

RECEIVED

JUL - 2 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Darlington County

Thomas A. Russo, Circuit Court Judge

WARREN K. SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELATE CASE NO. 2014-002426

APPENDIX

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
GUILTY PLEA TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	37
STATE'S RETURN.....	44
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	49
POST-CONVICTION RELIEF HEARING TRANSCRIPT	55
ORDER OF DISMISSAL	86
APPLICATION FOR POST-CONVICTION RELIEF PURSUANT TO <u>AUSTIN V. STATE</u>	94
STATE'S RETURN.....	109
POST- CONVICTION RELIEF TRANSCRIPT	114
ORDER GRANTING APPEAL PURSUANT TO <u>AUSTIN V. STATE</u>	121
INDICTMENTS AND SENTENCING SHEETS.....	125

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF DARLINGTON	)	FOURTH JUDICIAL CIRCUIT
	)	
THE STATE,	)	August 29, 2012
	)	
PLAINTIFF,	)	2011-GS-16-1059
	)	2011-GS-16-1061
VERSUS	)	2011-GS-16-1062
	)	2011-GS-16-1063
WARREN SMITH	)	2012-GS-16-0525
	)	
DEFENDANT.	)	
	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

Kendall Burch, Esquire
ATTORNEYS FOR THE STATE

Chelsea B. McNeill, Esquire
ATTORNEY FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

Plea	Page 03
Motion by Defense Counsel	Page 04
Ruling on Motion	Page 06
Examination of the Defendant by the Court	Page 04
Presentation of Facts by Ms. Burch	Page 16
Presentation of past record	Page 18
Acceptance of the Plea by The Court	Page 25
Statement by Defendant Counsel	Page 25
Statement by the Defendant	Page 29
Statement by the victim, Ms. Raines	Page 30
Statement by Ms. Clesta Mae Mack	Page 31
Sentence of the Court	Page 33
Certificate of Reporter	Page 36

STATE'S EXHIBIT

NUMBER	DESCRIPTION	PAGE
1	Photograph	35

THE STATE VERSUS WARREN KELVIN SMITH

3

1 (Whereupon, this hearing began at 12:27
2 p.m. on Monday, May 7, 2012.)

3 **THE COURT:** All right. Now, are there other
4 matters that you want to take up before lunch, or do you
5 want to return at two, Madame, Solicitor?

6 **MS. BURCH:** Your Honor, we do have the victim here
7 from the trial that was suppose to be first up this
8 morning. This was the one that we were trying to decide
9 how to proceed a few minutes ago. If we could go on and
10 take care of that plea, so that the victim can be free for
11 the day, the state sure would appreciate that.

12 **THE COURT:** Very good. We can do that. Thank you
13 for your patience with us this morning, while you watched
14 us do many other things.

15 **(PAUSE.)**

16 **MS. BURCH:** We are ready, Your Honor.

17 **THE COURT:** All right. Please call your case.

18 **MS. BURCH:** Thank you. These are Indictments
19 Numbered 2011-GS-16-1059 for petit larceny; 2011-GS-16-
20 1061 for kidnaping; 2011-GS-16-1062 for burglary first
21 degree; 2011-GS-16-1063 for assault and battery first
22 degree; and 2012-GS-16-0525 for armed robbery.

23 Your Honor, before you is Warren Kelvin Smith. He
24 was our first trial up this morning. Your Honor, I have
25 with me the victim, Ms. Maryland Raines, and Patricia Rae,

THE STATE VERSUS WARREN KELVIN SMITH

4

1 who is now with The Hartsville Police Department. But, at
2 the time of this incident, she was with The Darlington
3 County Sheriff's Department.

4 Your Honor, Ms. Chelsea McNeill was initially Mr.
5 Smith's attorney. I believe she has an issue or a motion
6 to put on the record before the plea begins.

7 **THE COURT:** All right. Ms. McNeill, I will be
8 glad to hear from you, ma'am.

MOTION TO BE RELIEVED

9
10 **MS. MCNEILL:** Thank you, Your Honor. May it please
11 the Court? It is my understanding that Mr. Warren Smith
12 wishes to represent himself, and so I am making a motion
13 to be relieved as counsel of record. You may want to
14 confirm that with Mr. Smith, since he is standing right
15 next to me.

16 **THE COURT:** All right. First of all, let's go to
17 this side.

18 Ms. Raines, ma'am, thank you for being here today. I
19 know you have waited patiently this morning while we have
20 chosen a jury in another matter, as well as handle several
21 matters of administrative business.

22 It is hard enough to be a victim of crime in the
23 first place, and then come back and relive it, and sit and
24 wait while you do that, it is very demanding of you ---
25 demands that we are making upon you, ma'am. And I am

THE STATE VERSUS WARREN KELVIN SMITH

5

1 grateful that you have been here with us. Thank you for
2 being here today.

3 Now, let me speak, if I may, with Mr. Smith for a
4 moment or two and his attorney. What I would like to do
5 is first get their position with regard to this case, and
6 then we will come back before any sentence is imposed and
7 give you an opportunity to speak ma'am; is that
8 satisfactory to you?

9 **MS. RAINES:** Yes, sir.

10 **THE COURT:** Very good. Now, this may take a
11 moment or two. If you want to pull up a chair there
12 behind you, help yourself. Feel free to be seated.

13 All right. Let's place Mr. Smith under oath, please.
14 Please follow our clerk's instructions if you would.

15 **WHEREUPON, WARREN KELVIN SMITH**

16 **AFTER BEING FIRST DULY SWORN TESTIFIES AS FOLLOWS**

17 **MR. SMITH:** Yes, ma'am.

18 **THE COURT:** All right. Mr. Smith, I am told by
19 your attorney that you wish to discharge her from being
20 your lawyer; is that true?

21 **MR. SMITH:** Yes, sir.

22 **THE COURT:** Tell me, why is that?

23 **MR. SMITH:** Well, when I first came back from Lee
24 County, my understanding were that she --- I was actually
25 questioned concerning a lawyer. And that she is new. And

THE STATE VERSUS WARREN KELVIN SMITH

6

1 that is the reason why. And I didn't feel it is my best
2 interest that she represent me, because she wasn't talking
3 --- She was talking a lot of negative vibes on my behalf.
4 And that is why I ask for her to, you know --- But she can
5 stay, and represent me at this point.

6 **THE COURT:** All right, sir. Well, I will tell you
7 that even though you are saying that she is quote "new"
8 that Ms. McNeill has represented multiple people in this
9 Court, and has been a public defender --- working in The
10 Public Defender's Office in places other than Darlington
11 County as well, so she has some experience. Not to
12 mention a law degree, as well as the ability to represent
13 you. And, Mr. Smith, she would be able to represent you
14 better than you would yourself, because you simply have
15 not had the benefit of going through law school, being in
16 this Court as often as she has.

17 I am going to respectfully deny your motion, and let
18 her remain with you during the course of this hearing. If
19 you have something that you want to say, we will make sure
20 that you have an opportunity to speak. All right, sir?

21 **MR. SMITH:** Yes, sir.

22 **THE COURT:** Motion is denied. Is there anything
23 further Ms. McNeill?

24 **MS. MCNEILL:** No, Your Honor.

25 **THE COURT:** All right. You have already called

THE STATE VERSUS WARREN KELVIN SMITH

7

1 your case, Ms. Burch. Is there anything further you wish
2 to tell the Court at this time?

3 **MS. BURCH:** Your Honor, there is no recommendation
4 on this plea.

5 **THE COURT:** All right, very good. Then, Ms.
6 McNeill, I am going to first speak to you. And I ask you,
7 have you had ample time with Mr. Smith. Apparently, there
8 has been some disagreement between you, but have you had
9 sufficient time with him to discuss the penalties of the
10 various charges, the elements of these various charges,
11 and his right to a trial on these various charges?

12 **MS. MCNEILL:** I have, Your Honor. I just need to
13 point out for the record that I have not signed the
14 sentencing sheets.

15 **THE COURT:** All right. Let me hand those to you
16 so we can do that now.

17 **(PAUSE.)**

18 **THE COURT:** All right. And again, you tell me
19 that you had not signed them, but I see that you have now.
20 But, have you had ample time with him to discuss each and
21 every one of these charges?

22 **MS. MCNEILL:** I have, Your Honor.

23 **THE COURT:** And so that our record will be clear
24 today, let me ask. What did you tell him these various
25 charges carried; petit larceny?

THE STATE VERSUS WARREN KELVIN SMITH

8

1 MS. MCNEILL: For petit larceny I told him, Your
2 Honor, that it was a misdemeanor zero to thirty day
3 offense or not more than a thousand dollar fine.

4 THE COURT: And kidnaping?

5 MS. MCNEILL: I told him it was a Class A Felony,
6 zero to thirty years, violent, no serious strike offense.
7 I explained to him what the strike offense entails. He
8 seemed to understand that.

9 I talked to him about the sex offender registry, if
10 the act involved an adult, unless the Court finds the
11 offense did not include a sexual offense or an attempted
12 sexual offense, which my understanding in this case there
13 was no sexual offense or attempted sexual offense.

14 Your Honor, I also told him that it was crime of
15 violent per §16-1-130 Subsection 3. And that a special
16 code was required on his driver's licenses under §56-1-
17 148. No parole according to §24-13-100. Child abuse
18 registry according to §17-25-135. No Youthful Offender
19 Act, and no pretrial intervention.

20 THE COURT: All right. And what did you tell him
21 that the assault and battery first degree carries?

22 MS. MCNEILL: Your Honor, I told him that it was a
23 Class B Felon, and it carries zero to ten years, and DNA
24 database.

25 THE COURT: And burglary first degree?

THE STATE VERSUS WARREN KELVIN SMITH

9

1 **MS. MCNEILL:** Your Honor, I told him that burglary
2 in the first degree is a felony, it is a mandatory minimum
3 of fifteen years to life. I also informed him that it was
4 a violent crime; a most serious strike offense. It was
5 considered a crime of violence per §16-1-130 Subsection 3.
6 Special code required on his driver's license according to
7 §56-1-148. No parole according to §24-13-100. No
8 Youthful Offender's Act, DNA database as a consequence, no
9 pretrial intervention program.

10 **THE COURT:** And finally armed robbery?

11 **MS. MCNEILL:** Your Honor, I advised him on strong
12 armed robbery as well as armed robbery. Originally I
13 think he was indicted for strong armed robbery, and now I
14 think that they are having him plead to armed robbery.
15 So, to cover that, I advised him of both.

16 For armed robbery, I informed him it was a Class A
17 Felony, mandatory minimum of ten years to thirty years. I
18 also informed him that it was a violent crime, a most
19 serious strike offense, no suspended sentence, no parole
20 according to §24-13-100. A crime of violence per §16-1-
21 130 Subsection 3. Special code required on his driver's
22 license, no Youthful Offender's Act, DNA database,
23 mandatory minimum of ten years, no pretrial intervention.
24 And I also informed him that he was eligible for work
25 release if the crime did not involve any criminal sexual

THE STATE VERSUS WARREN KELVIN SMITH

10

1 conduct, or an additional violent crime, and the defendant
2 is within three years of release from imprisonment.

3 However, I also informed him that he is also pleading
4 to an additional violent crime, making him ineligible for
5 work release.

6 **THE COURT:** All right. And, has he understood all
7 theses things, not just the penalties and these various
8 conditions of confinement, but the other matter with
9 regard to element, the charges, the defenses he may have,
10 and other factors that bear on where he finds himself
11 today?

12 **MS. MCNEILL:** Your Honor, there was some concern
13 with the armed robbery, up from a strong armed robbery.
14 We went through that. We went through the evidence. And
15 I have explained to him on three different way in which
16 the state probably could likely succeed at trial, and find
17 him guilty. A jury would find him guilty on armed
18 robbery, despite the fact that he disagrees that it was an
19 armed robbery.

20 He also has had concerns with pleading to burglary in
21 the first degree, as it happened at four o'clock in the
22 afternoon. I have explained to him that due to having two
23 previous burglaries on his record, that that would allow
24 the state to seek burglary in the first degree despite it
25 not happening at night, as well as the aggravating

THE STATE VERSUS WARREN KELVIN SMITH

11

1 circumstance of the robbery.

2 **THE COURT:** And, understanding then, as I perceive
3 from your comments that he has understood all these
4 things; and is that correct, in your opinion?

5 **MS. MCNEILL:** It is correct.

6 **THE COURT:** How does he wish to plead?

7 **MS. MCNEILL:** Guilty to all.

8 **THE COURT:** And, do you believe that these pleas
9 are in his best interest?

10 **MS. MCNEILL:** I do, Your Honor.

11 **THE COURT:** And, of course, he is here today, the
12 Court is here, we are ready for trial, this case was
13 called for trial. Tell me why you believe at this point
14 this is in his best interest not to proceed at trial, but
15 to enter a plea?

16 **MS. MCNEILL:** Your Honor, I think in this case with
17 Mr. Smith, well as --- The photographs that the state has
18 presented us in the Rule 5 Discovery is, I think, would be
19 pretty clear for a conviction on at least an assault and
20 battery first degree, as well as --- I know that the
21 victim in this case is here, and she is willing to testify
22 against Mr. Smith. I believe her statements would also
23 implicate him for a jury to find him guilty. He is also,
24 Your Honor, facing life. And I have talked to him about
25 how he is fifty-seven years old. And if he were to go to

THE STATE VERSUS WARREN KELVIN SMITH

12

1 trial, it is likely that a life sentence would be imposed
2 on him.

