOME MORE PRESCRIPTIONS ON THE FRONTAGE ROAD

1 NEAR THE HOTEL.

2 QUESTION: DO YOU HAVE ANYTHING TO ADD TO YOUR
3 STATEMENT?

4 ANSWER: NO, JUST THAT WE DIDN'T GO THERE TO ROB HIM.
5 IT JUST HAPPENED.

6 IS THAT THE CORRECT VERSION OF EVENTS, THAT LAST
7 STATEMENT THAT YOU GAVE?

8 A YES.

9 Q ANYTHING THAT YOU WANT TO CHANGE THAT'S IN YOUR
10 STATEMENT?

11 A JUST SOMETHING ABOUT BURNING SOME PRESCRIPTIONS ON THE
12 FRONTAGE ROAD. I'M NOT ---

13 Q THAT'S ALL?

14 A THIS IS NOT, YOU KNOW -- I'M NOT -- I JUST DON'T
15 REMEMBER.

16 Q THAT'S ON THE NEXT TO THE LAST QUESTION?

17 A THAT'S THE LAST -- YES.

18 Q OKAY. THAT'S THE ONLY THING YOU DON'T REMEMBER
19 TALKING ABOUT IS THE PRESCRIPTIONS ON THE FRONTAGE ROAD?

20 A YES.

21 Q OKAY. AND YOU SIGNED EACH OF THESE PAGES?

22 A YES.

23 Q AND THAT'S YOUR SIGNATURE ON EACH PAGE?

24 A YES.

25 Q I HAVE A COUPLE OF FOLLOW-UP QUESTIONS IF THAT'S OKAY.

1 HOW LONG HAD YOU KNOWN MR. EARHART?

2 A 30 -- 30-SOMETHING YEARS.

3 Q OKAY. AND PRIOR TO THIS, PRIOR TO NOVEMBER 9, ON
4 NOVEMBER 8 YOU HAD CHECKED INTO MOTEL 6?

5 A YES, SIR.

6 Q ALL RIGHT. AND YOU CHECKED IN THERE BECAUSE YOU KNEW
7 THERE WAS A WARRANT FOR YOUR ARREST FOR FORGING A CHECK?

8 A YES.

9 Q ALL RIGHT. AND YOU WENT OVER TO MR. EARHART'S HOUSE
10 AROUND 7:00 OR 7:30 ON NOVEMBER 9 ---

11 A YES.

12 Q --- WHEN YOU WANTED TO CHECK OUT OF THE MOTEL 6?

13 A YES.

14 Q AND THEN STAY WITH HIM?

15 A YES.

16 Q AND THEN THAT'S WHEN YOU ALL WENT OVER TO H.B.'S?

17 A YES.

18 Q ALL RIGHT. AND YOU DROVE THE TRUCK OVER TO H.B.'S THE
19 FIRST TIME?

20 A YES.

21 Q ALL RIGHT. WHEN YOU WENT INSIDE THE TRAILER AND THE
22 ALTERCATION TOOK PLACE AND YOU HIT H.B. WITH THE REBAR AND
23 THEN JOHN GOT THE REBAR AND WAS HITTING H.B., DID YOU STAY
24 IN THE TRAILER THE WHOLE TIME?

25 A NO. I WAS KIND OF OUTSIDE DOWN BY THE STEPS.

1 Q OKAY.

2 A I HAD WENT TO MY TRUCK, AND THEN I WENT BACK AND I WAS

3 DOWN BY THE STEPS.

4 Q ALL RIGHT. AND YOU COULD SEE THE TRAILER AND SEE WHAT

5 WAS HAPPENING?

6 A YES.

7 Q ALL RIGHT. AND THEN JOHN CAME OUT, HAD YOU ALREADY

8 GONE BACK TO THE TRUCK BY THEN OR ARE YOU STILL AT THE

9 STEPS?

10 A NO, I WAS IN THE TRUCK. I WAS PULLING LIKE, AND THEN

11 HE COME OUT.

12 Q ALL RIGHT. JOHN HAD BLOOD ON HIM, ON HIS CLOTHES?

13 A YES, ON HIS ARM HERE AND A LITTLE BIT ON HIS SHIRT IT

14 LOOKED LIKE. BUT I DEFINITELY SEEN IT ON HIS RIGHT HAND.

15 Q OKAY. WAS HE CARRYING ANYTHING?

16 A HE HAD SOMETHING IN HIS -- HE HAD A COAT. HE HAD

17 SOMETHING UNDER THE COAT -- IN THE COAT. LIKE I WAS SAYING

18 EARLIER, I DON'T -- I DON'T KNOW IF IT WAS THE REBAR OR

19 WHAT. BUT IT -- YOU KNOW, HE HAD IT -- HE HAD IT

20 CONCEALED..

21 Q OKAY. DID HE HAVE SOME KIND OF BAG?

22 A BAG, YES. UH-HUH.

23 Q ALL RIGHT. AND HE GOT IN THE PASSENGER SIDE OF YOUR

24 TRUCK?

25 A YES, SIR.

- 1 Q AND YOU ALL WENT BACK. YOU WENT TO -- BACK TO H.B.'S
2 THE SECOND TIME, BUT YOU WERE GOING TO CHECK OUT OF THE
3 HOTEL?
- 4 A YES, THAT'S CORRECT.
- 5 Q ALL RIGHT. YOU WERE DRIVING THE TRUCK AT THAT TIME?
- 6 A YES.
- 7 Q ALL RIGHT. AND THAT'S WHEN YOU SAW THE WHITE VAN?
- 8 A YES.
- 9 Q STOP. THEN YOU WENT BACK OVER TO JOHN'S HOUSE?
- 10 A WELL, WENT TO THE MOTEL AFTER I SEEN THE VAN.
- 11 Q TO CHECK OUT, RIGHT?
- 12 A YEAH, AFTER I CHECKED OUT, WENT BACK TO JOHN'S. YES,
13 THAT'S CORRECT.
- 14 Q ALL RIGHT. AND YOU MENTIONED IN YOUR STATEMENT ABOUT
15 THE SEAT COVER HAD BLOOD ON IT. THE SEAT COVER YOU'RE
16 TALKING ABOUT WAS ON THE PASSENGER SIDE OF THE TRUCK?
- 17 A YES, IT'S LIKE A LITTLE BENCH SEAT COVER. I HAD -- I
18 -- I ---
- 19 Q WHAT DID YOU SAY, WHAT KIND OF SEAT COVER?
- 20 A LIKE A LITTLE -- LIKE -- WELL, THAT GOES ON THE BOTTOM
21 OF THE SEAT. IT'S NOT A WHOLE SEAT COVER, YOU KNOW WHAT
22 I'M TALKING ABOUT?
- 23 Q NO, I HAVE NO IDEA WHAT YOU'RE TALKING ABOUT.
- 24 A IT'S ---
- 25 Q DESCRIBE IT?

1 A IT JUST COVERS THE PART YOU SIT ON.

2 Q ALL RIGHT.

3 A IT DON'T HAVE A BACK UP TO IT.

4 Q ALL RIGHT. HOW'S IT ATTACHED TO THE SEAT?

5 A IT'S TIED.

6 Q ALL RIGHT.

7 A BUT IT WASN'T -- I MEAN, IT -- HE HAD TO ALWAYS KEEP
8 TUCKING IT IN BECAUSE IT WAS -- IT WAS SO OLD. BUT WHEN
9 YOU BUY THEM NEW, YOU TIE THEM TO THE SEAT.

10 Q OKAY. AND ON YOUR DRIVER'S SIDE SEAT YOU HAD WHAT?

11 A I RODE WITH A HOME MEDIC DEVICE. IT'S A SEAT, HEAT,
12 MASSAGE SEAT THING THAT YOU CAN PUT IN YOUR HOUSE OR IN
13 YOUR VEHICLE.

14 Q OKAY. IT'S KIND OF A CUSHION -- CUSHION, TYPE?

15 A YES, IT HEATS YOUR BACK OR MASSES YOUR BACK AS YOU
16 DRIVE OR AS YOU'RE SITTING AT HOME.

17 Q OKAY. AND YOU MENTIONED THERE WAS BLOOD ON A SEAT
18 COVER IN THE TRUCK, SO THAT'S THE SEAT COVER YOU'RE
19 DESCRIBING THAT SAT ON THE PASSENGER'S SIDE?

20 A YES, THE SIDE JOHN WAS ON, YES.

21 Q ALL RIGHT. DID YOU HAVE ANY BLOOD ON YOU?

22 A NO.

23 Q ANY ON YOUR CLOTHES, HANDS, OR ARMS?

24 A (SHAKES HEAD.)

25 MS. SAMPSON: YOU'VE GOT TO SAY.

1 A NO. I'M SORRY.

2 Q YOU UNDERSTAND YOU'RE UNDER OATH?

3 A YES.

4 Q YOU'RE STILL -- YOU'VE BEEN UNDER OATH SINCE THE

5 JUDGE ---

6 A YES.

7 Q --- QUESTIONED YOU?

8 A YES.

9 Q ALL RIGHT. AND EVERYTHING YOU'VE SAID TODAY IS THE

10 TRUTH?

11 A YES.

12 MR. ROSS: THAT'S ALL THE QUESTIONS I HAVE. THANK

13 YOU, YOUR HONOR.

14 (THE DEFENDANT STEPS DOWN FROM THE WITNESS STAND.)

15 MR. ROSS: ONE MORE QUESTION, JUDGE.

16 THE COURT: ALL RIGHT. STAY STANDING, SIR. GO AHEAD.

17 MR. ROSS: HAVE A SEAT BACK.

18 (THE DEFENDANT RETURNS TO THE WITNESS STAND.)

19 MR. ROSS: WHAT HAPPENED TO THE GUN THAT H.B. HAD?

20 DEFENDANT: I CAN'T ANSWER THAT.

21 MR. ROSS: DID YOU SEE JOHN WITH IT?

22 DEFENDANT: NEVER SEEN JOHN WITH IT, NO, SIR.

23 MR. ROSS: DID YOU HAVE IT?

24 DEFENDANT: NO, SIR.

25 MR. ROSS: WHEN'S THE LAST TIME YOU SAW IT?

1 DEFENDANT: IN THE KITCHEN.

2 MR. ROSS: WHO HAD IT THEN?

3 DEFENDANT: H.B.

4 MR. ROSS: BEG THE COURT'S INDULGENCE.

5 (PAUSE.)

6 MR. ROSS: THAT'S ALL THE QUESTIONS I HAVE. THANK
7 YOU.

8 THE COURT: MR. SMITH, WHY DID YOU STRIKE THE VICTIM?

9 DEFENDANT: JUST WHEN THEY WERE ARGUING AND FIGHTING
10 AND THEN THAT, I WAS -- I SEEN HIM ON JOHN, AND I WAS JUST
11 TRYING TO -- I WAS JUST TRYING, YOU KNOW, GET HIM OFF. TO
12 BACK HIM UP. I WAS SCARED. AND I KNOW H.B. AND I KNOW HOW
13 HE WOULD BE. AND I KNEW HOW JOHN WOULD BE. AND I JUST --
14 I WAS BEING SCARED.

15 THE COURT: AND WHAT DID YOU HIT HIM WITH?

16 DEFENDANT: A REBAR.

17 THE COURT: AND WHAT IS A REBAR?

18 DEFENDANT: SOMETHING YOU PUT IN CONCRETE, A PIECE OF
19 -- A PIECE OF METAL.

20 THE COURT: THAT'S A METAL BAR?

21 DEFENDANT: YES, SIR.

22 THE COURT: WHERE DID YOU HIT HIM?

23 DEFENDANT: RIGHT HERE, I BELIEVE.

24 MS. SAMPSON: YOU'VE GOT TO SAY IT. SHE'S GOT TO TAKE
25 IT DOWN.

1 DEFENDANT: OH, OH, I'M SORRY. I BELIEVE IN THE -- IN
2 THE FOREHEAD.

3 THE COURT: AND WHAT HAPPENED TO HIM WHEN YOU HIT HIM
4 WITH THAT IRON BAR?

5 DEFENDANT: HE KEPT GOING. IT WASN'T A HARD HIT. I
6 JUST KIND OF LIKE GRAZED HIM LIKE. AND THEN HE KEPT GOING,
7 AND THAT'S WHEN -- YOU KNOW, I KNEW HE HAD THE GUN, THAT'S
8 WHEN I, YOU KNOW, GOT UP OUT OF THE TRAILER. AND THEN HIM
9 AND JOHN CONTINUED. AND JOHN PICKED UP THE REBAR AND
10 CONTINUED FIGHTING WITH H.B.

11 THE COURT: YOU SAID YOU HIT HIM WITH THE REBAR AND
12 THEN HE CONTINUED DOING WHAT?

13 DEFENDANT: YES, I DROPPED THE REBAR AFTER I DONE
14 THAT, YOUR HONOR.

15 THE COURT: AFTER YOU HIT THE VICTIM WITH THE REBAR,
16 THE VICTIM DID WHAT?

17 DEFENDANT: HE KIND OF FELL FORWARD A LIKE BUT HE WAS
18 STILL GOING.

19 THE COURT: STILL GOING. WHAT DO YOU MEAN?

20 DEFENDANT: STILL GOING, FIGHTING JOHN. GOING AT
21 JOHN, STILL, YOU KNOW.

22 THE COURT: AS A RESULT OF YOUR HITTING HIM, THAT GAVE
23 JOHN THE UPPER HAND?

24 DEFENDANT: NO, BECAUSE IT REALLY DIDN'T -- IT DIDN'T
25 REALLY PHASE HIM BECAUSE THE HIT WASN'T -- WASN'T THAT

1 HARD. JOHN -- JOHN, HE -- JOHN -- JOHN IS, YOU KNOW, VERY
2 HIGH STRUNG, YOU KNOW, INDIVIDUAL. AND HE WAS -- HE WAS
3 PRETTY -- PRETTY MAD, BUT NO. I WOULD SAY, NO, IT DIDN'T
4 GIVE JOHN THE UPPER HAND. AT THE TIME REALLY H.B. REALLY
5 HAD THE UPPER HAND BECAUSE H.B. HAD THE WEAPON, THE GUN.

6 THE COURT: WHEN YOU HIT HIM WITH THE BAR, WHAT DID HE
7 DO?

8 DEFENDANT: HE KEPT COMING. HE TOLD, YOU KNOW, JOHN
9 -- THEY WERE LIKE TOGETHER LIKE THAT. HE JUST -- THEY KEPT
10 -- THEY KEPT, YOU KNOW, THEY KEPT MOVING AND FIGHTING OR
11 WRESTLING OR WHATEVER YOU WANT TO CALL IT.

12 THE COURT: WAS HE STANDING OR ON THE FLOOR?

13 DEFENDANT: STANDING IN THE KITCHEN.

14 THE COURT: WHAT DID YOU DO WITH THE BAR AFTER YOU HIT
15 HIM?

16 DEFENDANT: I DROPPED IT, BECAUSE WHEN HE SAID THE
17 GUN, THAT'S WHEN I WAS SCARED FOR MY LIFE AND THAT'S WHEN I
18 SAID, I'M -- YOU KNOW, I'M GOING TO GET OUT. AND THEN
19 THAT'S WHEN I WENT OUT. AND I WAS WORRIED ABOUT WHAT WAS
20 GOING TO HAPPEN WITH JOHN AND THEM.

21 THE COURT: ANY ADDITIONAL ---

22 DEFENDANT: I DISPUTE -- CAN I SAY SOMETHING?

23 THE COURT: GO AHEAD, SIR.

24 DEFENDANT: YOU KNOW, FIRST I WANT TO APOLOGIZE TO THE
25 FAMILY FOR WHAT HAPPENED. I'M SORRY. H.B. NEVER DONE

1 ANYTHING TO ME. I NEVER HAD NO PROBLEMS WITH H.B. YES, I
2 BOUGHT DRUGS FROM HIM. BUT IF I NEEDED ANYTHING, H.B.
3 WOULD HELP ME. I JUST WISH I WOULD HAVE NEVER WENT BY
4 JOHN'S AND WENT OUT THERE. YOU KNOW, I FEEL -- FEEL LIKE,
5 YOU KNOW, A LOT OF IT'S, YOU KNOW -- I HAVE TO LIVE WITH IT
6 EVERY DAY.

7 THE COURT: ALL RIGHT. SOLICITOR?

8 MR. ROSS: ON YOUR STATEMENT -- DROP DOWN TO THAT
9 FIRST PARAGRAPH WHERE IT STARTS, THEN H.B. WENT AFTER JOHN.
10 DO YOU SEE THAT PART?

11 DEFENDANT: YES.

12 MR. ROSS: THEN H.B. WENT AFTER JOHN POINTING A PISTOL
13 AND TELLING HIM TO GET OUT. I WAS AT THE DOOR AND I
14 GRABBED THE PIECE OF REBAR AND WALKED OVER TO WHERE THEY
15 WERE AT. H.B. AND JOHN WERE ARGUING AND H.B. PUSHED JOHN.
16 I HIT H.B. ON THE HEAD WITH THE REBAR. H.B. FELL FORWARD
17 BUT NOT DOWN. HE DIDN'T STOP AND LUNGED AT JOHN AGAIN. I
18 GRABBED HIM AND TRIED TO HOLD HIM. HE THREW ME BACK. JOHN
19 PICKED UP THE REBAR AND HIT H.B. A COUPLE OF TIMES.

20 SO AFTER YOU HIT HIM, YOU THEN GRABBED HIM?

21 DEFENDANT: WELL, H.B. WAS A BIG -- WAS A BIG -- A
22 VERY WIDE MAN. SO I WAS JUST TRYING TO, YOU KNOW -- I WAS
23 JUST TRYING TO STOP -- STOP WHAT WAS HAPPENING. AND, YOU
24 KNOW, I JUST WAS TRYING TO GRAB HIM. I DIDN'T -- YOU KNOW.

25 MR. ROSS: SO ACCORDING TO YOUR STATEMENT THAT'S WHEN

1 JOHN GOT THE REBAR?

2 DEFENDANT: THE REBAR, YES.

3 MR. ROSS: RIGHT?

4 DEFENDANT: YES.

5 MR. ROSS: AND YOU WERE STILL TRYING TO HOLD H.B.?

6 DEFENDANT: I WAS -- I DON'T KNOW IF I WAS TRYING TO
7 HOLD HIM OR JUST GRABBING HIM OR, YOU KNOW, JUST TRYING TO
8 STOP IT.

9 MR. ROSS: THERE WASN'T ANYTHING PREVENTING YOU FROM
10 GETTING OUT OF THE TRAILER RIGHT OFF THE BAT, WAS THERE?

11 DEFENDANT: NO. I -- I COULD HAVE LEFT.

12 MR. ROSS: AND JOHN COULD HAVE LEFT?

13 DEFENDANT: YES. YES. I MEAN, YES.

14 MR. ROSS: THAT'S ALL I HAVE.

15 DEFENDANT: I MEAN, YES.

16 THE COURT: MR. SMITH, DURING THIS TIME WERE YOU ON
17 DRUGS?

18 DEFENDANT: YES, I HAD -- I -- I HAD TAKEN AN
19 OXYCOTIN. I WAS DOING AN OXYCOTIN EVERY DAY.

20 THE COURT: AND WHAT IS THAT?

21 DEFENDANT: IT'S A VERY POWERFUL NARCOTIC. IT'S FOR
22 PEOPLE WITH CHRONIC PAIN. I HAVE A BACK PROBLEM THAT I'VE
23 BEEN BEING TREATED BY DOCTORS FOR THE LAST THREE YEARS.
24 I'VE BEEN THROUGH PAIN MANAGEMENT; THAT'S HOW I GOT STARTED
25 ON PAIN MEDICATION. EVENTUALLY THE DOCTORS QUIT

1 PRESCRIBING ME PAIN MEDICATION.

2 AND A GENTLEMAN THAT I KNEW THAT USED TO WORK WITH ME,
3 WE WORKED TOGETHER, HE HAD TOLD ME ABOUT H.B., THAT HE HAD
4 SOME NARCOTICS THAT I COULD BUY FROM. AND I WOULD SEE H.B.
5 AND I WOULD PURCHASE A PILL. AND OXYCOTIN, YOU COULD TAKE
6 ONE AND IT WOULD LAST 12 HOURS. VERY POTENT MEDICATION.
7 AND VERY HIGHLY ADDICTIVE AFTER YOU'VE TAKEN IT A WHILE.

8 THE COURT: OKAY, SIR. YOU CAN STEP DOWN.

9 (THE DEFENDANT STEPS DOWN FROM THE WITNESS STAND.)

10 THE COURT: MADAM SOLICITOR, ANYTHING FURTHER?

11 MS. COOPER: YOUR HONOR, THAT IS ALL WE HAVE. AND I
12 WILL HOLD OFF ON READING HIS RAP SHEET UNTIL SENTENCING.

13 THE COURT: MS. SAMPSON, ANYTHING FURTHER FROM THE
14 DEFENSE AT THIS TIME?

15 MS. SAMPSON: NO, SIR. AT THIS TIME WE WOULD JUST
16 WAIT TO DO ANY MITIGATION AT THE TIME OF THE ACTUAL
17 SENTENCING IF THAT'S OKAY WITH YOUR HONOR.

18 THE COURT: ALL RIGHT. I WILL ALLOW -- I DO FIND THAT
19 THERE'S A SUBSTANTIAL FACTUAL BASIS FOR THE GUILTY PLEA.
20 THE GUILTY PLEA HAS BEEN ENTERED INTO BY THE DEFENDANT, MR.
21 SMITH, FREELY AND VOLUNTARILY, WITH ADVICE OF COUNSEL WITH
22 WHOM HE SAYS THAT HE'S SATISFIED. I FIND THAT THERE IS A
23 SUFFICIENT FACTUAL BASIS AND I WILL ACCEPT THE GUILTY PLEA.

24 AND THE STATE WOULD LIKE FOR ME TO RETAIN JURISDICTION
25 AND DEFER SENTENCING IN THIS CASE; IS THAT CORRECT, MADAM

1 SOLICITOR?

2 MS. COOPER: YES, SIR, YOUR HONOR.

3 THE COURT: AND WHAT IS THE DEFENSE'S POSITION
4 CONCERNING THAT?

5 MS. SAMPSON: YOUR HONOR, WE'VE AGREED WITH MS.
6 COOPER. WE TALKED ABOUT THIS.

7 BUT I NEED TO HAVE SOMETHING EXPLAINED TO MR. SMITH,
8 BECAUSE I'VE EXPLAINED IT TO HIM, BUT I'M NOT SURE THAT HE
9 UNDERSTANDS.

10 HE CONTINUES TO ASK ME ABOUT BOND, AND I'VE EXPLAINED
11 TO HIM THAT ONCE HE ENTERED A PLEA, HE REALLY HAS NO BOND.
12 AT THAT POINT HE HAS DONE EVERYTHING HE IS SUPPOSED TO AS
13 FAR AS WHAT IS REQUIRED OF HIM UNDER BOND. HE HAS SHOWN UP
14 FOR COURT, AND HE HAS DISPOSED OF HIS CASE, SO THEREFORE,
15 THERE IS NO BOND FOR YOU TO LOWER OR REDUCE.

16 I'M NOT SURE THAT HE UNDERSTANDS IT -- IF HE DOESN'T
17 UNDERSTAND IT OR DOESN'T TRUST ME IN THAT RESPECT THAT I'M
18 TELLING THAT THAT'S CORRECT.

19 BUT HE WANTED ME TO ASK YOU TO REDUCE HIS BOND SO THAT
20 WHILE HE'S THERE WAITING THE TRIAL OF MR. EARHART HE COULD
21 BE OUT ON BOND, BECAUSE HE KNOWS IT TOOK TWO YEARS TO TAKE
22 HIM TO THIS POINT, AND HE DOES NOT WANT TO STAY AT THE
23 DETENTION CENTER FOR TWO YEARS IF THAT'S HOW LONG IT'S
24 GOING TO TAKE FOR MR. EARHART TO GO TO TRIAL.

25 BUT, AGAIN, I'VE EXPLAINED TO HIM THAT THAT'S JUST NOT

1 POSSIBLE AT THIS POINT.

2 THE COURT: ALL RIGHT. FIRST, ON THE ISSUE OF MY
3 RETAINING JURISDICTION OF THIS CASE AND DEFERRING
4 SENTENCING UNTIL A LATER TIME, DO YOU ALSO WANT ME TO DO
5 THAT, MR. SMITH?

6 (PAUSE.)

7 DEFENDANT: YES.

8 THE COURT: OR DO YOU WANT ME TO SENTENCE YOU NOW?
9 (PAUSE.)

10 DEFENDANT: NO. I WANT -- I WANT TO WAIT, YOUR HONOR.

11 THE COURT: ALL RIGHT. I WILL DO THAT. I WILL RETAIN
12 JURISDICTION AND ACCEPT THE GUILTY PLEA. I WILL DEFER
13 SENTENCING.

14 NOW, ON THIS ISSUE OF BOND, MS. SAMPSON HAS JUST
15 SPOKEN. WHAT IS IT THAT YOU WOULD LIKE TO SAY OR ASK ME,
16 MR. SMITH?

17 DEFENDANT: I -- I WOULD JUST WANT TO GO BACK TO WORK.
18 I MEAN, I JUST WANT TO GO BACK TO WORK AND MAKE SOME -- YOU
19 KNOW, TRY TO -- JUST TRY TO PUT THIS -- TRY TO -- TRY TO,
20 YOU KNOW, PUT -- MOVE ON IF I CAN. I KNOW THAT SOUNDS
21 EASY, AND I KNOW, YOU KNOW, THERE'S A MAN WHO'S NOT GOING
22 TO MOVE ON. I KNOW THERE'S A FAMILY WHO DON'T HAVE A DADDY
23 ANY MORE.

24 THE COURT: WHAT IS YOUR CURRENT BOND SITUATION?

25 DEFENDANT: IT'S \$250,000.

1 THE COURT: WHAT IS IT THAT YOU WANT ME TO DO?

2 DEFENDANT: GET IT TO MAYBE I COULD MEET IT, WHERE I
3 COULD GET OUT OR I COULD GO TO WORK. I WILL SHOW UP AND DO
4 WHAT I -- YOU KNOW, I'M NOT A THREAT TO ANYBODY, YOU KNOW.

5 THE COURT: WELL, I WILL NOT ADDRESS THE ISSUE OF
6 BOND. I WILL NOT LOWER THE BOND. I WILL NOT ADDRESS THE
7 ISSUE AT ALL.

8 ALL RIGHT. IS THERE ANYTHING THAT THE STATE WOULD
9 LIKE TO HAVE THE VICTIM HAVE AN OPPORTUNITY TO SAY?

10 MS. COOPER: THE VICTIM, H.B. SHARPE'S FAMILY IS HERE,
11 YOUR HONOR.

12 THE COURT: THE FAMILY OF THE VICTIM.

13 MS. COOPER: AND I EXPLAINED THAT WHEN AFTER WE TRY
14 JOHN EARHART -- AND I JUST WANT TO CLARIFY SOMETHING TOO.
15 WE PLAN ON TRYING JOHN EARHART WITHIN THE NEXT 120 DAYS.
16 HE'S GOING TO BE PUT ON TRACK 1 ONCE WE PICK HIM UP. SO HE
17 JUST NEEDS TO REMAIN WHERE HE IS UNTIL THAT TIME.

18 YOUR HONOR, THE VICTIM'S FAMILY IS AWARE THAT THEY
19 HAVE A RIGHT TO ADDRESS THE COURT, AND I EXPLAINED THAT WE
20 ARE DEFERRING SENTENCE IN THIS CASE UNTIL AFTER JOHN
21 EARHART'S TRIAL. AND THEN AT THAT POINT THEY WILL BE GIVEN
22 THE OPPORTUNITY TO SPEAK. AND THEY UNDERSTAND THAT. THEY
23 JUST STILL WANTED YOUR HONOR TO KNOW THAT THEY ARE HERE IN
24 SUPPORT OF PROSECUTING THIS TO THE FULLEST EXTENT.

