

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Edgar W. Dickson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SEAN PHILLIP SMITH,

APPELLANT

APPELLATE CASE NO. 2012-212664

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

CASE NO. 2011-GS-10-5388
2011-GS-38-869
2011-GS-38-872
2011-GS-38-873

STATE OF SOUTH CAROLINA)

versus)

SEAN PHILLIPS SMITH,)

DEFENDANT)

TRANSCRIPT OF RECORD

DATE:

SEPTEMBER 19, 2011

BEFORE:

HONORABLE EDGAR DICKSON, PRESIDING JUDGE

APPEARANCES:

TOMMY SCOTT, ESQUIRE
ASSISTANT SOLICITOR
FOR THE STATE

PETE KULMALA, ESQUIRE
ATTORNEY AT LAW
FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
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DATE:

SEPTEMBER 19, 2011

SOLICITOR SCOTT: The State calls Sean Phillips Smith.
May it please the Court, Your Honor.

THE COURT: Yes, sir.

SOLICITOR SCOTT: Your Honor, standing before you is Sean Phillips Smith. He is represented by Mr. Pete Kulmala. Your Honor, Mr. Smith is pleading guilty to one count of armed robbery from Charleston County. He is waiving presentment, or, excuse me, he is waiving his right to have this case heard in Charleston, and is pleading guilty before you. This is a true billed indictment, Number 2011-GS-10-05388.

He is also pleading guilty, Your Honor, to one count of armed robbery from Orangeburg County, 2011-GS-38-869. That is true billed, as well as two counts of assault and battery in the first degree, 2011-GS-38-872 and 873. The only recommendation in this case, Your Honor, is that whatever sentence you give him on these charges that they run concurrent.

THE COURT: Alright.

CLERK: Will you raise your right hand, please.
(Whereupon, Sean Phillips Smith
is duly sworn.)

CLERK: Thank you.

SEAN PHILLIPS SMITH - EXAMINATION BY THE COURT

4

1 SEAN PHILLIPS SMITH,

2 EXAMINATION BY THE COURT:

3 Q. Alright, Mr. Smith, you are Twenty-eight years old?

4 A. Yes, sir.

5 Q. Alright, sir. How far did you go in school?

6 A. High school, I graduated high school.

7 Q. Which high school?

8 A. James Island.

9 Q. James Island? Alright, sir. And have you been working
10 or gotten any other job skills or job training since high
11 school?

12 A. I just been working full time.

13 Q. What kind of work do you do?

14 A. Cook.

15 Q. Where have you been cooking?

16 A. The last place was a restaurant at the corner of Buffalo
17 South and Charlie's Grill.

18 MR. KULMALA: He's working two jobs.

19 Q. Where is that?

20 A. Charleston, South Carolina.

21 Q. I mean where in Charleston?

22 A. On Folly Road, James Island.

23 Q. Alright, sir. Now, Mr. Smith, I'm told that you are
24 here to plead guilty to four different charges, is that
25 right, four different charges, three in Orangeburg and one

SEAN PHILLIPS SMITH - EXAMINATION BY THE COURT

5

1 in Charleston?

2 A. Yes, sir.

3 Q. Okay. Do you understand that you can require that since
4 this is a Charleston indictment you can require the Court to
5 have you plead in Charleston, but you're giving up that
6 right, you're waiving venue so you can plead to this charge
7 here?

8 A. Yes, sir.

9 Q. Okay. Alright. Now, Mr. Smith, have you ever been
10 treated for any mental health issues?

11 A. Yes, sir.

12 Q. Okay. Are you taking any kind of medication?

13 A. The Mental Health Clinic, just when the Mental Health
14 they prescribed me something because I couldn't sleep.

15 Q. Okay. Are you taking something for that?

16 A. Yes, sir, they just put it on the, they just now started
17 giving it to me.

18 Q. Alright, sir. How long have you been on it?

19 A. They just put it on the medicine cart yesterday for me
20 to start taking it.

21 Q. But you took it today?

22 A. No, I start taking it tonight.

23 Q. Oh, you start taking it tonight. Okay. Are you under
24 the influence of any alcohol or illegal drugs?

25 A. No, sir.

1 Q. Okay. So, you are thinking clearly here today?

2 A. Yes, sir.

3 Q. You know exactly what you're doing?

4 A. Yes, sir.

5 Q. Okay. The Solicitor's office tells me that the only
6 recommendation they're making to the Court is that any
7 sentence I give you be a concurrent sentence. Is that your
8 understanding?

9 A. Yes, sir.

10 Q. So, you understand that. Is that correct?

11 A. Yes, sir.

12 Q. Okay. Now, has anybody made any promises to you to get
13 you to plead guilty here today?

14 A. No, sir.

15 Q. Has anybody made any threats to you to get you to plead
16 guilty here today?

17 A. No, sir.

18 Q. You're doing it freely and voluntarily?

19 A. Yes, sir.

20 Q. Alright. You understand if I accept your plea here
21 today that you would have ten days from today's date to file
22 a notice of intent to appeal if you are aggrieved by my
23 decision?

24 A. Yes, sir.

25 THE COURT: Now, Mr. Kulmala, you have been

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representing Mr. Smith?

MR. KULMALA: That's correct, Your Honor.

THE COURT: Okay. And you have reviewed the evidence in all four of these cases with him?

MR. KULMALA: We have, Your Honor.

THE COURT: Okay. And you've advised him of the law, possible sentences and his constitutional rights?

MR. KULMALA: I've discussed that with him.

THE COURT: Okay. Do you believe he's understood everything you've told him?

MR. KULMALA: I believe he does understand.

THE COURT: Everything you've told him?

MR. KULMALA: I believe he does understand, yes, Your Honor.

THE COURT: Okay. And he has told you he wishes to plead guilty?

MR. KULMALA: That's correct.

THE COURT: Do you believe it's in his best interest to plead guilty?

MR. KULMALA: I do believe so.

Q. Alright, Mr. Smith, your attorney has told me that he has reviewed all the evidence in these cases with you, is that correct?

A. Yes, sir.

Q. Okay. He has advised you of the law, possible sentences

1 and your constitutional rights. Have you understood
2 everything he's told you?

3 A. Yes, sir.

4 Q. Are you satisfied with his services as your attorney?

5 A. Yes, sir.

6 Q. Do you need anymore time to talk with him?

7 A. No, sir.

8 Q. Do you want a jury trial on any of these charges?

9 A. No, sir.

10 Q. Alright, sir. I'll go through these one by one. The
11 first one I have, 2011-GS-10-5388, this is the Charleston
12 charge, Charleston Indictment true billed by the Grand Jury
13 down there on September Twelfth, Two thousand Eleven. The
14 allegations are that you did, in Charleston County, on or
15 about February Ninth, Two thousand Eleven, by the use of
16 force, threats or intimidation and while armed with a deadly
17 weapon, a hand gun, that you did take and carry away goods
18 or monies from the person of Carey Edmonds in an attempt to
19 deprive her of those goods. Do you understand the
20 allegations contained in this indictment?

21 A. Yes, sir.

22 Q. How do you plead to this charge of armed robbery?

23 A. Guilty.

24 Q. The next indictment I have is 2011-GS-38-869, this is
25 also armed robbery in Orangeburg County, true billed by the

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Grand Jury on June Twenty-second, Two thousand Eleven. The allegations are, Mr. Smith, that you did, in Orangeburg County, on or about March Twenty-eighth, Two thousand Eleven, by use of force, threats or intimidation and while armed with a deadly weapon take and carry away goods or monies from the persons of Lindsey Garrick and/or Joanie Sein and/or Brittany Livingston and/or Giant Discount Pharmacy with the intent to permanently deprive the victims of possession of said goods, and that you had a hand gun at the time. Do you understand the allegations contained in this indictment?

A. Yes, sir.

Q. Alright, sir. How do you plead to this charge of armed robbery?

A. Guilty.

Q. Thank you, sir... The next indictment I have is Indictment Number 2011-GS-38-872, true billed by the Grand Jury on June Twenty-second, Two thousand Eleven. This is for assault and battery, first degree. The allegations are, Mr. Smith, that you did, in Orangeburg County, on or about March Twenty-eighth, Two thousand Eleven, unlawfully offer or attempt to injure another person, Jason Creech, by means likely to produce death or great bodily harm, great bodily injury during the commission of a robbery. Do you understand the allegations contained in this indictment?

1 A. Yes, sir.

2 Q. Alright, sir, how do you plead to this charge of assault
3 and battery in the first degree?

4 A. Guilty.

5 Q. And the final indictment that I have is Indictment 2011-
6 GS-38-873, also for assault and battery in the first degree,
7 also true billed June Twenty-second, Two thousand Eleven.
8 The allegations are, Mr. Smith, that you did, in Orangeburg
9 County, on or about March Twenty-eighth, Two thousand
10 Eleven, unlawfully offer or attempt to injury a Marty Wilson
11 with present ability to do so by means likely to produce
12 death or great bodily harm, and it occurred during the
13 commission of a robbery. Do you understand the allegations
14 contained in this indictment?

15 A. Yes, sir.

16 Q. How do you plead to this charge of assault and battery
17 in the first degree?

18 A. Guilty.

19 Q. Okay. Thank you, sir.

20 THE COURT: Alright, Mr. Scott.

21 SOLICITOR SCOTT: Thank you, Your Honor. The first
22 incident is the Charleston incident. It took place on
23 February Ninth of Two thousand Eleven. It happened at Five
24 Thirty-two Wapoo Road in Charleston County. Your Honor, on
25 that incident date the defendant entered the Plantation

1 Pharmacy. He was wearing a hoody and brandishing a pistol.
2 He approached Carey Edmonds, one of the pharmacy employees
3 brandishing the pistol. Your Honor, he demanded that she
4 give him Oxycodone. He received One thousand Three hundred
5 and Fifty-eight pills and then he fled the store. Your
6 Honor, the defendant was identified by the victims after he
7 was arrested on his Orangeburg charges. Two witnesses from
8 the Charleston incident made a positive id of the defendant
9 after he had been arrested on the Orangeburg charges.

10 Your Honor, with regard to the three Orangeburg
11 charges, this incident took place at the Giant Discount
12 Pharmacy. That pharmacy, Your Honor, is actually located
13 inside of the Piggly Wiggly located at Sixty-six Eleven
14 Savannah Highway in Neeses, South Carolina which is in
15 Orangeburg County. Your Honor, this incident took place
16 approximately, I guess, six weeks later, it took place on
17 March Twenty-eighth, Two thousand Eleven. It happened
18 approximately twelve:twenty-five in the afternoon. Your
19 Honor, on that incident date the defendant entered the
20 Piggly Wiggly. He was wearing a knit cap, several layers of
21 clothing and carrying a back pack. You can see him on
22 video, Your Honor, he walks around the store for several
23 minutes, goes up and down several aisles. He then, Your
24 Honor, he enters the pharmacy. The pharmacy actually has
25 its own glass doors in order to get into the pharmacy. He

1 entered the pharmacy, Your Honor, he walked directly behind
2 the counter where there were three employees behind the
3 counter. There was a pharmacist by the name of Joanie Sein,
4 and two employees by the name of Brittany Livingston and
5 Lindsey Garrick. They were behind the counter. Mr. Smith,
6 Your Honor, he walked behind the counter, pulled out a gun,
7 and demanded that the employees give up, give him all the
8 Oxycontin and Percocet. Your Honor, you can see on the
9 video that the ladies are very fearful but they're able to,
10 I guess, get their composure enough to comply with his
11 demands. They go to the shelves and pull out dozens of
12 bottles of pills and put it in his back pack. Your Honor,
13 the defendant then exits the pharmacy, he exits the store.
14 In the process he tells the ladies, don't do anything for
15 ten minutes or I'll shoot you. The defendants, Your Honor,
16 he exits the store, he goes to the side of the building and
17 gets into a car that is being driven by a Mr. Jeffrey
18 Tranchita. The defendant, Your Honor, gets into the vehicle
19 and they leave the parking lot. Mr. Marty Wilson and Mr.
20 Jason Creech, they quickly learn that the pharmacy's been
21 robbed. They see this vehicle as being the only vehicle
22 that was sort of leaving the parking lot, so they get into a
23 vehicle and they begin to pursue this vehicle. When they
24 catch up to the vehicle, Your Honor, they pull beside the
25 vehicle and they don't recognize the driver as being the

SEAN PHILLIPS SMITH - EXAMINATION BY THE COURT

13

1 person that they saw leaving the grocery store, the
2 suspected robber. So, they're about to sort of call off the
3 chase on this vehicle thinking it wasn't involved, until
4 they notice something inside the vehicle that gives them
5 reason to believe that this defendant might be hiding in the
6 car. So, at that point, Your Honor, they fall in behind the
7 vehicle. At that point I think Mr. Tranchita realizes that
8 they're being followed, so he tries to accelerate and lose
9 Mr. Smith, or excuse me, Mr. Creech and Mr. Wilson. He
10 drives at speeds in excess of a hundred miles an hour making
11 several evasive turns. At some point, Your Honor, this
12 defendant who is in the trunk of the vehicle begins to fire
13 shots in the direction of Mr. Creech and Mr. Wilson. They
14 continue to chase and then -- the whole time, Your Honor,
15 they're on the phone with Nine one one, so they give them
16 their location. At that point, Your Honor, Lieutenant Randy
17 Culler becomes involved in the chase. Once law enforcement
18 gets involved in the chase Mr. Tranchita pulls over. Mr.
19 Chranschita is ordered from the vehicle. Mr. Smith, Your
20 Honor, is then order to exit from the trunk of the vehicle.
21 They search the vehicle, Your Honor. Inside the trunk they
22 find a twenty-two caliber revolver that contained four live
23 rounds and two fired cartridges. They find multiple
24 containers of pills in which tablets out in the trunk of the
25 vehicle. Mr. Smith, Your Honor, gave a statement to

1 deputies admitting his involvement. Basically it's a
2 statement that he was under the influence, or he needed
3 these drugs I guess to sustain himself. Your Honor, he also
4 gives another statement March Thirtieth of Two thousand
5 Eleven, again admitting his involvement. This statement was
6 not to law enforcement, this statement I believe to an
7 employee of Jeffrey Tranchita's original lawyers.