3 He and I spoke extensively about this situation, and
4 he has decided instead of allowing the victim to go
5 through the stress of the trial, that he would rather
6 plead guilty.

7 Originally, I believe that Mr. Jim Cox had
8 represented him at some sort of hearing in front of Your
9 Honor, and at the time, I believe the state was offering
10 fifteen years.

11 It is my understanding Judge, which is part of this
12 Court and the communication barriers that I have
13 experienced with Mr. Warren, is that he has felt like that
14 he has been. I guess, lead blindly into thinking that he
15 didn't realize that he was rejecting that offer at the
16 time the fifteen years was presented.

17 However, we are where we are today, and we are
18 pleading straight up.

19 **THE COURT:** All right. Then, Mr. Smith, you have
20 heard your lawyer tell me that you intend to plead guilty
21 to these charges; is that correct, sir?

22 **MR. SMITH:** Yes, sir.

23 **THE COURT:** And, are you guilty of all five of
24 these charges?

25 **MR. SMITH:** Yes, sir.

THE STATE VERSUS WARREN KELVIN SMITH

13

1 **THE COURT:** All right. Do you have any alcohol or
2 drugs in your system today?

3 **MR. SMITH:** No, sir.

4 **THE COURT:** And do you have any type of medication
5 that you take?

6 **MR. SMITH:** No, sir.

7 **THE COURT:** And do you have any sort of mental or
8 emotional condition that prevents you from understanding
9 what you are doing here?

10 **MR. SMITH:** No, sir.

11 **THE COURT:** So, you realize that you are pleading
12 guilty to a charge that carries up to life in prison, and
13 of course, other charges that carry lesser sentences as
14 well; do you understand that, sir?

15 **MR. SMITH:** Yes, sir.

16 **THE COURT:** All right. And, Mr. Smith, when you
17 come in here to plead guilty, you give up some significant
18 rights, and I want to discuss those with you. Each and
19 every right that I am getting ready to mention to you, you
20 are waiving, giving up by pleading guilty today, and you
21 don't have to do that. You have a right to a jury trial
22 on each of these charges. You have the right to remain
23 silent. You have a right not to incriminate yourself.
24 And you are presumed innocent of these charges. Do you
25 realize that you are waiving these constitutional

THE STATE VERSUS WARREN KELVIN SMITH

14

1 protections today when you come in here and plead guilty?

2 **MR. SMITH:** Yes, sir.

3 **THE COURT:** In this courtroom, if you wanted to
4 have a trial, this is how the process would work.

5 You and Ms. McNeill would be able to pick a jury. To
6 strike from that jury people you thought might oppose you.
7 You would have a right, once we had a jury of twelve
8 empaneled to testify to them. You could confront the
9 evidence and witnesses against you in the jury's presence.
10 To summons others in here to testify on your behalf to the
11 jury. All of this so the jury would hear your version of
12 whatever happened here, not just the state's version. Do
13 you realize that you are waiving these trial protections
14 today by pleading guilty?

15 **MR. SMITH:** Yes, sir.

16 **THE COURT:** I said a moment ago, you are presumed
17 innocent. What I really mean by that is this.

18 If we had a trial, you would have nothing to prove.
19 The state would have the burden of proof and would have to
20 prove these charges beyond a reasonable doubt, which is a
21 high standard. They would have to convince all twelve
22 jurors unanimously that you are guilty of each and every
23 charge, or you would not be convicted of each and every
24 charge. And, even if you were convicted by the jury, you
25 could appeal that jury's decision. Do you realize you are

THE STATE VERSUS WARREN KELVIN SMITH

15

1 waiving these trial protections today, and these
2 constitutional rights today by pleading guilty?

3 **MR. SMITH:** Yes, sir.

4 **THE COURT:** And is it your decision to plead
5 guilty that you made?

6 **MR. SMITH:** Yes, sir.

7 **THE COURT:** Has anyone tried to force you, or
8 require you to do this?

9 **MR. SMITH:** No, sir.

10 **THE COURT:** Has anyone offered you some reward to
11 come in here and plead guilty today?

12 **MR. SMITH:** No, sir.

13 **THE COURT:** All right. Now, you told me earlier
14 when we first began that you wanted to fire Ms. McNeill,
15 but are you satisfied with her services?

16 **MR. SMITH:** Yes, sir.

17 **THE COURT:** Do you think she has --- Have you
18 understood the things that she has explained to you?

19 **MR. SMITH:** Yes, sir.

20 **THE COURT:** And do you think she has done a good
21 job in explaining them to you?

22 **MR. SMITH:** Yes, sir.

23 **THE COURT:** All right. I want you to listen to
24 our Solicitor who is going to give us the charges against
25 you, the facts about the charges, and I am going to come

THE STATE VERSUS WARREN KELVIN SMITH

16

1 back to you with further questions; alright?

2 MR. SMITH: Yes, sir.

3 PRESENTATION OF FACTS

4 MS. BURCH: Thank you, Your Honor. This incident
5 occurred on February 18, 2011, at 4401 Oaks Highway in
6 Lamar, which is in Darlington County.

7 Your Honor, just to start I guess, at the beginning.
8 Ms. Raines is the victim in this case, and had spent her
9 morning shopping. She went around Hartsville, came back
10 to her house. Whenever she got out of the car, instead of
11 going ahead and unloading all the items that she had
12 purchased, her house sits in front of a trailer. She went
13 into the trailer I believe, to go use the restroom, and
14 decided that she was tired, and took a nap. So, she was
15 in her trailer for about an hour. Her car doors were
16 unlocked. When she came out, Mr. Smith pulled up, blocked
17 her car in so that it was at a "T". He gets out of the
18 car, and he tells Ms. Raines, I found your pocketbook in
19 Florence. Ms. Raines, confused because her pocketbook was
20 in the car, and says, no, my pocketbook was in the car.
21 He demanded a reward for finding her pocketbook. We
22 believe that Mr. Smith pulled in her driveway while she
23 was napping in the trailer and took her pocketbook, and
24 came back whenever he saw that she was back out in her
25 car.

THE STATE VERSUS WARREN KELVIN SMITH

17

1 Whenever she didn't have any money to give him a
2 reward, he began striking her in the face. The more she
3 said she didn't have any money, the more he hit her. She
4 was sitting in the car, and he knocked her from the
5 driver's side; she was sitting to the side with the door
6 opened. He knocked her from the driver's side into the
7 passenger's side to the point that she was stuck between
8 the seat. She remembered that she had a jar of quarters
9 in the house, and she said, I have some quarters, and he
10 jerked her up out of the car. Then picked up a brick and
11 held it to her head as she walked him into the house, and
12 got the quarters.

13 Your Honor, the victim was able to identify Mr.
14 Smith, because he had been going around their neighborhood
15 for a period of time demanding money from people. He had
16 previously been to her house twice, and she did not give
17 him money the two times that he came. I am trying to make
18 sure not to leave anything out. Ms. Raines did suffer a
19 fracture to her back, a bruised face, and her right breast
20 was very badly bruised. And a fractured collar bone, and
21 I believe one of her shoulders may have been dislocated.

22 And, Your Honor, I am going to pass up some pictures,
23 if that is okay.

24 THE COURT: You may. Show those to Ms. McNeill.

25 (PAUSE.)

THE STATE VERSUS WARREN KELVIN SMITH

18

1 **MS. BURCH:** Your Honor, those pictures would be of
2 the victim at the hospital after this incident took place.
3 And, I believe there are some pictures of the car, and of
4 the house, and in the back yard. Two pictures of Mr.
5 Smith's hands, from where he had been beating Ms. Raines
6 so hard that he either fractured or broke his hand.

7 And, Your Honor, Mr. Smith does have an extensive rap
8 sheet. It starts in 1982, and he has a simple possession,
9 petit larceny, grand larceny, along with a burglary
10 second, another grand larceny, another burglary second in
11 91. He has a forgery, two forgeries --- three charges,
12 I'm sorry. In 95 he has a petit larceny and a
13 trespassing. In 2004 he has a burglary second degree and
14 a petit larceny. He has one, two more burglary seconds.
15 Three more petit larcenies. Four financial transaction
16 card frauds, from 2004. And in 2010, he has a burglary
17 second degree, violent. And in 2011, he was arrested on
18 this charge. He also has a Florida record that includes
19 resisting arrest, petit theft, burglary, burglary --- and
20 I see three of those. He also has assorted drug charges,
21 and more burglaries. Your Honor, it seems to be the same
22 crimes repeating themselves.

23 **THE COURT:** All right, very good. The facts given
24 to me by the Solicitor concerning these charges, and that
25 this date, again occurring on February 18, 2011; Mr.

THE STATE VERSUS WARREN KELVIN SMITH

19

1 Smith are those facts true?

2 MR. SMITH: Yes, sir.

3 THE COURT: They are?

4 MR. SMITH: Yes, sir.

5 THE COURT: And is there anything about those
6 facts that was not true?

7 MS. MCNEILL: Your Honor, there is one issue about
8 the brick. And other than that, I think that we would
9 concede to the facts.

10 THE COURT: All right. And what it is about the
11 brick?

12 MS. MCNEILL: There is nothing in this file that I
13 have received in Rule 5 that indicates that he held a
14 brick to her while taking her in the house. In fact, on
15 the original arrest warrant that was for strong armed
16 robbery, it said that she was being --- That she had been
17 beaten in the car, and then he forced her outside of the
18 car and into the house. But there is no indication of any
19 brick involved in that whatsoever.

20 THE COURT: And the difference in your opinion
21 that that makes is between armed robbery and common law
22 armed robbery?

23 MS. MCNEILL: Yes, Your Honor.

24 THE COURT: All right. Let's go back and discuss
25 that a moment. Do you have a position that you wish to

THE STATE VERSUS WARREN KELVIN SMITH

20

1 say?

2 MS. BURCH: Your Honor, in preparation for this
3 trial, Ms. Parker and I sat down with the victim in her
4 home to go over her side of the story. And during that
5 interview, she disclosed to us that he picked up a brick
6 off of her back stairs that lead into the door that they
7 went into, and held that brick to her head. At that
8 point, Your Honor, is when Ms. Parker and I decided that
9 we needed to up the charge to armed robbery.

10 THE COURT: And when did that occur?

11 MS. BURCH: That occurred --- We went to her
12 house, it has been two weeks, and he was Indictment on May
13 the 3rd.

14 THE COURT: That is this past week?

15 MS. BURCH: Yes, Your Honor.

16 THE COURT: Then are you telling me that your
17 client is not pleading guilty to armed robbery?

18 MS. MCNEILL: Your Honor, I am telling you that
19 this has been one of the reasons that he has been so
20 frustrated the entire time. But the state is threatening
21 him with trial if he did not sign that plea sheet. And
22 when that was presented to him, he signed it because he
23 does not wish to go to trial on these charges. So, we are
24 kind of at an impasse. But there is nothing in the
25 entire file that I have received from the state indicates

THE STATE VERSUS WARREN KELVIN SMITH

21

1 anything about a brick. And all of a sudden, this single
2 picture of a brick surfaces in what I was handed last
3 week. Even in all of the incident reports, nothing about
4 a brick was even mentioned. So, all I am saying, Your
5 Honor, is I understand that time has passed, and maybe the
6 victim in this case has had time to think about details.
7 All I am saying is, there is nothing in the file that was
8 mentioned by any police or any witness in this case about
9 a brick, which is why this has been a struggle on this one
10 particular charge.

11 **THE COURT:** Very good. And, Mr. Smith, you admit
12 though that you robbed Ms. Raines; you just deny that you
13 used a brick to do so; am I correct?

14 **MR. SMITH:** Strong armed robbery I plead to it.
15 It will be strong armed robbery.

16 **THE COURT:** Tell me, Ms. Burch, what is the
17 benefit to the state to increase that one particular
18 charge when there are other greater charges to which he is
19 willing to plead today?

20 **MS. BURCH:** Your Honor, if we had gone to trial,
21 we believe we could have proved the armed robbery. And we
22 wanted him to face what we feel that he is guilty of.

23 **THE COURT:** Very good. It would seem to me that
24 it would be appropriate for the Court, rather than taking
25 testimony and making a specific finding with regard to

THE STATE VERSUS WARREN KELVIN SMITH

22

1 that charge, because this is a guilty plea. This is a
2 voluntary admission by the defendant. He tells me that he
3 does not admit to that charge, would be for the Court to
4 simply make a finding with regard to the lesser included
5 offense that he has committed a common law robbery, and
6 stand down the plea to the greater offense of armed
7 robbery. What says the state to that?

8 MS. BURCH: It is in the Court's discretion.

9 THE COURT: Ms. Raines, ma'am, let me say to you
10 that I realize that the information about this brick has
11 come from you. I don't dispute it, and I don't argue with
12 it. I don't doubt it, and I don't want you to believe
13 that for some reason what the Court is doing today will
14 somehow cast doubt on what you are saying. What I have
15 here is a defendant who comes forward and says I want to
16 plead guilty, but not to that greater charge. Now, he is
17 pleading to other charges which are even greater than the
18 armed robbery. However, for us to go through this
19 proceeding, and still leave that one charge out there
20 would not be very efficient for you or for us.

21 Thus, the Court is going to enter a finding of common
22 law robbery, and reduce that charge. That is the only
23 charge that the Court would intend to reduce ma'am.

24 (PAUSE.)