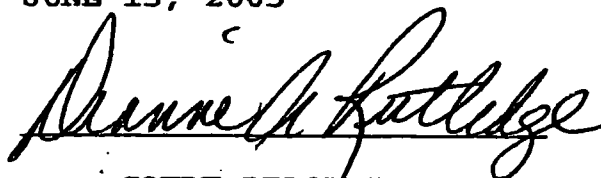
25 THE COURT: CERTAINLY, I WOULD LIKE TO ACKNOWLEDGE THE

1 PRESENCE OF THE VICTIM AND INFORM THE VICTIM'S FAMILY --
2 THE PRESENCE OF THE VICTIM'S FAMILY, THAT IS, AND INFORM
3 THE VICTIM'S FAMILY THAT THE COURT IS VERY SERIOUS ABOUT
4 PROTECTING THE RIGHTS OF VICTIMS AND TO GIVE VICTIMS THE
5 OPPORTUNITY TO BE PRESENT AND TO PARTICIPATE IN THE PROCESS
6 BY ADDRESSING THE COURT WHEREVER IT IS APPROPRIATE. WE
7 WILL DO THAT AT THE SENTENCING PHASE OF THIS MATTER.
8 ALL RIGHT. THAT WILL CONCLUDE THIS HEARING.
9 MS. COOPER: THANK YOU, YOUR HONOR.
10 AND, YOUR HONOR, THE STATEMENT THAT WAS PROFFERED BY
11 MR. ROSS, WE WOULD LIKE THAT MARKED AS A COURT EXHIBIT.
12 THE COURT: OKAY. THAT WILL BE ACCEPTED AS A COURT
13 EXHIBIT IN THIS CASE.
14 MS. COOPER: THANK YOU, YOUR HONOR.
15 (STATEMENT OF GERALD RANDAL SMITH RECEIVED AS COURT'S
16 EXHIBIT NO. 1.)
17 --- END OF TRANSCRIPT OF RECORD ---
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19
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1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
5 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE GUILTY
6 PLEA OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE
7 CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE
8 11TH DAY OF NOVEMBER 2004.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11 JUNE 13, 2005

12 
13
14 COURT REPORTER

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS
03-GS-40-11511

STATE OF SOUTH CAROLINA

-vs-

GERALD RANDAL SMITH

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TRANSCRIPT OF RECORD

OCTOBER 13, 19, 20, 2005
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE REGINALD LLOYD, JUDGE.

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

VANESSA COOPER, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

APRIL SAMPSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT.

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

I N D E X

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CERTIFICATE OF COURT REPORTER 35

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E X H I B I T S

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NO.

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TRANSCRIPT OF GUILTY PLEA 19

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STATE VS. GERALD SMITH

1 (THURSDAY, OCTOBER 13, 2005.)

2 THE COURT: YES, MA'AM.

3 MS. COOPER: THE STATE CALLS GERALD RANDAL SMITH.

4 (THE DEFENDANT WAS FIRST DULY SWORN.)

5 THE COURT: ALL RIGHT. MR. SMITH, YOU WISH TO ENTER A
6 GUILTY PLEA TO ONE COUNT OF VOLUNTARY MANSLAUGHTER?

7 MS. COOPER: YOUR HONOR, IF I MAY. HE'S ALREADY PLED
8 GUILTY.

9 THE COURT: THAT'S RIGHT.

10 MS. COOPER: JUST SENTENCING.

11 THE COURT: SENTENCING. LET ME GO OVER JUST TO MAKE
12 SURE ---

13 MS. COOPER: JUDGE NEWMAN.

14 THE COURT: THAT WAS WHAT DATE?

15 MS. COOPER: NOVEMBER 15, 2004.

16 THE COURT: OKAY.

17 MS. COOPER: AND, YOUR HONOR, FOR THE RECORD I DID
18 CALL JUDGE NEWMAN, SPOKE WITH HIS LAW CLERK, ASHLEY, AND HE
19 INDICATED TO HER HE WAS IN AGREEMENT WITH RELINQUISHING
20 JURISDICTION THAT HE HAD RETAINED AT THE TIME OF THE PLEA.

21 THE COURT: OKAY.

22 MS. COOPER: AND I DO BELIEVE THAT THE DEFENDANT WANTS
23 TO HAVE YOU SENTENCE HIM.

24 MS. SAMPSON: THAT'S CORRECT, YOUR HONOR.

25 THE COURT: LET ME ASK, MS. SAMPSON, ANYTHING ON YOUR

1 CLIENT'S PART CHANGED SINCE THE TIME OF THE PLEA?

2 MS. SAMPSON: AS FAR AS HIS DESIRE TO PLEAD?

3 THE COURT: RIGHT.

4 MS. SAMPSON: NO.

5 THE COURT: AND HE STILL MAINTAINS THAT ALL THE
6 ANSWERS GIVEN TO JUDGE NEWMAN WERE TRUTHFUL AND HONEST?

7 MS. SAMPSON: YES, SIR.

8 THE COURT: AND HE UNDERSTOOD TOTALLY HIS RIGHTS TO
9 HAVE A JURY TRIAL AND TO PLEAD NOT GUILTY TO THIS CHARGE?

10 MS. SAMPSON: YES, SIR.

11 THE COURT: AND YOU WENT OVER WITH HIM ALL THE
12 POSSIBLE DEFENSES HE MAY HAVE HAD TO THIS CHARGE AS WELL AS
13 HIS RIGHTS TO TESTIFY OR NOT TESTIFY AT TRIAL?

14 MS. SAMPSON: YES, SIR.

15 THE COURT: ALL RIGHT. HE'S BEEN ADVISED REGARDING
16 VOLUNTARY MANSLAUGHTER BEING A MOST VIOLENT -- A VIOLENT
17 CRIME, A MOST SERIOUS CRIME. YOU'VE GONE OVER WITH HIM ---

18 MS. SAMPSON: YES, SIR.

19 THE COURT: --- THE FACT THAT HE WOULD HAVE TO SERVE
20 AT LEAST 85 PERCENT AS WELL SHOULD HE BE RELEASED, HE WOULD
21 BE RELEASED ON COMMUNITY SUPERVISION?

22 MS. SAMPSON: YES, SIR.

23 THE COURT: AND HE UNDERSTANDS THAT HE COULD IN FACT
24 POTENTIALLY BY VIOLATING COMMUNITY SUPERVISION --- WORST
25 CASE SCENARIO IS TO AT LEAST DOUBLE WHATEVER SENTENCE HE

1 RECEIVES?

2 MS. SAMPSON: YES, SIR.

3 THE COURT: AND HE UNDERSTANDS THAT THE MOST SERIOUS
4 STRIKE, HE GET ANOTHER SERIOUS OR MOST SERIOUS STRIKE,
5 WOULD LEAD HIM TO POTENTIAL LIFE WITHOUT THE POSSIBILITY OF
6 PAROLE?

7 MS. SAMPSON: YES, SIR.

8 THE COURT: ALL RIGHT. MR. SMITH, YOU HEARD
9 EVERYTHING I ASKED YOUR ATTORNEY, MS. SAMPSON?

10 DEFENDANT: YES, YOUR HONOR.

11 THE COURT: OKAY. AND EVERYTHING SHE'S TOLD ME IS
12 TRUE?

13 DEFENDANT: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. MS. COOPER.

15 MS. COOPER: THANK YOU, YOUR HONOR. YOUR HONOR, I
16 BELIEVE I'VE PROVIDED THE COURT WITH A TRANSCRIPT OF MR.
17 SMITH'S GUILTY PLEA IN FRONT OF JUDGE NEWMAN.

18 THE COURT: YES, MA'AM.

19 MS. COOPER: I WOULD LIKE TO MAKE THAT A PART OF THE
20 COURT'S RECORD FOR THIS HEARING. BUT IN IT, YOUR HONOR, I
21 WENT THROUGH THE FACTS OF THE CASE AND ALSO YOU PRESIDED
22 OVER THE CO-DEFENDANT'S GUILTY PLEA, JON AREHART, AND I
23 WENT THROUGH A THOROUGH RECITATION OF THE FACTS INVOLVING
24 THIS CASE.

25 I DID WANT TO PUT ON THE RECORD THAT THE AGREEMENT

1 BETWEEN THE STATE AND MR. GERALD RANDAL SMITH WAS TO REDUCE
2 THE CHARGE FROM MURDER TO VOLUNTARY MANSLAUGHTER. IT WAS
3 AGREED UPON THAT SENTENCING WOULD BE DEFERRED SO THAT THE
4 STATE COULD REPORT TO JUDGE NEWMAN WHETHER THE DEFENDANT
5 TESTIFIED TRUTHFULLY AGAINST JON AREHART FOR THE CHARGE OF
6 MURDER.

7 YOUR HONOR, THE STATE MADE A GOOD FAITH EFFORT TO
8 ALLOW THE DEFENDANT TO TESTIFY AND TO MEET HIS END OF THE
9 NEGOTIATION OR AGREEMENT. WE PROFFERED HIS TESTIMONY
10 DURING THE GUILTY PLEA BEFORE JUDGE NEWMAN.

11 WE ASKED HIM IF HE AGREED WITH THE LAST WRITTEN
12 STATEMENT HE PROVIDED TO THE POLICE. THERE WAS FOUR
13 DIFFERENT WRITTEN STATEMENTS AND ONE POLYGRAPH WHICH HE
14 FAILED. BUT THE LAST STATEMENT WAS THE ONE HE TOLD US WAS
15 FACTUALLY CORRECT AND THE TRUTH.

16 WE ALSO ASKED HIM MORE DETAILED QUESTIONS INVOLVING OR
17 SURROUNDING HIS INVOLVEMENT IN THIS MURDER. AND THAT WAS
18 ALL IN THE TRANSCRIPT, YOUR HONOR.

19 IN PREPARATION FOR TRIAL AGAINST JON AREHART FOR THE
20 CHARGE OF MURDER, THE STATE MET WITH THE DEFENDANT FOR 4
21 1/2 HOURS ON OCTOBER 7TH OF 2005. WE CONFRONTED HIM WITH
22 TESTIMONY OR STATEMENTS FROM OTHER WITNESSES IN THIS CASE
23 IN ORDER TO ESTABLISH A TIME LINE AND TO EXPLAIN TO A
24 POTENTIAL JURY AGAINST JON AREHART FOR THE CHARGE OF MURDER
25 AS TO WHAT HAPPENED AND WHAT ROLE WAS PLAYED BY EACH

1 DEFENDANT.

2 YOUR HONOR, MS. SAMPSON, I BELIEVE IS COMPLETELY BEING
3 SINCERE WITH ME AND WITH THE COURT WHEN SHE'LL TELL YOU AND
4 AS SHE TOLD US IN THE PAST, THAT THE DEFENDANT SUFFERED A
5 MAJOR DRUG ADDICTION TO A DRUG CALLED OXYCONTIN, THE MOTIVE
6 FOR THE WHOLE MURDER CASE, YOUR HONOR. AND I DO BELIEVE
7 THAT THE DEFENDANT DOES HAVE SOME SORT OF IMPAIRMENT OF
8 MEMORY DUE TO THOSE DRUGS.

9 I DO KNOW HE'S COMPETENT TO ENTER THIS PLEA AND TO BE
10 SENTENCED. HOWEVER, YOUR HONOR, IT WAS INTERESTING TO ME
11 WHEN WE WERE JOGGING HIS MEMORY WITH STATEMENTS MADE BY
12 OTHER WITNESSES AS FAR AS TIME LINE, DO YOU REMEMBER
13 CALLING D.W. PLUMBING TWICE THAT MORNING AND SO FORTH?

14 AS WE WOULD JOG HIS MEMORY, HE STILL WAS ABLE TO
15 RECALL ENOUGH FACTS TO PLACE THE BLAME ON JON AREHART, AND
16 MINIMIZING HIS ROLE THROUGHOUT THIS WHOLE TRIAL OR
17 PREPARATION FOR TRIAL. AND HE CONTINUOUSLY MINIMIZED HIS
18 ROLE.

19 AN EXAMPLE WOULD BE, HE CLAIMS IN HIS STATEMENT NUMBER
20 FOUR, WHICH HE TOLD JUDGE NEWMAN WAS THE TRUTH AS HE
21 RECALLED IT THAT NIGHT, THAT HE HIT H.B. SHARPE ONCE REAL
22 HARD WITH THE REBAR, AND THIS BEING THE REBAR RIGHT HERE,
23 YOUR HONOR. IT'S NOT THE REBAR, BUT A SIMILAR -- SIMILAR
24 TO THE ONE USED IN THE MURDER.

25 HOWEVER, DURING THE PROFFER TO JUDGE NEWMAN WHEN HE

1 WAS ASKED BY JUDGE NEWMAN CONCERNING WHAT HE DID WITH THE
2 REBAR AGAINST H.B. SHARPE, HE INDICATED, I HIT HIM ONCE,
3 BUT IT DIDN'T DO ANYTHING.

4 AND, AGAIN, IT'S JUST AN EXAMPLE, YOUR HONOR, OF HIM
5 MINIMIZING HIS ROLE.

6 THE DEFENSE OF JON AREHART, THE DEFENSE ATTORNEY MR.
7 CHIP TRUITT, AS YOU'RE AWARE, YOUR HONOR, FILED A MOTION TO
8 DISQUALIFY THIS DEFENDANT FROM TESTIFYING IN THE CASE, AND
9 RAISED SOME PRETTY LEGITIMATE ISSUES, YOUR HONOR, THAT
10 CAUSED THE STATE SOME MAJOR CONCERN ABOUT USING HIM TO
11 TESTIFY AGAINST JON AREHART FOR MURDER.

12 AS A RESULT, YOUR HONOR, WE COULD NOT PROCEED AGAINST
13 JON AREHART FOR MURDER, AND AS A RESULT, I TRULY BELIEVE
14 JON AREHART WAS INVOLVED IN THIS CASE AND JON AREHART HAS
15 GOTTEN AWAY WITH MURDER.

16 HE DID PLEAD GUILTY TO ACCESSORY AFTER THE FACT OF
17 MURDER, BECAUSE THIS DEFENDANT COULD NOT ARTICULATE
18 TRUTHFULLY EACH ONE'S ROLE AND TAKE RESPONSIBILITY FOR HIS
19 ROLE, WHICH WOULD HAVE LENT CREDIBILITY TO HIM ON THE
20 WITNESS STAND THE STATE FELT VERY UNCOMFORTABLE CALLING HIM
21 TO TESTIFY FOR FEAR THAT HE WOULD YET GIVE A SIXTH VERSION
22 ON THE WITNESS STAND AND WE WOULD LOSE COMPLETE CREDIBILITY
23 IN FRONT OF THE JURY IN A TRIAL FOR MURDER AGAINST JON
24 AREHART.

25 I BELIEVE THE STATE MADE EVERY EFFORT TO WORK WITH

1 THIS MAN SO THAT HE COULD COOPERATE AND ASSIST US IN
2 CONVICTING WHO WE BELIEVE TO BE JUST AS GUILTY OF MURDER AS
3 JON AREHART WE BELIEVE TO BE.

4 YOUR HONOR, HE HAS RECEIVED THE BENEFIT OF THE
5 REDUCTION FROM THE CHARGE OF MURDER TO VOLUNTARY
6 MANSLAUGHTER. THIS WAS AN EXTREMELY BRUTAL CASE, YOUR
7 HONOR.

8 I DON'T BELIEVE YOU'RE FAMILIAR WITH THE ACTUAL SCENE
9 PHOTOGRAPHS, BUT I WOULD LIKE TO SHARE THAT WITH THE COURT
10 SO THAT YOU ARE COMPLETELY AWARE OF HOW BRUTAL THIS MURDER
11 WAS.

12 THE COURT: MS. COOPER, I'M GOING TO GIVE YOU THE
13 TRANSCRIPT BACK.

14 MS. COOPER: THANK YOU, SIR.

15 THE COURT: MARK THAT AS A COURT'S EXHIBIT.

16 MS. COOPER: THE FIRST PHOTOGRAPH, YOUR HONOR, IS THE
17 SCENE PHOTOGRAPHED BY INVESTIGATOR LIVINGSTON SHOWING MR.
18 SHARPE LAYING ON HIS STOMACH IN HIS LIVING ROOM.

19 AND THE NEXT PHOTOGRAPH SHOWS A CLOSE-UP OF HIS HEAD.
20 AND IT'S EVIDENT, YOUR HONOR, THAT THIS MAN HAD ALREADY
21 FALLEN DOWN, WAS HELPLESS, AND THE BEATING CONTINUED OVER
22 AND OVER. THERE'S A CONCENTRATION OF BLOOD SPATTER RIGHT
23 BY HIS HEAD. IT'S JUST A SENSELESS ACT, YOUR HONOR.

24 I WANTED TO BRING TO THE COURT'S ATTENTION THAT MR.
25 SHARPE WAS A 65-YEAR-OLD MAN WHO COULD HAVE BEEN EASILY

1 OVERPOWERED BY TWO MEN IN THEIR 40'S SUCH AS THE DEFENDANT
2 AND JON AREHART.

3 HE ALSO SUFFERED FROM HEART COMPLICATIONS. HE HAD A
4 PACE MAKER, AND HE WAS TAKING HEART MEDICATION DUE TO HIS
5 HEART HEALTH ISSUES.

6 HE ALSO SUFFERED FROM GOUT. HE WAS AN OVERWEIGHT MAN.
7 AND THIS WAS JUST COMPLETELY UNNECESSARY.

8 THE TWO LAST PHOTOGRAPHS THAT I HANDED UP SHOW
9 DEFENSIVE WOUNDS ON MR. SHARPE. HE TRIED TO DEFEND
10 HIMSELF, YOUR HONOR.

11 AND DR. CLAY NICHOLS WAS PREPARED TO TESTIFY THAT
12 THERE'S NO QUESTION IN HIS MIND THAT THIS MAN DID TRY TO
13 PROTECT HIMSELF FROM THESE REPEATED BLOWS WITH THE REBAR.

14 YOUR HONOR, I'VE DISCUSSED, AND I WANT TO INTRODUCE TO
15 YOU MS. LINDA SHARPE, TINA TOREZ. THESE ARE H.B.'S
16 DAUGHTERS.

17 ALSO, YOUR HONOR, INVESTIGATOR KEVIN ISENHOWARD AND
18 INVESTIGATOR LIVINGSTON ARE SO INTERESTED IN THE OUTCOME OF
19 THIS CASE. THEY SPENT A LOT OF MAN-HOURS INTO THIS CASE.
20 AND THEY HAVE SEEN IT THROUGH. THEY HAVE BEEN EXTREMELY
21 HELPFUL TO THE STATE IN PREPARATION FOR TRIAL. AND I JUST
22 WANTED TO INTRODUCE AND SHOW THE COURT THAT THEY ARE VERY
23 INTERESTED WITH THE OUTCOME OF THIS CASE.

24 I DO KNOW THAT BOTH MS. TOREZ AND MS. SHARPE WOULD
25 LIKE TO ADDRESS THE COURT AS PART OF THE VICTIM IMPACT

1 STATEMENT AT THE APPROPRIATE TIME.

2 AND ALSO I WOULD LIKE TO RELAY TO THE COURT THE
3 DEFENDANT'S PRIOR RECORD.

4 THE COURT: YES, MA'AM. I'D BE GLAD TO HEAR FROM
5 THEM.

6 MS. COOPER: OKAY.

7 LINDA SHARPE: FIRST, I'D LIKE TO THANK ---

8 MS. COOPER: LINDA SHARPE.

9 LINDA SHARPE: LINDA SHARPE. I'D LIKE TO THANK
10 VANESSA AND THE DETECTIVES FOR THEIR HARD WORK. I'D ALSO
11 LIKE TO THANK THE LORD FOR THE PEACE AND FORGIVENESS THAT
12 HE'S GIVEN ME BECAUSE I HAVE TO FORGIVE THIS MAN. AND ALL
13 I ASK THAT HE CAN REMEMBER MY DAD'S FACE, HIS SMILE, THE
14 TWINKLE IN HIS EYES, EVERYDAY. THIS MAN THAT HELPED YOU,
15 FED YOU, GAVE YOU SOMEWHERE TO REST, PUT MONEY IN YOUR
16 POCKET. HE WAS SUPPOSED TO BE A FRIEND OF YOURS. AND
17 EVERYDAY I HOPE YOU REMEMBER HIS FACE.

18 AND IT HAS HURT. I MISS MY DAD EVERYDAY. HE WAS NOT
19 JUST AN OLD MAN OR SOMEBODY IN YOUR DOPE GAME. HE WAS MY
20 DADDY. HE WAS A GRANDFATHER, AND HE WAS LOVED.

21 I JUST THANK YOU, YOUR HONOR. AND THANK YOU, VANESSA
22 AND DETECTIVES.

23 MS. TOREZ: I CAN'T.

24 LINDA SHARPE: SHE CAN'T SPEAK.

25 THE COURT: YES, MA'AM, MS. COOPER.

1 MS. COOPER: YOUR HONOR, THIS CLEARLY HAS BEEN VERY
2 PAINFUL FOR THE FAMILY.

3 OFFICER: YOUR HONOR, I SPOKE TO YOU THE OTHER DAY
4 ABOUT THIS. I GUESS YOU'VE SEEN THE PICTURES. BEING THERE
5 THAT DAY, IT WAS A HORRIBLE SCENE. I JUST WANT TO
6 REITERATE THAT IT'S THE WORST I'VE EVER SEEN. IT WAS
7 TOTALLY UNNECESSARY. THE BEATING CARRIED ON AFTER HE WAS
8 PROBABLY ALREADY GONE. THEY JUST CONTINUED TO BEAT HIM.

9 AND I JUST WANTED TO MAKE THAT STATEMENT SO YOU COULD
10 UNDERSTAND HOW BAD THIS WAS.

11 THANK YOU.

12 THE COURT: THANK YOU.

13 MS. COOPER: YOUR HONOR, THE DEFENDANT'S PRIOR RECORD
14 IS A 1977 POSSESSION OF ALCOHOL BY A MINOR. 1979 SIMPLE
15 POSSESSION OF MARIJUANA. 1979 PUBLIC DISORDERLY CONDUCT.
16 A 1979 DISORDERLY CONDUCT. A 1985 UNLAWFUL POSSESSION OF
17 MARIJUANA.

18 ALSO, INCIDENTLY, YOUR HONOR, THERE IS A FORGERY
19 CHARGE PENDING AGAINST THE DEFENDANT WHICH WE PLAN ON
20 DISMISSING SO HE WILL NOT BE SEEN IN FRONT OF THE COURT OR
21 THE SOLICITOR'S OFFICE.

22 WE WOULD RESPECTFULLY REQUEST THAT YOU SENTENCE HIM TO
23 THE MAXIMUM, YOUR HONOR.

24 THE COURT: THANK YOU, MS. COOPER.

25 MS. SAMPSON.

1 MS. SAMPSON: THANK YOU, YOUR HONOR, MAY IT PLEASE THE
2 COURT. THIS IS GERALD RANDAL SMITH, YOUR HONOR. AND I
3 HAVE REPRESENTED HIM -- HE INITIALLY WAS REPRESENTED BY
4 TARA LYONS IN OUR OFFICE WHEN HE WAS FIRST ARRESTED BACK IN
5 NOVEMBER OF 2002.

6 I HAVE A DIFFERENT TAKE. AND YOU'VE BEEN GIVEN
7 DIFFERENT PRESENTATIONS OF THE EXACT SAME FACTS. THERE ARE
8 TIMES WHEN THE STATE HAS BLAMED EVERYTHING ON JON. THERE
9 ARE TIMES WHEN THEY HAVE BLAMED EVERYTHING ON GERALD.

10 BUT THE TRUTH OF THE MATTER IS, YOUR HONOR, IT'S HARD
11 TO TELL WHO DID WHAT.

12 GERALD HAS SAID THE SAME THING FROM THE BEGINNING AS
13 FAR AS WHO STRUCK THE FINAL BLOW. HE HAS NEVER MINIMIZED
14 THAT.

15 HE HAS ALWAYS SAID THAT HE HIT MR. SHARPE. THERE'S NO
16 DOUBT IN HIS MIND THAT HE HIT HIM WITH THE REBAR FIRST.
17 BUT HE HAS ALWAYS SAID THAT JON AREHART STRUCK THE FINAL
18 BLOWS, THE BLOWS THAT INEVITABLY KILLED THIS MAN.

19 THE EVIDENCE THAT WAS OUT THERE SHOWS THAT JON WAS
20 LYING ABOUT HIS INVOLVEMENT.

21 WHEN WE WERE GOING TO TRIAL TO GET READY FOR THIS
22 BECAUSE HE JUST NEVER COULD PLEAD TO MURDER -- HE'S ALWAYS
23 WANTED TO PLEAD. HE JUST COULD NOT GET UP THERE AND SAY
24 THAT THAT WAS HIS INTENT.

25 WE WERE GETTING THIS READY FOR THE TRIAL AND I WAS

1 APPROACHED BY THE STATE ABOUT MR. AREHART'S INVOLVEMENT,
2 AND WHETHER MR. SMITH WAS WILLING TO TESTIFY.

3 HE'S ALWAYS BEEN WILLING TO TESTIFY ABOUT MR.
4 AREHART'S INVOLVEMENT.

5 HE HAD BEEN ARRESTED SINCE THIS INCIDENT OCCURRED AND
6 AFTER HE GAVE THE STATEMENTS. MR. AREHART'S THE ONE THAT
7 CLAMMED UP AND WOULD NOT TALK TO THE POLICE ANY MORE, WHO
8 ALSO FAILED A POLYGRAPH TEST.

9 I DON'T BELIEVE HE IS MINIMIZING HIS INVOLVEMENT. HE
10 HAS TOLD THE SAME STORY. IF YOU ASK HIM DIFFERENT
11 QUESTIONS, YOU WILL GET MORE DETAILED ANSWERS DEPENDING ON
12 WHAT YOU ASK HIM. AND I DO IN ALL HONESTY BELIEVE THAT
13 THAT'S PART OF HIS PROBLEM WITH HIS ADDICTION.

14 YOUR HONOR, HE BEGAN TAKING VICODIN FOR A BACK INJURY.
15 HE GOT ADDICTED TO THE VICODIN AND COULD NOT GET THAT
16 PRESCRIPTION ANY MORE. AND HE AND JON AREHART WERE FRIENDS
17 AND HE WAS INTRODUCED TO OXYCONTIN; AND THAT'S WHY WE'RE
18 HERE TODAY, YOUR HONOR.

19 YOU'VE HEARD -- WHEN -- WHEN THE PRESENTATION WAS MADE
20 ON TUESDAY, THE FAMILY WAS NOT HERE. AND I HATE TO DO THIS
21 IN FRONT OF A FAMILY BUT IT'S THE TRUTH AND I HAVE TO DO
22 WHAT I HAVE TO DO FOR MY CLIENT. MR. SHARPE WAS HIS DRUG
23 DEALER. HE GOT THE OXYCONTIN FROM HIM.

24 HE WAS BEING INVESTIGATED FOR SELLING OXYCONTIN. HE
25 HAD BEEN CALLED BY THE AREHART FAMILY TO TRY TO HELP HIM

1 NOT SELL IT TO JON AREHART.

2 THERE WAS INVESTIGATIONS OF HIS INVOLVEMENT IN OTHER
3 ILLEGAL ACTIVITY. NOT TO FINGER POINT AT MR. AREHART --
4 MR. SHARPE, BUT JUST TO SAY HE WAS INVOLVED IN OTHER
5 ACTIVITIES THAT LED TO THIS PARTICULAR CRIME, YOUR HONOR.

6 THIS IS A BRUTAL CRIME, AND I DO BELIEVE IT TOOK TWO
7 PEOPLE TO DO IT.

8 H.B. ALTHOUGH HE DID HAVE THE HEART PROBLEMS, WAS ABLE
9 TO FIGHT.

10 I HAD TALKED TO THE CORONER MYSELF IN TRYING TO GET
11 PREPARED FOR THE TRIAL. AND THOSE DEFENSIVE WOUNDS ALSO
12 COULD HAVE BEEN FROM FIGHTING BEFORE HE WAS HIT WITH THE
13 REBAR, WHICH IS WHAT MR. SMITH HAS ALWAYS SAID HAPPENED.
14 THERE WAS A FIGHT FIRST, AND THEN THERE WAS THE REBAR.

15 MR. SMITH HAS NEVER SAID HE WAS NOT INVOLVED. THAT'S
16 WHY HE PLED AND THEN SAT AT THE DETENTION CENTER FOR A YEAR
17 WAITING FOR MR. AREHART TO GO TO TRIAL.

18 THE REASON HE TOOK SO LONG TO GO TO TRIAL, THE
19 ATTORNEYS GOT SWITCHED. ONCE HIS TRIAL WAS COMING AND HE
20 GOT THE OFFER OF VOLUNTARY MANSLAUGHTER, HE TOOK IT.

21 YOUR HONOR, HE STANDS HERE WITH HIS BROTHER, RUDY
22 SMITH. I'VE HAD CONSTANT CONTACT WITH EITHER HIM OR HIS
23 SISTER, ROBBIE SMITH -- SISTER-IN-LAW, ROBBIE SMITH, WHO
24 COULDN'T BE HERE TODAY, SHE'S IN GREENVILLE, YOUR HONOR.