8 Your Honor, Mr. Smith, his prior record, he's got a Two
9 thousand three conviction for DUS. That's the extent of his
10 record.

11 Your Honor, several of the victims are in the courtroom
12 today. I know several of them would like to address Your
13 Honor.

14 If y'all want to come up.

15 JOANIE SEIN: My name is Joanie Sein. I was the
16 pharmacist involved in this incident.

17 THE COURT: Yes, ma'am. What would you like to tell
18 the Court?

19 JOANIE SEIN: I've been a pharmacist for fourteen
20 years. Three other very good friends went to pharmacy
21 school with me. Three out of the four of us have been
22 robbed at gun point. The fourth one, her store was robbed
23 but she was not there. It is a very terrifying feeling.
24 The Neeses pharmacy is a very -- Neeses is a very small
25 town, and it's a very family atmosphere, especially the

1 pharmacy where we work, and it was very very terrifying when
2 he came in. We all have families and very small children,
3 and something could have startled Mr. Smith, in that split
4 second he could have taken one of our lives and taken us
5 away from our family. I've had nightmares about this, I've
6 had trouble sleeping over it, and it was very hard to return
7 to work that first time because of it. And I don't think
8 that Mr. Smith understands what anxiety is until a gun is
9 held at him and he is threatened and someone else holds his
10 life in their hands.

11 Thank you.

12 THE COURT: Okay. Thank you, ma'am.

13 Your name, please, ma'am?

14 LINDSEY GARRICK: My name is Lindsey Garrick. I was a
15 technician working that day. When Mr. Smith entered the
16 pharmacy he actually came on my side of the pharmacy. He
17 actually shoved me back and pulled a gun on me. When he
18 demanded the Oxycontin, in the video you can see that he is
19 waving the gun around, but for the majority of the time has
20 the gun pointed at my head. Like Joanie said, one slip of
21 his hand that day and he could have shot and he could have
22 killed one of us. He's caused us to be fearful at work.
23 When someone strange walks in the door that's what we think
24 about. We think about that gun being pulled on us. It's
25 actually caused me enough anxiety that I've had to go to the

1 doctor. I have been put on medication because of my heart
2 that is most likely caused from this incident because I
3 started having problems after the incident. So, I'd just
4 ask that you take that into consideration today.

5 THE COURT: Thank you, ma'am, I appreciate it.

6 Yes, sir.

7 MARTY WILSON: My name is Marty Wilson. I work at a
8 gas station down at the bottom of the hill of that pharmacy,
9 and the things that I would for you to consider is, there
10 was a whole lot of innocent people in that grocery store at
11 around lunch time, and the young ladies, it die not just
12 traumatize them, but being that I work down that hill and
13 I'm alone down at that gas station, it's kind of fearful for
14 me sometimes when a motorcycle pulls up, you know, and he's
15 got his face covered I don't know what to expect, or
16 somebody slips up behind me while I'm dealing with another
17 customer. And the chase, the innocent people that was on
18 that stretch of road at the high speed that we was going,
19 their lives was in danger at the same time. These two
20 fellows endangered a whole lot more people than they
21 actually realized what they did, and I just sure would like
22 for you to consider the whole situation of all the innocent
23 people that was involved and how it could have really took
24 somebody innocent.

25 Thank you, Judge.

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THE COURT: Thank you, sir. Anybody else?

And Mr. Scott, what's the maximum on armed robbery?

SOLICITOR SCOTT: It carries as a minimum ten and a maximum of thirty, Your Honor.

THE COURT: Alright. And on the assault and battery, first?

SOLICITOR SCOTT: Zero to ten, Your Honor.

THE COURT: Alright, sir.

Q. Alright, Mr. Smith, you have heard what the Solicitor has told me about the circumstances that led to your arrest on all four of these charges?

A. Yes, sir.

Q. Okay. And according to the Solicitor's office you only had one prior, you had a DUS in O-three, is that correct?

A. Yes, sir.

Q. Do you understand by pleading guilty to these charges that all of these convictions will show up on your record?

A. Yes, sir.

Q. And that the armed robbery convictions are all violent and most serious offenses?

A. Yes, sir.

Q. Your attorney has gone over that with you?

A. Yes, sir.

Q. You understand they're strikes against you?

A. Yes, sir.

1 Q. Alright, sir. Now, understanding all that, do you want
2 me to accept your guilty plea on all four of these charges?

3 MR. KULMALA: Your Honor, with respect to the strikes,
4 and I just want to make sure that it's clear with the
5 Solicitor's office that in pleading today that, because
6 there are multiple most serious offense, that they would be
7 consolidated for purposes of the county of strikes as well
8 as the other part of the recommendation as all time would
9 run concurrent?

10 SOLICITOR SCOTT: Yes, Your Honor.

11 THE COURT: Okay. Alright. So, he would only have one
12 strike?

13 MR. KULMALA: That's correct.

14 Q. And do you understand that?

15 A. Yes, sir.

16 Q. Alright, sir. Now, understanding that, and I note the
17 correction on the record, do you want me to accept your
18 guilty plea to all four of these charges?

19 A. Yes, sir.

20 THE COURT: Alright, Mr. Smith, I find that your
21 decision to plead guilty is freely, voluntarily and
22 intelligently made. I find that you've had the advice and
23 counsel of a competent lawyer. I find that you're satisfied
24 with the services of your lawyer. I find that there is a
25 factual basis for you to plead guilty to each one of these

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charges, so I am going to accept your guilty plea.

Alright, Mr. Kulmala.

MR. KULMALA: Thank you, Your honor, may it please the Court.

THE COURT: Yes, sir.

MR. KULMALA: I know the Court is aware of, Mr. Scott mentioned that he basically has a clean record other than that DUS which was about eight years ago. And the drug involved is becoming sort of a monster I believe within society insofar as dependency issues are created, that the Oxycodone type of things are very very much dependency creating. And he backed into it in that sort of way from a back injury about eight or nine years ago and essentially became a user, a seeker and then got into the unfortunate circumstances that put other people at risk. But Mr. Smith does not come into this from a volitional decision to a life of crime but rather, you know, started with reaction to the dependency or addictive nature of these drugs. And I'd ask Your Honor to, you know, consider that in the sentencing, especially in light of his prior clean record. He has family members who are present here today in support of him at this point, which would be his Uncle George and his Aunt Pauline and Cousin Danielle, another Uncle David and then his grandmother, Betty Smith. And they're all here to demonstrate to the Court support for this young man, and we

1 would ask the Court to be considerate of all of the
2 circumstances and, you know, exercise discretion on the
3 amount of time involved in the sentencing.

4 THE COURT: Alright, sir. We'll stand down, let me go
5 back and think about it for a second. Okay. Please stand
6 down for a second.

7 (Recess)

8 THE COURT: I am taking into account the fact that you
9 are pleading, you know, that's helping you, but it does not
10 help that you did two armed robberies in two different
11 counties. That doesn't help you at all.

12 SENTENCE OF THE COURT:

13 THE COURT: Anyway, in the assault and battery charges,
14 the sentence of this Court is that you are committed to the
15 State Department of Corrections for a period of ten years on
16 each one of those.

17 On the armed robberies the sentence of this Court is
18 that you are committed to the State Department of
19 Corrections for a term of Twenty-five years.

20 These sentences are concurrent, and you will get credit
21 for time served.

22 SOLICITOR SCOTT: Thank you, Your Honor.

23 THE COURT: Thank you, sir.

24 MR. KULMALA: Thank you, Judge.

25 END OF TRANSCRIPT.

CERTIFICATE

1
2 I, the undersigned, Mrs. Harry A. Walker, of
3 Rowesville, South Carolina, Official Court Reporter for the
4 First Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate, and
6 complete transcript of record of all the proceedings had and
7 evidence introduced in the captioned cause, relative to
8 appeal, in the Court of General Sessions for Orangeburg
9 County, South Carolina, on the Nineteenth day of September,
10 2011.

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

DATE: March 22, 2012

15
16 Harry A. Walker
17 (MRS.) HARRY A. WALKER
18

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 STATE OF SOUTH CAROLINA,)
)
 Vs.)
)
 SEAN PHILIP SMITH,)
)
 Defendant.)

GENERAL SESSIONS
 Case Numbers M805154, M805157, M805158

MOTION TO RECONSIDER SENTENCE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 STATE OF SOUTH CAROLINA,)
)
 Vs.)
)
 SEAN PHILIP SMITH,)
)
 Defendant.)

Case number M640102

MOTION TO RECONSIDER SENTENCE

FILED FOR RECORD
 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC
 2011 SEP 28 P 12:45
 SD

TO: STATE OF SOUTH CAROLINA AND ITS ATTORNEYS, SOLICITOR, DAVID PASCOE AND SOLICITOR SCARLET A. WILSON:

You will please take notice that Defendant, Sean Philip Smith, by and through undersigned counsel, will and hereby does move before the Honorable Edgar Dickson, Circuit Court Judge for the First Judicial Circuit, at the Orangeburg County Courthouse, 151 Docket Street, Orangeburg, South Carolina, for an Order Reconsidering the Court's sentencing in the above-captioned cases, rendered following guilty pleas of September 19, 2011.

This Motion is based upon the applicable statutory and case law of South Carolina, and is made pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. Through this Motion, Defendant asks that the Court review and reconsider the sentences imposed, in light of the following factors, and to adjust the sentences as may be appropriate.

ATTEST: TRUE COPY
Winnie B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

1. Defendant voluntarily pled guilty.
2. Defendant has no prior record other than DUS for traffic-related offenses.
3. The underlying offenses occurred in a close and brief time period, rather than over a lengthy life of crime.

On September 19, 2011, Defendant came before the Court prepared to plead guilty and accept the consequences of the two armed robbery charges (M 805154 in Orangeburg County and M640102 in Charleston County) involving the prescription medications Oxycontin and Hydrocodone, along with 2 related counts for Assault & Battery in Orangeburg County. The seriousness of the armed robbery charges is underscored by that offense being included within the definition of "most serious" for enhancement of penalty to life without parole in the state's "two strikes" statute. The effect of such an offense was vividly demonstrated on September 19, 2011 by the testimony of three persons confronted by the Defendant in the Neeses case. This motion is not an attempt to diminish the admitted gravity of the offense of armed robbery, nor to denigrate the anguish that those three individuals must have endured. Rather, through this motion, Defendant asks the Court to also consider, as a means of allowing a reduction in the sentence, that the state's penal objective and society's need for punishment and retribution can be met by allowing this Defendant to serve concurrently an amount of time less than the 25 years announced in Court.

At the time of the pleas on Monday, Defendant was supported by the presence of five family members, including George Smith, his uncle, who has supplied an affidavit, (attached) which provides abbreviated insight into the personality of the Defendant. Through his affidavit, as well as the other circumstances to be gleaned from the information presented in the plea

hearing, it is apparent that Sean Smith is not engaged in a criminal lifestyle, but unfortunately became involved in crime through a developing dependency on the very ugly and very addictive drugs mentioned above. Certainly the armed robberies are not made less serious because they were committed by one who is developing an addiction, because it is apparent that large numbers of crimes derive from some form of addiction. However, in this case, Sean Smith has appreciated the grievousness of his offenses and elected to plead guilty, do his time and upon release, begin his life again. A part of making such an election is an anticipation that a guilty plea can result in a shorter sentence than one might receive following a contested trial. The possibility can certainly induce an individual to enter a plea.