25 THE COURT: Ms. Raines, again, I am not disputing

THE STATE VERSUS WARREN KELVIN SMITH

23

1 what you are saying. And, the state, if you don't want to
2 put this matter up, then that is fine. But, I simply say
3 I can't force a plea when the defendant is standing here
4 an telling me that he does not intend to plead to that
5 charge. Again, I am making no factual findings here. But
6 the other side of this coin is, if we don't go ahead and
7 resolve this charge, Ms. Raines, then Mr. Smith, this
8 matter will still be pending. It may be an appellate
9 issue. It could be any number of things that would just
10 not close this door and put it behind us, and we all move
11 forward.

12 So, let me let you talk with Ms. Raines a minute.

13 (Whereupon, the Solicitor's Office and the
14 victim Ms. Raines have a conversation off the record.)

15 **MS. BURCH:** Your Honor, the victim and law
16 enforcement, along with the state, we are fine with that.
17 And I do have the CDR Code for strong armed robbery.

18 **THE COURT:** Tell me what it is?

19 **MS. BURCH:** It is CDR Code 0137, and the statute
20 is §16-11-0325.

21 **MS. MCNEILL:** And, Your Honor, I would just like
22 for the record just to inform the Court of what I did
23 advise Mr. Smith that strong armed robbery carries, when
24 it is appropriate.

25 **THE COURT:** Go ahead.

THE STATE VERSUS WARREN KELVIN SMITH

24

1 **MS. MCNEILL:** I advised that strong armed robbery
2 is a Class D Felony, and he is facing zero to fifteen
3 years on that charge. I did advise him that it is a crime
4 of violence per §16-1-130 Subsection 3. I also advised
5 him that another consequence is special code required on
6 his driver's license under §56-1-148, and DNA database.

7 **THE COURT:** All right. And, now again, Mr. Smith,
8 with regard to all of these charges, including what has
9 now been reduced to common law robbery. The facts given
10 to me by the Solicitor, are they true?

11 **MR. SMITH:** Yes, sir.

12 **THE COURT:** And do you admit that you committed
13 each of these following crimes. Assault and battery first
14 degree, kidnaping, petit larceny, common law robbery, and
15 burglary in the first degree?

16 **MR. SMITH:** Yes, sir.

17 **THE COURT:** All right. Now, I want to make sure
18 that you understand that the charge for kidnaping is a
19 most serious charge, meaning that and as is burglary in
20 the first degree, meaning that these charges are
21 classified by our statute as most serious. We have a law
22 in South Carolina that we call two strikes and you are out
23 for most serious. You are picking up two strikes today.
24 Meaning, if you ever get out of prison and have another
25 charge against you, that would be serious or most serious.

THE STATE VERSUS WARREN KELVIN SMITH

25

1 The Court would have no option but to sentence you to life
2 imprisonment. Do you understand that?

3 **MR. SMITH:** Yes, sir.

4 **THE COURT:** Then with that understanding, and
5 based upon you admissions that you have just made to me, I
6 find that each of these charges, including the reduced
7 charge of common law robbery, have a factual basis to
8 them. In other words, these occurred, these are valid
9 charges. You have made this admission today that you have
10 committed these crimes. You have done this with the
11 assistance of a capable lawyer. You have done this after
12 I have advised you of your rights. You have waived those
13 rights.

14 For all these reasons, I am going to accept your
15 plea.

16 Now, the appropriate question is, what should the
17 Court impose as a sentence.

18 What I would like to do is hear from you first Ms.
19 McNeill, and then I would like to hear from Ms. Raines, if
20 she wishes to speak. And then we will hear from Mr.
21 Smith as well, if he wishes to speak prior to sentencing.

22 **MS. MCNEILL:** Thank you, Your Honor, May it please
23 the Court?

24 I think previously on the record I had stated that he
25 is fifty-seven. He is actually forty-eight. My mistake.

THE STATE VERSUS WARREN KELVIN SMITH

26

1 Your Honor, he is currently in SCDC serving time on a
2 probation violation, I think he was in front of Your
3 Honor.

4 Your Honor, I would like to point out a couple of
5 things about Mr. Smith. In getting to know him, and
6 talking with him, he did say on the record that he does
7 not have any mental health issues. I do believe after
8 speaking with Mr. Smith that he is competent. I did call
9 Lee Correctional Facility, where he is being currently
10 housed, and they said he is part of a counseling program,
11 but is not receiving any sort of medications, and I don't
12 think that he has any diagnosis under the DSM-IV TR. I
13 think he is just receiving counseling more for anger
14 management.

15 Your Honor, he says that when he committed these
16 crimes that he was on drugs at the time. You know, he
17 said, I am not trying to justify my behavior. But I was
18 just out of control. And I think that the drugs combined
19 with his anger issues caused him to snap.

20 If Your Honor had heard the record stated by
21 Assistant Solicitor Burch. Your Honor, will notice that
22 he doesn't have any violent charges on his record. In
23 fact, he has been known to go throughout the community,
24 and either ask for work or ask for a couple of dollars
25 here or there, and on one occasion the victim herself

THE STATE VERSUS WARREN KELVIN SMITH

27

1 prior several months prior.

2 In all of those statements that I have seen and
3 reviewed thoroughly, not once did he threaten violence. I
4 don't know what caused him to be set off on this
5 particular occasion. I think that maybe he and the victim
6 just started exchanging words, and his anger combined with
7 the drug issue caused him to snap. That is the only thing
8 that I have spoken with him and we have been able to try
9 to explore together. But I would just like to point out
10 that he has no previous record of violence.

11 He has his wife here today, who has been extremely
12 supportive of him. I know that she is a very strong
13 support system for him.

14 He was never close to his family growing up, although
15 he did tell me that in recent years he has become close
16 with them. And I do know that his mother and brother are
17 both to my understanding dying. His brother has some sort
18 of bone disease. When I enquire into it, he did say that
19 he has MS. And his mother suffers from cancer. His mom
20 is sixty-four years old, and his brother is thirty-seven
21 years old. And due to their health condition are unable
22 to be here today in support of him.

23 Your Honor, I have talked with him a little bit about
24 the crime that he is accused of, and what has he done with
25 his life since, and what has he learned, what has he

THE STATE VERSUS WARREN KELVIN SMITH

28

1 thought about. And he did tell me that since he has went
2 away to SCDC he has worked on accepting God into his life.
3 And I do know that he has a pretty strong faith, as he
4 referenced God on multiple occasions in my discussions
5 with him. He did marry his wife three years ago, although
6 they have been together longer than that, and they are
7 very close. And he also has three children, Your Honor.
8 And I know that what he did was a horrible crime that he
9 is accused of, and the pictures are pretty self-
10 explanatory. But, he does have a kind heart. And that
11 was evident to me when I spoke with him on several
12 occasions. And as you know, Your Honor, we have had
13 communication breakdowns, so for me to have found that, I
14 think says something about him. And I totally understand
15 the communication breakdown on some levels, because he is
16 facing a life sentence.

17 I would like Your Honor to consider the fact that he
18 is forty-eight years old, not in the best of health, and
19 does have a family on the outside, so that maybe one day
20 he can get out and participate with his family again.
21 And, again, we are asking for the minimum.

22 **THE COURT:** All right. And, let's go ahead and
23 hear from Mr. Smith, if he has something he wishes to say.
24 Sir, do you wish to speak?

25 **STATEMENT BY THE DEFENDANT**

THE STATE VERSUS WARREN KELVIN SMITH

29

1 **MR. SMITH:** Yes, sir. I would like to apologize
2 to the prosecutor's staff, the investigator's staff, and
3 also to the judge's staff. I also apologize to the
4 victim. I was offered a plea. I didn't take the plea,
5 like she said, I didn't take the plea for fifteen, because
6 Mr. Cox was my lawyer. He backed out and he didn't
7 indicate why he backed out. And Your Honor, I am just
8 asking the Court to have mercy on me, and where I can come
9 back home to my wife and my family.

10 **THE COURT:** All right.

11 **MR. SMITH:** And if I have to pay any restitution,
12 I am willing to pay any type of restitution that it is.

13 **THE COURT:** Very good. And, Ms. Raines, ma'am,
14 you have waited patiently. And let me ask, did we place
15 our defendant under oath when we began?

16 **CLERK:** Yes, sir.

17 **THE COURT:** And let's place Ms. Raines under oath,
18 please.

19 **WHEREUPON, MS. MARYLAND RAINES**

20 **AFTER BEING FIRST DULY SWORN TESTIFIES AS FOLLOWS**

21 **MS. RAINES:** I do.

22 **THE COURT:** Ms. Raines, I will be glad to hear
23 from you.

24 **STATEMENT BY MS. RAINES**

25 **MS. RAINES:** It is just that I have never been

THE STATE VERSUS WARREN KELVIN SMITH

30

1 afraid. I live alone, and I have never been afraid. If
2 he is out, I will be so afraid, I don't think I can live
3 by myself anymore. Like I say, I have never been afraid
4 before, but I am afraid now.

5 **THE COURT:** All right, ma'am. And what about your
6 physical injuries, ma'am, are you doing okay from those?

7 **MS. RAINES:** I have a fractured collar bone, and a
8 fractured vertebra, and I had back problems before, but it
9 is worse after that. I still have a back problem.

10 **THE COURT:** Again, thank you for being present
11 today. I appreciate your courage in being here today and
12 being present today. And ma'am, please be seated again
13 if you wish.

14 Is there anything further from the state?

15 **MS. BURCH:** Your Honor, I don't know if you would
16 like for us to address any previous plea negotiations, or
17 if that was clear enough.

18 **THE COURT:** It is not necessary for the Court.

19 **MS. BURCH:** Then nothing further.

20 **THE COURT:** Anything further from defense?

21 **MS. MCNEILL:** Beg the Court's indulgence.

22 **(PAUSE.)**

23 **MS. MCNEILL:** I believe the defendant Mr. Warren
24 Smith's wife would like to briefly like to address the
25 court.

THE STATE VERSUS WARREN KELVIN SMITH

31

1 **THE COURT:** All right. Ms. Smith, we are going to
2 place you under oath, ma'am. Please follow clerk's
3 instruction.

4 **WHEREUPON, CLESTA MAE MACK**

5 **AFTER BEING FIRST DULY SWORN TESTIFIES AS FOLLOWS**

6 **MS. SMITH:** Yes, ma'am.

7 **THE COURT:** And give us your full name, please,
8 ma'am?

9 **MS. MACK:** My name is Clesta Mae Mack. I was out in
10 Darlington County. I work with the public. Whatever my
11 husband has done, I know he is sorry for it, and I ask
12 that you have mercy upon him.

13 And, to Ms. Raines, anything that my husband has
14 done, I am very sorry. And whatever, he can do any kind
15 of restitution or anything to rectify anything. I just
16 ask that you have mercy upon him.

17 **THE COURT:** All right. Thank you, Ms. Mack. Mr.
18 Smith, I want to make sure that you understand, as your
19 lawyer said earlier in this proceeding, that these charges
20 that you are pleading to are most serious as we discussed.
21 But, one of the results of that is that they are non-
22 parolable, meaning that you will serve at a minimum
23 eighty-five percent of what you are sentenced to today.
24 And you may serve all of it depending on what happens
25 within The Department of Corrections. Do you understand

THE STATE VERSUS WARREN KELVIN SMITH

32

1 that, sir?

2 MR. SMITH: Yes, sir. Yes, sir.

3 THE COURT: All right. These determinations will
4 also affect your classification within The Department of
5 Corrections, and where you will be housed with
6 corrections; and do you understand that, sir?

7 MR. SMITH: Yes, sir.

8 THE COURT: Just one moment, please.

9 (PAUSE.)

10 THE COURT: What calculation have you made as to
11 what type of time credit Mr. Smith is entitled to?

12 MS. MCNEILL: Your Honor, I think it is about six
13 months. I'm sorry, sixteen months. But I am not
14 positive. Beg the Court's indulgence.

15 (PAUSE.)

16 MS. MCNEILL: Your Honor, Mr. Jones is going to
17 check on that for me.

18 (PAUSE.)

19 MS. MCNEILL: Judge, he has been incarcerated
20 continuously since February 22, 2011.

21 THE COURT: Thank you. And what is the state's
22 position as to whether or not there was a sexual component
23 to this?

24 MS. BURCH: Your Honor, there was no sexual
25 component.

THE STATE VERSUS WARREN KELVIN SMITH

33

1 **THE COURT:** All right. Then the Court makes a
2 finding that there was no sexual component, and thus there
3 is not a necessity of the registry upon Mr. Smith's
4 release, if he is released from prison.

5 **(PAUSE.)**

6 **THE COURT:** Ms. Raines, ma'am, do you mind me
7 asking this question? Tell me, what is your age, please?

8 **MS. RAINES:** My age is seventy-eight. I was
9 seventy-seven at the time.

10 **THE COURT:** Mr. Smith, tell me, what power is
11 there --- what authority is there in taking advantage of
12 someone who is physically weaker than you, and smaller
13 than you, much older than you; why would you do that, sir?

14 **MR. SMITH:** Sir, I was on drugs. And like I say,
15 I am sorry. I hope the Court has mercy on me.

16 **THE COURT:** All right. Just a moment.

17 **(PAUSE.)**

18 **THE COURT:** All right. Then these are the
19 sentences of the Court.

20 First of all, with your petit larceny charge, I
21 sentence you to thirty days in The County Detention
22 Center, and I am going to credit you for the thirty days
23 you have already served.

24 With regard to the assault and battery in the first
25 degree, I sentence you to ten years in The Department of

THE STATE VERSUS WARREN KELVIN SMITH

34

1 Corrections. I am going to make that concurrent to the
2 kidnaping charge. And I am going to credit you time that
3 you have served since you have been in jail since
4 2/22/2011.