25 HE DOES HAVE FAMILY SUPPORT. HE HAS BEEN IN JAIL, I

1 CALCULATE, 1066 DAYS, BUT ROUGHLY 2 YEARS AND 11 MONTHS.
2 AND HE'S HAD TO DO THAT AT THE DETENTION CENTER.

3 AND AS YOU'VE HEARD ABOUT THE CONDITIONS -- I'M NOT
4 SAYING PRISON IS SUPPOSED TO BE FUN OR NICE OR ANYTHING
5 LIKE THAT, BUT THEY'VE BEEN LOCKED DOWN FOR 23 HOURS AT
6 TIMES A DAY, NOT JUST TO MAKE THAT ANY BETTER. BUT HE'S
7 READY TO GO ONTO THE DEPARTMENT OF CORRECTIONS JUST TO GET
8 OUT OF THE DETENTION CENTER.

9 I WOULD REQUEST THAT HE RECEIVE ALL CREDIT FOR ALL THE
10 TIME HE'S SERVED. HE WAS ONLY SERVING IT ON THESE MURDER
11 CHARGES. HE WOULD HAVE BEEN ON BOND FOR THE FORGERY
12 CHARGE.

13 HE'S LOST -- YOU KNOW, HE'S LOST EVERYTHING, YOUR
14 HONOR.

15 I THINK THAT HE AND JON AREHART ARE JUST AS GUILTY AS
16 EACH OTHER. UNFORTUNATELY, JON AREHART GOT TO PLEAD TO
17 ACCESSORY. I HAD NOTHING TO DO WITH THAT AND NEITHER DID
18 RANDY. HE WAS CHARGED WITH ACCESSORY FROM THE BEGINNING;
19 THAT'S THE STATE AND THE POLICE'S DECISION, NOT OURS.

20 IF IT WERE UP TO ME, HE WOULD HAVE BEEN CHARGED JUST
21 LIKE MR. SMITH. THEY BOTH WERE INVOLVED. HE GOT 10 YEARS
22 ON A 65 PERCENTER WHERE HE'S ELIGIBLE FOR PAROLE.

23 WHAT RANDY WILL RECEIVE, HE'S NOT GOING TO BE ELIGIBLE
24 FOR PAROLE AND HE'S GOING TO HAVE TO DO 85 PERCENT OF THAT.
25 I THINK HE SHOULD GET EQUIVALENT TIME. I DO NOT THINK IT'S

1 FAIR THAT HE SHOULD HAVE TO DO MORE WHEN HE WAS JUST AS
2 INVOLVED AS MR. AREHART.

3 RESPECTFULLY, I WOULD REQUEST A 10 YEAR SENTENCE. HE
4 HAS TO DO 85 PERCENT OF THAT, AND HE HAS TO BE ON COMMUNITY
5 SUPERVISION. AREHART DOES NOT HAVE TO DO THAT. WHEN HE'S
6 DONE, HE'S DONE.

7 HIS RECORD, YOUR HONOR, STOPPED IN '85. HE HAS NOT
8 BEEN IN ANY TROUBLE SINCE THEN. HE WAS WORKING. HE WAS
9 WORKING AS A PLUMBER, IF I REMEMBER CORRECTLY, AND THAT'S
10 WHAT HE ALWAYS HAS DONE. HE HAS THE ABILITY TO WORK WHEN
11 HE GETS OUT.

12 THIS WAS THE RESULT OF HIS DRUG ADDICTION. AND NOT TO
13 EXCUSE IT, BUT THAT'S JUST WHAT IT WAS.

14 HE HAS BEEN REMORSEFUL, JUST LIKE HE'S UPSET NOW. HE
15 CRIES EVERY TIME I TALK TO HIM. HE CAN'T -- THAT'S PART OF
16 THE PROBLEM. HE HAS PROBLEMS TALKING ABOUT IT. H.B. WAS
17 HIS FRIEND AND HE DOES FEEL BAD ABOUT WHAT HAPPENED. HE
18 ALWAYS HAS AND ALWAYS WILL.

19 I THINK HIS BROTHER WOULD LIKE TO SPEAK TO YOUR HONOR
20 IF YOU WOULD ALLOW.

21 THE COURT: YES, MA'AM.

22 RUDY SMITH: YES ---

23 MS. SAMPSON: HIS NAME, FOR THE RECORD, IS RUDY SMITH.

24 RUDY SMITH: FIRST OF ALL, I'D LIKE TO EXPRESS MY
25 DEEPEST SYMPATHY TO THE SHARPE FAMILY, BECAUSE I KNOW WHAT

1 THEY'RE GOING THROUGH. BUT I KNOW MY BROTHER IS NOT A
2 VIOLENT PERSON. I JUST CAN'T BELIEVE THAT. AND LIKE MS.
3 SAMPSON HAS SAID, HE'S PAID THE PRICE. HE'S LOST HIS JOB.
4 HE'S LOST HIS WIFE. HE'S LOST HIS HOME. HE HAD A
5 BEAUTIFUL HOME ON 14 ACRES OF LAND THAT THEY WORKED FOR
6 YEARS TO BUILD. HE'S LOST EVERYTHING. WHEN THIS IS OVER,
7 HE'S GOT TO START OVER, A COMPLETELY NEW PERSON.

8 AND I'D JUST LIKE THE COURT TO TAKE THAT INTO
9 CONSIDERATION IF YOU WOULD. THANK YOU.

10 MS. SAMPSON: I DO BELIEVE MR. SMITH HAS SOMETHING
11 HE'D LIKE TO SAY, YOUR HONOR.

12 THE COURT: YES, MA'AM.

13 DEFENDANT: FIRST, I'D LIKE TO APOLOGIZE TO THE SHARPE
14 FAMILY. WHAT HAPPENED ON NOVEMBER 9TH OF 2002, I ADMITTED
15 MY PART IN IT, AND IT'S SOMETHING I LIVE WITH EVERYDAY,
16 SOMETHING I'LL CARRY WITH ME TO -- TO MY DYING DAYS.

17 I'D LIKE TO APOLOGIZE TO MY FAMILY FOR WHAT THEY'VE
18 BEEN THROUGH.

19 AND I'D JUST LIKE TO APOLOGIZE FOR THE STATE, FOR
20 BEING HERE, HAVING TO PUT EVERYONE THROUGH THIS THING.

21 WORDS, I JUST CAN'T -- I DON'T KNOW WORDS DON'T SAY
22 WHAT I CAN TELL THIS FAMILY OR MY FAMILY. BUT THAT I HURT.
23 I HURT FOR THEM MORE THAN WORDS CAN SAY, AND I'M SORRY FOR
24 MY ACTIONS THAT DAY.

25 THERE'S NOTHING I CAN DO TO TAKE IT BACK. AND I'M

1 TERRIBLY SORRY, YOUR HONOR. TRUTHFULLY, AM SORRY. IT'S
2 ALL I KNOW THAT I CAN SAY.

3 MS. SAMPSON: AND THAT WOULD BE ALL FROM US, YOUR
4 HONOR.

5 THE COURT: THANK YOU, MA'AM.

6 ANYTHING FURTHER FROM THE STATE?

7 MS. COOPER: NO, YOUR HONOR. THANK YOU, YOUR HONOR.

8 (PAUSE.)

9 MS. COOPER: YOUR HONOR, MAY MS. TOREZ MAKE ONE
10 COMMENT TO MR. SMITH?

11 THE COURT: YES, MA'AM.

12 MS. TOREZ: MR. SMITH, I JUST TO LET YOU KNOW THAT I
13 FORGIVE YOU.

14 DEFENDANT: THANK YOU.

15 THE COURT: MR. SMITH, I'M GOING TO SENTENCE YOU ON
16 INDICTMENT 03-GS-40-11511, TAKING INTO CONSIDERATION YOUR
17 EFFORTS TO HELP THE STATE AS WELL AS THE PROBLEMS YOU
18 CAUSED IN YOUR CO-DEFENDANT'S CASE.

19 I SENTENCE YOU TO 27 YEARS. I WILL GIVE YOU CREDIT
20 FOR THE TIME YOU HAVE SERVED.

21 THANK YOU, SIR.

22 MS. COOPER: THANK YOU, SIR.

23 (TRANSCRIPT OF GUILTY PLEA MARKED AS COURT'S EXHIBIT
24 NO. 1.)

25 (END OF SENTENCING HEARING ON OCTOBER 13, 2005.)

1 (WEDNESDAY, OCTOBER 19, 2005.)

2 THE COURT: YES, MA'AM. MS. SAMPSON, I THINK THIS IS
3 YOUR MOTION.

4 MS. SAMPSON: YES, SIR, YOUR HONOR. JUST A REMINDER.
5 THIS IS GERALD RANDAL SMITH. YOU SENTENCED HIM ON THURSDAY
6 TO 27 YEARS FOR VOLUNTARY MANSLAUGHTER.

7 YOUR HONOR, I WOULD ASK YOU TO RECONSIDER YOUR
8 SENTENCE BASED ON SEVERAL -- OR AT LEAST A FEW ISSUES.

9 YOUR HONOR, AS HIS RECORD WAS READ, HE REALLY HAD NO
10 PRIOR RECORD BEFORE THIS. HE HAD SOME DRUG CHARGES AND A
11 BREACH OF TRUST, WHICH HE COMPLETED HIS PROBATION ON. THE
12 LAST THING HE HAD, I BELIEVE, WAS IN '85. AND THEN HE
13 PICKED UP THE FORGERY AND THIS CHARGE, YOUR HONOR.

14 AS I TOLD YOU, BEFORE, GERALD ADMITS -- THOROUGHLY
15 ADMITS TO HIS INVOLVEMENT. HE WAS ADDICTED TO OXYCONTIN.
16 H.B. WAS HIS DEALER.

17 I DID NOT WANT TO GET INTO A LOT OF THE DETAILS ABOUT
18 THE VICTIM, BECAUSE HIS FAMILY WAS HERE, AND I JUST HAVE
19 PROBLEMS WITH DOING THAT, YOUR HONOR. MAYBE I SHOULD HAVE
20 TAKEN IT IN CHAMBERS AND DISCUSSED IT WITH YOU.

21 BUT THE VICTIM WAS NOT -- HE'S INNOCENT FOR THESE
22 CRIMES. BUT I WOULD NOT CALL HIM AN INNOCENT BYSTANDER IN
23 THIS PARTICULAR TRANSACTION. HE WAS A DRUG DEALER. HE WAS
24 BEING LOOKED AT BY THE FEDS AND BY LOCAL POLICE OFFICERS,
25 MY UNDERSTANDING, FOR HIS OXYCONTIN DEALING.

1 IN THE DISCOVERY THAT I RECEIVED, THEY HAD ALSO LOOKED
2 AT HIM FOR FIVE DIFFERENT MURDERS BUT WERE JUST NOT ABLE TO
3 PIN THOSE ON HIM. HE HAD A RECORD OLDER THAN I AM. HIS
4 RECORD DATED BACK TO 1956, YOUR HONOR, INCLUDED
5 HOUSEBREAKING, ARMED ROBBERY. AND IT'S NOT -- I'M NOT HERE
6 TO BLAME THE VICTIM.

7 THE COURT: THAT'S WHAT, A YEAR, MS. SAMPSON?

8 MS. SAMPSON: WHAT, A YEAR OLDER THAN ME?

9 THE COURT: YES, MA'AM.

10 MS. SAMPSON: NO. IT'S A LOT OLDER THAN ME.

11 THE COURT: ALL RIGHT.

12 MS. SAMPSON: BUT NOT TO BLAME THE VICTIM, BUT JUST SO
13 THAT -- I THINK THERE WAS A PICTURE OF HIM THAT YOU WEREN'T
14 NECESSARILY GETTING, THAT I THINK THERE IS A PARTICULAR
15 VIOLENCE TOWARDS HIM.

16 IT'S MY UNDERSTANDING FROM TALKING TO SEVERAL
17 DIFFERENT PEOPLE, THAT HE KEPT THAT REBAR THERE SO IF
18 PEOPLE DIDN'T PAY UP, THAT'S WHAT HE COULD USE IT FOR.

19 HE CARRIED A GUN. THERE WERE BULLETS FOUND IN THE
20 HOUSE. THEY COULDN'T FIND THE GUN. BUT EVERYBODY AGREED,
21 HE CARRIED A GUN.

22 JUST TO SAY THAT THIS WAS NOT SOMEONE THEY JUST PICKED
23 UP OFF THE STREET OR JUST SOMEONE THAT WASN'T DOING
24 SOMETHING THEY SHOULDN'T HAVE BEEN DOING. HE WAS INVOLVED
25 IN THIS AS WELL, YOUR HONOR.

1 AND I THINK YOU ALSO GOT A DIFFERENT PICTURE OF MR.
2 SMITH BASED ON THE FACT THAT THEY WERE GETTING READY FOR
3 TRIAL ON HIS CO-DEFENDANT, MR. AREHART. SO THERE WERE SOME
4 DISCUSSIONS ABOUT THAT, THAT, OF COURSE, I WAS NOT THERE
5 FOR. IT WAS NOT MY CASE.

6 MR. SMITH DID GIVE DIFFERENT STATEMENTS WHEN HE WAS
7 FIRST ARRESTED. HE GAVE FOUR IF I REMEMBER CORRECTLY. BUT
8 THAT LAST ONE IS THE ONE THAT HE CONTINUES TO STICK WITH TO
9 THIS DAY. HE STRUCK THE FIRST BLOW TO H.B., BUT -- AND
10 HE'S TELLING -- HE'S ALWAYS SAID IT WAS PROBABLY ONE OR TWO
11 BLOWS. BUT AFTER THAT, HE WAS STILL MOVING, AND THAT JON
12 WAS THE ONE THAT STRUCK THE FATAL FINAL BLOWS TO H.B.

13 THERE'S NOTHING THAT SPEAKS OTHER THAN JON SAYING I
14 DIDN'T. BUT THERE'S LOTS OF STUFF THAT SAY THAT JON WAS
15 NOT TELLING THE TRUTH, EITHER. AND THAT IS MY
16 UNDERSTANDING AS TO WHY MS. COOPER WAS GOING TO GO FORWARD
17 ON MURDER -- NOT ONLY WHAT MY CLIENT WAS SAYING, BUT THEN
18 GETTING READY FOR HIS TRIAL SHE SAW OTHER EVIDENCE TO SHOW
19 THAT JON WAS LYING AND NEVER WAS TRUTHFUL WITH THE POLICE,
20 UNLIKE RANDY, HE'S ALWAYS BEEN TRUTHFUL.

21 AND AS FAR AS HIM -- I DON'T KNOW HARPOONING THE CASE
22 OR MAKING IT WORSE, HE GAVE A STATEMENT ON THE RECORD BACK
23 IN NOVEMBER OF LAST YEAR. AND THAT'S WHEN THEY CHANGED THE
24 CHARGES ON JON AREHART TO MURDER.

25 HIS STATEMENT IS NOT DIFFERENT. I MEAN, HE HAS

1 PROBLEMS WITH HIS MEMORY. HE'S ALWAYS HAD THOSE. HE HAD
2 THOSE BACK IN 2002 WHEN THIS HAPPENED. HE HAD THOSE IN '04
3 WHEN SHE TALKED TO HIM BACK THEN. HE HAD IT A MONTH AGO.
4 HE HAD IT WHEN SHE TALKED TO HIM THE FRIDAY BEFORE TRIAL.

5 YOU NEED TO PREP HIM. THAT'S JUST UNFORTUNATELY, A
6 SYMPTOM OF HIS CONDITION OF BEING ON TOO MUCH OXYCONTIN.
7 HE CAN'T REMEMBER PARTS OF IT.

8 HE REMEMBERS THAT PARTICULAR PART OF IT, THE HITTING
9 AND ALL THAT, BECAUSE H.B. WAS HIS FRIEND AND THAT WAS
10 TRAUMATIC TO HIM.

11 BUT ANYTHING AROUND THAT -- EVEN WITH ME, HE HAS
12 PROBLEMS REMEMBERING THAT. AND I DON'T THINK THAT THAT'S
13 ON PURPOSE. EVEN TALKING TO ME HE HAS PROBLEMS WITH THAT.
14 I'LL HAVE TO ASK HIM SOMETHING AND REMIND HIM. HE TAKES A
15 LOT OF PREP.

16 AND THE THING THAT I THINK IS IMPORTANT FOR YOU TO
17 KNOW, YOUR HONOR: SHE KNEW THAT. I TOLD HER THAT BACK IN
18 NOVEMBER OF '04. I TOLD HER THAT WHEN SHE WAS GOING TO
19 TALK TO HIM -- HE TALKED TO HER FOR 4 HOURS WITHOUT ME
20 BEING PRESENT, JUST SO THAT THEY COULD GET HIM PREPPED. HE
21 WOULD TALK TO HER AS MANY TIMES AS SHE WANTED TO WITHOUT ME
22 BEING PRESENT TO GET HIM PREPPED. HE NEEDED THAT. AND THE
23 STATE KNEW THAT FROM THE BEGINNING.

24 SO I THINK THAT YOU GOT A PICTURE THAT HE WAS MAKING
25 THEIR CASE BAD ALMOST NOT ON PURPOSE, BUT THAT HE WAS

1 MAKING IT BAD. IT WAS LIKE THAT FROM THE START. IT DIDN'T
2 SUDDENLY CHANGE LAST WEEK OR THE WEEK BEFORE GETTING HIM
3 PREPPED. HE WAS ALWAYS THAT WAY.

4 THERE WERE OTHER WITNESSES TO SUPPORT WHAT HE WAS
5 SAYING, THAT JON HAD THREATENED TO USE THAT REBAR ON H.B.,
6 THAT JON WAS LYING ABOUT SITTING OUTSIDE, THAT HE HAD TO
7 HAVE BEEN INSIDE. THERE WAS OTHER EVIDENCE BESIDES MY
8 CLIENT. BUT I WILL AGREE THAT HE WAS THE MEAT OF HER CASE,
9 BUT THERE WAS OTHER EVIDENCE TO SUPPORT WHAT HE SAID.

10 THERE'S NOTHING THAT GOES TO SAY WHICH ONE OF THEM
11 STRUCK THE FINAL BLOW OTHER THAN THE TWO OF THEM. AND HE'S
12 THE ONLY ONE THAT ADMITS TO WHAT HAPPENED ON THE INSIDE,
13 WHEREAS JON WAS HANDS OFF.

14 SO I THINK ONLY GIVING HIM A 3 YEAR CREDIT FOR THAT,
15 YOUR HONOR -- THE MAXIMUM SENTENCE WAS 30 YEARS. YOUR
16 HONOR GAVE HIM 27. THAT'S ONLY GIVING HIM 3 YEARS WORTH OF
17 CREDIT FOR NOT GOING TO TRIAL, FOR ADMITTING WHAT HE DID,
18 FOR TRYING TO HELP THE STATE, FOR BEING AVAILABLE AS MUCH
19 AS SHE WANTED HIM TO.

20 HE ASKED FOR HIS TRANSCRIPT SO HE COULD READ IT. HE
21 ASKED FOR HIS STATEMENT SO HE COULD GET READY. WE GAVE HIM
22 THAT, SO THAT HE COULD BE READY TO TRY TO HELP, YOUR HONOR.

23 AND I JUST THINK THAT 27 YEARS IS TOO MUCH CONSIDERING
24 HIS RECORD OF NO VIOLENT CRIMES BEFORE THIS, OF WORKING AND
25 BEING AN OKAY CITIZEN UP UNTIL THIS, YOUR HONOR.

1 HE STANDS HERE WITH HIS TWIN BROTHER. HE WAS NOT HERE
2 AT HIS PLEA LAST WEEK. YOU MET HIS BROTHER -- HIS BROTHER-
3 IN-LAW. AND THE REST OF HIS FAMILY IS SITTING RIGHT HERE
4 IN THE FRONT ROW, YOUR HONOR, COUSINS, JUST TO SUPPORT HIM.

5 AND, AGAIN, HE'S GOT A LOT OF FAMILY SUPPORT WHICH I
6 KNOW WILL BE THERE WHEN HE GETS OUT. BUT I JUST DON'T
7 THINK THAT 27 YEARS GIVES HIM A BENEFIT OF ANYTHING WHEN
8 JON AREHART GOT 10, AND THAT'S NOT ANYTHING THAT RANDY CAN
9 DO ANYTHING ABOUT. HE WAS TRYING TO DO WHAT HE COULD TO
10 MAKE SURE HE GOT AN EQUIVALENT AMOUNT OF TIME THAT HE
11 THOUGHT HE DESERVED FOR HIS PART AND JON'S PART IN IT.

12 I DON'T KNOW THAT THERE'S ANYTHING MORE THAT I COULD
13 SAY, YOUR HONOR, BUT JUST TO LET YOU KNOW THAT FOR THIS
14 PARTICULAR DEFENDANT AND THIS PARTICULAR CRIME, I DON'T
15 THINK THAT 27 YEARS IS APPROPRIATE.

16 I KNOW YOU'VE ALREADY HEARD FROM HIM AND HIS BROTHER.
17 I DON'T KNOW IF HIS OTHER BROTHER WANTS TO ADD ANYTHING OR
18 NOT, YOUR HONOR.

19 THE COURT: YES, SIR.

20 MS. SAMPSON: DO YOU WANT TO SAY ANYTHING?

21 THE COURT: STATE YOUR NAME FOR THE RECORD.

22 JERRY SMITH: STATE MY NAME?

23 THE COURT: YES, SIR.

24 JERRY SMITH: JERRY ALLEN SMITH. I WANT TO LET YOU
25 KNOW THAT I LOVE HIM VERY MUCH. I JUST CAN'T TAKE IT. I

1 MEAN, I WASN'T HERE THE OTHER DAY BECAUSE I GO TO SCHOOL.
2 AND I BELIEVE EVERYTHING WHAT HE'S SAYING IN THIS COURT.

3 AND I JUST, YOU KNOW, WISH TO GOD THAT, YOU KNOW,
4 THERE'S ANY WAY, YOU KNOW, WE COULD HAVE IT REDUCED,
5 BECAUSE, YOU KNOW, I JUST -- I DON'T KNOW WHAT TO SAY. I
6 JUST THINK THERE'S MORE TO IT THAN WHAT YOUR HONOR HEARD
7 SAYING.

8 THE COURT: THANK YOU, SIR.

9 JERRY SMITH: I LOVE YOU.

10 MS. SAMPSON: THAT WOULD BE ALL FROM THE DEFENSE AT
11 THIS TIME, YOUR HONOR.

12 THE COURT: THANK YOU, MA'AM.

13 MS. COOPER, ANYTHING FROM THE STATE?

14 MS. COOPER: YES, SIR, YOUR HONOR. FOR THE RECORD,
15 THIS IS LEWIS TOREZ. HE IS HERE ON BEHALF OF THE SHARPE
16 FAMILY. MS. TINA TOREZ AND HER SISTER, LINDA SHARPE, JUST
17 COULDN'T GO THROUGH THIS AGAIN. LAST THURSDAY TOOK AN
18 EMOTIONAL TOLL ON BOTH OF THEM. YOU OBSERVED THEIR
19 Demeanor AND HOW DIFFICULT IT WAS FOR THEM, BUT HOW
20 FORGIVING THEY WERE LOOKING THEIR FATHER'S MURDERER IN THE
21 EYE AND TELLING HIM HOW MUCH THEY FORGAVE HIM; AND THAT
22 TOOK A LOT OF ENERGY FROM THEM, YOUR HONOR.

23 MY UNDERSTANDING WHEN A MOTION SUCH AS THIS IS MADE BY
24 THE DEFENSE, THAT A CHANGE IN CIRCUMSTANCE SHOULD BE
25 PRESENTED TO THE COURT IN ORDER TO MAKE -- TO REDUCE HIS

1 SENTENCE.

2 THE COURT: FOR THE RECORD, YOU WEREN'T HERE, MS.
3 COOPER. BUT I DID LAST WEEK CALL MS. SAMPSON AND MR.
4 CATHCART UP AND TOLD THEM THAT I WAS GOING TO RECONSIDER IT
5 ANYWAY. I UNDERSTOOD THAT DEFENSE WAS GOING TO FILE A
6 MOTION OR HAD FILED A MOTION. I HAD NOT SEEN IT. BUT I
7 DID INDICATE TO THEM THAT I WOULD RECONSIDER IT ANYWAY.

8 MS. COOPER: OH, OKAY. I DIDN'T REALIZE THAT, YOUR
9 HONOR.

10 I JUST WANT THE COURT TO BE AWARE THAT MS. SAMPSON HAS
11 REPRESENTED DRUG DEALERS IN THE PAST, AND SURELY I KNOW SHE
12 WOULDN'T WANT WHAT HAPPENED TO H.B. SHARPE TO HAPPEN TO ANY
13 DRUG DEALER THAT'S BEEN REPRESENTED BY HER OFFICE.

14 THIS WAS AN EXTREMELY VIOLENT MURDER, YOUR HONOR. YOU
15 SAW THE PHOTOGRAPHS THAT WERE TAKEN BY THE CRIME SCENE
16 INVESTIGATOR. AND IT'S CLEAR FROM THE PHOTOGRAPHS THAT MR.
17 SHARPE WAS DOWN AND WAS SEVERELY BEATEN OVER AND REPEATEDLY
18 WITH THE REBAR.

19 THE FACT THAT THE MAN HAD A REBAR BY HIS FRONT DOOR
20 SHOULDN'T BE USED AS SOME SORT OF BLAME FOR HIM. THE FACT
21 THAT THERE'S ANY BLAME PUT ON HIM, I UNDERSTAND THAT HE WAS
22 A DEALER OF BOTH OF THESE INDIVIDUALS. BUT HE NEVER ASKED
23 FOR THEM TO COME TO HIS HOME TO ROB HIM AND THEN TO MURDER
24 HIM.

25 AND I DON'T THINK THAT ANYTHING REGARDLESS OF THEIR

1 POSITION IN LIFE SHOULD BE TREATED THE WAY THAT MR. SHARPE
2 WAS TREATED AND BRUTALLY MURDERED.

3 YOUR HONOR, THE STATEMENT THAT THE DEFENDANT GAVE --
4 THE LAST STATEMENT THAT HE STUCK WITH ACCORDING TO THE
5 DEFENSE, THE FOURTH STATEMENT, THAT WAS THE STATEMENT THE
6 STATE WAS RELYING ON WHEN WE ENTERED INTO THIS AGREEMENT.
7 AND THEN LOW AND BEHOLD, THE PROFFER TO JUDGE NEWMAN, HE
8 CHANGES HIS STORY. HE CHANGED HIS VERSION OF THE FACTS ON
9 THE RECORD IN FRONT OF JUDGE NEWMAN. AND THAT WAS BROUGHT
10 UP IN MR. CHIP TRUITT'S MOTION.

11 AS A RESULT, YOUR HONOR, THE STATE SIMPLY COULD NOT --
12 WE AFFORDED HIM EVERY OPPORTUNITY TO COME CLEAN. AND HE
13 SIMPLY WAS NOT STICKING TO THE FOURTH STATEMENT THAT HE
14 PROVIDED TO THE POLICE. HE WAS CHANGING IT.

15 YOUR HONOR, I AGREE WITH MS. SAMPSON THAT THIS
16 OXYCONTIN DRUG ABSOLUTELY HAS AN IMPACT ON PEOPLE'S
17 RECOLLECTION AND ABILITY TO REMEMBER FACTS.

18 HOWEVER, IN THIS CASE, YOUR HONOR, EVERY TIME WE WOULD
19 TRY TO REFRESH HIS MEMORY WITH STATEMENTS PROVIDED BY OTHER
20 WITNESSES, HE WOULD CONVENIENTLY BE ABLE TO REMEMBER THAT
21 IT WAS THE CO-DEFENDANT THAT DID CERTAIN THINGS, PLACING
22 THE BLAME ON THE CO-DEFENDANT IN CERTAIN MATTERS.

23 AND I JUST DON'T BELIEVE A JURY WOULD HAVE BELIEVED
24 HIM. WE PROVIDED HIM WITH EVERY OPPORTUNITY TO FULFILL HIS
25 END OF THE AGREEMENT. AND THE STATE REDUCED THE CHARGE

1 FROM MURDER TO VOLUNTARY MANSLAUGHTER IN EXCHANGE FOR HIS
2 TESTIMONY. AND WE WERE NOT ABLE TO OBTAIN THAT TESTIMONY
3 IN FRONT OF A JURY, BECAUSE A JURY SIMPLY WOULD NOT HAVE
4 BELIEVED HIM.

5 AND AS A RESULT JON AREHART HAS GOTTEN AWAY WITH
6 MURDER. IT'S NOT THE STATE'S, YOU KNOW, POSITION. OUR
7 POSITION IS IF WE COULD HAVE GONE FORWARD ON THE MURDER
8 CHARGE, WE WOULD HAVE, BUT WE COULDN'T. WE DIDN'T HAVE ANY
9 OTHER WITNESSES TO PLACE HIM THERE, EXCEPT FOR THIS
10 DEFENDANT, AND HE SIMPLY WASN'T FORTHRIGHT, YOUR HONOR.