During the plea, the Solicitor informed the Court that Sean Smith had only a 2003 DUS. Not excusing the DUS, that record is further indication of Sean Smith's law-abiding life for 28 years before the events of Spring 2011. While the absence of a prior record cannot erase the fact of Defendant's commission of the armed robberies, it does tend to support Sean's previous character and that his recent criminal activities are the product of dependency or addiction to the kinds of prescription drugs which are coming to be recognized as problematic and dangerous. Also, Sean's lack of prior record, followed by the drug-seeking crimes of early 2011, further supports that his was a short-lived and involuntary descent into hard crime to deal with drug usage.

Defendant respectfully asks the Court to reconsider the sentences announced on September 19, 2011, with a particular focus upon the reasons set forth herein, and adjust the sentences accordingly.



PETE KULMALA
Harvey & Kulmala, LLC
PO Box 705
Barnwell, SC 29812
(803) 259-5531

September 28, 2011
Barnwell, SC

AFFIDAVIT OF GEORGE SMITH

PERSONALLY APPEARED before me, the undersigned, George Smith, who, being duly sworn, deposes and says:

1. I am George Smith, Sean's Uncle. I am a 31 year Civil Service employee of USDA/Rural Development. I was present in the Courtroom on Monday for Sean's guilty plea. I was prepared at that time to speak to the Court on Sean's behalf, and would like to convey through this affidavit, the thoughts that I had intended to deliver to the Court on Monday.
2. I would like to say a few things with regard to this most unfortunate situation that Sean has laid upon himself. First I want to acknowledge and state my total appreciation and understanding of the plight of the victims that spoke earlier. I say this with true compassion. My wife is a bank manager and I have concern for her. In fact a branch she managed previously was robbed and I remember the suffering of the bank employees. Also, I have a nephew by marriage, who is a pharmacist here in Orangeburg. Also, Sean's half-sister, Katie, at the time of this incident(s) was enrolled in pharmaceutical school.
3. But, I want to tell you what I know about Sean. Sean had a pretty tough time as a youngster. His mother left when he was a child and his dad, my Brother Phil, died when Sean was 16. I must admit that my brother did not offer the best environment for child rearing. Phil had numerous problems. But in that community, Norway, the community becomes the family. I saw on the courtroom wall a picture of someone whom I consider one of the great "Norwegians", Judge James (Jimmy) Williams. Jimmy helped Sean. He was a fellow church member at Sean's church, Norway Baptist Church. Jimmy was and is a man of Christ. He helped in mentoring Sean through church. Nearby to Sean's (my brother's) home was his grandmother, my mother Betty Smith, who was in court with us on Monday. She shouldered a major responsibility of the rearing of Sean. She was always less than a hundred yards away.
4. About Sean: He was no "druggie" in school. Certainly he was no angel but he did fairly well given all the difficulties he faced. After his dad died when Sean was age

2011 SEP 28
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 WITNESS
 CLERK OF COURT
 ORANGEBURG, SC
 4

16 Sean lived with my mother. Eventually, Sean left my mother's home to move to Charleston to be with his birth mother, Donna. Sean exceeded my expectations. He obtained his high school degree and worked. The work was not glamorous and not, by any means, the road to affluence. But, Sean continued to do his best.

The one blemish in Sean's "record" was for driving under suspension (DUS) - a result of unpaid tickets for various moving violations that mounted over time.

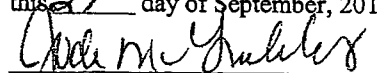
5. WHAT happened with Sean? As I understand Sean was having back pain that he attributed to the vehicle accident he had in his teens. It may have been the accident or just working on his feet for hours as a cook. I am not certain. But to make it short, he began taking oxycodone to deal with his back pain. It is my firm belief that this is what initiated the rapid downfall. He used the medications and became addicted. His need or craving (addiction) to the drug consumed him, as it has very many others. Addicted and in need of the drug, Sean did the unforgiveable, the unconceivable and committed these armed robberies. He admits that and clearly is placing his future upon the mercy of this court. HE WAS SO WRONG to take the steps to acquire the drugs. I fully understand this fact, but this young man needs help. Whatever your honor decides, I hope that it includes help that can return him to society where he may continue as a contributing member. His family loves him. He loves his family.

6. I have to say this about Sean. He is a loving young man. When I think of Sean, I think of how without failure, he ends every conversation with, Uncle George "I love you and tell Aunt Bubba and Dani I love them too". That is the true Sean. What we had happen is a drug addiction that resulted in a horrendous chain of events. THIS IS A LIFE THAT HAS VALUE. Please help him.

FURTHER YOUR AFFIANT SAYETH NAUGHT


George T. Smith

Sworn to and subscribed before me,
this 27 day of September, 2011.


Notary Public for South Carolina
My commission expires: 9-30-19

CERTIFICATE OF SERVICE

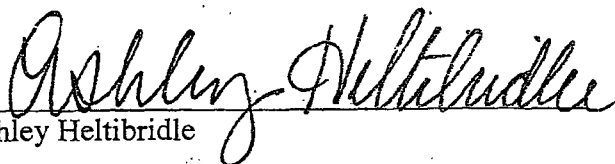
I, Ashley Heltibridle, paralegal for Pete Kulmala, attorney for the Defendant, Sean Smith, in the case of The State of South Carolina vs. Sean Smith, Case Nos.: M805154; M805157; M805158; and M640102, do hereby certify I have served the foregoing **Motion To Reconsider Sentence** on the date shown below by mailing a copy of the same via first class, US mail, postage prepaid, to the person listed below:

Thomas Scott, Asst. Solicitor
Office of the Solicitor for First Circuit
P.O. Box 1525
Orangeburg, SC 29116

Dale Savage, Asst. Solicitor
Office of the Solicitor for Ninth Circuit
101 Meeting Street
Charleston, SC 29401

Honorable Edgar Dickson
151 Docket St., Ste. 207
Orangeburg, SC 29115

FILED FOR RECORD
VIRGINIA R. CLARK
CLERK OF COURT
GENERAL P. 1118, SC
2011 SEP 28 P 12:46


Ashley Heltibridle

September 28, 2011
Barnwell, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
vs.)
)
SEAN PHILIP SMITH,)
Defendant.)

ORDER

2011-GS-38-869, 2011-GS-38-872 &
2011-GS38-873

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
vs.)
)
SEAN PHILIP SMITH,)
Defendant.)

ORDER

2011-GS-10-5388


FILED
CLERK OF COURT
ORANGEBURG COUNTY
SOUTH CAROLINA
2012 AUG -2 PM 3:20

This matter came before me on July 23, 2012 on the Defendant's Motion to Reconsider Sentence. Present in the courtroom were Sean Philip Smith, the Defendant; Pete Kulmala, attorney for the Defendant; and Thomas Scott, Deputy Solicitor.

The Court heard presentations from the Defendant and the State as to whether the Defendant's sentence of 25 years should be reconsidered.

The Court finds that the original sentence is appropriate and the Defendant's Motion to Reconsider Sentence is denied.

AND IT IS SO ORDERED.



Judge Edgar W. Dickson
Presiding Judge

Date: 8/2/12
Orangeburg, South Carolina

ATTEST: TRUE COPY
Winnif B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

SEAN PHILLIP SMITH,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212664

PETITION FOR ORDER
TO RECONSTRUCT THE RECORD OF
APPELLANT'S HEARING ON HIS
MOTION TO RECONSIDER

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned counsel requests an order requiring the parties to reconstruct the record of Appellant's hearing concerning his motion to reconsider his sentence held on July 23, 2012 before the Honorable Edgar W. Dickson.

In accordance with Rule 240(c)(3), SCACR, Appellant submits the following documents to support this Petition: indictments (Exhibit #1); sentence sheets (Exhibit #2); first page of guilty plea transcript (Exhibit #3); motion to reconsider sentence

(Exhibit #4); order denying motion to reconsider sentence (Exhibit #5); letter from the Court of Appeals dated March 8, 2013 (Exhibit #6); letter from Kulmala dated March 14, 2012 (Exhibit #7); and letter from Harry A. Walker dated March 4, 2013 (Exhibit #8).

The procedural history of Appellant's case is as follows. On June 22, 2011, an Orangeburg County grand jury indicted Appellant for armed robbery (2011-GS-38-0869) and two counts of assault and battery in the first degree (2011-GS-38-0872 & -0873). A Charleston County grand jury indicted Appellant for armed robbery on September 12, 2011 (2011-GS-10-5388). Exhibit #1. On September 19, 2011, Appellant appeared before Judge Dickson to enter a guilty plea to the charges, including the Charleston County charge, in Orangeburg County. Tommy Scott represented the state, and Pete Kulmala represented Appellant. Exhibit #3. At the conclusion of the guilty plea hearing, Judge Dickson sentenced Appellant to twenty-five years' imprisonment for armed robbery and ten years' imprisonment for each count of assault and battery in the first degree. He ordered the sentences to run concurrently. Exhibit #2. On September 28, 2011, Appellant filed a motion to reconsider sentence. Exhibit #4. Judge Dickson presided over a hearing on July 23, 2012 concerning the motion. By order dated August 2, 2012, Judge Dickson denied Appellant's motion. Exhibit #5.

Appellant filed a timely notice of appeal. On March 8, 2013, this Court wrote to Appellant's attorney asking him to provide a written explanation showing that an issue which could be reviewed on appeal existed pursuant to Rule 203(d)(1)(B)(iv), SCACR. Exhibit #6. By letter dated March 14, 2013, Mr. Kulmala responded that the "substantive response to the written explanation requirement of Rule 203(d)(1)(B)(iv) would be contained in the Motion to Reconsider Sentence under Rule 29, which was filed on

September 28, 2011, heard by Judge Dickson on July 23, 2012, and decided in written order filed August 2, 2012.” Exhibit #6. Thereafter, this Court appointed the Office of Appellate Defense to represent Appellant.

Undersigned counsel requested the transcripts from the court reporter. Counsel received the transcript of the guilty plea proceeding, but did not receive the transcript of the hearing concerning Appellant’s motion to reconsider sentence. On March 4, 2013, the court reporter wrote to the Office of Appellate Defense advising that although she had a note indicating a hearing was held on July 23, 2012, she was unable to locate her record of the hearing. Exhibit #7.

Therefore, undersigned counsel has been unable to obtain the transcript of the hearing concerning Appellant’s motion to reconsider sentence held on July 23, 2012 before Judge Dickson. Counsel has consulted repeatedly with Appellant concerning the unavailability of the transcript, the options available to Appellant, and the consequences of each of those options. Based upon these consultations, undersigned counsel is filing this petition to reconstruct the hearing concerning his motion to reconsider his sentence.

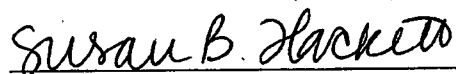
The transcript of the hearing concerning Appellant’s motion to reconsider his sentence is necessary in order to allow review of his guilty plea and sentence as it contains the evidence presented to support Petitioner’s claims that he is entitled to relief on appeal. According to plea counsel, the basis for the appeal is the motion to reconsider sentence and the evidence provided during the hearing on the motion. As a result, counsel requests reconstruction of the hearing. The order indicates that Appellant, his attorney, and the state’s attorney were present for the hearing. Undersigned counsel has received information that Appellant and his uncle, George Smith, addressed the court

personally on behalf of reconsideration of the sentence. Additionally, undersigned counsel has received information that three of the alleged victims appeared and addressed the court concerning sentencing.

When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); see also Deaton v. Leath, 279 S.C. 82, 302 S.E.2d 335 (1983) (granting the appellant's motion to set aside convictions and remand for a new trial where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal).

WHEREFORE, the undersigned counsel requests an order for the reconstruction of the record of Appellant's motion to reconsider sentence in order to perfect Appellant's direct appeal in the case. In addition, undersigned counsel requests the time periods for filing Appellant's initial brief and designation of matter be held in abeyance pending this Court's decision on this petition.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

August 6, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

SEAN PHILLIP SMITH,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Affidavit of Susan B. Hackett

I am the attorney assigned to represent Sean Phillip Smith. My office contacted the court reporter to request the transcript from the July 23,2012 hearing. The court reporter stated that although she had a note indicating a hearing was held on July 23, 2012, she was unable to locate her record of the hearing.

Susan B. Hackett
Susan B. Hackett

SWORN TO BEFORE ME this 6th day
of August, 2013.

Emily Brea (S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangburg County

Edgar W. Dickson, Circuit Court Judge

SEAN PHILLIP SMITH,

APPELLANT,

V.

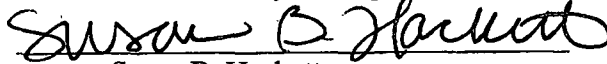
STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212664

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition for order to reconstruct the record of Appellant's hearing concerning his motion to reconsider sentence hearing in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant General, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, and Sean Phillip Smith, # 347944, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 6th day of August, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 6th day of August, 2013.