5 With regard to the charge for common law robbery,
6 which has been reduced by the Court. I sentence you to
7 fifteen years, and that is concurrent to the kidnaping
8 charge and I am going to credit you for time since
9 2/22/2011.

10 With regard to the burglary charge, as well as the
11 kidnaping charge, I sentence you concurrently to twenty-
12 five years in The Department of Corrections. I am going
13 to credit you time since 2/22/2011, against that.

14 And that is the sentence of the Court. What that
15 means is, Mr. Smith, is you will receive a twenty-five
16 year sentence, which you will be required to serve at
17 least eighty-five percent of, and that is the Court's
18 sentence.

19 Any questions now from the defense?

20 MS. MCNEILL: Your Honor, I just need to clarify on
21 the kidnaping charge, what your sentence was.

22 THE COURT: Twenty-five year sentence.

23 MS. MCNEILL: Thank you, Judge.

24 THE COURT: And I have made a finding that there
25 is no sexual component to the kidnaping, and have

THE STATE VERSUS WARREN KELVIN SMITH

35

1 indicated that on the sentencing sheet.

2 Ms. Raines, and to the state, ma'am, do you have any
3 questions about this decision?

4 **MS. RAINES:** No, sir.

5 **THE COURT:** Well, you need no longer live in fear.
6 And, ma'am, thank you for your courage in being here
7 today, and best wishes to you.

8 I am going to remand Mr. Smith now to The South
9 Carolina Department of Corrections. Good luck to you,
10 judge.

11 **MS. MCNEILL:** Thank you, Judge.

12 **THE COURT:** Ms. Mack, good luck to you, ma'am.
13 And let's make this State's Exhibit 1.

14 **WHEREUPON, STATE'S EXHIBIT**
15 **NUMBER 1 WAS MARKED FOR THE**
16 **RECORD.**

17 (Whereupon, this hearing was concluded at
18 (1:11 p.m. on Monday, may 7, 2012.)

19 **-- END OF TRANSCRIPT --**

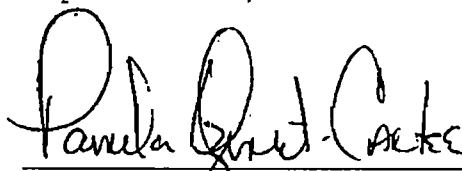
CERTIFICATE OF REPORTER

36

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of General Sessions in Darlington County, South Carolina, on the 7th day of May 2012.

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

September 26, 2012

A handwritten signature in cursive script, appearing to read "Pamela Ozment-Cartee", written over a horizontal line.

Pamela Ozment-Cartee
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA
COUNTY OF Darlington

IN THE COURT OF COMMON PLEAS

2012-CP-16-732

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

WARREN K. Smith DC# 184653
v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

THREE COPIES REQUIRED
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.
SUGG

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

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

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

1. Place of detention LEE C.I
2. Name and location of Court which imposed sentence GENERAL SESSIONS, Darlington
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-16-1059, 1061, 1062, 1063
 - (b) PETIT LARCENY, KIDNAPPING, BURGLARY, ASSAULT & BATTERY
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 5-7-2012
 - (b) _____

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

FILED
2012 AUG 28 AM 10:15
SCOTT B. SUGGS
CLERK OF COURT/REG. D.
DARLINGTON COUNTY, S.C.

- (a) INVOLUNTARY PLEA
 (b) INEFFECTIVE ASSISTANT COUNSEL
 (c) _____

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

in (10):

- (a) MAY PAID ATTORNEY WAS NOT PRESENT AT MY HEARING
 (b) THE COURT GAVE ME A PUBLIC DEFENDER THAT WAS NOT KNOWN TO ME
 (c) MAY PAID ATTORNEY WAS NOT PRESENT AT MY HEARING

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

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

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

- (a) the specific nature thereof: N/A

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

- (c) the disposition thereof:

i. _____

ii. _____

iii. _____

FILED
 2012 AUG 20 AM 10:15
 SCOTT B. SHIVERS, C.D.C.
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented: N/A

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Not Available for Direct Appeal

(b) _____

(c) _____

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

FILED
2012 AUG 28 AM 10:15
SCOTT B. SHEETS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. James C. Cox, 311 West Home Avenue Hartsville, SC, 29550
- ii. _____
- iii. PUBLIC DEFENDER, Chelsea B. McNeill, (Not BymyChoice)

- (b) the proceedings at which each such attorney represented you:

- i. 17A and C ABOVE
- ii. _____
- iii. _____

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

REVERSE SENTENCE and Remand for a New TRIAL

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

NO

FILED
2012 AUG 28 AM 10:15
SCOTT B. SUGGS
CLERK OF COURT, C.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of DARLINGTON
WARREN K. SMITH DC # 184653

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Mr. Warren K. Smith

SWORN to and subscribed before me this 23
day of Aug., 2012

[Signature]
Notary Public

(L.S.)

My Commission Expires: 12-2015

FILED
2012 AUG 28 AM 10:15
SCOTT D. SUEGG
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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

Warren K. Smith, Doc # 194653

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Mr. Warren K. Smith
Applicant

SWORN or affirmed to and subscribed before me this

23 day of Aug., 2012.

Debra Sias
Notary Public

My Commission Expires: 11-4-2015

FILED
2012 AUG 28 AM 10:15
SCOTT B. SUESS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS

2012-CP-16- 732

Warren K. Smith, 184653

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

Respondent, making its Return to the Application for post conviction relief (PCR) filed August 28, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted by the Darlington County Grand Jury for larceny (2011-GS-16-1059) kidnapping (2011 GS-16-1061), assault/assault and battery first degree (2011-GS-16-1063), and Burglary/burglary first degree (2011 GS-16-1062). James C. Cox, Esquire, represented Applicant.

On May 7, 2012, the Applicant pled guilty as indicted before the Honorable Judge Baxley, who sentenced Applicant to thirty days imprisonment on the larceny charge, to twenty-five years imprisonment on the kidnapping charge, to thirteen years imprisonment on the first burglary charge, and to twenty-five years on the second burglary charge with all charges to run concurrently. Applicant did not appeal.

Attached herewith and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction, Applicant's SCDC records, and if available, the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Involuntary plea"

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

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

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

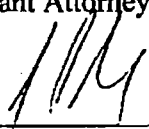
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 17, 2017.3

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS

2012-CP-16-0732

WARREN K. SMITH, 184653)

Applicant,)

vs)

AFFIDAVIT OF SERVICE VIA MAIL

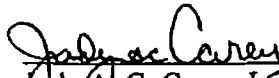
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Parker E. Howle, Esquire
Howle Law Firm
100 St. John's Street
Darlington SC 29532

DATED this 17th day of January, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of DARLINGTON)Warren K. Smith SCDC#184653)

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

v.)

AMENDED

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

Case Number: 2012-CP-16-732

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence General Sessions, Darlington
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-16-1059, 1061, 1062, 1063
 - (b) Petit Larceny, Kidnapping, Burglary, Assault and Battery

2013 APR 26 PM 4:09
 COURT B. SUGGS
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

FILED

TRUE CERTIFIED COPY,
Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 05/07/2012
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was not informed of my right to appeal and a Notice of Appeal was never filed by Chelsea McNeill
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) My paid attorney, James C. Cox, was not present for my plea, even though he had been paid to appear at same. I was given an offer of 15 years by the Solicitor, which my plea counsel, Chelsea McNeill, failed to address
- (b) in the time period leading up to and during my plea.
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) Not appropriate grounds for appeal
 (b) _____
 (c) _____

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

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

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. James C. Cox, 311 W. Home Avenue, Hartsville, SC 29550

 ii. Chelsea B. McNeill, PO Box 29, Dillon, SC 29536

 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Bond Hearing; should have been present at my plea

 ii. Plea

 iii. _____

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

Find that the assistance of both attorneys was ineffective and I was prejudiced by same

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

No

STATE OF SOUTH CAROLINA)

County of DARLINGTON)

VERIFICATION

I, Warren K. Smith, DCDC#: 184653, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Mr. Warren K. Smith
WARREN K. SMITH

SWORN to and subscribed before me this 18
day of April, 2013.

Debra J. Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

WARREN K. SMITH)
184653)
PETITIONER,)

TRANSCRIPT OF RECORD
12-CP-16-00732

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

July 16, 2013
Darlington, South Carolina

BEFORE :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

APPEARANCES:

PARKER E. HOWIE, ESQ.
Attorney for the Petitioner

KAREN C. RATIGAN, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

INDEX

	Page
History of the case	3
Warren Smith:	
Direct examination by Mr. Howle	4
Cross-examination by Ms. Ratigan	12
Chelsea McNeill:	
Direct examination by Mr. Howle	20
Cross-examination by Ms. Ratigan	26

(There were no exhibits submitted.)

1 MS. RATIGAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. RATIGAN: This is the case of Warren
4 Smith versus the State of South Carolina, docket
5 numbers 2012-CP-16-0732. Mr. Smith was indicted for
6 petit larceny, kidnapping, first degree burglary,
7 assault and battery first degree, and armed robbery.
8 He was represented on these charges by Chelsea
9 McNeill. He pled guilty to the charges August 29th
10 of 2012 before Judge Baxley. He received concurrent
11 sentences of 30 days for petit larceny, 25 years for
12 kidnapping, 25 years for first degree burglary, 10
13 years for assault and battery first degree; and he
14 pled to the reduced charge of strong armed, received
15 15 years. Again, that was concurrent and overall 25
16 year sentence. He did not file an appeal and the
17 State is ready to proceed.

18 THE COURT: Okay.

19 MR. HOWLE: Thank you, Your Honor. We
20 call Mr. Warren Smith.

21 THE COURT: All right.

22 THE DEFENDANT: Yes, sir.

23 THE CLERK OF COURT: Place your left hand
24 on the Bible and raise your right hand.

25 WHEREUPON,

PW - W. SMITH - DIRECT

1 **WARREN SMITH,**
2 having been duly sworn by the Clerk, testified as
3 follows:

4 THE CLERK: Have a seat.

5 **DIRECT EXAMINATION**

6 BY MR. HOWLE:

7 Q Mr. Smith?

8 A Yes, sir.

9 Q Would you state your full name for the record.

10 A My name is Warren Smith.

11 Q And you're here asking the Court to overturn your
12 plea from August of 2012?

13 A Yes, sir.

14 Q All right. Grant your PCR?

15 A Yes, sir.

16 Q Okay. And you understand that if your PCR is
17 granted the only remedy you have is a new trial,
18 correct?

19 A Yes, sir.

20 Q All right. And on all charges — you got some
21 pretty serious charges. You understand you can be
22 facing life in prison if you ended up getting this
23 PCR granted and going to trial?

24 A Yes, sir.

25 Q And you still wish to go forward?

PW - W. SMITH - DIRECT

1 A Yes, sir.

2 Q Okay. And you were represented by — at your
3 plea you were represented by Ms. Chelsea McNeill,
4 correct?

5 A Yes, sir.

6 Q All right. And just kind of overall, what do you
7 feel that your lawyer did wrong?

8 A My lawyer, ineffective assistance of counsel.
9 First of all, I was, had a paid attorney, Mr. James
10 C. Cox, and I never received any recommendation from
11 him to be relieved off my case. The State appointed
12 Ms. Tonya Little to my case. She failed to address
13 everything that the solicitor and Mr. Cox had
14 already negotiated on a 15 year plea. I was already
15 incarcerated on a 7 year sentence with probation
16 violation, and he advised me I would be pleading to
17 a 15 year sentence nonviolent run concurrent to my 7
18 year probation violation.

19 Q So you were originally offered 15 years, correct?

20 A Yes, sir.

21 Q All right. And why didn't you accept that offer?

22 A I didn't accept the offer made for 15 Mr. Cox
23 wasn't present at the time, and I wasn't going to
24 come up without consent with my counsel.

25 Q Okay. And did you inform the Solicitor's Office

PW - W. SMITH - DIRECT

1 of that?

2 A Yes, sir.

3 Q Did you ever figure out why Mr. Cox wasn't there
4 that day?

5 A I didn't never figure out. He didn't never give
6 me no recommendation why he wasn't there or never
7 seen no recommendation for Ms. McNeill who
8 represented me. They just brought me in and here
9 she was.

10 Q Okay. So Ms. Chelsea McNeill was appointed to
11 represent you?

12 A Yes, sir.

13 Q All right. And how often do you think you met
14 with Ms. McNeill before you pled?

15 A I met twice with Ms. McNeill at the county jail.
16 I met twice. The first, when I first met her she
17 came in. We discussed the cases, discussed the
18 charge that I had against me and we -- I told her
19 about Mr. Cox and I told her exactly what Mr. Cox
20 and talked about me and what Mr. Cox talked about
21 confidentially. And then she came back, then I told
22 her I need to talk to my wife. She came again. I
23 told her that me and my wife were talking and then
24 my wife had said that Mr. Cox was going to be
25 representing me and me and her went to talking and

PW - W. SMITH - DIRECT

1 we went through subject disagreement. She said I
2 was foolish to think that God was going to be there
3 for me and this and that; and I said, well, I'll
4 represent myself. I knew right then that she wasn't
5 going to represent me to the best of knowledge,
6 ability as being a lawyer.

7 Q So you pled on, let's see, August 29th, 2012.
8 How many times did you meet with Ms. McNeill before
9 that?

10 A I just met them two times, two times.

11 Q Just twice?

12 A That's it.

13 Q Okay. Do you feel that Ms. McNeill had it in
14 your best interest?

15 A Say that again.

16 Q Do you feel she acted in your best interest?

17 A Her best? No, she didn't because on the simple
18 fact she stated to the court, you know, in open
19 court that she wanted, she had filed a motion to be
20 relieved off my case and the judge denied the
21 motion. And at that time she went taint, everything
22 went taint, downhill.