11 MR. TOREZ -- WOULD YOU LIKE TO ADDRESS THE COURT?

12 MR. TOREZ: I'D SIMPLY LIKE TO SAY, YOUR HONOR, THAT
13 THE SENTENCE THAT YOU APPLY EARLY ON, I THINK IS JUST. IN
14 FACT, IF I HAD MY WAY, I'D GIVE HIM EVEN MORE TIME. MY
15 WIFE IS TOTALLY STRESSED ABOUT THE WHOLE SITUATION, THAT HE
16 MIGHT BECOME SO LOW, SO LESS, THAT SHE DON'T BELIEVE IN THE
17 JUSTICE SYSTEM. IN SPITE OF THE 27 YEARS THAT HE RECEIVED,
18 SHE WANTS MORE.

19 OUR RELATIONSHIP WITH FAMILY MEMBERS AND FRIENDS THAT
20 WE HAVE FROM MY FATHER-IN-LAW, THEY DON'T COME AROUND ANY
21 MORE. THE FAMILY IS TOTALLY SPLIT, SPLIT TO WHERE WE DON'T
22 SEE EACH OTHER.

23 IN FACT, MY WIFE AND MYSELF AS A RESULT OF THIS
24 SITUATION, WE'RE NOT EVEN LIVING TOGETHER.

25 SHE DON'T EVEN BELIEVE IN GOD ANY MORE, AND THIS IS A

1 CHRISTIAN LADY, A CHRISTIAN LADY THAT FOR ALL PRACTICAL
2 PURPOSE DOES NOT BELIEVE IN THE NEXT -- NEXT OF ALL -- SHE
3 JUST TOTALLY UNIMPRESSED ABOUT ANYBODY.

4 HOWEVER YOU PROJECT YOURSELF, YOU COULD PROJECT
5 YOURSELF AS THE NICEST PERSON IN THE WORLD, YES, BUT SHE
6 DON'T BELIEVE IN YOU ANY MORE. SHE JUST FEEL THE WHOLE
7 WORLD IS AGAINST HER, AS IF -- PEOPLE ARE JUST EVIL. WE
8 BELIEVE HE IS AN EVIL GUY.

9 AND THE FACT THAT THE LAWYER SAID THAT HE DOESN'T
10 REMEMBER, HIS MEMORY IS VERY POOR. THAT'S A RESULT --
11 THAT'S PRECISELY THE POINT. HE TAKES SO MUCH DRUGS. HE
12 TAKES SO MUCH DRUGS THAT HIS BRAIN CELLS ARE NEARLY BURNED.

13 LET'S NOT ALLOW THIS GUY TO GET OUT THERE AGAIN,
14 BECAUSE HE CAN'T THINK STRAIGHT. HE CAN'T REMEMBER ONE
15 SECOND TO ANOTHER. SO LET'S NOT ALLOW THIS GUY TO GET OUT,
16 PLEASE. IF ANYTHING, GIVE HIM MORE TIME.

17 MS. COOPER: THANK YOU, YOUR HONOR, THAT IS ALL THE
18 STATE HAS.

19 THE COURT: THANK YOU, MA'AM.

20 ANYTHING FURTHER FROM THE DEFENSE?

21 MS. SAMPSON: MR. SMITH WOULD LIKE TO SAY SOMETHING.

22 THE COURT: YES, SIR.

23 MR. SMITH: YES, YOUR HONOR, I KNOW MY BROTHER VERY
24 WELL. HE'S NOT THAT KIND OF PERSON. HE'S NEVER BEEN
25 VIOLENT IN HIS LIFE. HE'S NEVER -- HE'S NEVER -- HE'S NOT

1 CAPABLE OF THAT KIND OF CRIME. HE MAY HAVE HIT MR. SHARPE
2 ONE TIME. BUT TO BEAT HIM LIKE THAT, THAT'S NOT -- I KNOW
3 THAT'S NOT MY BROTHER. HE'S NOT THAT KIND OF PERSON.

4 HE WENT OVER THERE THAT DAY NOT WITH THE INTENTIONS OF
5 ROBBING HIM OR ANYTHING. HE WENT OVER THERE AT MR.
6 AREHART'S REQUEST; AND THAT'S WHEN THE ARGUMENT BROKE OUT,
7 BECAUSE MR. AREHART OWNED MR. SHARPE \$600. OKAY. SORRY.

8 I JUST WANT THE COURT TO KNOW THAT MY BROTHER IS NOT A
9 VIOLENT PERSON. HE MAY HAVE A LITTLE PROBLEM WITH HIS
10 MEMORY. HE'S ALWAYS BEEN LIKE THAT. HE'S NOT THE SMARTEST
11 PERSON IN THE WORLD, BUT WHAT 27 YEARS -- THAT'S NOT --
12 THAT'S NOT JUSTICE ON HIS PART IN THIS -- IN THIS CRIME.

13 HE'S MORE THAN WILLING TO ACCEPT RESPONSIBILITY FOR
14 HIS PART. BUT SERVE 27 YEARS FOR A MURDER THAT HE DIDN'T
15 COMMIT AND WHEN THE REAL MURDERER IS GOING TO BE OUT ON THE
16 STREET IN A FEW YEARS, I MEAN, THERE'S NO JUSTICE IN THAT.

17 THANK YOU.

18 THE COURT: ANYTHING FURTHER?

19 MS. SAMPSON: NO, SIR.

20 THE COURT: ANYTHING FURTHER FROM THE STATE?

21 MS. COOPER: NO, SIR, YOUR HONOR.

22 THE COURT: ALL RIGHT. I'M GOING TO THINK ABOUT THIS.

23 I'M GOING TO ASK YOU ALL TO STAND DOWN. WE'RE GOING
24 TO RESUME THE TRIAL AND I'LL THINK ABOUT IT AND GIVE YOU
25 ALL A RULING, AND BRING YOU BACK UP SOME TIME THIS MORNING.

1 THERE ARE OBVIOUSLY ISSUES OF A DISPARITY THAT THE CO-
2 DEFENDANT WAS ALLOWED TO PLEAD TO ACCESSORY AFTER.

3 LET ME JUST TELL YOU ALL WHAT I HAVE TO WEIGH.
4 OBVIOUSLY, YOU ALL KNOW THIS, BUT I HAVE A VERY BRUTAL
5 MURDER. I HAVE A VICTIM WHO IN THIS CASE BY ALL ACCOUNTS
6 WAS THE SUPPLIER OF DRUGS TO BOTH DEFENDANTS.

7 WHAT HAPPENED IN THAT ROOM, I DON'T KNOW. WE'VE NOT
8 HAD A TRIAL. WE'VE NOT REALLY HAD A PROFFER OF ANYTHING
9 FACTUAL REGARDING THOSE CIRCUMSTANCES OR KNOW WHAT THE
10 DEFENSE WOULD HAVE BEEN.

11 I'VE GOT TWO DEFENDANTS POINTING THE FINGER AT EACH
12 OTHER, AND BOTH OF THEM REPEATEDLY HAVE CHANGED THEIR
13 STORIES.

14 EVERYBODY SAYS THAT -- WITH ALL DUE RESPECT ABOUT
15 JUSTICE AND ALL, I'VE GOT A DEAD PERSON, QUITE LITERALLY,
16 THAT HAD HIS SKULL CAVED IN, AND TWO DEFENDANTS WHO WERE
17 THERE, WHO ADMIT TO BEING THERE, WHOSE ABILITY TO RECOUNT
18 WHAT HAPPENED EITHER AGAINST THE OTHER OR FOR THEIR OWN
19 PERSONAL BENEFIT IS SOMEWHAT IMPEDED BY THEIR LEVEL OF DRUG
20 USE.

21 SO I'LL THINK ABOUT IT AND CALL YOU ALL BACK IN A
22 LITTLE BIT.

23 MS. SAMPSON: THANK YOU, YOUR HONOR.

24 MS. COOPER: THANK YOU, YOUR HONOR.

25 (END OF HEARING HELD ON WEDNESDAY, OCTOBER 19, 2005.)

1 (THURSDAY, OCTOBER 20, 2005.)

2 THE COURT: YES, MA'AM.

3 MS. COOPER: YOUR HONOR, WE HAVE REDONE THE SENTENCING
4 SHEET AND PUT AMENDED SENTENCE ON TOP.

5 MS. SAMPSON: MY UNDERSTANDING IS THAT THE CLERK OF
6 COURT SAID THAT WAS THE WAY THAT WE NEEDED TO DO IT, IF YOU
7 WERE GOING TO AMEND SENTENCE VERSUS YOU JUST CHANGING THE
8 ORIGINAL.

9 THE COURT: OKAY. ALL RIGHT. ANYTHING FURTHER FROM
10 EITHER SIDE?

11 MS. COOPER: NO, SIR.

12 MS. SAMPSON: NOT FROM DEFENSE, YOUR HONOR.

13 (PAUSE.)

14 THE COURT: MR. SMITH, REALLY, ONLY BECAUSE YOUR CO-
15 DEFENDANT WHO I BELIEVE PROBABLY -- I THINK THE STATE IN
16 THEIR PRESENTATION AS WELL BELIEVE THAT HE WAS EQUALLY MORE
17 CULPABLE THAN HE WAS WILLING TO ADMIT.

18 I'M GOING TO CHANGE ANY PART OF THIS SENTENCE.

19 BUT, AGAIN, AS I SAID YESTERDAY, THIS IS STILL A
20 HEINOUS ACT. AND A LOT OF THE CIRCUMSTANCES OF WHY WE'RE
21 HERE NOW AND WHAT YOU'RE COMPLAINING ABOUT IS DUE TO YOUR
22 OWN FAULT.

23 ORIGINALLY YOU WERE SENTENCED TO 27. I WILL REDUCE
24 THAT TO 24 YEARS AND GIVE YOU CREDIT FOR THE 3 YEARS.
25 QUITE FRANKLY, THAT'S AS MUCH CONSIDERATION AS I CAN GIVE

1 YOU ON THAT.

2 THANK YOU, COUNSEL.

3 MS. COOPER: THANK YOU, YOUR HONOR.

4 --- END OF TRANSCRIPT OF RECORD ---

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1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
5 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
6 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
7 COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 13TH,
8 19TH, AND 20TH DAYS OF OCTOBER 2005.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11 DECEMBER 20, 2005

12 
13

14 COURT REPORTER
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ORIGINAL

STATE OF SOUTH CAROLINA

County of Richland

IN THE COURT OF COMMON PLEAS

2008C P+007794Gerald Randall Smith #312027

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 Broad River C.I. Congaree 146 4460 Broad River Road
Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Richland County Court of
General Sessions Columbia, S.C. 29202-2766
3. Name(s) of co-defendant(s) (if any) John Arheart
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2003-GS-40-11511

FILED
2008 OCT 28 PM 2:17
BARBARA A. SCOTT
C.C.C.

- (b) _____
- (c) _____

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

- (a) October 13, 2005 27 Years Then reduced to 24 Years on October 20, 2005 under a reconsideration by The Honorable Judge Lloyd.
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Yes
- (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?

Yes

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. Appeal Dismissed
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. Submitted April 1, 2008 Filed April 11, 2008
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Anders v. California, 386 U.S. 738 (1967) and
 - ii. State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991).
 - iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) _____

STATE OF SOUTH CAROLINA

County of Richland

IN THE COURT OF COMMON PLEAS

2008C P4007794Gerald Randall Smith #312027

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 Broad River C.I. Congaree 146 4460 Broad River Road
Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Richland County Court of
General Sessions Columbia, S.C. 29202-2766
3. Name(s) of co-defendant(s) (if any) John Arheart
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2003-GS-40-11511

2008 OCT 28 PM 2:17
BARBARA A. SCOTT
C.C.C. & G.S.
FILED

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 13, 2005 27 Years Then reduced to 24 Years on October 20, 2005 under a reconsideration by The Honorable Judge Lloyd.
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (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?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Assumed Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted April 1, 2008 Filed April 11, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Anders v. California, 386 U.S. 738 (1967) and
- ii. State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991).
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

(b) _____

(c) _____

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

(a) Ineffective Assistance of Trial Counsel(b) Involuntary Guilty Plea — S.C. Const. Art. 1, §3(c) Sixth and Fourteenth Amendment U.S. Constitutional Violation

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

(a) See attached Initial Brief

(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 Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) First time challenge
- (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? Guilt Plea
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Tara Lyons / April Sampson Esquire Richland County Public
Defenders Office, Columbia, S.C. 29202
- ii. Robert M. Dudek, Esquire 1205 Pendleton Street Room 306
Columbia, S.C. 29201
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, Plea, Guilt Plea, Sentencing, Motion for Reconsideration
- ii. Appeal
- iii. _____

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

Please Vacated and Remanded for a new trial

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Gerald R. Smith #312027, 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.

Gerald Randall Smith

SWORN to and subscribed before me this 15
day of OCT, 2008.

Eugene Smith (L.S.)
Notary Public

My Commission Expires: Commission Expires April 4, 2016

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

I, Gerald R. Smith #312027, 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.

Gerald Randall Smith
Applicant

SWORN or affirmed to and subscribed before me this

18 day of Oct, 2008.

Eugene Kett
Notary Public

My Commission Expires: My Commission Expires April 4, 2016

FILED
2008 OCT 28 PM 2:17
BARBARA A. SCOTT
C.C.C. & D.S.

STATE OF SOUTH CAROLINA
County of Richland

IN THE COURT OF COMMON PLEAS

C/A No.: 2003-GS-40-11511

Gerald Randall Smith Applicant

V.

State of South Carolina Respondent

INITIAL BRIEF OF APPLICANT

Submitted this 15 day of OCT, 2008.

Respectfully submitted by,

Gerald Randall Smith
Gerald Randall Smith #312027
B.R.C.I. CO-146
4460 Broad River Road
Columbia, S.C. 29210
PRO SE APPLICANT

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ISSUES PRESENTED

Issue "A" Was plea counsel's advice to continue the plea negotiations erroneous?

Issue "B" Was the plea and sentencing in violation of Boykin v. Alabama?

STATEMENT OF THE CASE

The Richland County Grand Jury indicted the Applicant for murder (2003-GS-40-11511). On November 15, 2004, the Applicant pled guilty to voluntary manslaughter before Judge Clifton Newman. Applicant was represented by April Sampson, Esquire, and the state was represented by solicitor's Vanessa Cooper and David Ross. Judge Newman deferred sentencing in this matter until after prosecution of a co-defendant. (Nov. 15, 2004, Tr. Pg. 3, Lines 3-25).

On October 13, 2005, Judge Reginald Lloyd sentenced the Applicant to a 27 year term of confinement. (Oct. 13, 2005, Tr. Pg. 19, Lines 15-20).

On October 20, 2005, Judge Lloyd reconsidered the prior year sentence and reduced the 27 year sentence to a 24 year term of confinement. (Oct. 20, 2005, Tr. Pg. 33, Line 3 thru Tr. Pg. 34, Line 1).

A timely notice of appeal was filed and the appeal was perfected by Robert M. Dudek of the Columbia Appellate Defense Office. The South Carolina Court of Appeals Affirmed the conviction on April 11, 2008. State v. Smith, Unpublished Opinion No.: 2008-UP-226.

This Post-Conviction Relief Application with supporting Initial Brief now follows.

ISSUE "A" ARGUMENT

Issue "A" Was plea counsel's advice to continue the plea negotiations erroneous?

There are two vital points to review in regards to this Issue at hand.

(1) The Applicant's competence to enter into the guilty plea and (2) the states breaching of the plea negotiations.

We must note that the co-defendant's attorney, Mr. Chip Truitt, filed a Motion to disqualify the Applicant from testifying at trial against his client, Mr. John Earhart. That Motion raised some pretty legitimate issues as to the Applicant's competence to testify as a witness at trial. In turn, this very fact then raised a highly legitimate question as to his competence to enter into a guilty plea. (Nov. 15, 2004, Tr. Pg. 8, Lines 6-24; Tr. Pg. 13, Line 19; Tr. Pg. 15, Line 9; Tr. Pg. 16, Lines 20-22).

At the sentencing phase (Oct. 13, 2005, Tr. Pg. 7, Lines 6-10; Tr. Pg. 8, Lines 16-24) the state alleged the Applicant was competent to enter a plea and be sentenced. However, at that same hearing, the solicitor stated, "The defendant could not articulate truthfully each one's role and take responsibility for his role." (Tr. Pg. 8, Lines 17-19). Here again, the Applicant's competence to be a witness at trial in the case came into play, also raising again, his competence to enter into a guilty plea. See: State v. Jarrell, 564 S.E.2d 362 (Ct. App. 2003).

Here, the Applicant's competence came into question not once, but twice. Counsel still allowed the Applicant to enter into a plea instead of moving to withdraw the plea and have her client mentally evaluated. Counsel's advice to continue the plea at that time was erroneous. Ray v. State, 401 S.E.2d 151 (1991); Rollison v. State, 522 S.E.2d 290, 292 (2001).

In plea negotiations, the state agreed to reduce the murder charge against the Applicant to voluntary manslaughter upon a straight up plea with no

recommendation as to the sentence to be imposed. (Nov. 15, 2004, Tr. Pg. 8, Lines 1-5).

At the sentencing phase, the state then requested the Court to impose the maximum sentence. (Oct. 13, 2005, Tr. Pg. 12, Lines 22-23). Although the 27 year sentence imposed was reduced to a 24 year sentence (Oct. 20, 2005, Tr. Pg. 33, Line 3 thru Tr. Pg. 34, Line 1), the key point here is that the state breached the plea negotiations by recommending a sentence when it had agreed not to do so. See: U.S. v. McQueen, 108 F.3d 64 (4th Cir. 1997); Boykin v. Alabama, Supra, note 3, 395 U.S. at 240 (1969); U.S. Const. Amend. Fourteen; S.C. Const. Art. 1, §3.

Here again, defense counsel stood by being fully aware of the states plea breach and still advised the Applicant to continue the plea rather than withdrawing from the plea. Counsel's advice was again erroneous and counsel was indeed ineffective, resulting in prejudice to the Applicant. Hill v. Lockhart, 106 S.Ct. 366 (1985); U.S. v. Bowman, 124 S.Ct. 1523 (C.A.4)(S.C.2003); U.S. Const. Amend. Six.

Under the totality of these circumstances, the plea should be reversed for further proceedings by another Circuit Court Judge.

ISSUE "B" ARGUMENT

Issue "B" Was the plea and sentencing in violation of Boykin v. Alabama?

The answer to the titled question above is quiet obviously "Yes", as well indicated by the case records of Nov. 15, 2004, Oct. 13, 2005, and Oct 19-20, 2005, as well as the briefed facts in the prior Issue "A" Argument of this Initial Brief of Applicant.

The plea could by no means be voluntarily made under circumstances such as the ones clearly shown in this particular case. Boykin v. Alabama, 395 U.S. 338 (1969); Hill v. Lockhart, 106 S.Ct. 366 (1985); U.S. Const. Amend. Fourteen; S.C. Const. Art. 1, §3.

Defense counsel was indeed ineffective. The Applicant was prejudiced by that ineffectiveness and would have certainly proceeded to a trial in this case had he known counsel would be so ineffective. Rollison v. State, 522 S.E.2d 290, 292 (2001); Johnson v. Catoe, 520 S.E.2d 617 (1999); Thompson v. State, 531 S.E.2d 294 (2000); Jordan v. State, 374 S.E.2d 683 (1988); U.S. Const. Amend. Six.

The plea in this instant case should be reversed, and not to do so would violate our S.C. Laws as well as both the State and Federal Constitutions.

A reversal is well warranted.

CONCLUSION

For the legal reasons and principles cited in this Post-Conviction Relief Application, with supporting Initial Brief, the conviction and sentence should be vacated, reversed for a new trial, or judgement of acquittal entered.

Wherefore, Applicant does forever pray.

Respectfully submitted by,

Gerald Randall Smith #312027
Gerald Randall Smith #312027
B.R.C.I. CO-146
4460 Broad River Road
Columbia, S.C. 29210
PRO SE APPLICANT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of Richland

C/A No.: 2003-GS-40-11511

Gerald Randall Smith Applicant

v.

State of South Carolina Respondent

CERTIFICATE OF SERVICE

I, the Applicant in the above captioned matter, do hereby under oath and penalty of perjury certify that I have served a copy of the same documents upon the below listed party upon this exact date:

Ms. Barbara A. Scott
Richland County Clerk of Court
P.O. Box 2766
Columbia, S.C. 29202-2766

Respectfully submitted by,

Gerald Randall Smith #312027

Gerald Randall Smith #312027
B.R.C.I. CO-146
4460 Broad River Road
Columbia, S.C. 29210
PRO SE APPLICANT

Sworn to and subscribed before me
this 18 day of OCT, 2008

Eugene F. [Signature]

Notary public for South Carolina My Commission Expires April 4, 2016

My Commission expires: April 4, 2016

FILED
2008 OCT 28 PM 2:18
BARBARA A. SCOTT
& G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

SMITH Gerald R, # 312027,)

2008-CP-400-7794

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed 10/28/2008, 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 Richland County Clerk of Court. The Applicant was represented by April Sampson, Esquire. On 10/20/2005, the Applicant pled guilty and was sentenced by The Honorable Reginald I. Lloyd to Murder - (2003-GS-40-11511)

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

SMITH Gerald R, # 312027,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

2008-CP-400-7794

RETURN

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In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons because he allegedly received ineffective assistance of counsel.

III.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent 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.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Tricia A. Blanchette, Esquire regarding when the hearing should be set.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

April 29, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Gerald R. Smith, 312026,

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-40-7794

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Tricia A. Blanchette, Bar No. 74904

Address:

PO Box 12725

Columbia, SC 29211

phone: 803-988-0008 fax: 803-988-8070

e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:

Brian Petrano, Bar No.

Address:

PO Box 11549

Columbia, SC 29211

phone: 803-734-3737 fax: 803-734-4113

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

November 19, 2009

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:☒ EXEMPT:☐ Rule to Show Cause in Child or Spousal Support(check reason) ☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

Gerald R. Smith, 312026,)
 Applicant,)

2008-CP-40-7794

v.)

State of South Carolina,)
Respondent.)

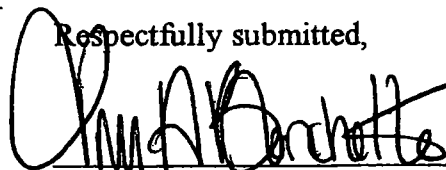
**AMENDMENT TO APPLICATION
 FOR POST CONVICTION RELIEF**

The Applicant, by and through his appointed attorney Tricia A. Blanchette, would respectfully amend and supplement his Application for Post Conviction Relief filed October 28, 2008, by adding the following specific allegations to his original allegation of "ineffective assistance of counsel" and "involuntary guilty plea" and by adding the allegation of ineffective assistance of appellate counsel:

1. Ineffective assistance of trial counsel and involuntary guilty plea, specifically but not limited to the following grounds:
 - a. Failure to properly prepare and investigate the case.
 - i. Failure to thoroughly review the discovery with the Applicant prior to his plea.
 - ii. Failure to meet with the Applicant and properly prepare for trial and/or plea.
 - iii. Failure to conduct an independent investigation or speak with any witnesses.
 - b. Failure to provide effective assistance of counsel during the plea phase.
 - i. Misadvised the Applicant that he would receive 10 years.
 - ii. Failure to advise the Applicant about the proffer and deferred sentencing.
 - c. Failure to provide effective assistance of counsel in relation to the Applicant's co-defendant's trial.

- i. Failure to provide the Applicant with his statements in a timely manner and review them with him prior to his pre-trial meeting with the Solicitor's Office.
 - ii. Failure to properly prepare the Applicant for his pretrial meeting with the Solicitor's Office and failure to attend the pre-trial meeting.
 - iii. Failure to address the Motion filed by co-defendant's counsel regarding the Applicant's testimony.
 - iv. Failure to communicate with the Applicant on the day of his co-defendant's trial.
- d. Failure to provide effective assistance of counsel during the sentencing phase.
- i. Failure to notify the Applicant that he would not be sentenced by the Honorable Clifton Newman.
 - ii. Failure to obtain a transcript of the Plea Hearing.
 - iii. Failure to address the prejudice or bias from the Honorable Reginald Lloyd's handling of the Applicant's co-defendant's case.
 - iv. Failure to object when the State changed their position from the plea hearing and requested the maximum sentence.
 - v. Failure to withdraw the Applicant's guilty plea.
 - vi. Failure to address the State's change in position during the Reconsideration Hearing.
2. The Applicant is also alleging ineffective assistance of appellate counsel for failure to address the motion for reconsideration.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
PO Box 12725
Columbia, SC 29211
(803) 988-0008

November 19, 2009
Columbia, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

Gerald R. Smith, 312026,)
 Applicant,)

v.)

State of South Carolina,)
Respondent.)

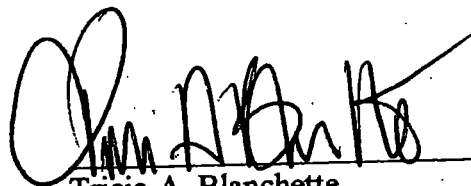
IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

2008-CP-40-7794

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed in the United States Mail on this 19th day of November 2009, a copy of Amendment to Application for Post Conviction Relief, with postage prepaid and the return address clearly shown on said envelope to the Office of the Attorney General at:

Office of the Attorney General
 ATT: Brian Petrano, Esq.
 P.O. Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 Attorney for the Applicant
 PO Box 12725
 Columbia, SC 29211

November 19, 2009

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	—)	2008-CP-40-07794

GERALD SMITH	)	
APPLICANT	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT	—)	

December 8, 2009
Columbia, South Carolina

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE.

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

BRIAN T. PETRANO, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

TRICIA A. BLANCHETTE, ESQ.
Attorney for the Applicant

CAROL M. THUEME, RPR
Official Court Reporter

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1 THE COURT: Mr. Petrano.

2 MR. PETRANO: If we could have Mr. Smith come
3 around.

4 THE COURT: Yes, sir.

5 MR. PETRANO: Thank you, Your Honor. May it
6 please the Court.

7 This is 2008-CP-40-07794, Mr. Gerald Randall
8 Smith. This was a PCR application filed on October 28th,
9 2008. It was a guilty plea with Judge Lloyd on
10 October 20th, 2005. At that time the applicant was
11 represented by Assistant Public Defender April Sampson.

12 The applicant had been indicted by the February
13 2003 term of the Richland County Grand Jury. That's
14 03-GS-40-11511. That indictment was for murder.

15 The applicant ultimately pled to the
16 lesser-included offense of voluntary manslaughter. He
17 received -- originally he received 27 years. That was
18 reconsidered a few days -- a few weeks later to 24 years.

19 There was a direct appeal, that was an Anders
20 brief, 2008-UP-226. The South Carolina Court of Appeals
21 remitted that case back to General Sessions on July 7th,
22 2008.

23 I will turn it over to Ms. Tricia Blanchette,
24 the applicant's current counsel of record.

25 Thank you, Your Honor.

1 THE COURT: Thank you, sir.

2 Counsel.

3 MS. BLANCHETTE: Your Honor, my name is Tricia
4 Blanchette. I was appointed to represent Mr. Smith.

5 We submitted a detailed amendment. It's my
6 understanding you should have a copy.

7 THE COURT: Yes, ma'am.

8 MS. BLANCHETTE: And to begin our case, I'd like
9 to call Mr. Gerald Smith to the stand.

10 THE COURT: Come around, Mr. Smith.

11 GERALD SMITH, after being duly sworn, testified
12 as follows:

13 THE COURT: Please take a seat, Mr. Smith. Tell
14 us your full name and spell your last for the record.

15 THE WITNESS: Gerald Randall Smith, S-M-I-T-H.

16 THE COURT: Thank you, sir.

17 DIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q Mr. Smith, are you currently incarcerated?

20 A Yes, ma'am.

21 Q And where are you incarcerated?

22 A Broad River Correctional.

23 Q And are you here today because you filed a
24 post-conviction relief application?

25 A Yes, ma'am.

1 Q And in filing that application, what is it that
2 you're asking the Court for today?

3 A To have my case overturned where I can go back and go
4 to trial and have it overturned, to get --

5 Q So you're asking the Court for a new trial?

6 A Yes.

7 Q And we have discussed that there is risks associated
8 with that.

9 A Yes.

10 Q That if the Court does grant you a new trial, you'd
11 be put back in the position you were after you were
12 indicted.