Notary Public for South Carolina

My Commission Expires: October 2, 2013.

EXHIBIT #1

WITNESSES

Marty Carrigg

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805154

Arrested: March 29, 2011

ACTION OF GRAND JURY
TRUE BILL

JUN 22 2011

Diane Blaine

Date 6-22-11

Foreperson of Grand Jury
Date: June 22, 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-0869

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

June 20, 2011 TERM

THE STATE
vs.

Sean Philip Smith

Indictment for

ARMED ROBBERY

ATTEST: TRUE COPY

Winnif B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
WINNIF B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2011 JUN 22 11:17

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-0869

At a Court of General Sessions, convened on June 20, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about March 28, 2011, in Orangeburg County, the defendant, Sean Philip Smith did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim(s), Lindsey Garrick and/or Joni Sane and/or Brittany Livingston and/or Giant Discount Pharmacy, with the intent to permanently deprive the victim of possession of the goods or monies, such weapon or alleged weapon described as a handgun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

ORANGEBURG COUNTY, SC
CLERK OF COURT
ALBERTA B. COOPER
Alberta B. Cooper

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Thomas B. Scott, III

Thomas B. Scott, III, Solicitor

WITNESSES

Marty Carrigg

Orangeburg County Sheriff

ARREST WARRANT NUMBER

M805157

Arrested: March 29, 2011

ACTION OF GRAND JURY
TRUE BILL

JUN 22 2011

Duane Bloome
6-22-11

Foreperson of Grand Jury

Date: June 22, 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS38-0872

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

June 20, 2011 TERM

THE STATE

vs.

Sean Philip Smith

Indictment for

ASSAULT AND BATTERY 1ST DEGREE

ATTEST: TRUE COPY

Winnifia B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

SC Code: 16-3-600(C)(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ORANGEBURG, SC
CLERK OF COURT
WINNIFIA B. CLARK
FILED FOR RECORD
2011 JUN 22 A 11:17

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-0872

At a Court of General Sessions, convened on June 20, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ASSAULT AND BATTERY 1ST DEGREE

That in Orangeburg County, South Carolina, on or about March 28, 2011, the Defendant, Sean Philip Smith, did unlawfully offer or attempt to injure another person, to wit: Jason Creech, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury and/or occurred during the commission of a robbery, this offense being a violation of Section 16-3-600 (C)(1) of the South Carolina Code of Laws, 1976, as amended.

ORANGEBURG COUNTY
CLERK OF COURT
M. Smith
ALLEGED: IRUE COBY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Thomas B. Scott III

Thomas B. Scott, III, Solicitor

WITNESSES

Marty Carrigg

Orangeburg County Sheriff

ARREST WARRANT NUMBER

M805158

Arrested: March 29, 2011

ACTION OF GRAND JURY
TRUE BILL

JUN 22 2011

Diane Bloome
22-11

Foreperson of Grand Jury

Date: June 22, 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS38-0873

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

June 20, 2011 TERM

THE STATE

vs.

Sean Philip Smith

Indictment for

ASSAULT AND BATTERY 1ST DEGREE

ATTEST: TRUE COPY

Winnif B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-600(C)(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ORANGEBURG, SC
CLERK OF COURT
WINNIF B. CLARK
FILED FOR RECORD
2011 JUN 22 11:17

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-0873

At a Court of General Sessions, convened on June 20, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ASSAULT AND BATTERY 1ST DEGREE

That in Orangeburg County, South Carolina, on or about March 28, 2011, the Defendant, Sean Philip Smith, did unlawfully offer or attempt to injure another person, to wit: Marty Wilson, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury and/or occurred during the commission of a robbery, this offense being in violation of Section 16-3-600.(C)(1) of the South Carolina Code of Laws, 1976, as amended

ORANGEBURG COUNTY, SC
CLERK OF COURT
C. Smith
A. J. Clark
BEST COPY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Thomas B. Scott, III

Thomas B Scott, III, Solicitor

SAV20110402343

WITNESSES

Lauren Glover

Charleston City Police Department

AGENCY CASE NUMBER

1102081

ARREST WARRANT NUMBER

M640102

DATE OF ARREST

April 16, 2011

ACTION OF GRAND JURY

TRUE-BILL

Foreperson of Grand Jury

SEP 12 2011

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO: 2011GS1005388

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

SEAN PHILIP SMITH

DOB: [REDACTED]

W/M

Indictment for

Armed Robbery

FILED

9/28/2011 9:34:56 AM

JULIE J. ARMSTRONG

CLERK OF COURT

EXHIBIT #2

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE Sean Phillip Smith
AKA:
Race: W Sex: M Age: 28
DOB: SS#:
Address:
DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-0869
A/W#: M805154
Date of Offense: 3/28/2011
S.C. Code § 16-11-330(A)
CDR Code #: 0139

SENTENCE SHEET

CDL: Yes [] No [] CMV: Yes [] No [] Hazmat: Yes [] No []

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

[] CONVICTED OF or [X] PLEADS

TO: Armed Robbery

In violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

[] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS(CSC §17-26-45 w/mirior 1st or Lewd Act)

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [X] Recommendation by the State.

ATTEST:

Thom B. Scott, III 15881 Sean Phillip Smith Attorney for Defendant 3577
Scott, III, Thomas B SC Bar# Sean Phillip Smith Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 25 days/months/years or [] under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 9/19/11
[X] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections
[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered

PTUP

Total: \$ plus 20% fee, \$

days/hours Public Service Employment

Payment Terms:

Obtain GED []

[] set by SCDPPPS

Attend Voc. Rehab. or Job Corp

Recipient:

May serve W/E begining

*Fine:

Substance Abuse Counseling []

§ 14-1-208 (Assessments 107.5%) \$

Random Drug/Alcohol Testing []

§ 14-1-211(A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

prnts. of \$ Beginning

§ 56-5-2995 (DUI Assessment) \$12 \$

\$ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$

Other:

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§ 44-53-450(C) (Conditional Discharge) \$350 \$

3% to County (if paid in installments) \$ 3.00

TOTAL \$ 133.00

[] Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.

[] Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2157

Sentence Date: September 19, 2011

SCCA/217 (06/2010)

Clerk of Court/ Deputy Clerk

Court Reporter: Karyn Dot Walker

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF Orangeburg)
 STATE VS)
Sean Phillip Smith)
 AKA: _____)
 Race: W Sex: M Age: 28)
 DOB: [REDACTED] SS#: _____)
 Address: _____)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-0872
 A/W#: M805157
 Date of Offense: 3/28/2011
 S.C. Code § 16-3-600(C)(1)
 CDR Code #: 3412

CDL: Yes No CMV: Yes No Hazmat: Yes No

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

CONVICTED OF or PLEADS

TO: Assault and Battery 1st Degree

in violation of § 16-3-600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Thomas B. Scott, III 15881 Sean Phillip Smith William B. Clark 3577
 Scott, III, Thomas B SC Bar# Sean Phillip Smith Attorney for Defendant. SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 9/19/11
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

ATTEST: TRUE COPY

William B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]
 Judge Code: 2153
 Sentence Date: Monday September 19, 2011
 SCCA/217 (08/2010)

[Signature] Clerk of Court/ Deputy Clerk
 Court Reporter: Karyn DeWisher

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS Sean Philip Smith

AKA:
Race: W Sex: M Age: 28

DOB: SS#:

Address:

DL#: SID#:

CDL: Yes No CMV: Yes No Hazmat: Yes No

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

TO: Assault and Battery 1st Degreee

in violation of 16-3-600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

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

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury (Defendant Initial)

The plea is: Without Negotiations or Recommendation Negotiated Sentence, Recommendation by the State.

ATTEST:

Scott, III, Thomas B Sean Philip Smith Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 9/19/11
The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Dept. of Corrections
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered: PTUP
Total: \$ ATTEST: TRUE COPY

Payment Terms:
set by SCDPPPS
Recipient:
*Fine:
14-1-206 (Assessments 107.5 %)
14-1-211(A)(1)(Conv. Surcharge) \$100 \$100.00
14-1-211(A)(2) (DUI Surcharge) \$100 \$
56-5-2995 (DUI Assessment) \$12 \$
56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
73.3, 1B TP (Law Enforce. Funding) \$25 \$25.00
33.7, 1B TP (Drug Court Surcharge) \$150 \$
50-21-114 (BUI Breath Test Fee) \$50 \$
56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00
44-53-450(C) (Conditional Discharge) \$350 \$
3% to County (if paid in installments) \$3.90
TOTAL \$133.90

Winnif B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-0873
AW#: M805158
Date of Offense: 3/28/2011
S.C. Code 16-3-600(C)(1)
CDR Code #: 3412

SENTENCE SHEET

CONVICTED OF or PLEADS

Conditional Discharge 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.
Appointed PD or appointed other counsel, 47.12 requires \$500 be paid to Clerk during probation.
PRESIDING JUDGE
Judge Code: 2153
Sentence Date: September 19, 2011
SCCA/217 (06/2010)

Clerk of Court/ Deputy Clerk
Court Reporter: Harry Dot Walker

STATE OF SOUTH CAROLINA)
 COUNTY OF Charleston)
 STATE VS.)
 Sean Philip Smith)
 AKA:)
 Race: WHITE Sex: M Age: 28)
 DOB: [REDACTED] SS#: [REDACTED])
 Address:)
 City, State, Zip:)
 DL#: SID#: SC01537493)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1005388
 A/W#: M640102
 Date of Offense: 2/9/2011
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: Thom B. Scott, III 15881 Sean Smith [Signature] 35??
 Savage, Dale FOR D.S. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 9/19/11
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-18-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
 Total: \$ plus 20% fee: \$ days/hours Public Service Employment
 Payment Terms:
 Set by SCDPPPS
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.00
TOTAL		\$ 133.00

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk [Signature]
 Court Reporter: Harry Dato Walker
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2153
 Sentence Date: September 19, 2011

EXHIBIT #3

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

CASE NO. 2011-GS-10-5388
2011-GS-38-869
2011-GS-38-872
2011-GS-38-873

STATE OF SOUTH CAROLINA)

versus)

SEAN PHILLIPS SMITH,)
DEFENDANT)

TRANSCRIPT OF RECORD

DATE:

SEPTEMBER 19, 2011

BEFORE:

HONORABLE EDGAR DICKSON, PRESIDING JUDGE

APPEARANCES:

TOMMY SCOTT, ESQUIRE
ASSISTANT SOLICITOR
FOR THE STATE

PETE KULMALA, ESQUIRE
ATTORNEY AT LAW
FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

EXHIBIT #4

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 STATE OF SOUTH CAROLINA,)
)
 Vs.)
)
 SEAN PHILIP SMITH,)
 Defendant.)

GENERAL SESSIONS
 Case Numbers M805154, M805157, M805158

MOTION TO RECONSIDER SENTENCE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 STATE OF SOUTH CAROLINA,)
)
 Vs.)
)
 SEAN PHILIP SMITH,)
 Defendant.)

Case number M640102

MOTION TO RECONSIDER SENTENCE

2011 SEP 20 10:12:46

TO: STATE OF SOUTH CAROLINA AND ITS ATTORNEYS, SOLICITOR, DAVID PASCOE AND SOLICITOR SCARLET A. WILSON:

You will please take notice that Defendant, Sean Philip Smith, by and through undersigned counsel, will and hereby does move before the Honorable Edgar Dickson, Circuit Court Judge for the First Judicial Circuit, at the Orangeburg County Courthouse, 151 Docket Street, Orangeburg, South Carolina, for an Order Reconsidering the Court's sentencing in the above-captioned cases, rendered following guilty pleas of September 19, 2011.

This Motion is based upon the applicable statutory and case law of South Carolina, and is made pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. Through this Motion, Defendant asks that the Court review and reconsider the sentences imposed, in light of the following factors, and to adjust the sentences as may be appropriate.

Wynona B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SOUTH CAROLINA

1. Defendant voluntarily pled guilty.
2. Defendant has no prior record other than DUS for traffic-related offenses.
3. The underlying offenses occurred in a close and brief time period, rather than over a lengthy life of crime.

On September 19, 2011, Defendant came before the Court prepared to plead guilty and accept the consequences of the two armed robbery charges (M 805154 in Orangeburg County and M640102 in Charleston County) involving the prescription medications Oxycontin and Hydrocodone, along with 2 related counts for Assault & Battery in Orangeburg County. The seriousness of the armed robbery charges is underscored by that offense being included within the definition of "most serious" for enhancement of penalty to life without parole in the state's "two strikes" statute. The effect of such an offense was vividly demonstrated on September 19, 2011 by the testimony of three persons confronted by the Defendant in the Neeses case. This motion is not an attempt to diminish the admitted gravity of the offense of armed robbery, nor to denigrate the anguish that those three individuals must have endured. Rather, through this motion, Defendant asks the Court to also consider, as a means of allowing a reduction in the sentence, that the state's penal objective and society's need for punishment and retribution can be met by allowing this Defendant to serve concurrently an amount of time less than the 25 years announced in Court.