23 Q I'm sorry, what?

24 A Everything went taint, downhill. She was taint
25 me that she didn't -- her performance went, her

PW - W. SMITH - DIRECT

1 performance or duty of law went downhill.

2 Q So did you ever attempt to fire her and proceed
3 without an attorney?

4 A Say it again.

5 Q Did you ever attempt to have her relieved as your
6 attorney?

7 A Yes, she filed a motion to be removed in court.

8 Q She filed it or you filed it?

9 A She filed it.

10 Q She filed it?

11 A Yea, I wanted her ---

12 Q And did you want her to file it?

13 A I wanted her to ---

14 THE COURT REPORTER: Y'all slow down.

15 THE COURT: Whoa, whoa.

16 THE MR. HOWLE: Sorry.

17 THE COURT: Wait a minute. Both y'all
18 can't talk at the same time. Okay, thank you.

19 BY MR. HOWLE:

20 Q So she filed the motion after you requested her
21 to file it?

22 A Yeah.

23 Q Okay. And what happened to that request?

24 A The motion got denied. It got denied in front of
25 Mr. Cox. He said that he believed I couldn't,

PW - W. SMITH - DIRECT

1 wasn't capable enough to representing myself. And
2 then after that she said when Mr. — originally she
3 believed that Mr. Cox had represented me and the
4 State had offered me 15 years and —

5 Q You said it was denied in front of Mr. Cox. I
6 think you mean Mr. Baxley?

7 A No, I meant Mr. Baxley.

8 Q Judge Baxley.

9 A It was denied in front of Mr. Baxley. And at the
10 time Ms. Chelsea, Ms. McNeill stated that the State
11 had offered me 15 years; and she said she — I
12 didn't know I was rejecting 15, but I told her I
13 didn't reject the 15. I didn't sign no paper that I
14 reject the 15. I told her I wasn't going to take
15 without consulting with my counsel and my counsel
16 wasn't present.

17 Q So you felt you were capable of proceeding
18 without an attorney?

19 A Well, no, I wasn't capable nothing to proceed
20 without attorney 'cause Mr. Cox wasn't there. I
21 wasn't going to go on without his consent 'cause
22 he's a paid attorney.

23 Q All right, so you eventually pled guilty,
24 correct?

25 A Say that again.

PW - W. SMITH - DIRECT

1 Q You eventually pled guilty, correct?

2 A I eventually?

3 Q Entered a plea of guilty?

4 A Yes, sir.

5 Q Right, okay. And do you feel that plea was
6 voluntary?

7 A Yes, sir, that Mr. Cox wasn't there? Yes, sir.

8 Q You do feel it was voluntary?

9 A Involuntary.

10 Q You feel it was involuntary?

11 A Yes, sir.

12 Q Why is that?

13 A Because Mr. Cox wasn't present at the plea.

14 Q Okay. Did you discuss with Ms. McNeill what your
15 sentence would be if you went to trial?

16 A Did I — no, we didn't.

17 Q She never said what she thought you would get if
18 you tried this case?

19 A She said if I would go to trial most likely I
20 would get a life sentence if I would go to trial.

21 So at that time when we were discussing everything,
22 we kept coming to disagreement, disagreement, and
23 she went off and I went off, we both went off. And
24 I said, well, I was representing myself. And at
25 that time I came in and I said, well, I'll take the

PW - W. SMITH - DIRECT

1 plea because I'm detrimental reliance, I was going
2 to get the 15 years.

3 Q All right. So you feel she pressured you into
4 accepting that plea?

5 A Yes, I felt like that I was coerced into taking a
6 plea, taking a guilty plea receiving a benefit that
7 I thought I was going to receive. I thought I was
8 going to receive a 15 year sentence.

9 Q All right. And did you — did Ms. McNeill inform
10 you you could appeal?

11 A No, she didn't.

12 Q All right. And did she file a notice of intent
13 to appeal?

14 A No, she didn't.

15 Q Okay. And is there anything else you would like
16 to tell the Court today?

17 A I would like for — I have some document that I
18 would like to put in the file, and I'd like some
19 legal law that I would like for you to put on, for
20 put on record for me. And I would like for really
21 look over my case and 'cause I feel that I was
22 eligible, reliable on the 15 years.

23 Q You would like the judge to see something? I
24 don't think that the State has a problem with that.

25 A Saying something? Or see something?

PW - W. SMITH - DIRECT

1 Q You'd like the judge to see something —

2 A Yes, sir.

3 Q —to consider? You can...

4 A You want to...

5 (Document tendered to the Court.)

6 THE DEFENDANT: How are you doing?

7 THE COURT: Good.

8 THE DEFENDANT: On that, Your Honor, do
9 you see this right here, this one.

10 THE COURT: What you want me to see?

11 THE DEFENDANT: That. Take that with
12 that. Give me one of them.

13 THE COURT: All right.

14 (Pause while the Court reviews documents.)

15 THE COURT: Okay.

16 BY MR. HOWLE:

17 Q Mr. Smith, and you wanted me to put on the record
18 that you've intended to file a 59(e) motion if your
19 PCR was not granted today.

20 A Yes, sir.

21 Q You want to put that on the record?

22 A Yes, sir, put it on the record.

23 THE DEFENDANT: That's all the questions I
24 have, Your Honor.

25 **CROSS-EXAMINATION**

1 BY MS. RATIGAN:

2 Q So during these two meetings with Ms. McNeill did
3 you review the State's evidence against you?

4 A Say that again, ma'am.

5 Q When you had those meetings with Ms. McNeill did
6 you review the State's evidence against you?

7 A No, ma'am.

8 Q What did you talk about at the meetings?

9 A Exactly what I talked about where Ms. McNeill
10 came to the Darlington County Detention Center on
11 April 23rd. She discussed the matter of the cases
12 that pertained to me, question about me pleading at
13 a deal made for Mr. Cox. And I discussed with her
14 that it was confidentially that we made it.
15 Ms. McNeill stated that she knew about the 15 year
16 deal and therefore was not accepting the deal —
17 actually, about the detail, accepting offer I stated
18 that Mr. Cox wasn't present at the time.

19 Q Okay, so you talked about the plea that —

20 A Talked.

21 Q —you had with Mr. Cox.

22 A Talked about the plea. Then she asked me, well,
23 what me and Mr. Cox talked about.

24 Q Okay.

25 A And I told her that was confidential.

PW - W. SMITH - CROSS

1 Q But you never talked about any of the evidence in
2 your case?

3 A No.

4 Q You never told her your version of what had
5 happened that day?

6 A No.

7 Q You never talked about the fact that the victim
8 had identified you?

9 A No.

10 Q Okay. So your testimony today is you felt like
11 she pressured you to pleading guilty by threatening
12 that you'd get a life sentence?

13 A Yeah. Well, yes, ma'am, because the simple fact
14 that she said if I didn't go to trial today we
15 didn't — if I didn't take the plea today that I
16 would go to trial today and believe would receive a
17 life sentence.

18 Q Okay. But didn't you tell the judge that day
19 that no one had pressured you into pleading guilty?

20 A Well, the reason I said that on the simple fact
21 'cause Ms. Chelsea had already stated on the record
22 that this court had offered me 15 years to the
23 judge. It was on record in my transcript.

24 Q So, but you didn't tell the judge that day you
25 felt like she had pressured you by threatening a

1 life sentence. Why didn't you tell him about that?

2 A Well, so much was going through my mind at the
3 time because I was still thinking about Mr. Cox
4 'cause Mr. Cox was a paid attorney, and he had
5 received my money and he had -- I was mentally
6 rethinking of all kind of stuff. He done ran off
7 with my money.

8 Q Okay.

9 A And then the State forced, appoint me an attorney
10 that I didn't know nothing about and shot me up
11 under the gun.

12 Q All right. Well, why didn't you tell the judge
13 that day about Mr. Cox?

14 A He knew about Mr. Cox.

15 Q But why didn't you tell him that I, why am I
16 going forward with Ms. McNeill when I have a paid
17 lawyer? Why didn't you talk about that?

18 A Because everything was already stated on the
19 record and that simple fact that really why I did
20 state it because Ms. McNeill had done made a motion
21 to be removed, and I was looking for the judge grant
22 me the motion so that way I could continue to get me
23 another lawyer or either Ms. Chelsea would ask for a
24 continuance.

25 Q Okay. But you knew you were in court that day

PW - W. SMITH - CROSS

1 was to plead guilty, correct?

2 A Say that again.

3 Q You knew when you went to court that day though
4 it was for a guilty plea hearing?

5 A It was a guilty plea hearing; but like I said, I
6 was just then relying on the 15 years. That's why I
7 take the plea.

8 Q Okay. And when you went in to court that day you
9 knew that there was no kind of sentence
10 recommendation; is that correct?

11 A Yeah, the prosecutor, she stated it in the
12 beginning that there was no negotiation plea.

13 Q Right.

14 A But at the end in my transcript she stated it,
15 that there was a negotiation plea.

16 Q But you knew that there was no negotiation that
17 day. You knew that you were pleading without any
18 kind of negotiation?

19 A No, I didn't. I said —

20 Q So when he —

21 A She stated it —

22 Q Hold on now, let me ask my question first.

23 A Okay.

24 Q What did you think was going to happen that day
25 in terms of a sentence? What did you think you were

1 going to get?

2 A 15 years.

3 Q Okay. You went there and thought you were going
4 to get 15?

5 A Yes, sir — yes, ma'am.

6 Q So when the solicitor said there was no
7 recommendation why didn't you object at that point?

8 A Well, I didn't know that I could object to that.
9 I say Ms. McNeill actually led me the wrong
10 direction.

11 Q Well, did you —

12 A I didn't know if I could have reject it. If I
13 could have known I could reject it, I would reject
14 it, and then I would rely on at the end of my
15 transcript where the prosecutor stated that there
16 was a negotiation plea.

17 Q Did you tell Ms. McNeill at the time when the
18 Solicitor said there was no recommendation, did you
19 tell her, you know, that's not true, we're here for
20 15 years?

21 A Say that again.

22 Q Did you bring that up to Ms. McNeill during the
23 plea when the Solicitor said there was no
24 recommendation, did you say to her, no, that's not
25 true, we have a 15 year deal?

PW - W. SMITH - CROSS

1 A No, I didn't say anything to her on the simple
2 fact because she stated that, that — she stated
3 that after she stated that the State had offered me
4 15 years and I didn't take the 15 years, she stated
5 I rejected the 15 years so she already about the 15
6 years.

7 Q And you admitted to the judge that day that you
8 had committed these crimes, correct?

9 A Yes, I did.

10 Q Okay. And your testimony today is that
11 Ms. McNeill never even mentioned an appeal to you?

12 A No, I never — never mentioned appeal, never
13 mentioned appeal to me, never filed the appeal.

14 Q All right. Well, why do you want an appeal?

15 A Why I want the appeal?

16 Q Yeah.

17 A I want — wait a minute. I want the appeal, the
18 appeal, appeal it 'cause the Court had made an
19 error, had made some errors.

20 Q What error?

21 A The error was that they had appointed me a lawyer
22 that I never had no representation of. Mr. Cox
23 never filed a motion to be removed off my case.

24 Q Okay.

25 A And when they appoint Ms. McNeill to me, I was

1 already doing a 7 year sentence on violation of
2 probation. And Mr. Cox had advised me that if I
3 come back and take the plea on the charges, that the
4 charges I would plea to, the charges try to drop the
5 lesser included offense and I would get a 15 year
6 sentence run concurrent with my 7 year probation
7 violation because the prosecutor wanted me to do a
8 whole 7 year sentence.

9 Q And you wanted the appellate court to look at
10 this issue?

11 A Yes, I did.

12 Q Okay.

13 MS. RATIGAN: That's all I have, Your
14 Honor.

15 THE COURT: Okay. Can you point out to me
16 in the transcript where you talk about, the
17 prosecutor talked about a negotiated deal.

18 THE WITNESS: On page 7, Your Honor.

19 THE COURT: On page 7?

20 THE DEFENDANT: Let me get my transcript
21 so I'm right there with you. Oh, goodness. On page
22 7 she stated there were no recomdon [sic] on this
23 plea.

24 THE COURT: No recommendation, right.

25 THE DEFENDANT: On page 30 she said, Your

PW - C. MCNEILL - DIRECT

1 Honor, I do not know if you would like for us to
2 address my, any previous plea negotiation, or -- if
3 that clear enough.

4 THE COURT: All right. She simply asked
5 the court if he, if the judge wanted her to talk
6 about any previous negotiations, right? And he told
7 her that's not necessary, right?

8 THE WITNESS: That right.

9 THE COURT: Okay, thank you.

10 Anything further for this witness, Mr. Howle?

11 MR. HOWLE: Nothing further, Your Honor.

12 THE COURT: Okay, you may step down.

13 MR. HOWLE: We call Ms. Chelsea McNeill.

14 THE COURT: Okay.

15 WHEREUPON,

16 **CHELSEA MCNEILL,**

17 having been duly sworn by the Clerk, testified as
18 follows:

19 **DIRECT EXAMINATION**

20 BY MR. HOWLE:

21 Q Ms. McNeill, would you state your full name for
22 the record?

23 A Chelsea Brook McNeill.

24 Q All right. And you represented Mr. Smith, Warren
25 Smith, when he pled back on August 29th, 2012?

PW - C. MCNEILL - DIRECT

1 A I did.

2 Q Okay. And were you aware that at one point he
3 had retained Jim Cox to represent him?

4 A I was.

5 Q Okay. And do you have any idea what happened
6 with that arrangement?

7 A From my understanding when I contacted the law
8 offices of Mr. Jim Cox, I think that what happened
9 was Mr. Cox had represented Mr. Warren Smith on a
10 previous matter. I think that it was the probation
11 violation and perhaps a bond hearing. And then when
12 he was sentenced for the probation violation and
13 sentenced to a seven year sentence, it's my
14 understanding that Mr. Cox was only retained in the
15 capacity to represent him on the probation violation
16 and perhaps the bond hearing.

