

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Aiken County  
The Honorable James R. Barber, III, Circuit Court Judge

Appellate Case No. 2014-000254

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THE STATE,

Respondent,

v.

TAMMY SMATHERS,

Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE.....2

STATEMENT OF THE FACTS .....3

ARGUMENT.....5

    I. The trial court did not abuse its discretion in denying Appellant’s request for early parole eligibility pursuant to S.C. Code §16-25-90 where it found Appellant’s testimony not credible.

CONCLUSION.....8

**TABLE OF AUTHORITIES**

**Cases**

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001)..... 5

Dixon v. Dixon, 336 S.C. 260, 519 S.E.2d 357 (Ct. App. 1999)..... 6

Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999)..... 6

State v. Blackwell-Selim, 392 S.C. 1, 707 S.E.2d 426 (2011) ..... 5

State v. Grooms, 343 S.C. 248, 540 S.E.2d 99 (2000) ..... 5, 6, 7

State v. Lanev, 367 S.C. 639, 627 S.E.2d 726 (2006) ..... 5

**Statutes**

S.C. Code §16-25-90..... 1, 5

## **STATEMENT OF ISSUES ON APPEAL**

### **I.**

The trial court did not abuse its discretion in denying Appellant's request for early parole eligibility pursuant to S.C. Code §16-25-90 where it found Appellant's testimony not credible.

## STATEMENT OF THE CASE

Appellant Tammy Smathers pled guilty to voluntary manslaughter on February 8, 2013. (R. \_\_\_, Transcript of guilty plea.) She was sentenced by the Honorable James R. Barber, III, to fifteen years' imprisonment. (R. \_\_\_, Sentencing sheet.) A motion to reconsider sentence was filed on February 12, 2013. (R. \_\_\_, Motion.) A hearing was convened on December 12, 2013. (R. \_\_\_, Transcript of motion hearing.) Judge Barber denied the motion in a written order dated January 14, 2014. (R. p. \_\_\_, Order.)

## STATEMENT OF FACTS

Appellant shot her husband, Donald Lee Smathers (“Victim”), in the back of the head at their home in Aiken County on January 26, 2011. (Plea Tr. pp. 10-11.) Appellant initially informed law enforcement that Victim had been shot by Melvin Lowe. (Plea Tr. p. 12.) Subsequent investigation and interview with Victim revealed that Appellant had actually shot Victim. (Plea Tr. pp. 12-13.) Victim survived his injury but still required constant medical care. He was ultimately placed in a nursing home. (Plea Tr. p. 13.) Victim died nearly a year after sustaining the gunshot wound from complications:

[T]he final diagnosis was a history of being shot in the head..., post surgical removal of the portion of the right cerebrum and pneumonia of the right lung. ... the cause and mechanism of death was respiratory failure due to pneumonia due to traumatic brain injury due to a gunshot wound to the head.

(Plea Tr. pp. 13-14.) The death was ruled a homicide. (Plea Tr. p. 14.)

At Appellant’s guilty plea, evidence was presented that Victim had desired to reunite with his wife after the incident and was prevented from doing so only by the pending legal action against her. (Plea Tr. p. 16; p. 20.) Appellant appeared to share her husband’s desire to reunite. (Plea Tr. pp. 17-18.) Appellant stated she loved Victim, he was a great father, and he was her best friend. (Plea Tr. p. 17.) Appellant reflected, “Like most families our lives were not always perfect. At times alcohol was a factor in our marriage. However, during the 25 years we were together we were never apart.” (Plea Tr. p. 17.) Appellant’s daughters from a previous relationship had even cared for Victim at one point after the shooting, and they spoke of Victim as “the only father that they had.” (Plea Tr. p. 13, p. 15; p. 19.)

However, at the motion hearing, Appellant presented a less rosy picture of home life. She testified that domestic violence began in 1989. (Motion Tr. p. 11.) Appellant testified that Victim “got mad at us at home” when he did not have a good day with his gambling business. (Motion Tr. p. 11.) When asked how often she would “receive criminal domestic violence or a threat of criminal domestic violence,” Appellant estimated approximately twice per month. (Motion Tr. pp. 11-12.)

In the same hearing Appellant denied that she had actually shot Victim in spite of her guilty plea. (Motion Tr. pp. 17-18.) Upon examination by the judge, she informed the court she had committed perjury when she entered her plea. (Motion Tr. 21.)