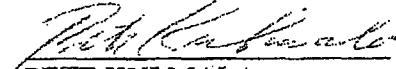
At the time of the pleas on Monday, Defendant was supported by the presence of five family members, including George Smith, his uncle, who has supplied an affidavit, (attached) which provides abbreviated insight into the personality of the Defendant. Through his affidavit, as well as the other circumstances to be gleaned from the information presented in the plea

hearing, it is apparent that Sean Smith is not engaged in a criminal lifestyle, but unfortunately became involved in crime through a developing dependency on the very ugly and very addictive drugs mentioned above. Certainly the armed robberies are not made less serious because they were committed by one who is developing an addiction, because it is apparent that large numbers of crimes derive from some form of addiction. However, in this case, Sean Smith has appreciated the grievousness of his offenses and elected to plead guilty, do his time and upon release, begin his life again. A part of making such an election is an anticipation that a guilty plea can result in a shorter sentence than one might receive following a contested trial. The possibility can certainly induce an individual to enter a plea.

During the plea, the Solicitor informed the Court that Sean Smith had only a 2003 DUS. Not excusing the DUS, that record is further indication of Sean Smith's law-abiding life for 28 years before the events of Spring 2011. While the absence of a prior record cannot erase the fact of Defendant's commission of the armed robberies, it does tend to support Sean's previous character and that his recent criminal activities are the product of dependency or addiction to the kinds of prescription drugs which are coming to be recognized as problematic and dangerous. Also, Sean's lack of prior record, followed by the drug-seeking crimes of early 2011, further supports that his was a short-lived and involuntary descent into hard crime to deal with drug usage.

Defendant respectfully asks the Court to reconsider the sentences announced on September 19, 2011, with a particular focus upon the reasons set forth herein, and adjust the sentences accordingly.

September 22, 2011
Barnwell, SC



PETE KULMALA
Harvey & Kulmala, LLC
PO Box 705
Barnwell, SC 29812
(803) 259-5531

AFFIDAVIT OF GEORGE SMITH

PERSONALLY APPEARED before me, the undersigned, George Smith, who, being duly sworn, deposes and says:

1. I am George Smith, Sean's Uncle. I am a 31 year Civil Service employee of USDA/Rural Development. I was present in the Courtroom on Monday for Sean's guilty plea. I was prepared at that time to speak to the Court on Sean's behalf, and would like to convey through this affidavit, the thoughts that I had intended to deliver to the Court on Monday.
2. I would like to say a few things with regard to this most unfortunate situation that Sean has laid upon himself. First I want to acknowledge and state my total appreciation and understanding of the plight of the victims that spoke earlier. I say this with true compassion. My wife is a bank manager and I have concern for her. In fact a branch she managed previously was robbed and I remember the suffering of the bank employees. Also, I have a nephew by marriage, who is a pharmacist here in Orangeburg. Also, Sean's half-sister, Katie, at the time of this incident(s) was enrolled in pharmaceutical school.
3. But, I want to tell you what I know about Sean. Sean had a pretty tough time as a youngster. His mother left when he was a child and his dad, my Brother Phil, died when Sean was 16. I must admit that my brother did not offer the best environment for child rearing. Phil had numerous problems. But in that community, Norway, the community becomes the family. I saw on the courtroom wall a picture of someone whom I consider one of the great "Norwegians", Judge James (Jimmy) Williams. Jimmy helped Sean. He was a fellow church member at Sean's church, Norway Baptist Church. Jimmy was and is a man of Christ. He helped in mentoring Sean through church. Nearby to Sean's (my brother's) home was his grandmother, my mother Betty Smith, who was in court with us on Monday. She shouldered a major responsibility of the rearing of Sean. She was always less than a hundred yards away.
4. About Sean: He was no "druggie" in school. Certainly he was no angel but he did fairly well given all the difficulties he faced. After his dad died when Sean was age

ATTEST: TRUE COPY
Wynya B. Clark
 CLERK OF COURT
 ORANGERBURG COUNTY, SOUTH CAROLINA

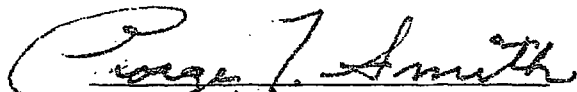
16 Sean lived with my mother. Eventually, Sean left my mother's home to move to Charleston to be with his birth mother, Donna. Sean exceeded my expectations. He obtained his high school degree and worked. The work was not glamorous and not, by any means, the road to affluence. But, Sean continued to do his best.

The one blemish in Sean's "record" was for driving under suspension (DUS) - a result of unpaid tickets for various moving violations that mounted over time.

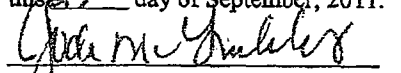
5. WHAT happened with Sean? As I understand Sean was having back pain that he attributed to the vehicle accident he had in his teens. It may have been the accident or just working on his feet for hours as a cook. I am not certain. But to make it short, he began taking oxycodone to deal with his back pain. It is my firm belief that this is what initiated the rapid downfall. He used the medications and became addicted. His need or craving (addiction) to the drug consumed him, as it has very many others. Addicted and in need of the drug, Sean did the unforgiveable, the unconceivable and committed these armed robberies. He admits that and clearly is placing his future upon the mercy of this court. HE WAS SO WRONG to take the steps to acquire the drugs. I fully understand this fact, but this young man needs help. Whatever your honor decides, I hope that it includes help that can return him to society where he may continue as a contributing member. His family loves him. He loves his family.

6. I have to say this about Sean. He is a loving young man. When I think of Sean, I think of how without failure, he ends every conversation with, Uncle George "I love you and tell Aunt Bubba and Dani I love them too". That is the true Sean. What we had happen is a drug addiction that resulted in a horrendous chain of events. THIS IS A LIFE THAT HAS VALUE. Please help him.

FURTHER YOUR AFFIANT SAYETH NAUGHT


George T. Smith

Sworn to and subscribed before me,
this 27 day of September, 2011.


Notary Public for South Carolina
My commission expires: 9-2019


CERTIFICATE OF SERVICE

I, Ashley Heltibridle, paralegal for Pete Kulmala, attorney for the Defendant, Sean Smith, in the case of The State of South Carolina vs. Sean Smith, Case Nos.: M805154; M805157; M805158; and M640102, do hereby certify I have served the foregoing **Motion To Reconsider Sentence** on the date shown below by mailing a copy of the same via first class, US mail, postage prepaid, to the person listed below:

Thomas Scott, Asst. Solicitor
Office of the Solicitor for First Circuit
P.O. Box 1525
Orangeburg, SC 29116

Dale Savage, Asst. Solicitor
Office of the Solicitor for Ninth Circuit
101 Meeting Street
Charleston, SC 29401

Honorable Edgar Dickson
151 Docket St., Ste. 207
Orangeburg, SC 29115


Ashley Heltibridle

September 28, 2011
Barnwell, South Carolina

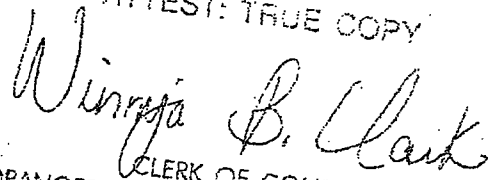
ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

EXHIBIT #5

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
vs.)
)
SEAN PHILIP SMITH,)
)
Defendant.)

ORDER

2011-GS-38-869, 2011-GS-38-872 &
2011-GS38-873

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
vs.)
)
SEAN PHILIP SMITH,)
)
Defendant.)

ORDER

2011-GS-10-5388

FILED
2012 AUG -2 PM 3:20
LORD
MARK
JACK

This matter came before me on July 23, 2012 on the Defendant's Motion to Reconsider Sentence. Present in the courtroom were Sean Philip Smith, the Defendant; Pete Kulmala, attorney for the Defendant; and Thomas Scott, Deputy Solicitor.

The Court heard presentations from the Defendant and the State as to whether the Defendant's sentence of 25 years should be reconsidered.

The Court finds that the original sentence is appropriate and the Defendant's Motion to Reconsider Sentence is denied.

AND IT IS SO ORDERED.



Judge Edgar W. Dickson
Presiding Judge

Date: 8/2/12
Orangeburg, South Carolina

ATTEST: TRUE COPY
Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

EXHIBIT #6



RECEIVED
MAR 8 2013

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 08, 2013

Mr. Pete Kumula
110 Main Street
Barnwell SC 29812

Re: The State v. Smith, Sean Philip
Appellate Case No. 2012-212664

Dear Counsel:

Please be advised that it has come to the Court's attention that the above matter originated from a guilty plea. Since this is an appeal from a guilty plea, nolo contendere plea, or plea pursuant to *Alford*, Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules requires you to provide "a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal." **Failure to make a sufficient showing may result in dismissal of this appeal.**

The explanation should be served and filed within ten (10) days of the date of this letter.

Please be advised the time limits for ordering the transcript are held in abeyance.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert M. Dudek ✓ SAG
Salley W. Elliott

EXHIBIT #7

HARVEY & KULMALA, LLC

*Attorneys at Law
110 Main Street
Post Office Box 705
Barnwell, South Carolina 29812*

**J. Martin Harvey
Pete Kulmala**

**(803) 259-5531
Fax: 259-5414**

March 14, 2013

SC Court of Appeals
Jenny Abbott Kitchings, Clerk
PO Box 11629
Columbia, SC 29211

Re: State of South Carolina vs. Sean Smith
Case Nos.: 2011-GS-38-869; 2011-GS-38-872; 2011-GS-38-873; and
2011-GS-10-5388

Dear Ms. Kitchings:

Pursuant to instruction contained in the March 8, 2013 letter of Deputy Clerk Allen, the substantive response to the written explanation requirement of Rule 203(d)(1)(B)(iv) would be contained in the Motion to Reconsider Sentence under Rule 29, which was filed on September 28, 2011, heard by Judge Dickson on July 23, 2012, and decided in written order filed August 2, 2012. A copy of that Motion and Order are enclosed herewith. In that Motion, Appellant Smith sought the trial court's review and reconsideration of his sentence. Essentially, Appellant's Motion sought reduction of the sentence in light of enumerated facts and conditions, supporting a lesser time commitment. The Circuit Court Judge denied the motion by written order dated August 2, 2012 and filed August 2, 2012.

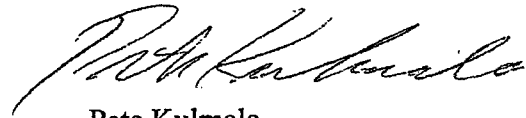
MAR 15 2013

RECEIVED
APPELLATE COURT

Should the Court require further information in connection with this response to the Rule 203 provision, please let me know.

Please accept my kind regards,

Most Respectfully,

A handwritten signature in cursive script, appearing to read "Pete Kulmala".

Pete Kulmala

PK/ah

cc: Sean Smith
Thomas Scott, Esquire
Benjamin Simpson, Esquire
Robert M. Dudek, Esquire

EXHIBIT #8

HARRY A. WALKER
CIRCUIT COURT REPORTER
P. O. BOX 127
ROWESVILLE, S.C. 29133

MARCH 4, 2013

SHARON A. GRAHAM
ADMINISTRATIVE COORDINATOR
S. C. COMMISSION ON INDIGENT DEFENSE
P. O. BOX 11589
COLUMBIA, S. C. 29211-1589

RE: STATE VS. SEAN PHILIP SMITH,
APPELLATE CASE NO. 2012-212664
CASE NO. 2011-GS-38-00869, 00872, 00873, 05388
DATE OF TRIAL: SEPTEMBER 19, 2011

DEAR SHARON:

AS REQUESTED I AM ENCLOSING A COPY OF THE GUILTY PLEA
TRANSCRIPT IN THE ABOVE HELD ON SEPTEMBER 19, 2011, ALONG WITH MY
BILL FOR SAME.

WITH REGARD TO YOUR REFERENCE TO AN AUGUST 2, 2012 MOTIONS
HEARING, I HAVE NO RECORD OF A HEARING ON THAT DATE. I HAVE FOUND
IN MY INDEX A HEARING HELD ON JULY 23, 2012. HOWEVER, I HAVE
DILIGENTLY SEARCHED MY FILES AND AM UNABLE TO LOCATE MY RECORD OF
THIS HEARING.

SINCERELY YOURS,

Harry A. Walker
HARRY A WALKER

ENC.