17 Q Okay. So in regards to any trial or plea on this
18 matter it's your understanding that he was not
19 represented by Mr. Cox?

20 A That's correct. It's my understanding that he
21 was not retained for a case in chief.

22 Q All right. And you are aware that at one point
23 Mr. Smith was offered 15 years?

24 A I was.

25 Q Okay. And he pled on August 29th on — do you

PW - C. MCNEILL - DIRECT

1 know about when that offer was extended to him? Do
2 you have any idea? I don't know that you
3 represented him at that time.

4 A I did not represent him at that time. That was
5 the point in time at which Mr. Jim Cox was, had
6 representation of him. It's my understanding that
7 at the probation violation hearing the State had
8 extended an offer of a 15 year sentence at that
9 probation violation hearing to which he got seven
10 years. It's my understanding that Mr. Warren Smith
11 rejected that 15 year offer; however, I know that he
12 didn't understand he was rejecting it but the State
13 took it as a rejection because it's my understanding
14 that the State wanted him to either accept or reject
15 that 15 year offer on that spot on that day of the
16 probation violation hearing. And when he did not,
17 the State took it as a rejection and took that offer
18 off the table.

19 Q Okay. Now during the course of your
20 representation did you discuss with Mr. Smith the
21 merits of his case?

22 A I did.

23 Q All right. And how did you feel about the
24 strength of his case?

25 A We were first up for trial so I prepared my trial

PW - C. MCNEILL - DIRECT

1 notebook routinely like I do for all my cases that
2 are proceeding to trial. Mr. Warren Smith was
3 incarcerated in SCDC on that seven year probationary
4 sentence when I was appointed to his case. So from
5 my notes it looks like my office, or my former
6 office, the Fourth Circuit Public Defender's Office
7 was appointed to his case on August 16th, 2011, for
8 case in chief. At that time Ms. Emily Creighton was
9 a public defender with that office, and it looks
10 like she took over representation on September 19th,
11 2011, and began reviewing his file. I then came on
12 board and started reviewing his file on August —
13 I'm sorry, October 6th, 2011, and it looks like I
14 really started preparing his case February 22nd,
15 2011 and then he was returned to the Darlington
16 County Detention Center, I think, sometime in April
17 of 2012 and at which time I began to meet with him.

18 Q Okay. How would you describe your relationship
19 with Mr. Smith, you know, in regards to your
20 representation?

21 A It was definitely strained. It — originally he
22 had been indicted or charged with strong armed
23 robbery, and then it's my understanding that the
24 State a week before calling his case first up for
25 trial they had direct indicted him for armed

PW - C. MCNEILL - DIRECT

1 robbery. When that happened, this is going to the
2 previous question about the strength of the case. I
3 thought that we had a pretty strong case against the
4 armed robbery charge because the fact that was in
5 dispute was whether or not a brick was used by
6 Mr. Smith in commission of the crime so I did think
7 that we had a pretty strong chance of getting a
8 lesser included offense of strong armed robbery.
9 However, the victim was present during our plea and
10 it was my understanding the whole time that she was
11 available to testify. She had identified him
12 through photo lineups. When I went over all this
13 evidence with him he focused on the fact that he
14 wanted that 15 year offer back, and so I sent emails
15 to Ms. Kendall Burch who was the assistant solicitor
16 prosecuting this case. She was adamant that she was
17 not going to offer that to him anymore; that he had
18 rejected it. That caused a huge discord in my
19 communication with Mr. Smith because he was
20 frustrated about why Mr. Cox wasn't representing
21 him, why I was, and why the 15 year offer was gone.
22 Q So the day Mr. Smith pled he was up for trial?
23 A That's correct.
24 Q Was he first up?
25 A He was.

PW - C. MCNEILL - DIRECT

1 Q Okay. And did you tell him that you, that at
2 that time you thought he would likely be found
3 guilty?

4 A I told him that based on my legal analysis of his
5 entire case that I did think that the chances of a
6 conviction from a jury trial were very strong and
7 that if convicted he would likely receive a life
8 sentence based upon his age.

9 Q Okay. And did you — so then he decided to
10 plead. Did you discuss with him at all what you
11 thought a possible sentence might be?

12 A I told him that he was facing up to life and due
13 to his age I was worried that he would receive a
14 life sentence or the equivalent thereof because of
15 his age. And at the time I was prepared to move
16 forward to trial he had not wanted to plead until
17 the day of trial so I at that time advised him that
18 I didn't think that there was any incentive to plead
19 and that we should just make the State work for it
20 at a jury trial.

21 Q So you actually recommended he should go to
22 trial?

23 A That's correct. At the — initially I
24 recommended him to plead. When I could not get the
25 offer back on the table and they had direct

PW - C. MCNEILL - CROSS

1 indicted him for armed robbery, at that point I
2 thought that it was best to proceed with trial
3 instead of a plea because there was no incentive for
4 him to waive his constitutional rights to a trial.

5 Q Okay.

6 MR. HOWLE: That's all the questions I
7 have, Your Honor.

8 THE COURT: Okay.

9 **CROSS-EXAMINATION**

10 BY MS. RATIGAN:

11 Q How many times -- and obviously you may have to
12 estimate this -- would you say you would have met
13 with Mr. Smith prior to the plea?

14 A I think that I met with him either three or four
15 times; and I think with each session that I met with
16 him, one I have documented as an hour long. Another
17 one I have is two hours and another one is
18 two-and-a-half year hours. And the fourth one I
19 only believe that I walked in there to show him his
20 video statement evidence.

21 Q Okay. And while he was in SCDC did you exchange
22 letters with him, do you recall?

23 A While he was in SCDC?

24 Q Yeah.

25 A No, ma'am.

1 Q What about at the jail?

2 A Exchange letters?

3 Q Yeah. Did y'all write — did he write you with
4 issues that he wanted you to raise, anything like
5 that?

6 A I don't recall receiving any letters from him.
7 Whenever, I mean, because I was preparing this case
8 for first up for trial so I was going to the jail
9 instead of corresponding via letter.

10 Q Okay. Did you file the usual Brady and Rule 5
11 motions?

12 A I personally did not. My office did when they
13 were appointed to take over the case back in August
14 of 2011.

15 Q So you took it about two months later. Did you
16 have discovery by that point, do you remember?

17 A I did.

18 Q Okay. Did you review it both independently and
19 with Mr. Smith?

20 A I did.

21 Q Did you review with him the fact that the victim
22 had identified him?

23 A I did, and I also provided him with a copy of all
24 of his discovery and went over it extensively as I
25 do with all my clients.

PW - C. MCNEILL - CROSS

1 Q Did you review with him the elements of these
2 various charges?

3 A Thoroughly.

4 Q And the minimum and maximum he was facing on each
5 one?

6 A Yes, I stress that fact.

7 Q Did you -- strike that. Were there any kind of
8 plea offers made while you represented him?

9 A None whatsoever.

10 Q And it sounds like your testimony is basically he
11 knew the 15 was gone, he just couldn't accept that
12 it was gone. Would that be fair to say?

13 A Yes, that's fair to say. I had -- I have in my
14 notes that I had met with the client at the jail
15 after he arrived from SCDC on April 25th, 2012,
16 spent over an hour discussing all consequences of
17 all pending charges and the time that he is facing,
18 discussed that there is no offer on the table and
19 discussed his right to a trial as well as his right
20 to plead guilty. Discussed that he is facing no
21 matter if trial or a guilty -- what time he's facing
22 no matter to trial or guilty plea. Client was
23 irritated that he no longer was being offered 15
24 years. At one point he admitted to rejecting that
25 former offer but then tried to claim his rights were

1 violated because Rick Jones and Jim Cox, former the
2 judge he was in front of during probation violation
3 hearing, all promised him 15 years or less with
4 concurrent time.

5 Q So by the time Mr. Smith pled it was a straight
6 up plea with no negotiations; that's correct?

7 A That is correct. It was like that the entire
8 time I represented him.

9 Q So did you explain to him going into the plea
10 just that he could face anything up to life?

11 A I stressed that I thought that he would receive
12 the equivalent of a life sentence.

13 Q You testified today that he believed he was going
14 there to get 15 years. Did you make any kind of
15 representation that that 15 years would be back on
16 the table?

17 A No, I did not. He and I had a very large
18 breakdown in communication the entire time because I
19 told him that 15 years was not an option. Well, it
20 was an option; but I said that based on my legal
21 analysis of the violent nature of the crime
22 committed that I did not think that Judge Baxley
23 would grant him the mandatory minimum.

24 MS. RATIGAN: That's all I have, Your
25 Honor.

1 THE COURT: Okay. Anything else?

2 MR. HOWLE: No, nothing further, Your
3 Honor. Thank you.

4 THE COURT: Thank you. You can step down.

5 THE WITNESS: Thank you.

6 THE COURT: State have anything?

7 MS. RATIGAN: The State would rest on the
8 record and Ms. McNeill's testimony.

9 THE COURT: Okay. I assume you don't have
10 anything else.

11 MR. HOWLE: Nothing further, Your Honor,
12 thank you.

13 THE COURT: All right, I'll read this
14 record and let y'all know.

15

16 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

17

18

19

20

21

22

23

24

25

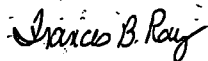
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 2nd day of March, 2015.



FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DARLINGTON)

2012-CP-16-0732

Warren Smith,
S.C.D.C. No. 184653,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
2013 SEP -9 PM 2:45
SCOTT B. SUGGS
CLERK OF COURT, S.C.D.
DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 28, 2012. The Respondent made its return on January 17, 2013. An evidentiary hearing into the matter was convened on July 16, 2013 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Parker Howle, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Chelsea McNeill, Esquire. The Court had before it the transcript of the guilty plea hearing, the Darlington County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. The Applicant was indicted at the August 2011 term of the Darlington County Grand Jury for petit larceny (2011-GS-16-1059), kidnapping (2011-GS-16-1061), first-degree burglary (2011-GS-16-1062) and first-

TRUE CERTIFIED COPY,

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

COPY

degree assault and battery (2011-GS-16-1063) and at the May 2012 term for armed robbery (2012-GS-16-0525). He was represented by Chelsea McNeill, Esquire.

On August 29, 2012, the Applicant pled guilty to all of the charges as indicted – except the armed robbery charge was reduced to strong arm robbery during the guilty plea hearing. He was sentenced by the Honorable J. Michael Baxley to concurrent terms of thirty days for petit larceny, twenty-five years for kidnapping, twenty-five years for first-degree burglary, ten years for first-degree assault and battery, and fifteen years for strong arm robbery. The Applicant did not file an appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. “The court gave me a public defender that was not known to me.”
2. Involuntary guilty plea:
 - a. “May [sic] paid attorney was not present at my hearing.”

In an amended application for post-conviction relief filed April 26, 2013, the Applicant made the following allegations:

1. Ineffective assistance of counsel:
 - a. “My paid attorney, James C. Cox, was not present for my plea, even though he had been paid to appear at same. I was given an offer of 15 years by the Solicitor, which my plea counsel, Chelsea McNeill, failed to address in the time period leading up to and during my plea.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their

credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C.

131, 318 S.E.2d 360 (1984)).

The Applicant stated he hired James Cox to represent him and that Cox was never relieved as his attorney. The Applicant stated there was a fifteen-year plea offer but that he did not accept it because Mr. Cox was not there. The Applicant stated he had two meetings with plea counsel and that they discussed the case and what he had discussed with Mr. Cox. The Applicant stated they did not discuss either his version of events or the victim's identification. The Applicant stated plea counsel pressured him into pleading guilty. The Applicant stated his plea was involuntary because Mr. Cox was not present. The Applicant admitted he told the plea judge he committed these crimes. The Applicant stated he did not tell the plea judge about Mr. Cox's representation because this information was already on the record. The Applicant admitted he did not tell the plea judge he felt pressured. The Applicant stated he believed he would receive a fifteen-year sentence if he pled guilty but admitted he did not mention this to the plea judge. The Applicant stated plea counsel did not advise him of the right to appeal.

Plea counsel testified she was aware of Mr. Cox's prior representation. Plea counsel testified she called Mr. Cox and was told he had been retained on a prior matter, not this one. Plea counsel testified a fifteen-year plea offer on these charges had been made while Mr. Cox still had the case but that the Applicant had rejected it. Plea counsel testified she had three or four meetings with the Applicant and that they reviewed: the discovery materials, the elements of the charges, and the sentencing ranges for those charges. Plea counsel the State never conveyed a plea offer on this case after she was appointed. Plea counsel testified she was prepared for trial but that the Applicant decided to plead guilty. Plea counsel testified the Applicant knew he was pleading guilty without a sentence recommendation and that the fifteen-year offer was no longer in place.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving his guilty plea was involuntary. The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.12; pp.18-19; p.24). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.13-15). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately represent him at the guilty plea hearing. Plea counsel testified she had several meetings with the Applicant and they reviewed the State's evidence, charges, and possible penalties. Plea counsel testified they discussed that the prior fifteen-year plea offer was no longer available. Plea counsel testified they had prepared the case for trial but the Applicant

chose to plead guilty instead. This Court finds plea counsel's testimony is credible. This Court finds plea counsel adequately discussed the case with the Applicant and the Applicant was aware he was pleading guilty without a sentence recommendation. While the Applicant now claims he was actually represented by Mr. Cox and not plea counsel, this Court notes the Applicant never made such a statement at the plea hearing; rather, the Applicant admitted his satisfaction with plea counsel's representation. THs Court finds and concludes the Applicant has failed to articulate what else plea counsel should or could have done to better represent him. Xxx.