13 A Yes, ma'am.

14 Q And you could face up to the maximum sentence for the
15 murder charge.

16 A Yes, ma'am.

17 Q And understanding that you do want to go forward
18 today?

19 A Yes, ma'am.

20 Q Okay. Now, Mr. Smith, you entered a plea on
21 November 15th of 2004, in front of Judge Newman; is that
22 correct?

23 A Yes, ma'am.

24 Q And then you were later sentenced on October 13th,
25 2004 --

1 THE COURT: I thought it was Judge Lloyd.

2 MS. BLANCHETTE: He entered his plea in front of
3 Newman and he was sentenced by Judge Lloyd.

4 MR. PETRANO: And Lloyd did the reconsideration,
5 correct?

6 MS. BLANCHETTE: That's correct.

7 THE COURT: All right. That's fine.

8 BY MS. BLANCHETTE:

9 Q And then you were sentenced on October 13th, 2005, by
10 Judge Lloyd; is that correct?

11 A Yes, ma'am.

12 Q And Judge Lloyd had a reconsideration hearing?

13 A Yes.

14 Q And your original sentence was 27 years; is that
15 correct?

16 A Yes.

17 Q And what did Judge Lloyd reduce that to?

18 A Twenty-one -- 24 with three years time served, or
19 something, with the county time.

20 Q So you have a 24-year sentence with credit for your
21 county time?

22 A Right. Yes, ma'am.

23 Q Now, in this case, do you remember approximately when
24 you were arrested?

25 A I want to say November 12th of 2002.

1 Q And thereafter, were you appointed an attorney, or
2 did you have funds to retain an attorney?

3 A I had spoken with an attorney. John Delgado had come
4 out and visited me a few times. I was looking to retain
5 him, but I was trying to liquidate some properties that I
6 had.

7 Q Were you able to retain Mr. Delgado?

8 A No, ma'am.

9 Q Were you appointed an attorney?

10 A Yes, ma'am.

11 Q Who were you originally appointed?

12 A Tara Lyons.

13 Q And did you have the opportunity to meet with her or
14 just explain to me what occurred as far as per your
15 attorney?

16 A Repeat that again.

17 Q Did you have the opportunity to meet with Tara Lyons
18 as your attorney?

19 A Yes, ma'am, numerous times.

20 Q Do you know approximately how many times you met with
21 her?

22 A Probably four or five.

23 Q And were you in the county facility at that time?

24 A Yes, ma'am.

25 Q Now, when you met with Tara, were you all preparing

1 for trial, or was she trying to work out a plea for you?

2 A Preparing for trial.

3 Q And was there anyone that came on to assist her with
4 that from the Public Defender's office?

5 A No, not that I recall. She had brought an
6 investigator, I believe it was Neeley or someone down to,
7 you know, go over some things.

8 Q Now, did Tara remain your attorney?

9 A For a while until she left. I believe she took a new
10 job with the Federal Prosecutor's office, as I recall, and
11 that's when she was off, got off the case.

12 Q And who took over your case at that point?

13 A April Sampson.

14 Q And she was appointed to represent you?

15 A Yes, ma'am.

16 Q Now, as far as discovery, did you receive a copy of
17 the discovery, or Rule 5 documents from your appointed
18 attorneys?

19 A No, I didn't get any until later on. I asked for
20 them numerous times, but couldn't get my discovery
21 until -- I don't recall the date, but it was much later.

22 Q Did you have the opportunity to go over the discovery
23 documents with your attorney?

24 A There at the end I did before I was getting ready for
25 trial.

1 Q Now, speaking of trial, did you want a trial or did
2 you want a plea in this case? What was the focus?

3 A I wanted the trial. That's what I always wanted was
4 a trial.

5 Q And you were willing to go to trial on the charge of
6 murder?

7 A Yes, ma'am.

8 Q Now, was there a plea offer in your case?

9 A April had approached me about a plea offer prior to
10 my trial of 15 to 20.

11 Q And were you brought here to the courthouse and told
12 of that plea?

13 A Yes, I was brought downtown and met with April.

14 Q And what was your understanding about that 15 to 20,
15 were you going to take it, was she going to work out a
16 better deal?

17 A She said that was too much time for me due to my
18 involvement in the crime, that she was trying to do
19 something else.

20 Q Now, after the 15 to 20, was there another offer that
21 came in?

22 A She come back with a -- well, I had called home and
23 spoken with brother and he had spoken with April and he
24 had told me of the offer that was offered to her through
25 the Solicitor's office that if I would testify at

1 Areheart's trial, they would reduce my charge to
2 manslaughter, and she was wanting to go to an open plea
3 and she was telling me somewhere between eight and ten
4 years on that plea.

5 Q Now, did you understand the open plea was two to 30
6 years?

7 A She explained that, but she told me that with the
8 plea deal, that the State would remain silent and that she
9 would be able to come forth and we would be able to speak.

10 Q And did she tell you -- you said that the State would
11 remain silent, so they weren't going to request any amount
12 of time?

13 A That's right.

14 Q Now, how long did you have to think about that plea
15 offer?

16 A It's been so long. I would say a month or two maybe.

17 Q Was that a hard decision for you to reach?

18 A Very hard.

19 Q And why was that a hard decision for you to reach as
20 to whether or not to take that?

21 A Because I was pleading to something that I didn't --
22 I didn't feel like -- I didn't do, and that was the death
23 of H. B. Sharp.

24 Q Now, you proceeded to a plea on November 15th, 2004,
25 in front of Judge Newman; is that correct?

1 A Yes, ma'am.

2 Q And what was your understanding of what was going to
3 happen that day; did you think it was going to be the plea
4 and sentencing, just the plea, what was your
5 understanding?

6 A Well, that day I was prepared for trial. I was down
7 in the bottom of the Richland County Courthouse here and
8 April was in the room with me, I believe it was in the
9 bottom, but she kept on reassuring me to take the plea,
10 that was in my best interest, and that I would get
11 anywhere between eight to ten years. And I didn't never
12 want to plea and I took the plea at the last minute.

13 It was my understanding that when I pled that
14 day that the State wasn't going to recommend anything,
15 that she would give -- stand up and we would be able to
16 address the Court and talk on my behalf and that I would
17 be sentenced that day, but that ain't what happened.

18 Q So that was your understanding going in to the plea?

19 A Right.

20 Q Now, at the plea on page three of the transcript, the
21 State says that your sentencing is going to be deferred
22 until after your co-defendant's trial. Are you saying
23 that you were not aware of that?

24 A Not aware of that.

25 Q And on page 48 of the transcript, you actually asked

1 for bond. What was your reasoning for that?

2 A Because I thought I was going to be sentenced with a
3 deferred sentence. The way it was to me, I was so
4 confused I asked for a bond where I could go home and work
5 and try to provide for my family and my wife and stuff and
6 to get out. I mean, I just didn't understand what was
7 going on at the time the way -- you know, I thought I was
8 going to be sentenced. Then they did a deferred sentence
9 and that's why I asked for a bond.

10 Q Now, looking at pages 20 through 28 of that
11 transcript, you give a very detailed proffer or testimony
12 to the Court; is that correct?

13 A Yes, ma'am.

14 Q Did you know that you were going to have to give that
15 testimony that day at your plea?

16 A No, I thought I would just go up in front of the
17 judge and April would speak on my behalf and whoever was
18 there, my family members or whatever she had, you know, to
19 do and that I would be sentenced. I didn't know I was
20 going to have to get on the stand.

21 And she was confused that morning, too. She
22 told me, she says "I don't even know if he's going to
23 accept the plea." Then I was sworn in and put on the
24 stand.

25 Q So you were not prepared to give that testimony that

1 day?

2 A No, ma'am.

3 Q Now, did you review the case and prepare with
4 Ms. Sampson for that testimony?

5 A No, not really, no.

6 Q You also during the course of that plea, you
7 apologized to the Court and indicated that you were on
8 oxycontin the day of the crime; is that correct?

9 A Yes, ma'am, that is correct.

10 Q Okay. And was it your understanding that the State
11 knew at that point that you had memory issues due to your
12 drug use?

13 A Yes, they knew from day one that, yes, I had a
14 problem with drug use and memory problems.

15 Q Now, it was your understanding that part of the plea
16 deal was that the State was going to remain silent and not
17 recommend any time?

18 A Exactly right, yes.

19 Q When Judge Newman accepted your plea, did the State
20 recommend any time?

21 A No, they didn't say anything.

22 Q And did the State remain silent as it was your
23 understanding they were going to do?

24 A Yes, ma'am.

25 Q Okay. Now, a main focus in your case was your

1 cooperation with the State; is that correct?

2 A Yes, ma'am.

3 Q And you had a co-defendant in your case. Could you
4 explain who that co-defendant was?

5 A His name was John Areheart. We were -- you want me
6 to explain how he was -- our relationship with each other?

7 Q What was he charged with?

8 A He was charged with accessory after the fact, but
9 they were going to indict him on murder, they were going
10 to take him to trial for murder.

11 Q And did the State want your cooperation in bringing
12 him to trial?

13 A Right, wanted my testimony.

14 Q Now, in this case you gave five statements; is that
15 correct?

16 A Yes, ma'am.

17 Q What was the reason -- could you explain to the Court
18 how it was that you gave five statements in this case?

19 A Never being in trouble, I was high, they would take
20 me in a room and sit there and, you know, interrogate me
21 for a few hours and take me down the hallway, then bring
22 me back, so I was just saying a few things and finally I
23 told them, "Look, I'll tell you what happened." It was
24 after 17 hours or however long I was down there, since 9
25 that morning. I might have gave the statements 12 or 13

1 hours later.

2 Q And had you discussed suppressing those statements or
3 the use of those statements in trial with your attorney?

4 A Have I talked what?

5 Q Did you discuss suppressing those statements or the
6 use of those statements in trial?

7 A Yes.

8 Q And what were you told?

9 A April said there's no way you're going to get them
10 suppressed, they're coming in.

11 Q Now, you had a pretrial meeting with the State; is
12 that correct?

13 A Yes, ma'am.

14 Q And that was because Mr. Areheart was supposed to go
15 to trial on October 10th, 2005?

16 A Yes, ma'am.

17 Q And you met with the State on Friday, October 7th; is
18 that correct?

19 A Yes, ma'am.

20 Q Now, on October 6th, did you receive some documents
21 from your attorney the day before your meeting with the
22 State?

23 A Yes, April come down to the county jail and brought
24 the documents to me.

25 Q And what were those documents?

1 A The statements that I had made.

2 Q And you received those the night before you were
3 supposed to meet with the State?

4 A Yes, ma'am.

5 Q Did you have adequate time to go over those before
6 you met with the State?

7 A No, ma'am.

8 Q Now, you met with the Solicitor for approximately how
9 long on Friday, October 7th?

10 A Almost four hours.

11 Q And did you feel that you properly prepared for that
12 meeting with the Solicitor?

13 A No. I thought my attorney was going to be present
14 and she wasn't even there. It was just me with the
15 Solicitor and some other gentleman.

16 Q And what was it that the Solicitor went over with
17 you?

18 A She went over some time lines and some things about
19 phone calls and stuff that I just, you know, I told her
20 it's been so long, I can't recollect and recall, you know,
21 certain calls that were made and stuff.

22 I thought mainly it was going to be over the
23 statements that I had made, you know, and I just couldn't
24 recall a lot of things.

25 And I told her that I was trying, you know, gave

1 my best effort to work with the State and be as
2 cooperative as I could, but, you know, it was after three
3 years, I was high on oxycontin that day, and the memory,
4 you know, was terrible on some of that.

5 But like you had asked me earlier, they was well
6 aware of the memory problems that I had.

7 Q And it was your understanding that your attorney was
8 going to be present at that four-hour meeting at the
9 Solicitor's office?

10 A Yes.

11 Q Now, Mr. Areheart was called to trial October 10th,
12 2005, here at the Richland County Courthouse?

13 A Yes, ma'am.

14 Q And were you present that day?

15 A Yes, ma'am.

16 Q And where were you located?

17 A In the tank in the basement here at Richland County
18 Courthouse.

19 Q Did you have communication with your attorney that
20 day?

21 A She had come down and told me that she believed John
22 was going to plea out to manslaughter.

23 Q And were you concerned at that point what was going
24 to happen to you if he pled out?

25 A No, because I was still under the understanding that

1 I was going to receive from eight to ten years.

2 Q And at that time did you find out that Judge Newman
3 would not be sentencing you?

4 A Right. She said that since John had took the plea in
5 front of Lloyd, she would like to take me up in front of
6 Lloyd.

7 Q And did she indicate to you the amount of time that
8 she thought Judge Lloyd would give you?

9 A She assumed anywhere between eight and ten years.

10 Q And did she give you her reasoning for that?

11 A Because normally that's what he give drug dealers if
12 they messed around and they were in that predicament and
13 that, you know, she said she had it worked out to him,
14 you know, that he liked her and she felt good about it.

15 Q And you referenced drug dealers. Could you just
16 explain and give some context, was the victim in this case
17 known to be a drug dealer?

18 A Yes, ma'am, he was a known drug dealer who was being
19 investigated, I believe, by the Feds or --

20 MR. PETRANO: I object to that speculation as to
21 the investigation.

22 THE COURT: Sustained.

23 BY MS. BLANCHETTE:

24 Q Now, your attorney told you that she thought Mr.
25 Areheart was going to enter a plea. Did she come back

1 down and explain to you that he had entered a plea?

2 A Never seen her.

3 Q So she didn't return again that day?

4 A Didn't return.

5 Q How did you find out about his plea?

6 A I found out when I got back to the county jail.

7 Q And how did you find out that information?

8 A From another inmate that was in the van with Mr.
9 Areheart when they left the courthouse.

10 MS. BLANCHETTE: Your Honor, may I approach the
11 witness?

12 THE COURT: Sure.

13 BY MS. BLANCHETTE:

14 Q Mr. Smith, could you identify what this appears to be
15 for the Court?

16 A The State of South Carolina versus John Areheart,
17 defendant. It's a motion to disqualify a witness.

18 Q And is that John Areheart that was the co-defendant
19 in your case?

20 A Yes, ma'am.

21 Q And you've read through this. Who is the witness
22 that this motion is attempting to disqualify?

23 A Me.

24 MS. BLANCHETTE: Your Honor, at this time I'd
25 move this as Applicant's No. 1.

1 MR. PETRANO: Your Honor, I'm not sure what the
2 relevance is, and also I'd like to just tailor my
3 objection to qualify in the sense that if this does come
4 in, whatever statements are made, is that to offer them as
5 truthful just because it's in the motion? That's all. I
6 just don't understand, it's not an affidavit or anything.

7 Am I making any sense, Judge?

8 THE COURT: Yes.

9 MS. BLANCHETTE: Your Honor, the purpose for
10 introducing this is the next line of questions I was going
11 to have is whether or not he was aware of this motion.

12 THE COURT: This is non-jury. She's allowed to
13 proffer it.

14 MR. PETRANO: Thank you, Judge.

15 (WHEREUPON, Applicant's Exhibit No. 1 was marked
16 for identification and received into evidence.)

17 THE COURT: Who represented Mr. Areheart?

18 MS. BLANCHETTE: I'm representing Mr. Areheart?

19 THE COURT: Who represented him?

20 MS. BLANCHETTE: Mr. Truitt.

21 THE COURT: Chip Truitt?

22 MS. BLANCHETTE: Chip Truitt, yes.

23 BY MS. BLANCHETTE:

24 Q Now, Mr. Smith, was your case on the same track with
25 Mr. Areheart, or were you guys at the same type of

1 preliminary hearings and appearances, or were you on
2 different tracks?

3 A Different tracks. I never had a preliminary hearing.

4 Q Now, I've handed you this motion to disqualify your
5 testimony that was filed by your co-defendant's attorney.
6 Did your counsel obtain a copy of this motion and review
7 it with you?

8 A No.

9 Q Could you flip to the last page and tell us the date
10 that this was filed?

11 A August the 4th of 2005.

12 Q Now, this was filed August 4th, 2005, and you were
13 not back in court until October of 2005?

14 A Correct.

15 Q Now, prior to today, had you had the opportunity to
16 review the contents of this motion?

17 A Never seen it, just 'til today.

18 Q And is it your understanding that this motion was
19 presented to Judge Lloyd during the day that Mr. Areheart
20 was supposed to go to trial?

21 A No.

22 Q Well, is it your understanding that this motion was
23 an issue the day that Mr. Areheart was supposed to go to
24 trial?

25 A Right.

1 Q Did they discuss whether or not you were going to be
2 allowed to testify?

3 A I was just told that the State was going to
4 disqualify me for, you know, to be a witness or something.

5 Q And did you have concerns prior to today about the
6 content of this motion that was filed to disqualify your
7 testimony?

8 A Yes, it's concerned me since when I heard it in
9 October of -- November of 2005.

10 Q Now, there's a couple of things in here, and we're
11 not presenting this for the truth of the matter asserted,
12 this is as to whether or not you knew that this motion had
13 been filed and presented to Judge Lloyd.

14 Specifically on page one, it says: "That
15 Mr. Smith has proven to be a liar and did not tell the
16 truth when placed under oath at his guilty plea on
17 November 15th, 2004."

18 Did you know that information had been presented
19 to the Court?

20 A No, ma'am.

21 Q Turning to page two at the bottom it says:
22 "Mr. Smith has lied multiple times to law enforcement and
23 has lied at his guilty plea while under oath. Because of
24 Mr. Smith's egregious history of lying, the defendant is
25 compelled to make this motion to prevent such a dishonest

1 and self-serving individual for making a mockery of the
2 obligation to tell the truth, in trying to trick the jury
3 into convicting an innocent individual so that he can
4 receive a lighter sentence for brutally murdering
5 Mr. H. B. Sharpe."

6 Were you aware that that information was
7 contained in this motion presented to Judge Lloyd?

8 A No, ma'am.

9 THE COURT: Well, that's more of an assertion
10 than information. Go ahead.

11 BY MS. BLANCHETTE:

12 Q Now, on page three it goes into the details of your
13 proffer and why the information you gave was false or why
14 you were lying. Were you aware of that fact, that he had
15 put that in this motion?

16 A No, ma'am.

17 Q On page four it goes into two witnesses that were
18 going to be called to testify to verify that you were a
19 liar and that you had stolen money and drugs from the
20 victim. Were you aware of that information?

21 A No, ma'am.

22 Q On page five it goes into further detail of how you
23 lied and that you had also lied regarding the series of
24 events that you gave to Judge Newman. Were you aware of
25 that information?

1 A No, ma'am.

2 Q On page six it indicates that the witnesses that you
3 had referenced, that that was a lie and those witnesses
4 did not exist. Were you aware of that information?

5 A No, ma'am.

6 Q On page six in the last paragraph, it says: "We know
7 that Randy Smith flunked a polygraph test."

8 Were you aware that that information had been
9 presented to the Court?

10 A No, ma'am.

11 Q So in all, in reviewing this motion and knowing that
12 it had been presented to Judge Lloyd through the course of
13 the day when Mr. Areheart was supposed to go to trial,
14 would you have felt comfortable or proceeded to being
15 sentenced by him knowing that he had this information?

16 A Absolutely not.

17 Q Is that something that you had the opportunity to
18 discuss with your attorney ahead of time or review with
19 her?

20 A No, ma'am.

21 Q To your knowledge, did she have a copy of this motion
22 that was filed in August before you went to court in
23 October?

24 A No, ma'am.

25 Q Now, regarding that sentencing, did your attorney

1 obtain a copy of the plea transcript that contained your
2 proffer to provide to Judge Lloyd?

3 A No.

4 Q Did your attorney reference the fact that the State
5 had agreed to remain silent, and they did at the plea?

6 A Did she what now? I'm sorry.

7 Q During the sentencing in front of Judge Lloyd, did
8 your attorney bring it to the Court's attention that the
9 State had agreed to remain silent, and they did at the
10 plea portion?

11 A Right. At plea portion they remained silent and
12 this -- and Lloyd, no, ma'am, she did not.

13 Q Now, on page five of your sentencing transcript, it
14 indicates that Judge Lloyd had heard your co-defendant's
15 plea so they weren't going to go into the facts. Were you
16 aware of the fact that he had heard your co-defendant's
17 plea?

18 A No, ma'am.

19 I'm not understanding. Did he hear John
20 Areheart's plea?

21 Q On page five of the plea transcript, the State
22 indicates that Judge Lloyd had just heard John Areheart's
23 plea so they weren't going to go into a detailed
24 recitation of the facts.

25 A Right. No, I did not know.

1 Q Okay. And were you comfortable of the fact that they
2 were relying on the facts from his hearing for your
3 sentencing?

4 A Would I have been comfortable, or would I --

5 Q Are you now?

6 A No, ma'am.

7 Q Now, on page six, the State indicates that the only
8 deal is they're dropping it to voluntary manslaughter.
9 Was that your understanding?

10 A And that they would remain silent and no
11 recommendation and that I would, you know --

12 Q And then on page seven and eight, the State says that
13 they made a good effort to work with you, but your
14 credibility became an issue. And that you were competent,
15 but your memory was shot from drugs.

16 How much knowledge did you have before that day
17 that your competency or memory was going to be an issue?

18 A Well, I knew they knew from that day when the
19 negotiating started that I had a memory problem, I mean,
20 due to the drug use and everything --

21 Q So were you -- go ahead.

22 A -- that day.

23 Q A what?

24 A You know, just due to the drug use on that day.

25 Q So were you surprised when the State, all of sudden,

1 is saying that you cannot testify due to these issues
2 since they knew it all along?

3 A Yes, ma'am.

4 Q Now on page 12, the solicitor requested that you
5 receive the maximum sentence. What was your reaction to
6 that?

7 A Total shock.

8 Q And what was your understanding that the plea deal
9 was for?

10 A That the State would remain silent and that I was
11 going to receive anywhere between eight and ten years.

12 Q And at the time of the plea when Judge Newman
13 accepted your plea they stayed silent; is that correct?

14 A Yes. That the State would remain silent, yes.

15 Q And it wasn't until your sentencing in front of a
16 different judge that they all of sudden asked for the
17 maximum sentence?

18 A All of a sudden, yes, ma'am.

19 Q They also introduced brutal crime scene photos. Were
20 you aware that that was going to be done?

21 A No, ma'am.

22 Q At that point when the State requested the maximum,
23 did you want to withdraw or stand down from the
24 sentencing?

25 A Yes, ma'am.

1 Q Did you have the opportunity to talk with your
2 attorney about that?

3 A No, ma'am.

4 Q Now, when Judge Lloyd sentenced you, he said he
5 considered your cooperation but also the problem you were
6 to your co-defendant's case, and he sentenced you to 27
7 years.

8 A That's correct.

9 Q And now upon review of this motion, you understand
10 the information that was given to Judge Lloyd about the
11 problem you were to your co-defendant's case?

12 A Yes, ma'am.

13 Q Now, after the plea, did you -- or after the
14 sentencing and you received 27 years, did you have the
15 opportunity to meet with your attorney?

16 A Yes. She come down -- they took me back down to the
17 tank and she come down, it wasn't too long afterwards and,
18 you know, she just said she didn't know what had happened,
19 that she would file an appeal.

20 Q Did she indicate to you that she had some concern
21 about the information Chip Truitt had given to Judge Lloyd
22 regarding you?

23 A She had told me she had spoken with Chip Truitt, and
24 that yes, something along that line.

25 Q Now, there was a reconsideration on October 19th,

1 2005?

2 A Yes, ma'am.

3 Q And Judge Lloyd indicated that he agreed to hear the
4 motion because your attorney contacted him?

5 A Yes.

6 Q Okay. And her argument there on page 21 was that the
7 victim was under investigation for drugs and murder; is
8 that correct?

9 A That's correct.

10 Q And then on page 23 she tells the Court that you
11 always had a memory problem and the State knew it?

12 A Yes.

13 Q On page 25 she said that the time doesn't reflect
14 your cooperation when your co-defendant, Mr. Areheart, got
15 ten years?

16 A Yes.

17 Q And then finally, does she at all reference the
18 motion or the prejudicial information contained in it
19 during that hearing?

20 A No, ma'am.

21 Q Does she ever ask the Court if she could obtain a
22 transcript of your proffer to show, one, your cooperation
23 with the State, and two, that the State had remained
24 silent during your plea?

25 A No, ma'am.

1 Q After that hearing, the judge indicated that he
2 needed time to think about it and the next day he reduced
3 your sentence by three years; is that correct?

4 A That's correct.

5 Q After that, did you have any further communication or
6 contact with Ms. Sampson?

7 A She might have come down to the tank after that, but
8 beyond that, that was it.

9 Q Okay. And you were appointed an appellate defender
10 to handle your appeal; is that correct?

11 A That is correct.

12 Q And in our amendment and today you're on the stand,
13 you're alleging ineffective assistance also of appellate
14 counsel?

15 A Yes, ma'am.

16 Q And that is because your appellate counsel didn't
17 address the reconsideration hearing?

18 A That is correct.

19 Q Did you attempt to bring that to your appellate
20 defender's attention?

21 A Yes.

22 Q And what happened when you brought that to his
23 attention?

24 A He just, you know, didn't really -- just, you know,
25 said there really wasn't anything there.

1 Q Now, Mr. Smith, I've gone over everything we've
2 prepared for today, and we've met several times to prepare
3 it.

4 THE COURT: Let the record reflect that the
5 appellate counsel was Bob Dudek.

6 MS. BLANCHETTE: Thank you, Your Honor.

7 BY MS. BLANCHETTE:

8 Q I would like to ask you two questions: One, if you
9 would have known, or if your attorney would have consulted
10 with you, would you have withdrawn your plea in front of
11 Judge Lloyd once the State requested the maximum sentence?

12 A Yes, I would have.

13 Q And in reviewing this motion today, do you have
14 concern about the fact that Judge Lloyd was made privy to
15 this motion and then turned around and sentenced you the
16 following day?

17 A Do I have concern that he had it?

18 Q Yes.

19 A Yes.

20 Q And based upon what we've gone over today and the
21 questions I've asked you, you're alleging that your
22 attorney was ineffective?

23 A Yes.

24 Q And but for her deficient performance you would not
25 have pled guilty and you would have proceeded to trial?

1 A That is correct.

2 Q Okay. And you're asking the Court today for a new
3 trial?

4 A For a new trial, yes, ma'am.

5 Q Mr. Smith, is there anything else that you'd like to
6 bring to the Court's attention?

7 A No, that I just, you know, like to go back and have a
8 new trial and let 12 jurors decide my fate.

9 Q And it was your understanding when you entered the
10 plea that the State was not going to request the maximum
11 sentence?

12 A That was my understanding, they wasn't going to
13 recommend any sentence on me, that with my testimony
14 against Areheart, that they would let me plead to
15 manslaughter. It was an open plea, but she assured me it
16 would be anywhere between eight to ten years that I would
17 receive. I would have never had pled had I known that the
18 State was going to stand up and recommend the maximum
19 sentence or this motion was set in front of this Judge and
20 numerous other things that happened in my plea
21 proceedings.

22 Q And when these events unfolded the way they did, were
23 you relying on your attorney to pursue your best interest
24 and represent you on these matters?

25 A Yes, relying on April Sampson to represent me.

1 MS. BLANCHETTE: Your Honor, I have no further
2 questions.

3 THE COURT: Mr. Petrano.

4 CROSS-EXAMINATION

5 BY MR. PETRANO:

6 Q You said that you never went over the discovery or
7 that you never got a copy of the discovery? My notes
8 aren't clear.

9 A The discovery, I tried numerous times to get the
10 discovery brought to the county jail and it just could
11 never get it down there. But sometimes I was told that
12 there was a staph infection going throughout the jail and
13 April was pregnant with a child and she didn't want to
14 come down there.

15 THE COURT: Let the record reflect that the
16 witness testified previously that he received the
17 discovery information prior to trial; is that correct?

18 THE WITNESS: Yes.

19 THE COURT: Go ahead, Mr. Petrano.

20 BY MR. PETRANO:

21 Q And that you were actually preparing for trial with
22 Tara?

23 A With Tara, yes.

24 Q Okay. And so you knew what the State's case was
25 going to be?

1 A The State's case against me?

2 Q Yes.

3 A I knew they was going to take me to trial for murder;
4 is that what you're asking?

5 Q Yes.

6 A Yes.

7 Q You had given how many statements did you say?

8 A It was, I believe, five.

9 Q Okay. And basically you admitted to hitting the
10 victim with the rebar, right?

11 A That is correct.

12 Q All right. And you still maintain that and that's
13 what you pled to, right?

14 A Yes.

15 MR. PETRANO: Okay. Your Honor, may I approach
16 the witness?

17 THE COURT: Yes, sir.

18 BY MR. PETRANO:

19 Q You said that the State was supposed to -- that you
20 thought everything was going to be eight to ten, right?

21 A Right.

22 Q And I want to show you the transcript. I'm showing
23 you -- this is the one with Judge Newman, and so this
24 would have been the first one, right?