CC: DESIREE ALLEN
COURT SERVICES COORDINATOR
S. C. COURT ADMINISTRATION
1015 SUMTER STREET, SUITE 200
COLUMBIA, S. C. 29201

MAR 6 2013



ALAN WILSON
ATTORNEY GENERAL

August 9, 2013

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Sean Phillip Smith
Appellate Case No: 2012-212664

Dear Ms. Kitchings:

I received Appellant's Petition for Order to Reconstruct the Record of Appellant's Motion to Reconsider Sentence Hearing in the above-referenced case. Respondent has no objection to Appellant's petition.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab

cc: Susan B. Hackett, Esquire
Ms. Trisha Allen

RECEIVED

9 2013

SC OFFICE OF
APPELLATE DEFENSE

The South Carolina Court of Appeals

The State, Respondent,

v.

Sean Philip Smith, Appellant.

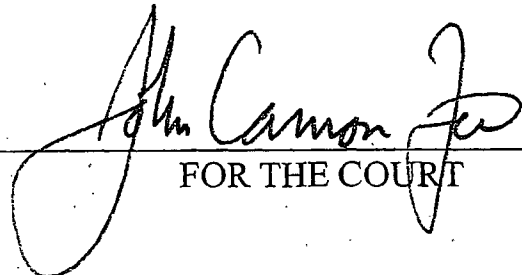
Appellate Case No. 2012-212664

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SC OFFICE OF APPELLATE CLERK

ORDER

Appellant has filed a petition to remand this appeal to the circuit court for reconstruction of the record, explaining that the court reporter is unable to locate her record of the hearing on Appellant's motion to reconsider his sentence. Respondent does not object to Appellant's petition. The petition is granted and this case is remanded to the Orangeburg County Court of General Sessions. Counsel for Appellant is ordered to contact counsel for Respondent and the circuit court judge, the Honorable Edgar W. Dickson, within ten days of this order to schedule such hearings as the circuit court judge deems appropriate to accomplish the reconstruction. Counsel for Appellant shall provide an update to this court no later than fifteen days from the date of this order, with a copy to counsel for Respondent.


FOR THE COURT

Columbia, South Carolina

cc:

Susan Barber Hackett
Salley W. Elliott
Judge Edgar W. Dickson

FILED
10/1/13

 COPY

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

RECEIVED
NOV 13 2013
SC Court of Appeals

SEAN PHILLIP SMITH,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212664

NOV 13 2013

PETITION FOR CONSENT ORDER
TO REMAND FOR A NEW HEARING OF
APPELLANT'S HEARING ON HIS
MOTION TO RECONSIDER HIS SENTENCE

On August 6, 2013, undersigned counsel requested an order requiring the parties to reconstruct the record of Appellant's hearing concerning his motion to reconsider his sentence held on July 23, 2012 before the Honorable Edgar W. Dickson. On August 9, 2013, Salley Elliott, Senior Assistant Deputy Attorney General, responded by letter that Respondent had no objection to the petition. On October 1, 2013, this Court granted the petition for reconstruction. Specifically, the Court ordered the matter remanded to the

Honorable Edgar W. Dickson for the scheduling of "such hearings as the circuit judge deems appropriate to accomplish the reconstruction."

On October 31, 2013, Peggy T. Smith, Judge Dickson's administrative assistant, emailed undersigned counsel, Ms. Elliott, and Tommy Scott, the deputy solicitor. In the email, Judge Dickson stated: "Rather than reconstruct the record, I have no objection to just doing a new hearing on the reconsideration." Ms. Elliott deferred to the deputy solicitor, who was in agreement with Judge Dickson's proposal. Undersigned counsel spoke with Appellant by phone on November 7, 2013. Appellant agreed with Judge Dickson's proposal as well.

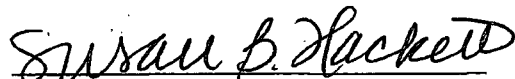
Inasmuch as all the parties are in agreement that a new hearing would be in the interests of justice, Appellant respectfully moves this Court for a consent order remanding this case to Judge Dickson for a new hearing on Appellant's motion for reconsideration of his sentence. Appellant also respectfully requests this Court or the Orangeburg County Clerk of Court appoint counsel to represent him at the hearing on his motion for reconsideration.¹ Finally, Appellant asks this Court to hold Appellant's appeal in abeyance pending Judge Dickson's decision on Appellant's motion to reconsider his sentence following the new hearing. When Judge Dickson issues his decision, Appellant's counsel appointed for the new hearing will notify Susan B. Hackett with the Office of Appellate Defense immediately. Ms. Hackett will notify this Court, and the matter will proceed in the normal course.

WHEREFORE, the undersigned requests this Court issue a consent order remanding this case to Judge Dickson for a new hearing on Appellant's motion for


¹ Appellant's counsel at the guilty plea proceeding and the motion for reconsideration was Pete Kumala, who was retained for those proceedings.

reconsideration of his sentence. Appellant also respectfully requests this Court appoint counsel to represent him at the hearing on his motion for reconsideration. Finally, Appellant asks this Court hold the appeal in abeyance pending a decision from Judge Dickson on the motion for reconsideration.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

I CONSENT:


for Salley Elliott, Esquire

November 13, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

NOV 13 2013

SC Court of Appeals

SEAN PHILLIP SMITH,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212664

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition for consent order to remand for a new hearing of Appellant's motion to reconsider his sentence in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant General, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, and Sean Phillip Smith, # 347944, at Lieber Correctional Institution, PO. Box 205, Ridgeville, SC 29472, this 13th day of November, 2013.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 13th day of November, 2013.

Sean Elliott (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Sean Philip Smith, Appellant.

DEC 20 2013

Appellate Case No. 2012-212664

ORDER

On October 1, 2013, this court remanded this case to the Orangeburg County Court of General Sessions for the purpose of reconstructing the record of the hearing on Appellant's motion to reconsider his sentence. The parties have now filed a consent motion, indicating the parties and Judge Edgar W. Dickson "are in agreement that a new hearing would be in the interests of justice" and requesting this court to "issue a consent order remanding this case to Judge Dickson for a new hearing on Appellant's motion for reconsideration of his sentence." The motion is granted. The August 2, 2012 order denying Appellant's motion to reconsider his sentence is vacated and this case is remanded for a new hearing on the motion to reconsider. Furthermore, Appellant's request for the appointment of counsel is granted. The Clerk of Court for Orangeburg County shall immediately appoint the next lawyer on the Rule 608 appointment list to represent Appellant during the hearing on the motion for reconsideration of his sentence. The parties shall provide this Court with a status update in thirty days and every thirty days thereafter.


 FOR THE COURT

Columbia, South Carolina

FILED

12/20/13

cc:

Susan Barber Hackett, Esquire

Sally Elliott, Esquire

The Honorable Edgar W. Dickson

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2011-GS-38-00869

State of South Carolina,)
)
 Plaintiff,)
)
 v.) Transcript of Record
)
 Sean Phillip Smith,)
)
 Defendant.)
)
)
)
)
)
)
)
)

March 13, 2014
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Tommy Scott, Esquire
Attorneys for the State

Nick Thomas, Esquire
Attorneys for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

State v. Sean Phillip Smith

3/13/14

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I N D E X

WITNESS/DESCRIPTION

PAGE NO.

Hearing

EXHIBITS:

NO EXHIBIT WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter 18

1 MR. SCOTT: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. SCOTT: State calls Sean Phillip Smith.

4 May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 MR. SCOTT: Standing before you is Sean Phillip Smith.

7 He pled guilty in front of Your Honor on September 19, 2011.
8 He was represented by Mr. Pete Kalmala. Mr. Smith pled
9 guilty, Your Honor, he pled guilty to armed robbery on 2011-
10 GS-38-869. Your Honor sentenced Mr. Smith to 25 years. Mr.
11 Smith also pled guilty to two counts of assault and battery
12 in the first degree, 2011-GS-38-782 and 873. Your Honor
13 sentenced Mr. Smith to 10 years concurrent. Mr. Smith also
14 waived a venue and pled guilty to one count of armed robbery
15 from Charleston County, 2011-GS-10-5388. Your Honor
16 sentenced Mr. Smith to 25 years, also concurrent. Your
17 Honor heard a Motion to Reconsider on July 23, 2012. You
18 issued an order dated August 2, 2012, denying the
19 defendant's Motion to reconsider the sentence.

20 On December 20, 2013, upon consent of all parties that
21 order was vacated by the Court of Appeals and a new hearing
22 on the defendant's Motion to Reconsider was granted. The
23 Court of Appeals also ordered that the Orangeburg Clerk of
24 Court appoint counsel for Mr. Smith and the record should
25 reflect that Mr. Nick Thomas was appointed and is present

State v. Sean Phillip Smith

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1 today with Mr. Smith. The defendant's original counsel,
2 Pete Kalmala is also present here today.

3 Because this is the defendant's motion, Your Honor,
4 I'll allow Mr. Thomas to go first.

5 MR. THOMAS: Thank you, Judge. Thank you, Mr.
6 Solicitor.

7 Before you, Judge, is Mr. Sean Smith. You've seen Mr.
8 Smith before as our record reflects. He is 31 years old at
9 this point in time, Your Honor. He's been incarcerated in
10 Lieber prison.

11 The facts of this case are extremely ugly, involved --
12 here in Orangeburg County it involved an armed robbery at
13 the pharmacy at the Piggly Wiggly. What we've got with this
14 Judge, is a number of things. Most importantly I believe
15 what we have is a case of could've and did. He did admit
16 what he did wrong. Given the opportunity today, Judge, of
17 course, with the Court's permission he'd like to address the
18 Court when I'm finished.

19 THE COURT: Okay.

20 MR. THOMAS: But he did a number of things that are very
21 wrong and very bad and things could've happened. Someone
22 could have been killed. Someone could have been killed in
23 the car accident chasing him. Someone could have been
24 killed by the two shots that he says he fired in the air,
25 but he did fire two shots. He's never wavered on admitting

1 his fault in this case and with these acts. But we don't
2 punish on could've, we punish on did.

3 Your Honor, I've taken the time on this case to review
4 over 1,000 pleas taken by this Court. I've looked at armed
5 robberies stemming as far back as 2009. I've looked at the
6 sentences in each one, and, as all of us know, no two cases
7 are alike. They all have different fact, they all involve
8 different victims, different circumstances.

9 This young man, who is still young at 31 had never been
10 in trouble prior to his experimentation with the drug
11 OxyContin. That drug got a hold of him and lead him down the
12 road to some awful decisions. Things he can't get back, but
13 things he admitted he did. His co-defendant in this case,
14 Your Honor, who was driving the car, but didn't fire any
15 shots, received a sentence of eight years suspended on
16 service of one and five years probation.

17 As I went over this list and I looked at his history.
18 His father was a drug addict. He was raised by his other
19 family members, all of whom are present here in the
20 courtroom today, Your Honor. And this is the village that
21 helped raise him and they helped to raise him right and he
22 lived a right and straight and sober life until, like his
23 father, he experimented with drugs, dug himself this hole
24 and committed these acts. From everyone I've talked to who
25 know this man, no history of violence. No history of guns

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1 and no history of violence. Wasn't a bully in school.
2 Didn't get in trouble, physical fights, other altercations
3 of a combative nature at any point in his life. He went
4 down this road and committed these acts. From the moment he
5 was pulled over he admitted what he had done, and brought
6 himself upon the Court and asked the Court's mercy in the
7 original sentencing, as the record reflects, was 25 years.

8 Judge, since that time he's been incarcerated he's
9 achieved his GED certificate. I've showed these to the
10 solicitor. I'd like to approach the bench if I could --

11 THE COURT: Sure.

12 MR. THOMAS: -- with some of the things he's received
13 while he's been incarcerated.

14 THE COURT: Thank you.

15 MR. THOMAS: Including not only finishing his GED,
16 Judge, but finishing at the top five percent of his class.
17 He comes from a family of educated folks, smart folks. His
18 sister recently became a registered nurse. I believe his
19 grandmother is a retired school teacher who'd achieved her
20 master's degree.

21 This addictive gene was in his body. He made these
22 mistakes, went down this road, admitted to what he'd done,
23 but, again, Your Honor, it brings me back to one, his co-
24 defendant, who as I said didn't have a gun, didn't fire a
25 shot. Those stupid decisions were Mr. Smith's. But, again,

1 he acknowledged them. He admitted to what he did do not what
2 could have happened.

3 As I reviewed these 1,000 pleas and went over it, all
4 different armed robberies, only one sentence even came close
5 and that involved three counts of attempted murder in which
6 people were shot. Not just shot but did get hit by bullets.
7 But when I saw one, I saw a case that I thought would be a
8 more appropriate sentence for Mr. Smith than 25 years, and
9 it was a case that Your Honor once did you punished him, in
10 that case, with seven years each consecutive for a total of
11 14 years.

12 What I'm asking the Court today, Judge, is to reduce
13 his sentence from 25 years to 15 years consecutive, plus one
14 additional year for each shot that he fired out of that
15 vehicle for a total of 17 years.