This Court finds the Applicant failed to meet his burden of proving he is entitled to a review of his direct appeal issues. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, "courts must take into account all the information counsel knew or should have known." Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. This Court finds the Applicant has failed to articulate a rational defendant would have wanted to appeal in this situation or that he informed plea counsel of his desire to do so. As such, the Applicant is not entitled to an appeal of potential direct appeal issues from his guilty plea hearing.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Furthermore, the Applicant’s guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

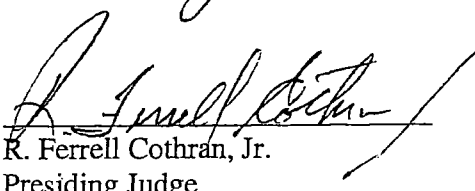
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

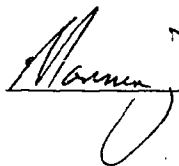
for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

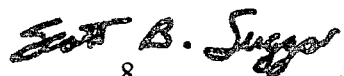
AND IT IS SO ORDERED this 20 day of Aug, 2013.


R. Ferrell Cothran, Jr.
Presiding Judge

, South Carolina.

FILED
2013 SEP -9 PM 2:45
SCOTT B. SUGGS
CLERK OF COURT/R.C.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,


CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

FORM 5

STATE OF SOUTH CAROLINA)

County of DARLINGTON)WARREN SMITH, 184653,)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

13CP160942

APPLICATION FOR

POST-CONVICTION RELIEF

NOV 20 11:31
CLERK OF COURT, S.C.
DARLINGTON COUNTY

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CI , 990 WISACKY HWY., BISHOPVILLE, S.C.
29010
2. Name and location of Court which imposed sentence GEN. SESS., DARLINGTON
CO. JUDICIAL Ct.
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-16-1059, 1061, 1062, AND 1063, etc.
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) MAY 7, 2012, SEE SCCA-217 (SENTENCING SHEETS)
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty XXX
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed: N/A
 i. _____
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. _____
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) BECAUSE CASE COUNSEL REFUSED TO APPEAL A GUILTY PLEA.

FILED
 2013 NOV 20 AM 11:37
 SCOTT B. SUGGS
 CLERK OF COURT/R.D.D.
 DARLINGTON COUNTY, S.C.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) COUNSEL INEFFECTIVE FOR INCORRECTLY FILING AN APPEAL;
- (b) SEE ATTACHMENTS/ADDENDUMS
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) APPLICANT'S PCR COUNSEL IS FOUND TO HAVE INTERFERED
- (b) WITH THE PCR APPEAL PURSUANT TO RULE 243, SCACR, etc.
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? POST CONVICTION RELIEF APPLICATION
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. PCR
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SEE APPLICANT'S PROCEDURAL HISTORY
- ii. _____
- iii. _____
- iv. _____

FILED
 2013 NOV 20 AM 11:37
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

(c) the disposition thereof:
SEE SAME, etc.

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:
SEE SAME, etc.

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: SEE ATTACHMENTS AS EXHIBITS, etc.

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented: N/A

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____

2013 NOV 20 AM 11:37
SCOTT B. SUEGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

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

(a) THE APPLICANT'S CONSTITUTIONAL RIGHTS WAS NOT VIOLATED
 (b) UNTIL THE AFOUL HAPPENED IN CASE #2012-CP-16-732, etc.
 (c) _____

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

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

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. JAMES C. COX, ESQ.

ii. DARLINGTON PUBLIC DEFENDERS OFFICE COUNSEL

iii. PARKER E. HOWLE, ESQ.

(b) the proceedings at which each such attorney represented you:

i. GUILTY PLEA

ii. " "

iii. POST CONVICTION RELIEF APPLICATION

FILED
 2013 NOV 20 AM 11:37
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

Revised 3/2003

19. State clearly the relief you seek in filing this application:
TO BE REINSTATED APPEAL PURSUANT TO RULE 243, SCACR.

20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)
)
 County of DARLINGTON/LEE)

VERIFICATION

I, WARREN SMITH, 184653, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me at this time for vacating, setting aside or correcting the convictions and sentence attacked in this application; and that the matters and allegations therein set forth are true and correct.

Mr. Warren K. Smith
WARREN SMITH, 184653
 990 WISACKY HWY.
 BISHOPVILLE, S.C. 29010

SWORN to and subscribed before me this 19
 day of Nov. 2013

Debra S. Suggs (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

2013 NOV 20 AM 11:37
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

FILED

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

I, WARREN SMITH, 184653, hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. In support of my application I declare under penalty of perjury that the following facts are true:

- (a) I am the applicant in this action and I believe I am entitled to redress.
- (b) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Mr. Warren Smith

Applicant

SWORN or affirmed to and subscribed before me this

19 day of Nov 2013

Debra S. Sikes

Notary Public

My Commission Expires: 11-4-2015

Lee Corr., Inst.,
990 Wisacky Highway
Bishopville, SC 29010-1775

FILED
2013 NOV 20 AM 11:37
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

MOTION

EXHIBIT #1.

Case No.: 2012-CP-16-0732

Warren Smith,
S.C.D.C. No.: 184653

v.

Appellant

State of South Carolina,

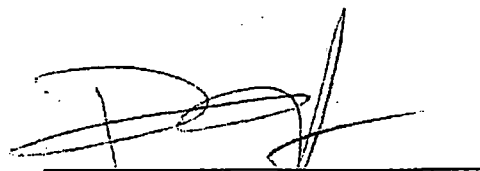
Respondent.

STATEMENT PURSUANT TO RULE 203(d)(1)(B)(iv)

This matter is before the Court in regards to an Application for Post-Conviction Relief, filed by Petitioner on August 28, 2012. This matter was heard by the Honorable R. Ferrell Cothran, Jr. on July 16, 2013. This matter was taken under advisement, and an Order of Dismissal was signed by the Court on August 19, 2013. Said Order was filed on September 9, 2013 and received by Counsel on or about September 12, 2013. Counsel failed to provide a copy to Appellant until October 3, 2013. At that time, Appellant requested this Notice of Appeal be filed on his behalf. Counsel requests that any time limitations be waived and this Notice of Appeal be submitted on Appellant's behalf.

Date: October 17, 2013

I SO MOVE:



Parker E. Howle
Attorney for PCR Applicant
Post Office Box 186
Darlington, SC 29540

FILED

2013 NOV 20 AM 11:37

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

EXHIBIT #2.

NOTICE OF APPEAL FROM DARLINGTON COUNTY
Court of General Sessions

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No.: 2012-CP-16-0732

Warren Smith,
S.C.D.C. No.: 184653

v.

Appellant

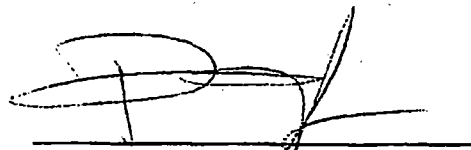
State of South Carolina,

Respondent.

STATEMENT PURSUANT TO RULE 203(d)(1)(B)(iv)

Appellant's application for Post-Conviction Relief was heard on July 16, 2013 and dismissed by Order of the Court dated August 20, 2013. Undersigned counsel files this appeal at the request of Appellant and pursuant to In re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991), as well as Weathers v. State, 319 S.C. 59 (1995). Counsel knows of no issue that can be reviewed on appeal.

Date: October 17, 2013



Parker E. Howle
Attorney for PCR Applicant
Post Office Box 186
Darlington, SC 29540

2013 NOV 20 AM 11:37
SCOTT B. SUGGS
CLERK OF COURT/R.D.D.
DARLINGTON COUNTY, S.C.

FILED

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**NOTICE OF APPEAL FROM DARLINGTON COUNTY
Court of General Sessions**

Case No.: 2012-CP-16-0732

EXHIBIT

FILED
2013 NOV 20 AM 11:37
CLERK OF COURT
SCOTT B. SUGGS
DARLINGTON COUNTY, S.C.

Warren Smith,
S.C.D.C. No.: 184653.

Appellant

v.

State of South Carolina,

Respondent:

CERTIFICATE OF SERVICE

I, Parker E. Howle, certify that I have, this 17th day of October, 2013, served a copy of this Notice of Appeal, Motion and Certificate of Service in connection with the above matter upon the parties to this action listed below by depositing same in United States Regular Mail, postage pre-paid and addressed as follows:

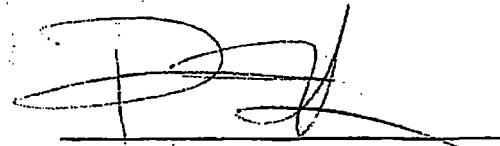
Jenny-Abbott Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Robert M. Dudek
Chief Appellate Defender
Office of Indigent Defense
1330 Lady St., Suite 401
Columbia, SC 29201

Karen C. Ratigan
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211

The Hon. Alan Wilson
SC Attorney General
Post Office 11549
Columbia, SC 29211

Warren Smith
SCDC No.: 184653
Lee Correctional, Dorn 215-C
990 Wisacky Way
Bishopville, SC 29010



Parker E. Howle
Attorney for PCR Applicant
Post Office Box 186
Darlington, SC 29540

FILED

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT

2013 NOV 20 AM 11:37

WARREN SMITH, #184653,
APPLICANT,

) CASE NO. 2013-CP-16-732

SCOTT B. SUGGS
CLERK OF COURT/R.D.O.
DARLINGTON COUNTY, S.C.

VS.

) > PCR AUSTIN APPEAL PETITION,
) AUSTIN V. STATE, 409 SE2d 395 (1991)STATE OF SOUTH CAROLINA,
RESPONDENT,

13CP160942

COMESNOW: PCR APPLICANT WARREN SMITH IN THE ABOVE STATED CAPTIONED-CASE, WITH A PRO SE AUSTIN APPEAL PETITION, THE POST CONVICTION APPEAL PURSUANT TO RULE 243, SCACR, i.e., APPLICANT PROFFERS TO THE COURT THE FINDINGS FROM THE S.C. SUPREME COURT IN IT'S ORDER DATED OCTOBER 30, 2013, ISSUED BY THE S.C. SUPREME COURT IN APPELLATE CASE NO. 2013-002256, etc.

APPLICANT WARREN SMITH, #184653, MAKE FACTUAL CONTENTIONS AS THE FOLLOWING: APPLICANT SMITH WAS REPRESENTED BY CASE COUNSEL PARKER E. HOWEL, ESQ.; ATTORNEY PARKER E. HOWLE, ESDQ., FAILED TO FILE THE NOTICE OF APPEAL TO THE S.C. SUPREME COURT ACCORDINGLY TO THE APPELLATE COURT RULES PROCEDURAL TO THE POST CONVICTION RELIEF DISMISSALS, etc.; HAD NOT BEEN FOR THE CASE COUNSEL PARKER E. HOWLE NEGLECTING HIS DUTIES TO FILE APPLICANT'S PCR APPEAL ACCORDINGLY TO THE RULES THE APPLICANT WOULD BE RECEIVING A REVIEW BY THE APPELLATE COURT TO THE ORDER OF DISMISSAL TO THE POST CONVICTION RELIEF.

FACTS SUPPORTING APPLICANT'S CONTENTIONS THAT HE IS ENTITLED TO AN APPELLATE COURT REVIEW TO HIS PCR ORDER OF DISMISSAL ISSUED BY THE COURT OF COMMON PLEAS, etc., AND THE APPELLATE COURT OVERLOOKED THE FACTS THAT THE APPLICANT COULD NOT HAVE FILED ANY PAPERS TO HIS CASE PURSUANT TO RULE 11, SCRCP, etc., AS STATING THAT THE CASE COUNSEL IS OBLIGATED TO FILE ALL NECESSARY PAPERS.