25 A Right.

1 Q Up there at the top, when you agreed to what the
2 State is doing on page eight, where in there does it say
3 that the State, or that the deal is eight to ten or
4 anything like that?

5 A "The Court: Any plea negotiated to ultimately reduce
6 the charge from murder to manslaughter, reduce the charge
7 --"

8 Q Keep reading, please.

9 A "That's the only --

10 Defendant: Yes."

11 Q And then in this case, once you were convicted and
12 sentenced, you also had a direct appeal, right?

13 A Yes, sir.

14 Q And, in this case, it was an Anders brief which gives
15 you an opportunity to write your own brief?

16 A Yes.

17 Q And you did that, correct?

18 A Yes.

19 Q And is this it?

20 A Yes.

21 Q I'm going to turn your attention to page seven. And
22 there's not a number on the pages, but it proceeds what is
23 numbered as eight.

24 Could you read the first line under the caption
25 "Argument," please.

1 A "Argument: The State's plea negotiation in this case
2 did include no recommendation as to sentencing. Oxycontin
3 was the motive for the murder in this case. The State
4 requests the maximum sentence to be imposed. The State
5 breached the original plea agreement for the following
6 reasons."

7 Continue reading?

8 Q Or you can tell us in your own words, you don't have
9 to read it. I mean, however you want to proceed.

10 A What do you want me to tell you?

11 Q My question is, sir, is there anything in there about
12 the eight to ten?

13 A No. That was between me and my lawyer, what my
14 lawyer had told me.

15 Q If I'm reading it right, to summarize, and you
16 correct me if I'm wrong, but your reasoning for the
17 conclusion that the State breached the deal was that they
18 actually asked for the maximum at the end of the day?

19 A No, they stood up and asked for the maximum
20 sentencing.

21 The understanding that I had through my attorney
22 was that the State wasn't going to recommend any time or
23 no recommendation, in which, in fact, they stood up and
24 recommended a maximum sentence to be imposed on me.

25 Had I known the State was going to do that, I

1 would have never entered into this plea.

2 I never wanted to enter into it to begin with,
3 Your Honor. I made the decision at the last minute.

4 MR. PETRANO: Nothing further, thank you.

5 THE COURT: Anything on redirect?

6 MS. BLANCHETTE: Nothing, Your Honor.

7 THE COURT: You may step down there, Mr. Smith.

8 THE WITNESS: Okay.

9 MS. BLANCHETTE: Your Honor, I would call April
10 Sampson to the stand.

11 APRIL SAMPSON, after being duly sworn, testified
12 as follows:

13 THE COURT: Please take a seat and spell your
14 last name for the record.

15 THE WITNESS: April Sampson, S-A-M-P-S-O-N.

16 DIRECT EXAMINATION

17 BY MS. BLANCHETTE:

18 Q Ms. Sampson, are you currently practicing law?

19 A I am.

20 Q And what area of law do you practice?

21 A Mainly criminal and some employment.

22 Q Okay. And how long have you been practicing criminal
23 law?

24 A Since 1999.

25 Q And were you previously with the Richland County

1 Public Defender's Office?

2 A I was.

3 Q And is that how you came into contact with Mr. Smith?

4 A That's correct.

5 Q Okay. And you were -- did you originally work the
6 case with Ms. Tara Lyons?

7 A I did. And I don't know -- when Gerald said that he
8 didn't know that that might be true.

9 The way it works in our office is once you've
10 determined that a case is a trial, then you get a second
11 seat with you. And Tara did that with me, but I didn't
12 meet Gerald until I actually took the case over.

13 Q And you took the case over from Ms. Tara Lyons?

14 A That's correct. I took it over, according to my
15 notes, it was around December of 2003.

16 Q And at that time were you all preparing for trial or
17 were you trying to work out a plea for him?

18 A At the time we were preparing for trial because my
19 remembrance of it was the entire time that Tara had it, it
20 was a trial.

21 Q And at that time was he facing a trial on the murder
22 charge?

23 A Correct.

24 Q And when was it that the State agreed to drop it down
25 to voluntary manslaughter; do you remember?

1 A I have in my notes, I was approached by the
2 Solicitor's office on November 10th of 2004.

3 The way that it happened, according to my notes,
4 is that I was in holding -- there's a holding cell down
5 below this building where the defendants are brought over
6 before they get ready for plea or whatever. I was down
7 there talking to someone else, not to Gerald, and they
8 came up and asked would Gerald be willing to testify
9 against his co-defendant in exchange for reducing the
10 charge to voluntary manslaughter.

11 Now, I'd asked them months before would they be
12 willing to reduce the charge to manslaughter, they've
13 never been accepting of that.

14 She wanted -- Ms. Cooper, it was Cooper then,
15 Vanessa Cooper wanted Gerald to proffer his testimony on
16 the record during the plea and that they would not take a
17 position on sentencing and I could take whatever position
18 I wanted to.

19 Q So it was your understanding from the original offer
20 that the State was going to remain silent?

21 A Correct.

22 Q Now, was there a plea offer for 15 to 20 that
23 Mr. Smith referenced?

24 A When he said that I looked. I remember that's what I
25 was trying to get initially. I don't remember ever

1 getting that.

2 Initially, the case was with Luck Campbell. I
3 have in my notes that I was asking her to reduce it to
4 voluntary manslaughter, but she refused to do so.

5 I don't have anything about the 15 to 20.

6 Q Just to go over, once the State had made an official
7 plea offer, was it to voluntary manslaughter; is that
8 correct?

9 A Correct.

10 Q And he'd be facing two to 30 years?

11 A Correct.

12 Q Did you give him any information as to the amount of
13 time that you thought he would be facing or he would
14 receive?

15 A I explained to him that he could get anywhere from
16 two to 30, but that we would be asking for a specific
17 amount of time, and I remember saying I believe around ten
18 years, that's what we would be asking for; that because he
19 would be helping the State out, that they would be more
20 likely to -- again, they weren't going to say anything,
21 they weren't going to fight us about that, and therefore
22 we would try to be getting that amount of time for him.

23 Q And you would agree, then, with Mr. Smith's statement
24 that it was his understanding that he could potentially
25 get ten years?

1 A I told him that's what we would be asking for, but
2 that the range is still two to 30.

3 Q And the date of the plea was November 15th, 2004, and
4 that was in front of Judge Newman; is that correct?

5 A That's correct.

6 Q And that day your client had to give a proffer. Had
7 you prepared him for that and gone over that with him?

8 A I had told him that. I have in my notes -- I
9 actually -- the first time -- I'll go through my notes.

10 The first time I talked to anybody about it was
11 the same day I got the offer. I actually spoke with his
12 sister and brother on the phone and explained that, tried
13 to narrow it down with the Solicitor what she wanted to do
14 through e-mails, made sure that everybody was on board on
15 the 12th. I talked to the Solicitor to make sure
16 everything was going -- that that was still the offer and
17 everything was going to be able to go down.

18 Again talked to the brother and sister on the
19 12th and they said that Gerald wanted to talk to me
20 specifically because he was unsure whether he wanted to
21 plead or not. I explained that I would not be able to go
22 down there in time to talk to him, but I gave them my home
23 number, said to call me on three-way at home, and that
24 they could do that.

25 They called me, according to my notes, around

1 9 o'clock that night on the 14th and I was able to talk
2 to Gerald that way on the phone, and that I explained the
3 concept of "hand-of-one" because he kept insisting that he
4 didn't do the final blow. And I had to explain to him
5 that if he's standing there, if he started it and his
6 co-defendant did it, that's "hand-of-one is the hand of
7 all." He's as guilty in the eyes of the law as the
8 co-defendant, even though he didn't strike the final blow.

9 Then we met on the 15th for about an hour and
10 he stated that he wanted to plead. And he met at that
11 time with myself and Mr. Strickler, who was my boss at the
12 time, because I wanted to make sure he understood what was
13 going on, not just from me, but from someone else as well.

14 But the entire time I explained to him he's
15 going to have to proffer, he's going to have to talk and
16 tell what had happened as part of the plea.

17 Q And you had worked with him extensively and you were
18 aware that he had a memory problem or problems from his
19 drug use?

20 A Correct. And I -- as he said, they knew that. When
21 they initially -- when they came to me on the 10th, I
22 explained to them that he's got a problem with his memory,
23 that's why he's got -- even on the record, you've got
24 different statements.

25 When I speak to him, we have problems sometimes

1 with his memory, he'll forget something that I said and I
2 have to remind him, "Don't you remember I told you that?"

3 I don't think that he's making that up. I think
4 that that's just a problem he has. Whether it's due to
5 the oxycontin or whatever, he just has sometimes issues
6 with his memory.

7 Q So the State -- it's your understanding that the
8 State was fully aware of his memory issues when they
9 entered into this plea negotiation?

10 A I told them -- the day that they offered, I told them
11 that. And they had the different statements, so they knew
12 that to begin with.

13 Q So when this all of sudden becomes a problem the day
14 of John Areheart's trial, was that surprising to you?

15 A Yes. Nobody had told me that that was ever an issue.

16 I mean when he proffered, there was problems.
17 If you look at the transcript from his proffer in front of
18 Newman, they have to ask him questions because, again,
19 he's given a different statement than he's given before.

20 I'm not saying that John's running around giving
21 different statements. I just think that, depending on
22 what you ask him, you get a different answer -- I mean,
23 I'm sorry, Gerald gives different answers depending on the
24 way you phrase the question. And I don't think that he's
25 lying, I just think that it depends on how you ask him the

1 question.

2 Q So the State entered into this plea deal with you and
3 with Mr. Smith knowing about his memory problems and
4 they've agreed to stay silent regarding sentencing?

5 A At the time that we entered into everything, yes.

6 Q All right. And that's, in fact, what happened at the
7 plea in front of Judge Newman, they did not make any
8 recommendations regarding the amount of time that they
9 would like?

10 A Right. The reason at that time nobody said anything
11 about sentencing is Newman was not going to sentence him
12 that day, because the hold up was they had to have the
13 trial for Areheart, so - with any plea offer that has to
14 do with whether the person is going to testify or not, he
15 can change his mind at any point and not testify, so
16 they're not going to do any sentencing at least from the
17 State's perspective at that time until the defendant has
18 done his part, which is testify.

19 Q But, to Mr. Smith, it would appear that day that they
20 were going along with everything and the State was staying
21 silent as they had told you they would?

22 A Correct. And as far as I was concerned they were
23 going along with it. It was just now we were just waiting
24 for there to be a trial for Areheart.

25 Q And you had the opportunity to meet with Mr. Smith on

1 October 6th, which would have been the day before he met
2 with the State to prepare for Mr. Areheart's trial?

3 A October 6th of '05?

4 Q Yes.

5 A That's okay. I did not meet with him. I was in
6 trial. On October 6th of '05, I was in trial. I wouldn't
7 have remembered that without my notes.

8 Ms. Cooper called me before I started my trial
9 and said she was going to bring him over, and I said, "I'm
10 not going to be available on the 7th if you bring him over
11 this week at all, I'm going to be in trial."

12 She said, "Well, I have to do it this week and
13 prepare for next week."

14 And I said, "Well, you know, I'll send a clerk
15 to speak with Gerald, explain to him that, A, I'm not
16 going to be there when he talks to her, to find out if he
17 still wants to go for it, and to give him a copy of his
18 statements and his transcripts, because he didn't have
19 them."

20 Q So you weren't present for the four-hour meeting that
21 he had with the State?

22 A No. And the reason I didn't really have a concern
23 with not being there is, A, he'd already spoke. He'd
24 already put everything on the record. He'd given three --
25 four or five different statements in the discovery

1 already. They had already promised they weren't going to
2 charge him with anything else no matter what he said when
3 he met with her. He couldn't make it any worse. And I
4 couldn't be there. I didn't want to hinder his ability to
5 get the plea deal because I'm in trial. So he did meet
6 with her without me.

7 Q And at that time you had no indications that there
8 were any problems with him testifying with the State or
9 his cooperation with the State?

10 A No. And I had actually spoke with Chip Truitt and he
11 had not mentioned anything about the motion or any
12 problems other than that his client was still saying that
13 it was Gerald's fault. They finger-pointed at each other.

14 Q And I'm going to hand you, since you referenced the
15 motion, what was marked as Applicant's No. 1. Had you
16 previously seen that motion?

17 A I did not see this motion until you showed it to me
18 this morning.

19 Q Okay. Was that filed, in fact, in August of 2005, or
20 submitted in August of 2005?

21 A According to this it was.

22 Q And you never received a copy of that motion from any
23 party?

24 A No, and I wouldn't. It references Gerald, but I was
25 not the attorney who wrote it, nor was I representative of

1 the State, so Chip had no duty to give it to me. But it
2 would have been a good courtesy since I was talking to
3 him, he knew that I was Gerald's attorney, to have let me
4 know, but he never did.

5 Q So you weren't aware of the detailed allegations they
6 made about him being a liar, flunking the polygraph,
7 having false witnesses in that motion?

8 A I didn't know the contents of the motion until you
9 all started reading it.

10 The problem -- I knew he had made a motion, but
11 when you say someone makes a motion in criminal court, it
12 can be oral, it doesn't mean they did a written motion.
13 It's not like civil where everything's in writing. So
14 when they said he made a motion, for all I know, he came
15 to the court and said, "I'd like to be heard on this
16 matter." I didn't know there was a physically written
17 motion until you said so today.

18 Q And when they referenced that there was a motion,
19 whether it was oral or written, that would have been the
20 day that you appeared for John Areheart's trial?

21 A That's correct.

22 Q And that's when you first had knowledge that there
23 was this issue about disqualifying his testimony?

24 A That's correct.

25 And my understanding is that they had a

1 closed-door meeting with the judge to discuss the motion.

2 Again, why I didn't think there was a written --
3 a lot of times before you put a motion on the record, you
4 go in the back in chambers and you talk to the judge to
5 let him know kind of the issues of what you're about to
6 have this motion about, just so that the judge doesn't
7 come cold in hearing the matter. My understanding is that
8 they had this meeting with the judge and that's when, I
9 guess, Ms. Cooper decided to change what she wanted to do,
10 but my being told was that they had discussed the motion.

11 THE COURT: I'm so sorry. Is that Judge Lloyd
12 or Judge Newman?

13 THE WITNESS: Judge Lloyd, as far as I know.

14 THE COURT: All right.

15 BY MS. BLANCHETTE:

16 Q So it's your understanding that they had discussed
17 the motion with Judge Lloyd, but you didn't know the
18 content of the motion?

19 A Correct. I knew it had to do with his memory, and
20 that was it.

21 Q In reviewing it today, do you think it would have
22 been prudent to obtain that motion and to be able to
23 possibly mitigate that information?

24 A In hindsight, I mean, sure, it would have been great
25 to have had it if I knew it existed. No one told me.

1 No, I don't know how I would have known there
2 was a written motion. It's not like you go and it's
3 printed that somebody has done a written motion. You're
4 just not given this material. I had what they gave me.

5 Q Now, the main crux of his plea deal was that he was
6 going to cooperate with the State, but no one informed you
7 about this motion and that the cooperation or his ability
8 to testify was not going to happen?

9 A That didn't -- I didn't know that till they told me
10 that Areheart had pled.

11 Q And were you present in court that day when Areheart
12 pled?

13 A I don't remember being there, but that doesn't mean
14 that I wasn't. I don't remember being there.

15 Q Do you remember meeting with Mr. Smith that day and
16 kind of keeping him informed of what was going on? That
17 would have been October 10th, 2005.

18 A Yes, I do remember talking to him. I have that it
19 was October 11th, but, either way, I do remember meeting
20 with him.

21 Q Now, Mr. Smith proceeded to sentencing in front of
22 Judge Lloyd. Did you have the opportunity to explain to
23 him why he wasn't going in front of Judge Newman?

24 A Correct.

25 The problem with Newman is he was not a resident

1 here, so he wasn't going to be around any time soon. We
2 were going to have to waive jurisdiction to go forward
3 with this plea or ask Newman to come specially to hear it
4 just for that sentence or wait until he showed up,
5 whenever that was going to be. So the only way we could
6 go forward with any sentencing was to waive jurisdiction
7 and let it go forward in front of any judge.

8 What he said about what I said about Lloyd is
9 correct. I had done two previous pleas in front of Judge
10 Lloyd where he had given the defendant as little time as
11 possible when the murder involved a drug dealer. We had,
12 without a doubt, evidence that the victim in this case was
13 a drug dealer. That's how they got to him so fast is they
14 were watching him. That's in his discovery, that's not
15 some fact he made up. So there was no doubt about that.
16 And I did tell him that, without a doubt, told him that.

17 Q So going in to being sentenced by Judge Lloyd that
18 day, you had informed him -- did you give him a kind of a
19 basic amount of time you thought he was going to get, or
20 you just told him that Judge Lloyd might be favorable to
21 his position?

22 A I told him what my past clients had gotten, which
23 were ten. They'd all -- the two that I had gone in front
24 of that had had similar circumstances had gotten ten
25 years.

1 And in talking with Lloyd, my understanding was
2 it's because they were drug dealers and if they were going
3 to take that chance at being involved in illegal activity,
4 then that's what they get, that was his perspective. I
5 mean, I did tell Gerald that.

6 Q Did you obtain a transcript of the plea to provide
7 the Court with the proffer?

8 A The transcript of?

9 Q The plea hearing in front of Judge Newman.

10 A I had it. I don't know if we gave it to the Court or
11 not. I had given a copy to Gerald. So I don't know --
12 I'll be honest, I don't know if we gave it to Judge Lloyd
13 or not.

14 Q Now, during the course of sentencing, they indicated
15 that Judge Lloyd had just heard John Areheart's plea and
16 they were just going to use the recitation of the facts.
17 Were you aware of the fact that he had just heard his
18 plea?

19 A Yes. When they say "just," again, it could have
20 been -- my remembrance is it was the day -- the day --
21 they were originally going to do Gerald the day before and
22 not the same day as Areheart, but because they couldn't
23 get the family there, they did them on that the same day
24 so the family wouldn't have to come twice.

25 Q Now, when the State gives their position on page

1 seven and eight, in summary they pretty much say he's not
2 competent, his memory is shot, so therefore we cannot use
3 him.

4 A Uh-huh.

5 Q Is it your testimony today that they knew that all
6 along?

7 A They knew that all along.

8 Q Then on page 12, the State requested the maximum
9 sentence. Was that a surprise to you?

10 A At the time, yes.

11 Q Was it your understanding that they were going to
12 remain silent as part of the plea deal?

13 A It was my -- when we made the plea deal, that was my
14 understanding. Having not had the ability to testify, I
15 could see from their perspective why that would remove
16 them not having to go along with what their plea deal was
17 I didn't expect that, but when they did it, I remember
18 going, well, I guess they don't have to go along with
19 their plea deal because he was not able to go along with
20 his part of it.

21 Did I expect it, though? No, I didn't expect
22 that.

23 Q And would it be fair to say that it was Mr. Smith's
24 understanding when he entered his plea, that the State was
25 not going to request the maximum sentence?

1 A I'd say yes.

2 Q So when we look at the plea to see if there was
3 knowing, voluntary, and understanding, his understanding
4 was no recommendation as far as sentence?

5 A I would say yes.

6 Q Now, you were able to obtain a reconsideration
7 hearing in front of Judge Lloyd?

8 A Correct.

9 Q And how did that come to be?

10 A I filed the motion. I mean, I was surprised at the
11 amount of time he gave him. So I didn't know why he had
12 done that. So I filed the motion as soon as we got done.
13 And while I was in court for something else -- I'm looking
14 at my notes to make sure I'm telling you correctly -- he
15 said, "I'll go ahead and hear your motion. I want to do
16 that on the following Monday." So he was amenable to
17 hearing it. Sometimes judges are not so amenable to
18 hearing a reconsideration motion.

19 Q Now, you presented several arguments on Mr. Smith's
20 behalf during that hearing. You never referenced the fact
21 that the State was supposed to remain silent. Is there a
22 reason for that?

23 A Oversight on my part. And I guess because we had
24 stated that that was the original offer, at least in my
25 memory we had stated it somewhere. I mean, the difference

1 is we have transcripts now. I have to rely that day on
2 what I can remember, and my memory of it was that we had
3 said that at some point, that his plea offer was that it
4 was an open plea and that they were going to not take a
5 position.

6 Having looked at the transcript, apparently that
7 was not said on the record, but we had chamber meetings
8 with him. So it's my fault for not being sure that it's
9 on the record, but the problem is, you talk to the judge,
10 you go in front of him, it's hard sometimes to remember
11 what was said when.

12 Q And Judge Lloyd agreed to reduce the sentence by
13 three years. What was your reaction to that?

14 A I still didn't think that was enough. I don't think
15 24 is the proper sentence for Gerald. I told him that
16 when he got the sentence. That's why I was like, let's
17 file your notice of appeal. You know, I don't normally
18 appeal a plea unless a client requests it.

19 Q Have you had the opportunity to review the appeal
20 that was done for Mr. Smith?

21 A No.

22 Q In that appeal, Appellate Defense didn't raise the
23 issue of reconsideration. Is that an issue that you
24 thought would be raised in his appeal?

25 A I will say this: The way that I describe law is you

1 go to a general physician when you're sick and then when
2 you find a particular problem like you've got cancer, you
3 go to an oncologist.

4 Asking me about an appeal is asking the general
5 physician, do I need to go to an oncologist?

6 I don't know anything about appeals, I don't do
7 them. So asking me should that have been appealed? Sure,
8 I guess it's an issue, but I don't know because I don't do
9 appeals.

10 Q Now, Mr. Smith said that once the State requested the
11 max, he would have wanted to withdraw. Did you have an
12 opportunity to discuss that with him, or did that cross
13 your mind?

14 A When he said that, my memory is we're standing up
15 there and I'm trying to think, do you want -- I thought I
16 asked him we could withdraw, but I don't know where we'd
17 go if we withdraw. My remembrance is that he said, "Let's
18 just go on."

19 If he says that we didn't, his memory may be
20 better than mine on that issue, but my remembrance is --
21 and I don't have it written in my notes, so I don't know
22 is what I'm going to have to say -- but my remembrance is
23 that we had a very brief whispering of "Do you want to
24 withdraw?" but not a full-fledged conversation.

25 Q Now, and this may not be a fair question, but are you

1 at all familiar with Thompson versus State, a 2000 Supreme
2 Court case?

3 A No.

4 Q Okay. And in that case they found that an attorney
5 was ineffective for not objecting when the State said they
6 wouldn't request the maximum and they requested the
7 maximum.

8 A Uh-huh.

9 Q Would you say today that you should have maybe
10 objected when the State requested the maximum?

11 A In hindsight, sure, I should have. At the time --

12 THE COURT: Excuse me, is that case out of
13 Charleston County?

14 MS. BLANCHETTE: One second, Your Honor.

15 THE COURT: Was it Judge Rawl's case?

16 MS. BLANCHETTE: I printed these off of a site I
17 don't usually use, so let me look at mine and then I can
18 tell you.

19 THE COURT: That's okay. That's fine. You
20 don't have to tell me.

21 MS. BLANCHETTE: I have a copy of both cases for
22 Your Honor, if you'd like those now.

23 THE COURT: All right.

24 MS. BLANCHETTE: Yes, it was Judge Rawl.

25 THE COURT: All right.

1 BY MS. BLANCHETTE:

2 Q Just one more brief question. Are you familiar with
3 Jordan versus State, a 1988 case on the same issue?

4 A No.

5 Q Okay. And you said it did cross your mind that maybe
6 you should have withdrawn or objected at that point?

7 A Yes.

8 Q Okay. But you didn't raise that to the Court's
9 attention?

10 A No. Again, I was unfortunately a little taken aback.
11 It was one of those things I didn't expect, so I wasn't
12 prepared. I wouldn't have had a court case, I wouldn't
13 have had anything, because I'm standing there in front of
14 a judge.

15 Q And was it your understanding that that could be
16 addressed or maybe remedied by the reconsideration?

17 A Yes, that's why we had the reconsideration hearing
18 was to discuss -- I guess I maybe should ask you, do you
19 mean about them not remaining silent, or about trying to
20 get his amount reduced?

21 Q The amount of time that he received.

22 A What I was trying to address was trying to get his
23 time reduced, not trying to withdraw his plea.

24 MS. BLANCHETTE: Your Honor, I have no further
25 questions.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. PETRANO:

4 Q You knew he could get two to 30 for the voluntary
5 manslaughter?

6 A Correct.

7 Q And he was prepared for the possibility that he had
8 to testify against Areheart?

9 A What do you mean by "prepared"? Had I prepared him?

10 Q In the sense that he knew he might have to go to
11 court, take the stand and testify at the trial.

12 A Right. And I wanted to just -- something that Gerald
13 had said that he didn't have his discovery. He's correct
14 that he didn't have his discovery.

15 The first time I met with him was December of
16 '03 and then I met with him again February of '04. In
17 February of '04, he asked me if he could have his
18 discovery and I had already talked to him about this once
19 the first time.

20 We reviewed his discovery in December of
21 '03, and then in February, he asked for a copy.

22 What I do when a client who's in jail asks for a
23 copy of their discovery is I make them to sign a waiver.
24 Because when you're in jail, if they tell you to leave
25 your discovery, you have to leave the cell only with your

1 information. I don't like for clients to have their
2 discovery when they're in jail because other people can
3 read it. So I advised him he'd have to sign the waiver
4 saying that I explained to him that it was dangerous for
5 him to have his discovery, but he can have it if he wants
6 to. And he said, based on me, what I just explained, he
7 didn't want it. So I never did give it to him until I had
8 to give him his actual statement so he could get prepared
9 to meet with Vanessa.

10 Q And that threat of another inmate or a detention
11 center, whatever they're called at the detention center,
12 another inmate looking at the material is particularly
13 prevalent with co-defendants, right?

14 A Well, not in his case because Areheart wasn't
15 arrested.

16 Q Okay.

17 A But, in his case, the only evidence against him
18 unfortunately, pretty much was him. I didn't want to add
19 to it by him having some other person coming in and
20 saying, well, he said XYZ.

21 For example, the same day that I met with him --
22 I met with him because he was testifying against -- in
23 Jimmy Causey's case, Dwayne Wilson was his cell mate, or
24 in the same dorm with him. And so that was why I was
25 meeting with him in the first place is because he might

1 have to give testimony that Dwayne Wilson had said he was
2 the gunman and not Causey.

3 So therein is what I'm talking about, people get
4 information when they're at the jail and then they offer
5 it in order to get their charges reduced. They often can
6 do that because they've read your discovery. That's why
7 we don't give it to them unless they sign the waiver
8 saying that's a problem and they understand it.

9 Q And at a certain point you had been preparing for
10 trial and taking over the preparation for trial from Tara,
11 right?

12 A Correct.

13 Q What was the avenue of defense going to be if you had
14 one?

15 A If we had one. The problem with Gerald's case is he
16 gave a statement initially that says: "I didn't do
17 anything."

18 Then later he gives a statement that says: "Oh,
19 I was there, but I didn't do anything."

20 Then it was: "I was there, I was standing there
21 and I watched Areheart do it."

22 His statements got progressively worse; the more
23 you asked him, the worse it got for him.

24 There was some other evidence. They had burnt
25 some evidence that could have been against them. There

1 were some seat covers, if I remember correctly, in his
2 truck. They burnt those, allegedly. They threw the rebar
3 and some other evidence in the river. There was just some
4 other evidence that could be used against him, including
5 Areheart. So it wasn't a slam-dunk case for us.

6 It was going to boil down to did a jury believe
7 that he didn't go in there with any intent to kill and
8 that he didn't know what Areheart was going to do, or that
9 he didn't do it at all, he was sitting out in the truck.

10 I mean, there was different -- sitting here
11 right now, I couldn't tell you the specific defense, but
12 mainly it was going to be, he didn't go there with
13 anything but to go buy oxycontin and Areheart decided to
14 beat H.B. to death.

15 MR. PETRANO: Nothing further, Your Honor.

16 THE COURT: Anything from you?

17 MS. BLANCHETTE: Nothing, Your Honor.

18 THE COURT: You may step down, Ms. Sampson.

19 Anything further?

20 MS. BLANCHETTE: I have one final witness, Rudy
21 Smith.

22 RUDY SMITH, after being duly sworn, testified as
23 follows:

24 THE COURT: Take a seat, Mr. Smith. Tell us
25 your full name and spell your last name for the record.

1 THE WITNESS: May I ask you to please speak up
2 because I'm kind of hard of hearing. I haven't been able
3 to hardly hear.