## ARGUMENT

**The trial court did not abuse its discretion in denying Appellant's request for early parole eligibility pursuant to S.C. Code §16-25-90 where it found Appellant's testimony not credible.**

In criminal cases, the appellate court reviews errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the factual findings of the trial court unless an abuse of discretion is shown. State v. Lanev, 367 S.C. 639, 643-644, 627 S.E.2d 726, 729 (2006). "The appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence." State v. Blackwell-Selim, 392 S.C. 1, 3, 707 S.E.2d 426, 427-428 (2011).

S.C. Code §16-25-90 provides:

[A]n inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to ... an offense against the household member, ... presented *credible evidence* of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

[Emphasis supplied.] "Use of the term 'credible evidence' indicates the legislature intended the defendant's evidence to be, in fact, trustworthy, not simply plausible." State v. Grooms, 343 S.C. 248, 253, 540 S.E.2d 99, 101 (2000). Merely presenting evidence will not satisfy this requirement. Id. "The defendant must persuade the judge her evidence is reliable." State v. Blackwell-Selim, 392 S.C. at 4, 707 S.E.2d 428.

The trial court found that while Appellant presented evidence of domestic abuse, the evidence was not credible. It is well settled that the appellate court should accord great deference to the trial court where matters of credibility are involved because the

trial judge, who observed the witness, is in the best position to evaluate credibility. See for example Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999) (deference given to PCR judge's findings of fact where credibility is involved); Dixon v. Dixon, 336 S.C. 260, 519 S.E.2d 357 (Ct. App. 1999) (on appeal from family court appellate court may take facts in accordance with its own view of the preponderance of the evidence, but appellate court should give great deference to trial court findings who saw and heard witnesses). In the present case, even without observing the witness, it is clear from the record that the trial court had reason to doubt Appellant's credibility. Notably, at the motion hearing Appellant informed the court that she had committed perjury during her plea because she had not actually killed her husband. (Motion Tr. p. 18, pp. 21-22.) The court also considered the prior reports involving the couple which included two incidents where no physical abuse was actually recorded, and one incident where Appellant was actually the aggressor (Tr. pp. 15-16); the lack of corroboration; and dubious claim that other records were destroyed. Based on the record, it is clear that the trial judge had sound reason to find Appellant's testimony failed to establish a credible history of domestic violence.

To the extent that Appellant contends her testimony was adequate to establish, by a preponderance of the evidence, credible evidence of a history of criminal domestic violence because no other testimony was presented, such argument is without merit. The argument that a defendant's mere presentation of evidence would meet this burden was squarely rejected in State v. Grooms, *supra*. In Grooms, the Supreme Court expressly noted,

...the legislature did not intend the mere production of evidence to automatically result in earlier parole eligibility. If that were the case, ... then all individuals who are

convicted of an offense against household members would be eligible for parole after service of one-fourth of their prison term simply by testifying they suffered a history of criminal domestic violence at the hands of their own victims.

Id. at 253, 540 S.E.2d 101. The trial court correctly considered this authority in its order.

Based on all the foregoing, it is clear the trial court did not abuse its discretion in denying Appellant's request for early parole eligibility pursuant to S.C. Code §16-25.90.

**CONCLUSION**

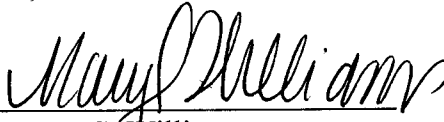
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON  
Attorney General

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Solicitor, Second Judicial Circuit

BY:   
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ATTORNEYS FOR RESPONDENT

September 24, 2014

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**SC Court of Appeals**

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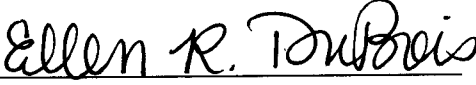
**PROOF OF SERVICE**

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I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

James E. Whittle, Jr., Esquire  
Johnson, Johnson, Whittle & Lancer, PA  
Post Office Box 2619  
Aiken, SC 29802-2619

I further certify that all parties required by Rule to be served have been served.  
This 24th day of September, 2014.

  
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ALAN WILSON  
ATTORNEY GENERAL

September 24, 2014

James E. Whittle, Jr., Esquire  
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RE: State v. Tammy Smathers  
Appellate Case No. 2014-000254

Dear Mr. Whittle:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mary S. Williams  
Assistant Attorney General  
Bar # 76192

MSW/erd  
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)  
Victim Services

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