16 As it stands now defendant will be 51 years old when he
17 will be eligible for release. He's already demonstrated the
18 ability to try and rehabilitate himself and I believe when
19 he addresses the Court he will go a little further into
20 detail on that.

21 But again Your Honor the disproportionate sentencing
22 with this co-defendant, which nearly amounts to cruel and
23 unusual punishment in comparison to his 25 years. But,
24 again, he's never cast blame on anyone else. And with the
25 Court's permission I'd like Mr. Smith to address you.

1 THE COURT: Okay. I do want to hear from you, Mr.
2 Smith.

3 Mr. Thomas, I do have a question to ask you.

4 MR. THOMAS: Yes, sir.

5 THE COURT: What I remember in looking over the notes
6 and like that, was I thought it was Mr. Smith's testimony
7 that the driver didn't know anything about what he was doing
8 in this thing. He had no knowledge of what he was doing.
9 He was just his driver. That's what I believe I was told.

10 MR. THOMAS: I'm not overly familiar with that part of
11 the record, Your Honor.

12 THE COURT: Okay. I want to -- I want to get that. I
13 know you didn't represent him.

14 MR. THOMAS: I did not.

15 THE COURT: I know you didn't represent the co-
16 defendant, but my recollection of that, and I know Mr.
17 Kalmala is here and I don't know if he remembers anything
18 about it, because I don't think he was actually involved in
19 that one, but my take on it was that Mr. Smith was taking
20 sole responsibility for this. He indicated, I think his name
21 was Tranchida?

22 MR. SCOTT: Tranchida.

23 THE COURT: Okay. That Mr. Tranchida, that he had asked
24 him to just drive him out there and so just want you to be
25 aware of that, okay.

1 MR. THOMAS: Well, thank you, Judge for pointing that
2 out and I do acknowledge what you're saying but I don't
3 believe that changes the face of my argument in comparison
4 to other cases.

5 THE COURT: No, I just wanted to make you aware of that.

6 Mr. Smith, I'll be happy to hear from you, please, sir.

7 MR. SMITH: Yes, sir. I just want to tell you again how
8 sorry I am and let everybody know that I think about it
9 every day. What could have happened. I'm glad nobody got
10 physically hurt. I know mentally it will probably always
11 bother them. I'm can imagine it's not something anybody
12 could forget, and I understand that.

13 I've never been this type of person, sir. I never
14 carried a handgun, never anything like that, sir. I got
15 hooked on drugs. I got hooked on Heroin and OxyContin and I
16 became somebody that's ugly. It's not a life I ever wanted
17 to lead, it's not who my family raised me to be. It's
18 ultimately my fault, I understand, because I'm the one who
19 made the decision to use the drugs and so I still accept
20 full responsibility for everything that happened. I just --
21 it's not who I am. It's not who I wanted to be. I just ask
22 that you give me a chance at a life, sir. My father died in
23 his early 40s. Both my uncles have had heart attacks in
24 their 40s. I'll be 51 when I get out, and honestly with my
25 history of drug use, Your Honor, I'd just like a chance for

State v. Sean Phillip Smith

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1 some kind of life. I'll be lucky if I live that long with
2 my history and family history and my history of drugs. I
3 understand I've got to be punished for what I did, sir, but
4 I'd like a chance to live a life and prove, show my family I
5 can make something of myself. I had been -- Judge, I see
6 drugs just about every day in prison. I see and do
7 everything I can to stay away. I haven't been a perfect
8 angel, still, sir, every day I try. I still make mistakes
9 where I'm at, but I try -- I stay away from drugs and I try
10 every day to be better than what I let my life become. I
11 went ahead and got my GED.

12 THE COURT: Yes, sir.

13 MR. SMITH: I help tutor at the school. I just -- I'm
14 trying to make things -- I'm trying to make my life right. I
15 know I can't make things right. There's nothing I can do to
16 take back or nothing the Court can do to even punish me for
17 what I did to these people. It's always going to be with
18 them, but I just -- I just beg you for a chance in life,
19 sir, and I'm sorry. I don't know how -- what else to say to
20 you. I regret it every day. Every day of my life I live
21 with it and I realize it's something I did, and I need to
22 accept responsibility and I know it's something I will never
23 do again. I know I'll never be that type of person again no
24 matter what happens here today. I never want to be around
25 drugs again. I see it and what it did to my life. I watch

1 stuff in that prison. That's what most of us did, drugs and
2 alcohol related -- I watch people -- last week somebody got
3 killed arguing because they were drunk. And I just watch
4 what drugs are doing to people and that's something I never
5 want in my life again.

6 I'll say, once again, I'm sorry. I'm sorry for the
7 Court's time, sorry what I did to these people's lives.
8 That's all I can do is ask for some leniency, sir.

9 THE COURT: Okay. Mr. Smith, this is good that you've
10 taken advantage of your situation. That is good.

11 All right. Mr. Thomas, anything else?

12 MR. THOMAS: Just in conclusion, Your Honor, again, 15
13 years consecutive, plus one year for each shot fired for two
14 additional years for a 17 year total sentence.

15 The Court's role is to punish for the acts that he
16 committed, but also prison is for rehabilitation as well,
17 too and we don't see many candidates who come through here
18 who I believe can be rehabilitated. Mr. Smith is one that
19 can be and just reducing that eight year period off his
20 original sentence I believe he can contribute to the
21 positive growth of society, Your Honor.

22 Nothing further.

23 THE COURT: Mr. Scott.

24 MR. SCOTT: May I please the Court, Your Honor.

25 THE COURT: Yes, sir.

State v. Sean Phillip Smith

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1 MR. SCOTT: Your Honor, armed robbery is a very violent
2 offense. I think our legislature has determined that the
3 minimum sentence on one armed robbery should be 10 years. I
4 think lost in all of this has been the fact that Mr. Smith
5 committed two armed robberies. One in Charleston, one here.
6 I can't speak to all the details on the Charleston incident.
7 I don't think those victims ever came to any of our
8 hearings. I did the plea and I received very little
9 discovery before doing that plea. But I can tell you that
10 the armed robbery that Mr. Smith committed here in
11 Orangeburg, I'm very familiar with the facts and
12 circumstances on that case. I've met with those victims on
13 a number of occasions, Your Honor has heard from those
14 victims on a number of occasions, at least three times. I'm
15 thinking four times. Once for Mr. Tranchida's plea, once for
16 Mr. Smith's plea, once for Mr. Smith's Motion to Reconsider
17 and I think a bond hearing for Mr. Tranchida.

18 THE COURT: Yes, I think I remember that.

19 MR. SCOTT: But with regard to the facts on Mr. Smith's
20 armed robbery, as Your Honor may recall the defendant drove
21 or traveled all the way from Charleston County that day. He
22 can be seen on video entering the Neeses Piggly Wiggly where
23 the pharmacy is located. He walks around the store,
24 basically casing the store, waiting for the right
25 opportunity to go into the pharmacy. He then enters the

1 pharmacy, he points a gun. Doesn't just present it, but he
2 points it at one of the technicians, one of the pharmacist.
3 We now know that that gun was loaded because within minutes
4 he's firing that gun at two of his pursuers. He's not just
5 firing that gun from the car, he's actually crawled into the
6 trunk, popped the trunk so he can shoot at these people.

7 So if the minimum on one armed robbery is 10 years, I
8 think a 25 years sentence for two armed robberies on two
9 different days in which one of the incidents the defendant
10 is shooting at people I think is appropriate.

11 As far as the co-defendant's sentence. From the very
12 outset, from the time that Mr. Tranchida and Mr. Smith were
13 arrested they both gave consistent stories to law
14 enforcement that Mr. Tranchida did not know what Mr. Smith
15 was going to do that day. In fact, in an affidavit that Mr.
16 Smith wrote he said, quote, Jeff didn't have anything to do
17 with the robbery. Jeff was only in Orangeburg because I
18 asked him to take me to see my grandmother. At no time did
19 Jeff and I conspire to rob anyone or place of business.

20 As the case proceeded I actually explored the
21 possibility of Mr. Smith, giving a little more information
22 as to Mr. Tranchida's involvement or his knowledge and I was
23 told by Mr. Kalmala that Mr. Smith stood by his original
24 story, that Mr. Tranchida had no involvement in planning or
25 conspiring to assist in the armed robbery. So I think it's

1 somewhat hypocritical for Mr. Smith to argue that his
2 sentence is somewhat disproportionate to his co-defendant's,
3 when Mr. Smith has all but said from the very beginning that
4 Mr. Tranchida is innocent. I mean, if you believe Mr. Smith
5 from the beginning, Mr. Tranchida shouldn't have been
6 convicted of anything, but now he's complaining that his
7 sentence is disproportionate.

8 Mr. Smith has also had some disciplinary actions while
9 in SCDC. He's lost canteen privileges for 434 days. He's
10 lost telephone privileges for 434. Lost visitation
11 privileges for 434 days and he's lost television for 1,825
12 days.

13 Your Honor, it would be the state's position that your
14 original sentence is appropriate, based on the
15 circumstances, based on the facts of this case.

16 Mr. Thomas spoke early on about what could have
17 happened and how we don't punish people on could've. You
18 mentioned that somebody could have been shot, somebody could
19 have been killed. I will submit that Your Honor did not
20 sentence Mr. Smith on could'ves. If somebody had been shot
21 or killed Mr. Smith would not have been entitled to a 25
22 year sentence. It would have been substantially greater.

23 We did notify the victims of today's hearing. As I
24 said earlier, they've been here four or five times, already.
25 I think Your Honor knows their position.

1 That's all from the state, Your Honor.

2 THE COURT: Okay.

3 MR. THOMAS: Anything you want to add.

4 MR. THOMAS: Thank you, Judge. Please the Court.

5 THE COURT: Yes, sir.

6 MR. THOMAS: The punishments that Solicitor Scott
7 referred to are from the same nucleus of operative facts.
8 One is involving his unlawful possession of a cell phone
9 while in Lieber prison. And that slew of punishments are
10 from that -- the same nucleus of operative facts.

11 As far as Mr. Solicitor's argument that my client's
12 defenses is hypocritical I take the blame for that, Your
13 Honor, for not have been provided a copy of the full record.
14 So I'm unaware of that information so that is also my
15 position, but disproportionate pleas this Court has taken
16 that I have taken the time to review. So not just into his
17 co-defendant. I'm willing to even withdraw the argument that
18 I made on that behalf because I was not privy to that
19 information.

20 THE COURT: Yes, sir.

21 MR. THOMAS: But I am privy to the 1,000 pleas of public
22 record that I have reviewed and I do believe that the
23 sentence is disproportionate to the others.

24 THE COURT: And you've got your notes?

25 MR. THOMAS: Yes, Your Honor, I do.

State v. Sean Phillip Smith

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1 THE COURT: You just haven't -- they're just written
2 down like that?

3 MR. THOMAS: I have them written here, but I have
4 additional.

5 THE COURT: Right. Okay.

6 MR. SCOTT: Which I don't assume includes any facts from
7 those cases.

8 MR. THOMAS: Brief facts.

9 MR. SCOTT: From a warrant or an indictment?

10 MR. THOMAS: Briefly, yes, actually.

11 THE COURT: Okay. Anything else, Mr. Thomas?

12 MR. THOMAS: Nothing, Your Honor.

13 THE COURT: Okay. All right. Okay.

14 Mr. Kalmala, did you want to say anything? You're here
15 and took the trouble to come over here.

16 MR. KALMALA: Your Honor, I don't really have anything
17 in particular to add. You know, I endorse and support the
18 arguments made by Mr. Thomas.

19 THE COURT: Okay.

20 MR. KALMALA: With respect to the question of comparing
21 Mr. Smith's sentencing with Tranchida's sentencing, you
22 know, I believe that the recap offered by the solicitor is
23 correct, but I concur with Mr. Thomas in that that's not
24 really necessarily relevant when you consider the overall
25 impact of the similar charges and similar sentences, there

1 is a disproportionality.

2 THE COURT: Thank you, Mr. Kalmala, I appreciate it.

3 All right. Gentlemen, what I'm going to do is let me
4 go back. I'm going to take it under advisement. I've got my
5 -- I was able right before we got here to pull all my notes
6 and now I'm going to go back and review those. I will get
7 in touch with y'all. There is no reason to sit here. I
8 will get in touch with y'all with my decision with what I'm
9 gong to do.

10 MR. THOMAS: Thank Your Honor.

11 Thank you, Mr. Solicitor.

12 THE COURT: Thank you. I appreciate it.

13 (This proceeding was concluded.)
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING OF THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE 13 DAY OF MARCH, 2014.

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

Hilda M. Jordan, CVR-M

November 21, 2014

State v. Sean Phillip Smith

3/13/14

19

1

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
vs.)
)
SEAN PHILIP SMITH,)
)
Defendant.)