4 THE COURT: Tell us your full name and spell
5 your last name for the record.

6 THE WITNESS: Douglas R. Smith, S-M-I-T-H.

7 THE COURT: Thank you.

8 DIRECT EXAMINATION

9 BY MS. BLANCHETTE:

10 Q I'll come up here so you can hear me better.

11 A Yes.

12 Q Now, Mr. Smith, could you explain your relationship
13 to Gerald Smith?

14 A He's my brother.

15 Q Okay. And how is it that you became involved in his
16 case?

17 A Well, what do you mean "how I became involved"?

18 Q Did you meet with his attorney? What was your
19 involvement in his case?

20 A Yeah, I met with a Tara Lyons, me and my
21 sister-in-law met with her.

22 THE COURT: Are there any allegations of
23 ineffective assistance regarding Ms. Lyons?

24 MS. BLANCHETTE: No, Your Honor.

25 THE COURT: Thank you.

1 BY MS. BLANCHETTE:

2 Q Did you also have the opportunity to meet with April
3 Sampson or talk with her about your brother's case?

4 A Yes, ma'am.

5 Q Do you know about how many times you spoke with her,
6 met with her?

7 A Probably a half a dozen times or more, mostly on the
8 telephone; in fact, always on the telephone.

9 Q And you may or may not have heard their testimony
10 today that once --

11 A I got glimpses of it.

12 Q Okay. Once she was told that the State would drop it
13 to voluntary manslaughter and do an open plea, that she
14 called you. Did you receive a call about that plea offer?

15 A I think so, yes.

16 Q Okay. And do you recall if she told you whether or
17 not the State was going to ask for an amount of time?

18 A No, they wasn't.

19 Q The State wasn't going to ask for any time?

20 A Well, I think I learned that when he went before
21 Newman.

22 Q So you met with her the day of the plea also?

23 A Yeah.

24 Q And it was your understanding when he entered the
25 plea in front of Judge Newman, the State was going stay

1 silent or not ask for any time?

2 A Right.

3 MR. PETRANO: Your Honor, I'm going to have to
4 object. These are kind of leading. I think the testimony
5 should come from the witness.

6 THE COURT: She's made her point.

7 Are you going to beat it to death or what?

8 MS. BLANCHETTE: I'm done.

9 THE COURT: Thank you. Go ahead.

10 BY MS. BLANCHETTE:

11 Q Now, did you have --

12 THE COURT: No, I thought you were done. The
13 point is, there was no reference made on the record in
14 terms of the State remaining silent regarding sentencing.

15 MS. BLANCHETTE: Right. I was going to ask him
16 another question.

17 THE COURT: Go ahead.

18 MS. BLANCHETTE: Not regarding that matter.

19 THE COURT: Go ahead.

20 BY MS. BLANCHETTE:

21 Q Did you have an understanding as the amount of time
22 Ms. Sampson thought he would get?

23 A Yes.

24 Q And what was that?

25 A Eight to ten.

1 Q And did she tell you that herself, or how did you
2 find that out?

3 A She told me that herself.

4 Q And do you know her reasonings for that?

5 A Well, she explained to me that Judge Lloyd liked her
6 and that -- see, I had concerns about Judge Lloyd and the
7 whole proceeding that went on that day.

8 Q When he went in front of Judge Newman, what was your
9 understanding he was going to receive, you said eight to
10 ten?

11 A Yeah.

12 Q Okay. And were you present for his plea in front of
13 Judge Newman?

14 A Yes, ma'am.

15 Q And were you aware of the fact that he was going to
16 have to testify or proffer testimony that day?

17 A No, ma'am.

18 Q And were you surprised when he had to do that?

19 A Yes, ma'am.

20 Q And then were you also present the day that John
21 Areheart was supposed to go to trial?

22 A Yes, ma'am.

23 Q Were you in the courtroom, or where were you that
24 day?

25 A I was in the courtroom.

1 Q And who were you in the courtroom with?

2 A Well, I was by myself.

3 Q Okay. Did you have the opportunity to speak with
4 April at all that day?

5 A Yes, ma'am. That's when I expressed my concerns
6 about -- because Judge Newman had said that he would
7 retain jurisdiction over the case and defer sentencing
8 until after the trial.

9 Q And the day of John Areheart's trial, you found out
10 that Judge Lloyd would actually be sentencing your
11 brother?

12 A Yes, ma'am. That's when I expressed my concerns.

13 Q And did you also -- were you concerned with what you
14 saw going on in the courtroom that day?

15 A Yes, ma'am.

16 Q What was it that you saw or were aware of that day?

17 A Well, there was a lot of -- seemed like a lot of
18 confusion to me because there were people going in and out
19 of the courtroom.

20 THE COURT: That's normal, Mr. Smith.

21 Go ahead.

22 BY MS. BLANCHETTE:

23 Q And they were going in and out of the courtroom,
24 looked like they were having discussions about the case?

25 A Right, right. The lawyers and the judge and --

1 Q And you were just trying to figure out what was going
2 on and how it affected your brother?

3 A Yeah, and that's when April approached me and more or
4 less said that, you know, there's nothing to worry about,
5 that Judge Lloyd liked her and that Gerald's sentence
6 would be comparable to Areheart's eight to ten. And I
7 really didn't know what was going on. It was very
8 confusing.

9 Q But you stayed there that day and were trying to be
10 an active participant for your brother?

11 A Yeah.

12 Q Now, were you present for John Areheart's plea?

13 A Yeah.

14 Q And how much time did he receive?

15 A I believe it was 15 years. Fifteen or ten, I can't
16 remember.

17 Q And did you have the opportunity to speak with your
18 brother that night at the jail and let him know?

19 A I talked with him on the telephone.

20 Q Okay. And you told him about Areheart's plea?

21 A Yeah, because he was clueless as to what had
22 happened.

23 Q Were you present at your brother's sentencing in
24 front of Judge Lloyd?

25 A Yes.

1 Q And it was your understanding that day that the State
2 was going to stay silent and you thought your brother was
3 going to receive eight to ten years?

4 A Right.

5 Q And at that time the State requested the maximum
6 sentence?

7 A Right, with time served.

8 Q And were you concerned?

9 A I was shocked.

10 Q Okay. And then when your brother received a 27-year
11 sentence, what was your reaction?

12 A I was totally shocked. You could have knocked me
13 over with a feather.

14 Q Now, did you have the opportunity to talk to
15 Ms. Sampson or your brother after that?

16 A Well, I talked with April out in the hallway or
17 whatever, and she said she didn't know what had happened.

18 Q Did you have any further follow-up with her?

19 A Yes, because later on that he was going to
20 reconsider, that she'd filed a motion or something, I
21 don't know. I don't know if it was the next day or the
22 day after that that we went back and forth and he reduced
23 it another three years.

24 Q And was it your belief that he was going to reduce it
25 further than that?

1 A Yeah, I thought -- yeah, I thought maybe, you know,
2 he would reconsider it because he said he had a lot of
3 thinking to do.

4 MS. BLANCHETTE: Your Honor, if I could just
5 have one moment.

6 THE COURT: Sure.

7 MS. BLANCHETTE: Thank you. I have no further
8 questions.

9 MR. PETRANO: Nothing from the State, Judge.

10 THE COURT: You may step down there, Mr. Smith.
11 Anything further?

12 MS. BLANCHETTE: No, Your Honor. I just have
13 some additional cases that I'd like to hand up to the
14 Court, and with that, that concludes the applicant's case.

15 THE COURT: All right.

16 MR. PETRANO: I just have a case.

17 THE COURT: Let me make it easy for both of you.
18 I'll give you 30 days to submit proposed orders.

19 The question to me based on the Jordan case, Vic
20 Rowl's case out of Charleston is whether or not the trial
21 attorney should have mentioned on the record the fact that
22 the State failed to live up to what appeared to be a deal,
23 so that's the issue.

24 You all can address whatever other issues you
25 want, but I specifically know it was a Charleston case, it

1 was my case, and Vic Rawl was the PCR judge.

2 Let's take a break and we'll come back.

3 (The proceedings were concluded.)

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER
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34 STATE OF SOUTH CAROLINA)
5 COUNTY OF RICHLAND)
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78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Richland County, South Carolina, on the 8th day of
15 December, 2009.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 December 7, 2010

21 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

the beating on the person who turned him in to law enforcement, Jon Archeart. There is no direct or forensic evidence to link Jon Archeart to this horrific crime. Mr. Archeart has always maintained his innocence in this crime.

Believing that Mr. Smith was involved in the murder of H.B. Sharpe because of Mr. Smith's actions after the murder, Mr. Archeart turned Mr. Smith into the Richland County Sheriff's Department. Mr. Archeart showed law enforcement where evidence was, including Randy Smith's truck, which was subsequently seized by the sheriff's department. Mr. Archeart was helpful in every way to the sheriff's department. Mr. Archeart actually went into the hotel room of Randy Smith so the sheriff's department could apprehend Mr. Smith without difficulty. Without his assistance, Randy Smith may never have been arrested much less convicted. Mr. Archeart even met with the Fifth Circuit Solicitor's Office and was going to testify against Randy Smith before Mr. Smith accepted a plea bargain from the State. However, in spite of his cooperation and substantial assistance to law enforcement, the Solicitor's Office sought and received a direct presentment indictment against Mr. Archeart for murder. This direct presentment indictment was based in large part on the testimony of Randy Smith. However, as will be discussed below, Mr. Smith has lied multiple times to law enforcement and has lied at his guilty plea while under oath. Because of Mr. Smith's egregious history of lying, the Defendant is compelled to make this motion to prevent such a dishonest and self-serving individual from making a mockery of the obligation to tell the truth and trying to trick the jury into convicting an innocent individual so that he can receive a lighter sentence for brutally murdering Mr. H.B. Sharpe.

When arrested, Mr. Smith gave five different statements to law enforcement about the murder of H. B. Sharpe. On November 12, 2002 at 12:05 hours, Randy Smith lied to the police the first time and denied any knowledge of the murder. On November 12, 2002 at 17:03 hours, Randy Smith lied to law enforcement the second time when he told them that he did not strike or kill H. B. Sharpe. On November 12, 2002 at 19:15 hours, Randy Smith again lied to law enforcement when he told them that he had only seen the murder but had not participated in it. On November 12, 2002, Mr. Smith was given a polygraph exam and failed the polygraph. Finally, on November 12, 2002 at 23:00 hours, Mr. Smith gave his fifth statement and lied to the police again. Mr. Smith admitted to striking the victim on the head with a rebar and then grabbing the victim. At a minimum, he lied about Jon Areheart going through the victim's pockets and getting oxycontin.

At the guilty plea, on November 15, 2004, Mr. Smith told the court on page 20, lines 19-20 that he talked to an investigator, and she said that she had a warrant out for him. The prosecution will concede that this was a lie. Mr. Smith did not talk to an investigator about pending warrants. He did not have any pending warrants on November 8 or 9, 2002.

On page 22, lines 6-14, Mr. Smith indicated that he left the mobile home after the struggle started and sat in his car. Mr. Smith never indicated that he went through the pockets of the victim. It is an undisputed fact that H.B. Sharpe was a drug dealer who carried large amounts of cash on him. Mr. Sharpe was found dead on the floor with his pockets turned inside out and no money on him which is consistent with the murderer rifling through his pockets and stealing the money.

Once the murder and robbery was complete, Randy Smith drove away from the scene in his grey Toyota pick-up truck. At some point later that day, Mr. Smith ran over the well in Mr. Areheart's backyard. Mr. Donald Northcutt and his daughter, Jennifer Springer, came over to fix the well. Mr. Northcutt, a completely independent and unbiased witness, will testify that Randy Smith said he could only pay Mr. Northcutt \$20.00 even though the bill was \$65.00. Randy Smith said that if Mr. Northcutt would give him a ride to the hotel, then he could pay him the rest of the money. Mr. Northcutt agreed to take Randy Smith to the hotel. Once at the Holiday Inn near I-26, Randy Smith walked around the corner to hide from Mr. Northcutt. Mr. Smith then came back with a \$100.00 bill. Mr. Northcutt will testify that Mr. Smith paid for two nights of the hotel with two \$100.00 bills. Mr. Northcutt will also testify that Mr. Smith paid him \$40.00 more for the repairs to the well pump. Mr. Northcutt will testify that he thought it was unusual that Mr. Smith had as much money as he did.

Ms. Jennifer Springer, the daughter of Mr. Northcutt, will testify that Randy Smith gave her \$83.00 and some change in cash to get him a hotel room for the third night at the Holiday Inn. She will also testify that Randy Smith gave her father \$10.00 for gas.

Randy Smith admitted at the guilty plea that after the murder had occurred Mr. Areheart asked Mr. Smith for oxycontin. He then gave Jon Areheart \$40.00 to buy oxycontin. Mr. Smith also admitted that he had oxycontin. page 26, lines 6-14. The police did not find any oxycontin in the residence after the murder even though the victim was a known dealer of oxycontin.

Mr. Smith had H.B. Sharpe's stolen cash on him after the murder. Two independent witnesses will corroborate this fact. Mr. Smith admits that Mr. Archeart did not possess any drugs or cash after the murder. This is why Mr. Smith gave Mr. Archeart money with which he could purchase oxycontin. Obviously Mr. Archeart would not need to ask Mr. Smith for drugs or money if he was the one who robbed H.B. Sharpe. The only reasonable explanation for Mr. Smith having large amounts of cash and drugs on him after the murder is that he is the one who went through the victim's pockets and stole the money and drugs. Thus, Randy Smith is lying to the Court when he claims he left the house when the fight started and did not go back into the house. As we know from the crime scene, the victim's pockets were rifled through where he was found lying on the floor dead. Mr. Smith had money and drugs. Mr. Archeart did not. Mr. Smith's version of the murder cannot possibly be true. Mr. Smith perjured himself before the Honorable Clifton Newman.

Mr. Randy Smith continued to lie to the Court in his explanation as to why he returned in his truck to the crime scene. On page 23, lines 4-25, Smith gave an absurd explanation as to why he returned to the crime scene. He stated that he had to check out of his hotel room and that is why he went by the crime scene a second time. Mr. Smith *actually had to drive past the Motel 6* to get to the crime scene and then backtrack to the hotel. There is absolutely no reason why Mr. Smith would need to go by the crime scene to check out of his hotel. The only true explanation for him going back to the crime scene is that Jon Archeart wanted to go there to buy oxycontin. Jon Archeart did not know, however, that Randy Smith had already murdered H.B. Sharpe. Two more independent witnesses, Donnie Carter and Jimmy Lawson, will verify that after they told

Randy Smith and Jon Archeart that H. B. Sharpe had been shot, Jon Archeart wanted to go up to the house. Both witnesses will testify that Jon Archeart looked shocked when they told Archeart and Randy Smith that H. B. Sharpe had been shot. Both witnesses will testify that Randy Smith said, "Let's get the hell . . . of here."

In his guilty plea, Randy Smith lied to the Court when he told the judge that the two witnesses said H. B. Sharpe had committed suicide. Randy Smith further lied when he told the judge that Jon Archeart said he was not going back there. Both Jimmy Lawson and Donnie Carter will absolutely refute that statement. Mr. Smith was the one that refused to go back up to the house. Anyone who had just committed a murder would not want to go back to the crime scene when the police are on the way. However, Mr. Archeart wanted to go up to the house according to both Mr. Carter and Mr. Lawson.

Furthermore, we know that Randy Smith flunked a polygraph test regarding his involvement in the murder of H. B. Sharpe. To this point, Randy Smith has not passed a polygraph regarding the murder of H. B. Sharpe. He has without a doubt lied under oath multiple times about how the murder occurred. The Prosecutor has an obligation to seek justice and not merely to convict. The prosecuting attorney is the attorney for the state, and it is his primary duty not to convict but to see that justice is done. The Defendant moves that the prosecution not be allowed to call and vouch for a witness that is going to lie under oath about his role in a murder. Rule 3.4 (a) (4) of the S.C. Appellate Court Rules states that, "A lawyer shall not knowingly: Offer evidence that the lawyer knows to be false." If the witness can actually pass a polygraph, then the prosecution would have a good faith belief that the witness would tell the truth under oath. As it currently stands, Mr. Smith has proven that he will lie under oath. He has never passed a polygraph.

Thus, the Defendant would move that the Court rule that the Defendant is not competent to testify pursuant to South Carolina Rule of Evidence 601 (b) (2). The Court has the authority to rule that a proposed witness is incapable of understanding the duty of a witness to tell the truth.

Respectfully submitted,


David N. Truitt
Attorney for Defendant Jon Archheart
Koon & Cook, P.A.
2016 Gadsden St.
Columbia, SC 29201

August 4, 2005

Columbia, SC

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

) IN THE COURT OF COMMON PLEAS

) 2008CP407794

) Gerald R. Smith, 312027,

) Applicant,

) v.

) ORDER OF DISMISSAL

) State of South Carolina,

) Respondent.

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 MAY -5 AM 10:00

RICHLAND COUNTY
FILED**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 28, 2008. The Respondent made its Return on May 7, 2009. On November 19, 2009, the Applicant, through appointed counsel submitted an Amendment to Application for Post Conviction Relief. An evidentiary hearing into the matter was convened on December 8, 2009 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's brother Douglas R. Smith testified. The Applicant's trial counsel, April Sampson, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the

Gerald R. Smith, 312027, Order of Dismissal (2008CP407794)

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Applicant's records from the South Carolina Department of Corrections, and the documents from the Applicant's direct appeal. Because the Applicant's direct appeal was an Anders appeal the entire lower court record is in the Record on Appeal (ROA) and the pagination from the ROA will be used throughout this order.

The Applicant pled guilty and proffered his statement(s) at a plea proceeding with the Honorable Clifton Newman on November 15, 2004; however he was not to be sentenced until after the co-defendant's conviction. The Applicant is presently incarcerated following a guilty plea/sentencing before the Honorable Reginald Lloyd on October 25, 2005. The Applicant pled guilty to the following:

2-03	03G54011511	0116 16-03-0020 * 30 - L/D * Murder / Murder	24	Yes
Sentenced to:		0217 16-03-0050 * 30 * Manslaughter / Voluntary manslaughter	: as a lesser offense.	

The Applicant appealed his plea. Following an Anders brief, the South Carolina Court of Appeals denied the appeal.¹ State v. Gerald Smith, Op. No. 2008-UP-226 (S.C. Ct. App. filed April 11, 2008). The Remittitur was dated July 7, 2008.

¹ Anders v. California, 386 U.S. 738 (1967).

Gerald R. Smith, 312027, Order of Dismissal (2008CP407794)

In his amended PCR application the Applicant makes the following allegations:

- 1. Ineffective assistance of trial counsel and involuntary guilty plea, specifically but not limited to the following grounds:**
 - a. Failure to properly prepare and investigate the case.**
 - i. Failure to thoroughly review the discovery with the Applicant prior to his plea.**
 - ii. Failure to meet with the Applicant and properly prepare for trial and/or plea.**
 - iii. Failure to conduct an independent investigation or speak with any witnesses.**
 - b. Failure to provide effective assistance of counsel during the plea phase.**
 - i. Misadvised the Applicant that he would receive 10 years.**
 - ii. Failure to advise the Applicant about the proffer and deferred sentencing.**
 - c. Failure to provide effective assistance of counsel in relation to the Applicant's co-defendant's trial.**

- i. Failure to provide the Applicant with his statements in a timely manner and review them with him prior to his pre-trial meeting with the Solicitor's Office.
 - ii. Failure to properly prepare the Applicant for his pretrial meeting with the Solicitor's Office and failure to attend the pre-trial meeting.
 - iii. Failure to address the Motion filed by co-defendant's counsel regarding the Applicant's testimony.
 - iv. Failure to communicate with the Applicant on the day of his co-defendant's trial.
- d. Failure to provide effective assistance of counsel during the sentencing phase.
- i. Failure to notify the Applicant that he would not be sentenced by the Honorable Clifton Newman.
 - ii. Failure to obtain a transcript of the Plea Hearing.
 - iii. Failure to address the prejudice or bias from the Honorable Reginald Lloyd's handling of the Applicant's co-defendant's case.
 - iv. Failure to object when the State changed their position from the plea hearing and requested the maximum sentence.
 - v. Failure to withdraw the Applicant's guilty plea.
 - vi. Failure to address the State's change in position during the Reconsideration Hearing.

At the evidentiary hearing, Applicant proceeded, for the most part, on the allegations stated in the application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony 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 (1985).

The Applicant testified that he understands the risks and wants to proceed with the PCR. The Applicant explained he was arrested in November of 2002 and he unsuccessfully tried to retain attorney John Delgado. He explained that he met with his assigned public defender, Ms. Tara Lyons, and that they met four (4) or five (5) times. The Applicant explained that Ms. Lyons was using an investigator from the PD's office, Mr. McKneely. The Applicant testified that the first plea offer was for fifteen (15) to twenty (20) years. The Applicant explained that plea counsel told him later that there was an offer to plea to two (2) to thirty (30) years but that he would have to testify against the co-defendant. The Applicant explained that although he knew the plea would be from two (2) to thirty (30) years, it was his understanding from plea counsel that he would receive a sentence between eight (8) and ten (10) years. The Applicant explained that he was hesitant to plead guilty to a crime that he did not commit but he thought he had a few months to think about it. Later, the Applicant claims that he was brought to court for what he thought would be his

trial, but that plea counsel kept advising him to consider the plea offer, that he would likely get eight (8) to ten (10) years and the State would not recommend anything specific. The Applicant explained that he did not know that sentencing would be deferred and that he would have to proffer his testimony that day. The Applicant explained that he was high on OxyContin the day of the crime. The Applicant explained that he gave a total of five (5) statements. The Applicant explained that plea counsel informed him that it would be highly unlikely for the statements to be suppressed. The Applicant explained that he tried to cooperate and give truthful statement(s) but that his memory was "not so good" because of being on OxyContin. The Applicant testified that he never saw a copy of the motion to exclude his testimony from the co-defendant's trial (introduced as Applicant's #1). The Applicant testified that he is not comfortable knowing that he pled guilty and was sentenced by Judge Lloyd after Judge Lloyd addressed a motion from the co-defendant's case regarding the motion to exclude his (the Applicant's testimony). The Applicant claimed that he was not aware that Judge Lloyd had just heard the co-defendant's plea just before the Applicant's plea.² The Applicant claims that he thought the plea deal was that the State would drop the charge from murder to voluntary manslaughter and that they would remain silent as to what sentence

² This is directly contradicted by the transcript when it was explained that Judge Lloyd had just handled the co-defendant's plea. (ROA, p. 57 L. 22).

they wanted.³ The Applicant claimed that he tried to bring this up with appellate counsel.

Plea counsel testified that she was "2nd seat" in the case because it was thought it would go to trial. Plea counsel explained that she took over the case around December 2003. Plea counsel explained that the State approached her on November 10, 2004 and discussed the idea of reducing the charge to voluntary manslaughter if the Applicant was willing to cooperate. Plea counsel testified that up until that day, the State was not willing to lower the murder charge. Plea counsel explained that the agreement was that the State would remain silent as to any specific sentence request on behalf of the State, but that the Applicant was free to ask for any specific time. Accordingly, plea counsel explained that she advised the Applicant he could get anywhere from two (2) to thirty (30) years following a conviction for voluntary manslaughter, but that they would be asking for ten (10). Plea counsel testified that the Applicant was fully aware that he was first going to appear before Judge Newman to plea guilty, proffer his testimony and that his actual sentencing would be deferred. Plea counsel testified that she explained the concepts of "hands of one" to the Applicant because even considering his story it was still murder. Plea counsel testified that she consulted her boss, Douglas Strickler, the Public Defender for the 5th Circuit before agreeing to the plea/proffer. As plea

³ This is directly contradicted by the transcript, the Applicant told the plea court that the ONLY promise was to reduce the charge to manslaughter. (ROA, p. 8 L. 1 - 5).

counsel explained, everyone knew the Applicant had memory problems, he gave several different statements and that it was obvious it was not a great proffer. Plea counsel explained that at the time of the initial plea/proffer, the agreement was that the State would not ask for any specific time. Plea counsel explained that she was in trial when the Applicant met with the Solicitor but that she communicated with the Applicant via her clerk to verify that he still wanted to meet with the Solicitor. Plea counsel explained that the situation was already bad, that the Applicant could not make it any worse because it was a situation with two co-defendants blaming each other and the Solicitor knew he had given several statements. Plea counsel explained that she did not receive a copy of the motion to exclude the Applicant's testimony which was filed by co-defendant's counsel. Plea counsel explained that the Solicitor changed her course of action based on the motion to exclude the Applicant's testimony in the co-defendant's trial and the fact that the co-defendant pled guilty. Plea counsel explained that she informed the Applicant that although Judge Newman accepted the plea he would actually be sentenced by a different judge because Newman was an out-of-circuit judge. Plea counsel explained that she thought the sentence would be low with Judge Lloyd because the victim was a drug dealer, and she explained that to the Applicant and that she was guessing it would be around a ten (10) year sentence. Plea counsel testified that she was aware that Judge Lloyd heard the Areheart (co-defendant) plea prior to the Applicant's sentencing. Plea counsel explained with certainty that her explanation to the

Applicant regarding the plea deal was that the State would not ask for any specific time during sentencing, i.e. no recommendation. Plea counsel testified that it was an oversight on her part to not put the sentencing part of the plea deal on the record, but that they did have a meeting in chambers when that issue was explained. Plea counsel agreed that she should have objected when the Solicitor requested a specific sentence. Plea counsel explained that the Applicant did not have a copy of the discovery materials of his own until after he signed a waiver, but that they had reviewed the discovery materials.

The Applicant also presented testimony from Mr. Douglas Randy Smith who is the Applicant's brother. Mr. Smith explained that he also thought the State was not going to ask for any specific time in regards to sentencing.

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). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible.

Accordingly, this Court finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

The Applicant was not a credible witness, however his claim regarding the State's promise to stay silent as to sentencing was confirmed by plea counsel. It does appear that particular aspect of the plea deal was not put on the record. This Court is concerned in that a detailed analysis concerning deficient performance may go beyond this actual PCR case and into the professional norms of the prosecution and defense bar in this area/state. Meaning, it may be that there are plea deals that contain sentencing promises such as the one in this case (not to ask for a specific sentence), but that part of the "deal" is that the agreement for the sentencing is not to be put on the record. For example, the State may agree not to recommend a sentence but they cannot agree to make that assertion on the record (for policy reasons or to satisfy the victims). Therefore, it would not be deficient to fail to put something like that on the record. We have no claim that such a scenario applies to the case at hand, and as explained below the PCR fails due to the prejudice prong.

Although, it does appear that there may have been deficient performance by plea counsel for not stating the portion of the plea deal regarding sentencing recommendation on the record. The Applicant himself shares some of the blame. Early into the plea, he was specifically asked about the plea agreement:

THE COURT: HAS ANYONE PROMISED YOU ANYTHING TO
GET YOU TO PLEAD GUILTY?

Gerald R. Smith, 312027, Order of Dismissal (2008CP407794)
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DEFENDANT: NO.
 THE COURT: ANY PLEA NEGOTIATIONS OTHER THAN
 REDUCING THE CHARGE FROM MURDER TO
 MANSLAUGHTER?
 DEFENDANT: REDUCE THE CHARGE.
 THE COURT: THAT'S THE ONLY ---
 DEFENDANT: YES

(ROA, p. 7 L. 23 – p. 8 L. 5).

The Supreme Court of South Carolina has stated a bright line rule stated that “all plea agreements must be on the record . . . We also hold that prospectively for all plea agreements entered after the filing of this opinion, we will limit our review of a plea agreement only to those terms which are fully set forth in the record.” State v. Thrift, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994) “The effect of our opinion today is that neither the State nor the defendant will be able to enforce plea agreement terms which do not appear on the record before the trial judge who accepts the plea.” Id. at 296, 440 S.E.2d at 349.

The Applicant now claims that he would never have pled guilty if he knew the State would ask for specific time. This Court finds that there is no prejudice in this case because if the Applicant truly thought that was such a critical element of the plea agreement (beyond reducing the charge from murder to voluntary manslaughter) then he should have explained that to the plea court when he was specifically asked to do so. The plea court asked him to explain the bargain as he knew it, the only concern he mentioned was the reduced charge. It is the Applicant's negligence and failure to tell the plea court about this supposed critical element of

the plea agreement that negates any prejudice. By disposing of most, if not all, of the Applicant's claims due to lack of prejudice, this Court is in no way finding that plea counsel's performance was deficient. "The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." Strickland v. Washington, 466 U.S. 668, 697, 104 S.Ct. 2052, 2069 (1984).

Another indirect claim is that the plea court perhaps sentenced the Applicant harshly because of the Solicitor's request for the maximum sentence. This Court finds such a claim to be without merit. The analysis is multilayered. First, if there were no recommendations (which the plea court(s) thought was the case), then either party is free to request a favorable sentence. "State and the defendant have not agreed to sentencing. Therefore, either party is free to request a favorable sentence." State v. Rikard, 371 S.C. 295, 302, 638 S.E.2d 72, 76 (2006). Another consideration is, (assuming there ever was an agreement by the Solicitor not to request any specific sentence) whether the Solicitor improperly requested a specific sentence. This Court does not consider the Solicitor's request to be improper when considering the circumstances. The State was precluded from being able to use the Applicant as a witness when the Applicant changed his story at the plea/proffer. The State had already received several different statements from the Applicant. At his plea, Applicant changed his testimony again, this time on the record, so that the

State could no longer rely on his previous statement in court.⁴ Therefore, Applicant did not uphold his end of the bargain, but still received the benefit of pleading to the lesser-included offense of Voluntary Manslaughter.

The Solicitor explained, and the Record supports, that the Applicant gave a conflicting version of events to the plea court compared to his past sworn statement(s). In one of his statements the Applicant admitted to hitting the victim real hard with a piece of rebar type metal. However, at the plea/proffer, rather than admit to the facts he previously swore to, he tried to minimize his role and blame the codefendant, he admitted to striking the victim with the rebar but diluted the admission by claiming it was insignificant contact and probably did not do anything to harm the victim. (ROA, p. 59 – 60). The Solicitor explained that they attempted to work with the Applicant but it was he could not live up to his end of the bargain and tell the truth. (ROA, p. 59 – 61). Accordingly, this Court does not consider the Solicitor's purported deviation to be unexcused. Finally, as explained *supra* there is no prejudice because this was a brutal murder and the sentence received is fully justified considering the facts. The Applicant and his co-defendant beat an elderly man to death, and continued to beat him with large pieces of metal even after the initial blow which knocked him to the floor. (ROA, p. 13 – 14, 19, 43 – 44, 61 – 62).

⁴ See Areheart motion (Applicant's #1), p. 3.

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. The Applicant was not prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. 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 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

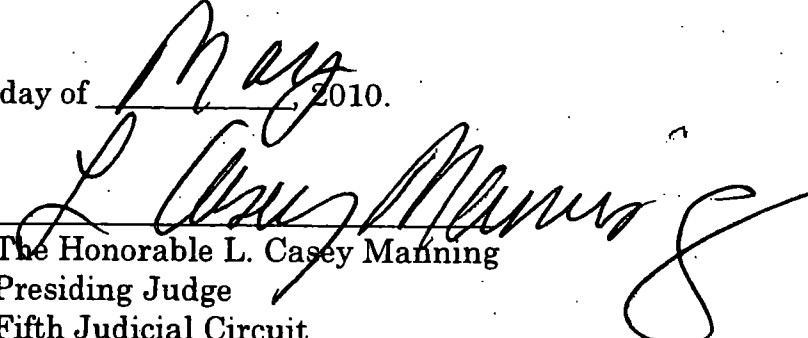
relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the 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), SCRCR, 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. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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 4 day of May, 2010.


The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit


Gerald R. Smith, 312027, Order of Dismissal (2008CP407794)
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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Gerald R. Smith, 312026,
Applicant,)

v.)

State of South Carolina,
Respondent.)IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2008-CP-40-7794

NOTICE OF MOTION AND MOTION
FOR REHEARING PURSUANT TO RULE
59(a), SCRCP, AND/OR MOTION TO
ALTER OR AMEND PURSUANT TO
RULE 59(e), SCRCP

2010 MAY 17 PM 1:44

PLEASE TAKE NOTICE that the Applicant, through his undersigned attorney, will move before the Honorable L. Casey Manning to direct an entry of a new judgment and/or alter or amend the judgment signed on May 4, 2010 and filed on May 5, 2010. A copy of the Order of Dismissal was received by the undersigned attorney on May 11, 2010.

COMES NOW the Applicant, by and through his undersigned attorney, and requests that this Court direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCP.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on October 28, 2008. An evidentiary hearing into the matter was convened in front of the Honorable L. Casey Manning on December 8, 2009 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Brian T. Petrano, Assistant Attorney General.

During the hearing, the Applicant testified on his own behalf. Applicant's counsel also called Douglas R. Smith and April Sampson, Esquire to the stand. Applicant's counsel introduced one exhibit during the presentation of the Applicant's case and provided the Court with copies of several cases in support of the Applicant's allegations. This Court also had before it a copy of the Application, the Respondent's Return, the records of the Richland County Clerk of Court concerning the subject conviction, and the Applicant's records from the South Carolina Department of Corrections.

At the conclusion of the evidentiary hearing, this Court requested that the parties submit proposed Orders. Applicant's counsel submitted a proposed Order on January 19, 2010, a copy of which is attached. This Order was resubmitted by Applicant's counsel via email and mail on several occasions.

The Applicant respectfully submits the following grounds in support of his Motion:

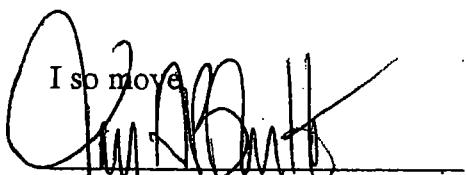
1. The Order of Dismissal fails to address the Applicant's testimony regarding Ms. Sampson taking over his case and the Order appears to attribute his testimony regarding Ms. Sampson to Ms. Tara Lyons.
2. The Order of Dismissal does not fully address the Applicant's or Ms. Sampson's testimony regarding the Motion to Disqualify Witness. Applicant respectfully requests that this Court review the Applicant's proposed Order where this issue is addressed on pages 8-9, 13 and properly address this issue.
3. The Order of Dismissal does not fully address the testimony and issue presented regarding the Motion for Reconsideration. Applicant respectfully requests that this Court review the Applicant's proposed Order where this issue is addressed on page 10 and properly address this issue.
4. The Order of Dismissal fails to fully summarize the testimony of Douglas R. Smith at the evidentiary hearing, which is detailed on page 11 of the Applicant's proposed Order. Pursuant to Marlar v. State, 375 S.C. 407, 653

S.E.2d 266 (2007), the Applicant respectfully requests that this Court review the Applicant's proposed Order and properly address this testimony.

5. The Applicant would respectfully request that this Court review and reconsider the Applicant's proposed Order, a copy of which is attached, prior to rendering a final decision on this matter.
6. The Applicant would further request that this Court specifically reconsider the testimony from the Applicant and his counsel that the State did not honor their agreement to remain silent as to sentencing and that plea counsel admitted that she was ineffective for failing to object or bring this matter to the plea court's attention. Pursuant to Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) and Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000), the Applicant would move this Court to find that plea counsel was ineffective when she failed to object when the State failed to honor their agreement to remain silent as to sentencing. The Applicant would urge this Court to review the detailed argument set forth on pages 16-17 in the proposed Order.

THEREFORE, based upon the foregoing the Applicant prays that the Court reconsider the Order of Dismissal and review the Applicant's proposed Order.

Furthermore, the Applicant respectfully requests that this Court direct an entry of a new judgment and/or alter or amend the judgment signed on May 4, 2010 and filed on May 5, 2010.

I so move


Tricia A. Blanchette
 Attorney for the Applicant
 PO Box 12725
 Columbia, SC 29211

May 11, 2010
 Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Gerald R. Smith, 312026,)
Applicant,)

2008-CP-40-7794

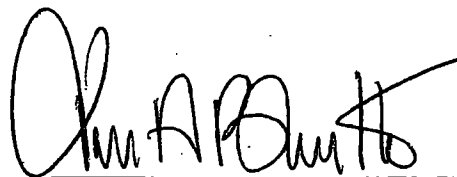
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed in the United States Mail on this 12th day of May 2010, a copy of a Motion for Renewing Pursuant to Rule 59(a), SCRCPP, and/or Motion to Alter or Amend Pursuant to Rule 59(e), SCRCPP, with postage prepaid and the return address clearly shown on said envelope to the Office of the Attorney General at:

Office of the Attorney General
ATT: Brian Petrano, Esq.
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney for the Applicant
PO Box 12725
Columbia, SC 29211

May 12, 2010

2010 MAY 17 PM 1:44
FILED
RICHLAND COUNTY
CLERK OF COURT
W. BRIDE

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Gerald Smith, #312027

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2008-CP-400-7794

ORDER

RICHLAND COUNTY
FILED
2010 JUN 11 PM 2:28
JEANETTE W. McBRIDE
C.C.P. & C.S.

This matter comes before the Court by way of the Applicant's motion to alter or amend pursuant to Rule 59, SCRCP. This matter originally came before the Court by way of an Application for post-conviction relief (PCR) filed October 28, 2008. The Respondent made its Return on or about May 8, 2009. On November 19, 2009, the Applicant, through appointed counsel submitted an Amendment to the Application for Post Conviction Relief. A hearing was convened at the Richland County Courthouse on December 8, 2009. The Applicant was present and represented by Tricia Blanchette, Esquire. The Respondent was represented by Assistant Attorney General Brian T. Petrano. By Order dated May 4, 2010, and filed May 5, 2010, this Court dismissed the Application. The Attorney for the Applicant received a copy of the Order of Dismissal on May 11, 2010. A timely Motion to Alter or Amend Judgment was then filed.

The Applicant in his motion has alleged that the Order of Dismissal does not make clear against whom his allegations of Ineffective Assistance of Counsel were raised. In reviewing the Order, this Court would note that the Applicant alleged that Ms. April Sampson, his second attorney, informed him of the first plea offer, and handled all of his representation from December 2003 on, including plea negotiations and his plea and sentencing. This Court would further note that when the Order refers to "Plea Counsel" it is referring exclusively to Ms. Sampson.

Smith, Gerald Randal - Order denying Applicant's Rule 59(e) motion (2008CP4007794)

The Applicant has further alleged that the Order failed to fully address the testimony regarding the Motion to Disqualify Witness in co-defendant's trial, and the Motion for Reconsideration, and that the Order failed to summarize Douglas R. Smith's (Brother) testimony.

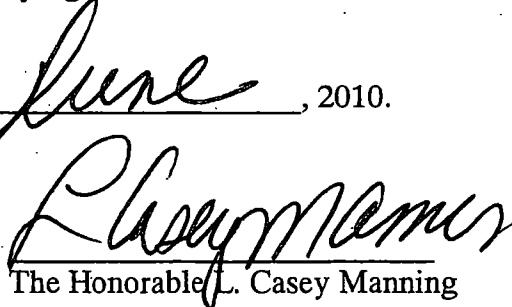
Based upon careful reconsideration of all of the evidence in this case and upon full consideration of the Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment. Plea Counsel and Applicant each testified that they had never before seen the Motion for Disqualification, which arose from a case in which neither was directly involved. Applicant's allegations that Counsel was ineffective regarding the motion for reconsideration are identical to the allegations regarding the plea and sentencing hearings, and are therefore properly addressed in the Order. Finally, Brother's pertinent testimony is summarized appropriately in the Order.

This Court further finds that oral argument would not aid in the reconsideration of the original judgment. The previous order fully comports with the requirements of Rule 52(a), SCRPC.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 10 day of June, 2010.


The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge

GERALD SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2010-164866

BRIEF OF PETITIONER

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

Whether plea counsel was ineffective in failing to object to the solicitor's asking for the maxim sentence at petitioner's guilty plea when it was in violation of a negotiated plea agreement?

STATEMENT

On October 25, 2005, petitioner appeared before the Honorable Reginald Lloyd in Richland County and pled guilty to voluntary manslaughter. A twenty-four (24) year sentence was imposed. April Sampson, Esquire represented petitioner.

Petitioner appealed his conviction and the appeal was dismissed by the Court of Appeals on April 11, 2008, after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Smith, Op. No. 2008-UP-226.

Petitioner filed an application for post-conviction relief on October 28, 2008. An evidentiary hearing was held on December 8, 2009, before the Honorable L. Casey Manning. Petitioner was present and was represented by Tricia Blanchette, Esquire. Respondent was represented by Brian T. Petrano, Assistant Attorney General. Petitioner and his brother, Douglas R. Smith, testified at the hearing. April Sampson also testified at the hearing.

On May 4, 2010, Judge Manning issued an order denying and dismissing petitioner's application for post-conviction relief. A subsequent Rule 59(e) motion was denied on June 10, 2010.

A petition for writ of certiorari was filed with the court on February 4, 2011. Respondent filed a return dated March 21, 2011. This court subsequently granted the petition and directed the parties to submit briefs.

This brief of petitioner follows.

ARGUMENT

Plea counsel was ineffective in failing to object to the solicitor's asking for the maximum sentence at petitioner's guilty plea when it was in violation of a negotiated plea agreement.

Petitioner was originally charged with murder. A co-defendant, Areheart, was also involved. Plea counsel testified that she reached a negotiated agreement with the solicitor where the murder charge would be reduced to manslaughter in exchange for petitioner testifying against the co-defendant. In addition, at petitioner's guilty plea the State would be silent as to sentencing. (App. p. 156, lines 1-22).

On November 15, 2004, petitioner appeared before the Honorable Clifton Newman and pled guilty to voluntary manslaughter. Sentencing was deferred until after petitioner's help with the Areheart case. On October 13, 2005, petitioner appeared before the Honorable Reginald Lloyd for sentencing. The solicitor explained the plea agreement to Judge Lloyd but left out the part about the State being silent as to sentencing. The solicitor stated she did not believe petitioner was forthcoming enough to help with the Areheart case so they could not proceed to try Areheart for murder. She did acknowledge, however, that petitioner did have a memory impairment due to a drug addiction to Oxycodone. The solicitor went on to describe the crime in detail along with crime scene photos. (App. p. 57, line 19 – p. 62, line 13). She then asked Judge Lloyd to sentence petitioner to the maximum. (App. p. 64, lines 22-23).

Plea counsel disagreed with the State's presentation and noted that petitioner had always been willing to testify. She said petitioner's memory problems and addictions make it where he cannot be entirely consistent when he is asked questions. (App. p. 65, line 1 – p. 66, line 13). She noted that the state let Areheart plead guilty to accessory after the fact with a 10 year sentence and 65% parole eligibility. (App. p. 68, lines 15-22).

Judge Lloyd initially sentenced petitioner to 27 years. (App. p. 71, lines 19-20). On reconsideration, the sentence was changed to 24 years. (App. p. 85, lines 23-24).

At no time did plea counsel ever object to the solicitor asking for the maximum sentence and advise the plea court that the negotiated sentence called for the State to be silent at sentencing.¹ Petitioner stated at the evidentiary hearing that the solicitor knew from day one when the negotiating started that he had memory problems. (App. p. 143, lines 12-20). He was in total shock with the solicitor requested the maximum sentence rather than remaining silent as agreed. (App. p. 144, lines 4-11). If he had known this was going to happen, he would not have pled guilt but would have proceeded to trial. (App. p. 148, line 8 – p. 149, line 4).

Plea counsel testified that she told the solicitor when she wanted to negotiate that petitioner had memory problems and had given four different statements. The solicitor knew this because she had the different statements.² (App. p. 159, line 17 – p. 160, line 12). Counsel said in past cases before Judge Lloyd he had given defendants as little as 10 years when the homicide involved a drug dealer. (App. p. 167, lines 8-25). The victim in this case was a drug dealer.

Plea counsel testified that it was a mistake on her part not to object and advise the court that the State had agreed to and was supposed to remain silent. (App. p. 170, lines 19-23; app. p. 173, lines 9-11; app. p. 174, lines 5-7).

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2)

¹ The complete plea agreement should have been put on the record. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994).

² The solicitor also chose not to use petitioner as a witness against Areheart because Areheart's attorney filed a motion to disqualify petitioner as a witness. (App. p. 60, lines 6-15).

that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice, petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State 325 S.C. 182, 480 S.E.2d 733 (1997). In addition, "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Roseboro v. State, 317 S.C. 292, 454 S.E. 2d 312 (1995).

In this case, counsel had admitted her error. She also admitted that she obtained ten (10) year sentences for her clients on cases of this type previously. In Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000), the Court held a defense attorney ineffective for failing to object when the solicitor recommended that the trial judge impose the maximum sentence in violation of a negotiated plea agreement. In Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988), another defense attorney was held ineffective in failing to withdraw a guilty plea after the State reneged on a plea bargain. Counsel in this case should likewise be held ineffective.

CONCLUSION

Petitioner's guilty plea should be vacated.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER.

This 19th day of February, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge

GERALD SMITH,

PETITIONER,

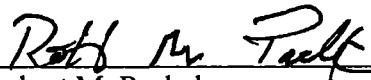
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STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

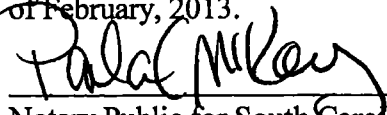
I certify that a true copy of the brief of petitioner, in this case has been served on Robert D. Corney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of February, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of February, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Richland County
L. Casey Manning, Circuit Court Judge
2008-CP-40-7794

Gerald Smith,

Petitioner,

vs.

State of South Carolina,

Respondent.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Assistant Deputy Attorney General\
Bar # 68571

Post Office Box 11549
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ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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STATEMENT OF ISSUE ON APPEAL

Probative evidence supports the PCR court's denial of relief where Petitioner failed to follow the plea bargain so counsel would be unable to enforce the agreement and where counsel's performance did not fall below professional norms and where the sentencing court took into consideration Petitioner's assistance and lack of assistance in his co-defendant's prosecution.

STATEMENT OF THE CASE

Petitioner pled guilty before the Honorable Clifton Newman on November 15, 2004. Sentencing was deferred at that time. Applicant then appeared before the Honorable Reginald Lloyd on October 13, 2005 and sentenced to twenty-seven years imprisonment. Plea counsel then filed a motion for reconsideration and after a hearing on the motion on October 19, 2005, Judge Lloyd lowered the sentence to twenty-four years imprisonment on October 20, 2005.

Petitioner appealed the conviction and sentence. The appeal was dismissed by the Court of Appeals pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Smith, Op. No. 2008-UP-226.

Petitioner filed an application for post-conviction relief (PCR) on October 28, 2008. Following a hearing on the application on December 8, 2009, Judge Manning denied relief by order dated May 4, 2010. A subsequent Rule 59(e) motion was denied on June 10, 2010. Petitioner filed a petition for writ of certiorari and the State filed its return. This Court granted certiorari. The State's Brief of Respondent follows.

STATEMENT OF FACTS

Petitioner Smith was originally charged with murder. In exchange for allowing Smith to plead guilty to the lesser offense of voluntary manslaughter, Smith was to make a proffer to the prosecution. The sentence was deferred until the prosecution of the co-defendant. App. p. 3, lines 7-13.

Smith and his co-defendant were charged with the brutal death of their oxycontin dealer, H.B. Sharpe. Sharpe was struck in the head about a dozen times with a rebar (basically, an iron bar) found in his trailer. A neighbor saw a grey Toyota pickup truck. Ronnie Edwards, who found the dead body, suggested to law enforcement they should talk to Smith. Law enforcement checked Smith's DMV records and discovered that Smith owned a grey Toyota pickup truck. App. pp. 9-15.

Law enforcement was already on their way to interview Smith when Smith's co-defendant, Areheart, provided law enforcement with a tip. Areheart claimed Smith came over to his residence and started burning clothes and wanted to hide his truck in Areheart's garage. Smith explained he wanted to hide the truck because he claimed he had warrants for his arrest for bad checks. According to Areheart, they decided to buy oxycontin from Sharpe, but when they arrived, they encountered two men in a van who said Sharpe was shot. Smith "feaked out" and they went to check Smith out of his motel room, which was near Sharpe's residence. Then they went back to Areheart's residence. Smith was so upset that he drove erratically and hit a well. They needed to call a plumber to fix the problem. App. pp. 15-17.

The State indicated at the guilty plea that the plumber would verify he arrived to find something burning. Smith and Areheart told the plumber it was yard debris. App. p. 17.

Based on this information, law enforcement picked up Smith and towed his truck. Smith gave five statements to law enforcement. The first claiming no involvement, the second claiming that he drove Areheart to Sharpe's and waited outside. In the third, he put himself inside the trailer. In the last statement, Smith claimed Areheart started an argument with Sharpe because Sharpe would not sell him anymore Oxycontin. Smith admitted hitting Sharpe over the head with the rebar and then Areheart took over and killed Sharpe. App. pp. 17-19.

The proffer

Smith claimed at the proffer that he went to Sharpe's with Areheart, but was nervous about it because he knew that Areheart and Sharpe had some arguments in the past. When they arrived, Areheart got in an argument with Sharpe. Smith hit Sharpe and then Smith went outside. Then Areheart came out and was agitated as they rode in the truck to a bridge. Smith proffered that Areheart threw something out, that at the time, he thought was the weapon, but Smith was not sure it was the weapon. When they arrived back at Areheart's, Areheart proceeded to burn various items. Smith assumed they were Areheart's clothes because Areheart got blood on his clothes at Sharpe's trailer. App. pp. 20-25.

After Smith gave this narrative answer, he was examined by the prosecution. He read aloud his fifth statement to law enforcement in which he admitted hitting Sharpe

with the rebar. Areheart then hit Sharpe repeatedly with the rebar when he attempted to fight back. Areheart killed Sharpe. Areheart disposed of the rebar at a bridge. In the statement, Areheart burned the items. App. pp. 31-33.

Smith agreed that this written statement was correct, including the fact that he hit Sharpe with the rebar first. However, Smith told Judge Newman that when he hit Sharpe, it was not that hard, it did not do anything to Sharpe. App. p. 36; pp. 42-44. This differed from Smith's fourth statement, in which he admitted hitting Sharpe real hard with the rebar. App. p. 59. Judge Newman accepted the plea and sentencing was deferred.

The sentencing hearing

At the sentencing hearing before Judge Lloyd, the prosecution advised Judge Lloyd that in preparation for trial, they met with Smith and discussed statements from other witnesses that conflicted with Smith's version of events. Smith then began to minimize his own role and placed the blame on Areheart, without demonstrating any problem recalling events. Consequently, Areheart's attorney filed a motion to exclude Smith's testimony and ultimately, the State felt they could not pursue a murder charge against Areheart and allowed him to plead guilty to accessory after the fact. The prosecution felt that Areheart had gotten away with murder due to Smith's unreliability. The prosecution noted Smith had some memory impairment due to his drug addiction, but felt that this was not a factor in Smith's continuously changing version of events. App. pp. 57-61.

The prosecution asked for the maximum sentence. App. p. 64. In response, counsel made a spirited argument that Smith was consistent with law enforcement about his involvement. App. 65-67. Counsel questioned the prosecution's charging decisions in regards to Areheart. App. p.p. 68-69. Smith apologized to the court. App. pp. 68-70. A member of the victim's family told Smith she forgave him. Judge Lloyd sentenced Smith to twenty-seven years imprisonment taking into consideration Smith's efforts to help the prosecution as well as the problems Smith caused with his co-defendant's case. App. p. 71.

The hearing on the motion for reconsideration

At the motion for reconsideration of Smith's sentence, Counsel advised Judge Lloyd that Sharpe kept the rebar to beat people who did not pay up for the illegal drugs. He was a gun-carrying drug dealer. App. p. 73. Counsel continued to argue that memory problems were what made trial preparation difficult, not Smith's willingness to cooperate. App. pp. 74-76.

The State argued in reply that they gave Smith the opportunity to come clean and he changed his version of events yet again in front of Judge Newman. The State observed the following:

Your Honor, I agree with Ms. Sampson that this oxycontin drug absolutely has an impact on people's recollection and ability to remember facts.

However, in this case, Your Honor, every time we would try to refresh his memory with statements provided by other witnesses, he would conveniently be able to remember that it was the co-defendant that did certain things, placing the blame on the co-defendant in certain matters.

And I just don't believe a jury would have believed him. We provided him with every opportunity to fulfill his end of the agreement. . . .

App. p. 86, lines 15-22.

Judge Lloyd sagely discussed his quandary:

Everybody says that – with all due respect about justice and all, I've got a dead person, quite literally, that had his skull caved in, and two defendants who were there, who admit to being there, whose ability to recount what happened either against the other or for their own personal benefit is somewhat impeded by their level of drug use.

App. p. 84, lines 14-20.

Judge Lloyd, who obviously gave the matter serious consideration, called the case the next day and reduced the sentence by three years. In so doing, noted: "[T]his is still a heinous act. And a lot of the circumstances of why we're here now and what you're complaining about is due to your own fault." App. p. 85, lines 19-22.

The PCR hearing

At the PCR hearing, counsel's testimony reflected that she remained partial to her client, but nonetheless counsel agreed that "when he proffered, there was problems." App. p. 160, lines 15-24.

Counsel was agreeable to have sentencing in front of Judge Lloyd because she had two clients in the past plead before Judge Lloyd where the victim was a drug dealer. They received lower sentences. Counsel understood that Judge Lloyd's view was that "because they were drug dealers . . . they were going to take that chance at being involved in illegal activity, then that's what they get, that was his perspective." App. p. 168, lines 1-5.

Counsel testified she was surprised when they asked for the maximum, but explained: "I didn't expect that, but when they did it, I remember going, well, I guess they don't have to go along with their plea deal because he was not able to go along with his part of it." App. p. 169, lines 13-20. Counsel recalled chambers meetings where the judge was advised that the original plea agreement was an open plea in which the State was not going to take a position. App. p. 171.

ARGUMENT

Probative evidence supports the PCR court's denial of relief where Petitioner failed to follow the plea bargain so counsel would be unable to enforce the agreement and where counsel's performance did not fall below professional norms and where the sentencing court took into consideration Petitioner's assistance and lack of assistance in his co-defendant's prosecution.

Smith alleges the PCR court erred in denying relief on the grounds that counsel was ineffective for failing to enforce the plea agreement. However, as counsel testified, she considered the matter and decided that the State was correct about his violation of the plea agreement. App. p. 169, lines 13-20. Accordingly, the record supports that she did not attempt to enforce the plea agreement as a matter of trial strategy and reasonable professional judgment.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The proper measure of attorney performance is reasonableness

under professional norms. Id. In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. Id. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) (citing Strickland).

"Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland. at 691. Therefore, "[j]udicial scrutiny of counsel's performance must be highly deferential." Id. at 689. Strickland therefore established the rule that in proving a claim of ineffectiveness, "the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. "Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

In Strickland, the United States Supreme Court declared:

... a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is,

the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.

Strickland, 466 U.S. at 689, 104 S.Ct. at 2065.

In the instant case, the plea agreement was no longer enforceable due to Smith's continuously changing version of events where his culpability waxed and waned. Counsel instead took a tact that maximized the mitigating aspects of Smith's conduct, emphasized the less than savory character of the victim, and minimized Smith's credibility issues.

Counsel provided effective representation in relaying Smith's alleged memory issues, the mitigating factors involved, and his cooperation in making a motion for reconsideration. Counsel's motion for reconsideration was successful as Judge Lloyd lowered the sentence by three years. Counsel also leveraged her experience with Judge Lloyd to pursue a strategy that emphasized that Sharpe was a drug dealer because she was aware Judge Lloyd apparently took a position that violence was an assumption of the risk for those in the illegal narcotics trade and therefore, sentences would be lower for those who did commit acts of violence on drug dealers. That Judge Lloyd did not stick to this reasoning with Smith does not diminish her excellent trial strategy otherwise.

Further, Smith was not prejudiced. It is apparent, based on Judge Lloyd's comments at the motion for reconsideration, that he would consider the plea agreement breeched by Smith's inconsistent statements during the proffer and trial preparation. Indeed, it appears Judge Lloyd was made aware of the prior agreement. App. p. 171. Additionally, Smith failed to show there was a reasonable probability the result would

have been different had counsel brought the matter to Judge Lloyd's attention during the sentencing or reconsideration hearings. Finally, the PCR court found Smith's testimony that but for counsel's alleged deficiency, he would not have pled guilty but gone to trial. App. pp. 207-210. Therefore, probative evidence supports the PCR court's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

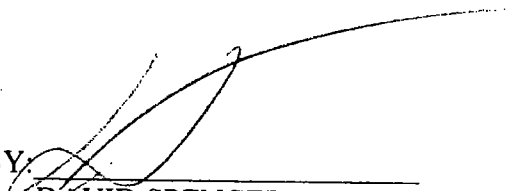
CONCLUSION

For all of the foregoing reasons, this Court should affirm the PCR court's denial of relief.

Respectfully submitted,

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June 21, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge
2008-CP-40-7794

GEARLD SMITH,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

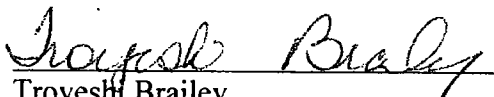
RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Brief of Respondent** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Robert M. Pachak, Esquire
PO Box 11589
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This 21th day of June, 2013


Troyesh Brailey
LEGAL ASSISTANT for the Respondent