ORDER

2011-GS-38-869, 2011-GS-38-872 &
2011-GS38-873

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
vs.)
)
SEAN PHILIP SMITH,)
)
Defendant.)

ORDER

2011-GS-10-5388

FILED FOR RECORD
WINNIE A. S. CLARK
CLERK OF COURT
ORANGEBURG, SC

2014 AUG 22 AM 8:35

This matter came before the Court on March 13, 2014 on the Defendant's Motion to Reconsider Sentence. Present in the courtroom were Sean Philip Smith, the Defendant; Nicholas Thomas, attorney for the Defendant; and Thomas Scott, Deputy Solicitor.

It appears that on September 9, 2011, the Defendant entered a guilty plea to one count of armed robbery (2011-GS38-869) and two counts of assault and battery, 1st degree (2011-GS38-872 & 873) stemming from an incident that occurred in Orangeburg County, and one count of armed robbery (2011-GS10-5388) stemming from an incident that occurred in Charleston County.

1/2 ~~28~~

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

It further appears that the Court sentenced the Defendant to twenty five (25) years on the armed robbery indictments and ten (10) years on the assault and battery indictments, with all sentences to run concurrently.

On March 13, 2014, the Court heard presentations from the Defendant and the State as to whether the Defendant's sentence should be reconsidered.

After due deliberation and upon review of the memoranda, case law, exhibits and arguments of counsel, the Court finds that the existing sentence is appropriate and the Defendant's Motion to Reconsider Sentence is denied.

AND IT IS SO ORDERED.



Judge Edgar W. Dickson
Presiding Judge

Date: 8/18/14
Orangeburg, South Carolina

2/28

96

WITNESSES

Marty Carrigg

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805154

Arrested: March 29, 2011

ACTION OF GRAND JURY
TRUE BILL

JUN 22 2011

Quane Bloome

Date 6-22-11

Foreperson of Grand Jury

Date: June 22, 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS38-0869

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

June 20, 2011 TERM

THE STATE
vs.

Sean Philip Smith

Indictment for

ARMED ROBBERY

ATTEST: TRUE COPY

Winnif B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2011 JUN 22 11:17
WINNIF B. CLARK
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-0869

At a Court of General Sessions, convened on June 20, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about March 28, 2011, in Orangeburg County, the defendant, Sean Philip Smith did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim(s), Lindsey Garrick and/or Joni Sané and/or Brittany Lynn Egston and/or Giant Discount Pharmacy, with the intent to permanently deprive the victim of possession of the goods or monies, such weapon or alleged weapon described as a handgun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

ORANGEBURG COUNTY, SC
CLERK OF COURT
Marilyn B. Clark
ALLEGED: BRINE & OPA

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Thomas B. Scott, III

Thomas B. Scott, III, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg
STATE VS. Sean Philip Smith
AKA:
Race: W Sex: M Age: 28
DOB: SS#:
Address: Charleston, SC 29412
DL#: SID#:

INDICTMENT/CASE#: 2011GS38-0869
AW#: M805154
Date of Offense: 3/28/2011
S.C. Code § 16-11-330(A)
CDR Code #: 0139

SENTENCE SHEET

CDL: Yes No CMV: Yes No Hazmat: Yes No
In disposition of the said indictment comes now the Defendant who was:
TO: Armed Robbery

CONVICTED OF or PLEADS

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

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

ATTEST:
Scott, III, Thomas B SC Bar# 15881
Sean Philip Smith
Attorney for Defendant SC Bar# 3577

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 9/19/11
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65
(Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.
SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$

Payment Terms:
set by SCDPPPS
Recipient: ORANGEBURG COUNTY, SC

Table with 2 columns: Description and Amount. Includes items like 14-1-206 (Assessments 107.5%), 14-1-211(A)(1) (Conv. Surcharge) \$100, 14-1-211(A)(2) (DUI Surcharge) \$100, 56-5-2995 (DUI Assessment) \$12, 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, 73.3, 1B TP (Law Enforce. Funding) \$25, 33.7, 1B TP (Drug Court Surcharge) \$150, 50-21-114 (BUI Breath Test Fee) \$50, 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$3.00, TOTAL \$133.00

PTUP
days/hours Public Service Employment.
Obtain GED
Attend Voc. Rehab. or Job Carp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ Beginning
\$ paid to Public Defender Fund
Other:

Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC
Clerk of Court/ Deputy Clerk
Court Reporter: Harry Det Walker

Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.
Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.
PRESIDING JUDGE
Judge Code: 2157
Sentence Date: September 19, 2011
SCCA/217 (06/2010)

WITNESSES

Marty Carrigg

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805157

Arrested: March 29, 2011

ACTION OF GRAND JURY
TRUE BILL

JUN 22 2011

Diane Bloom

Foreperson of Grand Jury
Date: June 22, 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-0872

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

June 20, 2011 TERM

THE STATE
vs.

Sean Philip Smith.

Indictment for

ASSAULT AND BATTERY 1ST DEGREE.

ATTEST: TRUE COPY

Winnif B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-600(C)(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2011 JUN 22 11:17
WINNIF B. CLARK
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-0873

At a Court of General Sessions, convened on June 20, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ASSAULT AND BATTERY 1ST DEGREE

That in Orangeburg County, South Carolina, on or about March 28, 2011, the Defendant, Sean Philip Smith, did unlawfully offer or attempt to injure another person, to wit: Marty Wilson, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury and/or occurred during the commission of a robbery, this offense being in violation of Section 16-3-600 (C)(1) of the South Carolina Code of Laws, 1976, as amended.

ORANGEBURG COUNTY, SC
CLERK OF COURT
Christina B. Clark
BEST TRUE COPY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Thomas B. Scott, III
Thomas B Scott, III, Solicitor

COUNTY OF Orangeburg
STATE VS Sean Philip Smith
AKA:
Race: W Sex: M Age: 28
DOB: SS#:
Address: Charleston, SC 29412
DL#: SID#:

INDICTMENT/CASE#: 2011GS38-0872
A/W#: M805157
Date of Offense: 3/28/2011
S.C. Code § 16-3-600(C)(1)
CDR Code #: 3412

SENTENCE SHEET

CDL: Yes No CMV: Yes No Hazmat: Yes No
in disposition of the said indictment comes now the Defendant who was:
TO: Assault and Battery 1st Degree

CONVICTED OF or PLEADS

in violation of § 16-3-600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST:
Scott, III, Thomas B 15881 Sean Philip Smith Attorney for Defendant 3577
SC Bar# SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 9/19/11
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65
(Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
RESTITUTION: Deferred Def. Waives Hearing Ordered.
PTUP
days/hours Public Service Employment

Total: \$ plus 20% fee: \$
Payment Terms:
set by SCDPPPS
Recipient: ORANGEBURG COUNTY, SC

Table with 2 columns: Description and Amount. Includes items like 14-1-206 (Assessments 107.5%), 14-1-211(A)(1)(Conv. Surcharge) \$100, 14-1-211(A)(2) (DUI Surcharge) \$100, 56-5-2995 (DUI Assessment) \$12, 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, 73.3, 1B TP (Law Enforce. Funding) \$25, 33.7, 1B TP (Drug Court Surcharge) \$150, 50-21-114 (BUI Breath Test Fee) \$50, 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC
Clerk of Court/ Deputy Clerk
Court Reporter: Mary Dot Walker

Obtain GED
Attend Voc. Rehab. or Job Corp
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
prmts. of \$ Beginning
\$ paid to Public Defender Fund
Other:

Conditional Discharge § 44-53-450(C) requires \$350 be
paid to the Clerk prior to disposition.
Appointed PD or appointed other counsel, § 47.12
requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE
Judge Code: 2153
Sentence Date: September 19, 2011
SCCA/217 (06/2010)

WITNESSES

Marty Carrigg

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805158

Arrested: March 29, 2011

ACTION OF GRAND JURY
TRUE BILL
JUN 22 2011
Diane Blount
Foreperson of Grand Jury
Date: June 22, 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-0873

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

June 20, 2011 TERM

THE STATE
vs.

Sean Phillip Smith

Indictment for

ASSAULT AND BATTERY 1ST DEGREE

ATTEST: TRUE COPY

Winnif B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-600(C)(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2011 JUN 22 11:17
WINNIF B. CLARK
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-0872

At a Court of General Sessions, convened on June 20, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ASSAULT AND BATTERY 1ST DEGREE

That in Orangeburg County, South Carolina, on or about March 28, 2011, the Defendant, Sean Philip Smith, did unlawfully offer or attempt to injure another person, to wit: Jason Creech, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury and/or occurred during the commission of a robbery, this offense being a violation of Section 16-3-600 (C)(1) of the South Carolina Code of Laws, 1976, as amended.

ORANGEBURG COUNTY SC
CLERK OF COURT
M. Smith
ALLEGED: TRUE COPY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Thomas B. Scott, III

Thomas B. Scott, III, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE vs. Sean Philip Smith
AKA:
Race: W Sex: M Age: 28
DOB: SS#:
Address: Charleston, SC 29412
DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

107

INDICTMENT/CASE#: 2011GS38-0873
A/W#: M805158
Date of Offense: 3/28/2011
S.C. Code § 16-3-600(C)(1)
CDR Code #: 3412

SENTENCE SHEET

CDL: Yes No CMV: Yes No Hazmat: Yes No

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

CONVICTED OF or PLEADS

TO: Assault and Battery 1st Degree

In violation of § 16-3-600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Scott, III, Thomas B SC Bar# 15881 Sean Philip Smith Attorney for Defendant SC Bar# 3577

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 9/19/11
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ Plus 2% fee, \$

Payment Terms:

set by SCDPPPS

Recipient:

*Fine:

Table with 3 columns: Description, Amount, Total. Includes items like 14-1-206 (Assessments 107.5%), 14-1-211(A)(1)(Conv. Surcharge) \$100, 14-1-211(A)(2) (DUI Surcharge) \$100, 56-5-2995 (DUI Assessment) \$12, 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, 73.3, 1B TP (Law Enforce. Funding) \$25, 33.7, 1B TP (Drug Court Surcharge) \$150, 50-21-114 (BUI Breath Test Fee) \$50, 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCJA Surcharge) \$5, 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning
paid to Public Defender Fund

Other:

Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.
Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Judge Code: 2153

Sentence Date: September 19, 2011

Winnif B. Clark CLERK OF COURT ORANGEBURG COUNTY, SC
Court Reporter: Harry Dot Walker

SAV20110402343

WITNESSES

Lauren Glover
Charleston City Police Department

AGENCY CASE NUMBER

1102081

ARREST WARRANT NUMBER

M640102

DATE OF ARREST

April 16, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

SEP 12 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1005388

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

SEAN PHILIP SMITH
DOB: [REDACTED]
W/M

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & G.S.
By: [Signature]
DEPUTY CLERK

Indictment for
Armed Robbery

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 12, 2011 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about February 9, 2011, in Charleston County, South Carolina, at [REDACTED] by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, SEAN PHILIP SMITH, did take and carry away goods and/or monies from the person or immediate presence of Kerri Edmonds with the intent to permanently deprive her of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DALE SAVAGE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS. Sean Philip Smith

INDICTMENT/CASE#: 2011GS1005388
A/W#: M640102
Date of Offense: 2/9/2011
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

AKA:
Race: WHITE Sex: M Age: 28
DOB: SS#:
Address:
City, State, Zip: Charleston, SC 29412-9211
DL#: SID#: SC01537493

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: Thomas R. Scott, Jr. 15881 Sean Smith
Savage, Dale For D.S. SC Bar# Defendant Attorney for Defendant SC Bar# 9577

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on: 9/19/11
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-18-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 2 columns: Description and Amount. Includes items like *Fine, § 14-1-206, § 14-1-211(A)(1), § 14-1-211(A)(2), § 56-5-2995, § 56-1-286, Proviso 47.9, § 14-1-212, § 14-1-213, § 50-21-114, § 56-5-2942(J), Proviso 90.5, 3% to County, and TOTAL \$133.40.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

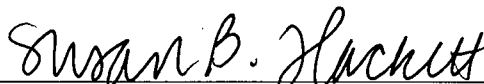
Clerk of Court/ Deputy Clerk
Court Reporter: Harry Darte Walker
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2153
Sentence Date: September 19, 2011

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 9th day of December, 2014



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

5

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

DEC 09 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

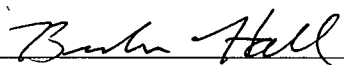
V.

SEAN PHILLIP SMITH,

APPELLANT

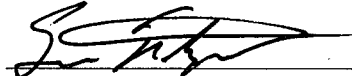
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Sean Phillip Smith #347944 at Lieber Correctional Institution PO Box 205, Ridgeville, SC 29472, this 9th day of December, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 9th day of December, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.