TRUE CERTIFIED COPY

*Scott B. Suggs*CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

DOCUMENTS, MOTIONS, AND APPEALS, etc., RELATING TO APPLICANT'S CASE MATTERS, etc. THE APPLICANT COMESNOW AND STATE EXPLICITLY THAT THE CASE COUNSEL WAS RESPONSIBLE TO INFORM THE COURT ACCORDINGLY TO THE WELL SETTLED LAWS AS IS ESTABLISHED TO PRESERVED THE APPLICANT'S RIGHTS TO AN APPEAL. THE APPLICANT IS COMPELLING THE COURT TO SEE THAT THE CASE COUNSEL HAVE ADMITTED TO THE ERRORS COMMITTED DURING THE FILING THE NOTICE OF APPEAL, THE ORDER IN ITSELF GIVES THIS PROOF AND AS IT IS STATED BY THE COURT THE COUNSEL HAS INDICATED THAT THAT HE RECEIVED A WRITTEN NOTICE OF ENTRY OF THE NOTICE (ORDER OF DISMISSAL TO THE POST CONVICTION) ON ABOUT SEPTEMBER 12, 2013, AND THE ORDER ALSO STATES THAT THE COUNSEL OF RECORD REQUESTED THAT THE TIME LIMITATION BE WAIVED THAT OF WHICH IS A CLEAR INDICATION THAT THE CASE COUNSEL IS SHOWING THAT HE WAS INCOMPETENT AND HAVE A POOR JUDGEMENT TO FOLLOW WELL SETTLED LAWS BY THE STATE SUPREME COURT IN HANDLING POST CONVICTION RELIEF APPEALS, etc., THE APPLICANT ARGUES THAT THE S.C. SUPREME COURT OVERLOOKED THE FACTS THAT THE CASE COUNSEL IS INEFFECTIVE ASSISTANCE WHEN HE FAILED TO BE KNOWLEDGEABLE OF THE S.C. SUPREME COURT'S POLICIES REGULATING THE PCR'S AND BECOMING KNOWLEDGEABLE ABOUT THE APPEAL RULES AS 201, 202, 203, AND 243, SCACR, etc., THIS PCR APPEAL PETITION WOULD HAVE NOT BEEN NECESSARY IF THE CASE COUNSEL WOULD HAVE CONTACTED THE COMMON PLEAS CLERK OF COURT IN REGARDS TO THE FINAL ORDER OF DISMISSAL TO THE APPLICANT'S POST CONVICTION RELIEF CASE MATTER SO THAT THE ORDER COULD HAVE BEEN SERVED ON HIM IN A TIMELY FASHION, AND DUE TO THE CLERK OF COURT IN THE LOWER COURT IMPROPERLY SERVING THE FINAL ORDER IT IS LIKE THE COUNSEL WAS OMITTED FROM CORRECT SERVICES TO THE FINAL ORDER, WHEREAS, MAKING IT EVENMORESO A VIOLATION COMMITTED ON BEHALF OF THE CASE COUNSEL, THE CASE COUNSEL IS RESPONSIBLE FOR HIS BAD CHOICES MADE IN REGARD TO THE REQUEST TO WAIVE THE STATUE OF LIMITATION TO FILE THE APPEAL, NEVERLESS THE NOTICE APPEAL IS A JURISDICTIONAL REQUIREMENT AND IS AN ITEM THAT IS REGULATED BY PROCEDURES SETTLED BY THE COURTS, etc., AND THE APPLICANT WILL FURTHER MAKE

FILED
2013 NOV 20 AM 11:11
SCOTT B. SUGGS
CLERK OF COURT
ROCKINGHAM COUNTY, S.C.

A FACTUAL CONTENTIONS THAT HE DID NOT AUTHORIZED FOR THE CASE COUNSEL TO REQUEST FOR A WAIVER TO HIS APPEAL IN THE TIME FRAME, THE APPLICANT MADE A REQUEST ABOUT THE RULE 59(e), MOTION TO BE FILED TO HAVE HIS PCR ISSUES PRESERVED IN THE FINAL ORDER AND THIS WAS NOT DONE AND THE ATTORNEY IGNORED THE APPLICANT'S REQUEST, BUT STILL THE APPLICANT DID NOT UNDER NO CIRCUMSTANCES REQUESTED FOR A WAIVER TO BE REQUESTED BY THE CASE COUNSEL IN HIS APPEAL AND THIS IS A FACT THAT IS PROVEN BY THE COURT RECORDS POINT BLANK.

THE APPLICANT MOTION TO THE COURT TO REINSTATE HIS APPEAL DUE TO THE CASE COUNSEL ERRONEOUS FILING AND REQUEST FILED TO THE S.C. SUPREME COURT, THE APPLICANT BRINGS THE COURT'S ATTENTION TO THE EXHIBIT AS NO. 1., THAT OF WHICH REVEALS THAT THE CASE COUNSEL (PARKER E. HOWLE, ESQ.) IS THE SOLE ELEMENT IN HAVING APPLICANT'S APPEAL FILED THE WRONG WAY AS FOR THE COURT TO DISMISS IT AS IT BEING FILED ERRONEOUSLY, THE S.C. COURT DENIED THE REQUEST FOR TIME LIMITATION TO BE WAIVED AND THE COURT DISMISSED THE APPEAL FOR NOT BEING TIMELY SERVED UNDER RULE 243 and 203(b)(1), SCACR. APPLICANT WILL TAKE POSITIONS BY THE WELL SETTLED LAWS OF AUSTIN AS WITH HIS SECOND APPLICATION FOR PCR FILED AS IT STATES THAT A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL HAS A RIGHT TO APPELLATE REVIEWS TO THE DENIAL OF HIS FIRST PCR APPLICATION, BUT WHERE THE COUNSEL FAILED TO TIMELY FILE TO SEEK REVIEW, THUS, THE MATTER WOULD BE REMANDED FOR AN EVIDENTIARY HEARING ON THE SOLE ISSUE OF WHETHER THE APPLICANT REQUESTED AND WAS DENIED AN OPPORTUNITY TO SEEK APPELLATE REVIEW. THE APPLICANT TAKES THE SAME LIKEWISE POSITIONS TO HIS APPEAL RIGHTS BEING EVALUATED BY THE STANDING LAWS TO BE REINSTATED BY.

THE APPLICANT DID NOT FILE A REHEARING PETITION BASED UPON THE FACTS THAT THE S.C. COURT RARELY EXTENDS THE TIME TO FILE A NOTICE OF AN APPEAL IN SUCH CASES AS POST CONVICTION RELIEF DISMISSALS, etc., SO THEREFORE THE PETITION FOR REHEARING APPEAL REVIEWS TO BE GRANTED IS NECESSARY AND THEREFORE SUBMITTED.

PAGE 3. OF FOUR

FILED

RECEIVED
DISTRICT ATTORNEY
JANUARY 20 AM 11:37
CLERK OF COURT/R.O.D.
MARINE COUNTY, S.C.

CONCLUSION

THEREFORE, THE APPLICANT RESPECTFULLY DEMAND THAT THE PCR COURT FIND THE CASE COUNSEL ERRED IN FILING THE NOTICE OF APPEAL IN APPLICANT'S PCR AND REQUEST THE PCR COURT TO REINSTATES HIS PCR APPEAL BASED UPON THE SIXTH AMENDMENT VIOLATION OF THE U.S. CONSTITUTION, IT IS THEREFORE PRAYED AND SUBMITTED ON THIS ____ DAY OF NOVEMBER 2013.

NOVEMBER 19, 2013

ENCLOSURE(S) ³-

RESPECTFULLY SUBMITTED,

s/ *Mr. Warren L. Smith*

WARREN SMITH, #184653

LEE C.I.

990 WISACKY HWY.

BISHOPVILLE, S.C. 29010

pro se APPLICANT/PETITIONER

KAREN C. RATIGAN, ESQ.

ASSIST. ATTY. GENERAL

PO BOX 11549

COLUMBIA, S.C. 29211-1549

RESPONDENT

2013 NOV 20 AM 11:37
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

WARREN SMITH, 184653
LEE C.I./RICH. UNIT
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

NOVEMBER 19, 2013

HON: SCOTT B. SUGGS
CLERK OF COURT
PO BOX 1177
DARLINGTON, S.C. 29540

13CP160942

RE: WARREN SMITH V. STATE, ENCLOSED SEE AUSTIN V. STATE, PCR
APPEAL REVIEW PETITION.

DEAR MR. SUGGS:

2012-732

PLEASE SEE ENCLOSED FOR YOUR FILING MY PETITION FOR A AUSTIN
REVIEW PETITION TO CASE NO. 2013-CP-16-732, THIS PETITION IS
FILED TO YOUR OFFICE AS ANOTHER PCR AND THIS ADDENDUM IS ATTACHED
FOR THE STATING MY ARGUMENTS AND THE DOCUMENT TO DISCLOSE THE
PROFFERS AS WELL WITH THE SUPPORTING FACTS TO MY CLAIMS TO HAVE
MY APPEAL REINSTATED DUE TO THE ATTORNEY'S PROCEDURAL DEFAULTS
AND POOR JUDGEMENTS WITH DEALING WITH THE STATUTE OF LIMITATION.
I REQUEST THAT YOU RETURN MY COPY TO ME SOON AS PRACTICAL AND I
APPRECIATE YOUR TIME AND HELP GIVEN TO ME IN THE ADVANCE.

NOVEMBER 19, 2013

ENCLOSURE(S)

RESPECTFULLY SUBMITTED,
S/ Warren L. Smith

WARREN SMITH, 184653
990 WISACKY HWY.

WS/lb

BISHOPVILLE, S.C. 29010

pro se APPLICANT/PETITIONER

: KAREN C. RATIGAN, ESQ.
FILES/WS

2013 NOV 20 AM 11:37
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

TRUE CERTIFIED COPY.

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	FOR THE FOURTH JUDICIAL CIRCUIT
Warren K. Smith, #184653,	)	Case No. 2013-CP-16-942
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed November 20, 2013, would respectfully show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. Applicant was indicted at the August 2011 term of the Darlington County Grand Jury for petit larceny (2011-GS-16-1059), kidnapping (2011-GS-16-1061), first-degree burglary (2011-GS-16-1062) and first-degree assault and battery (2011-GS-16-1063) and at the May 2012 term for armed robbery (2012-GS-16-0525). He was represented by Chelsea McNeill, Esquire.

On August 29, 2012, Applicant pled guilty to all of the charges as indicted – except the armed robbery charge was reduced to strong arm robbery during the guilty plea hearing. He was sentenced by the Honorable J. Michael Baxley to concurrent terms of thirty days for petit larceny, twenty-five years for kidnapping, twenty-five years for first-degree burglary, ten years for first-degree assault and battery, and fifteen years for strong arm robbery. Applicant did not file an appeal.

Applicant filed his first post-conviction relief action on August 28, 2012. Respondent made

its return on January 17, 2013. The Honorable R. Ferrell Cothran, Jr., convened an evidentiary hearing into the matter on July 16, 2013 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Parker E. Howle, Esquire. Judge Cothran denied relief in an order filed September 9, 2013. Applicant filed a notice of appeal from Judge Cothran's order, but the South Carolina Supreme Court dismissed the appeal as untimely on October 30, 2013.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Counsel ineffective for incorrectly filing an appeal"
 - a. "Applicant's PCR counsel is found to have interfered with the PCR appeal pursuant to rule 243, SCACR, etc."

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and records from Applicant's prior PCR. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Applicant alleges he did not knowingly and voluntarily waive his right to appellate review of his prior PCR hearing. Respondent submits this allegation is without merit. "The right to seek appellate review of the denial of PCR is expressly authorized by state law." Austin v. State, 305 S.C.

453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. § 17-27-100). "A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived." Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted). However, a defendant may waive the right to an appeal by making a "knowing and intelligent decision not to pursue the appeal." See Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010) (quoting Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004)). Furthermore, "[a]cts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). Even if the PCR court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine "whether he was prejudiced by his failure to obtain review of a meritorious issue." Odom, 337 S.C. at 263, 523 S.E.2d at 756 (1999).

Respondent submits Applicant knowingly and voluntarily waived his right to appellate review of his PCR hearing. However, this allegation probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

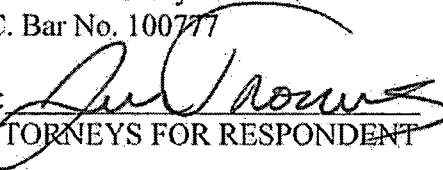
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

May 30, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	2013-CP-16-942
	)	
WARREN K. SMITH, #184653	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
 Shaffer Law Firm
 140 Gibson Road
 Lexington, South Carolina 29072

DATED this 30th day of May, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

State of South Carolina)	In the Court of General Sessions
County of Darlington)	Fourth Judicial Circuit
	2013-CP-16-00942
	2012-CP-16-00732

Warren K. Smith,	)	
	)	
Appellant,	)	
	)	
Vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	
	)	

July 21, 2014
Columbia, South Carolina

B e f o r e:

The Honorable Thomas A. Russo, Judge

A p p e a r a n c e s:

Tristan M. Shaffer
Attorneys for the Appellant

Joshua L. Thomas, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/Mr. Thomas	4
Motion/Mr. Shaffer	4
Response/Mr. Thomas	5
Motion/Mr. Thomas	5
Decision by the Court	5
Certificate Page	7

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
------------	--------------------	-------------	------------

NO EXHIBITS INTRODUCED

1 MR. THOMAS: This is *Warren Smith vs. the State of*
2 *South Carolina*, Case No. 2014-CP-16-942. He filed his
3 application November, 2013, seeking an *Austin* appeal from
4 his PCR hearing.

5 He -- he was convicted in -- or he pled guilty in
6 August 2012, for petty larceny, kidnapping, first degree
7 burglary, first degree assault and battery, and strong-arm
8 robbery.

9 He did file a PCR in August, 2012. Judge Cothran
10 heard that in July of 2013. He denied relief in an order
11 filed September 9, 2013. Mr. Parker Howell represents him
12 on that.

13 He attempted to appeal that order, but it was an
14 untimely -- the Supreme Court dismissed it as untimely. I
15 have spoken with Mr. Howell. He -- it was just an
16 oversight as far -- he did fail to file -- timely file
17 notice of appeal. So at this point, we'd just ask that
18 you enter an order granting an *Austin* appeal for -- for
19 PCR.

20 THE COURT: All right. Mr. Shaffer, you have no
21 objection to that, I'm assuming?

22 MR. SHAFFER: Your Honor, not at this time. I -- I
23 have spoken with my client. He does have some issues
24 related to his -- his PCR attorney not reserving his
25 issues for his original PCR. My -- my advice to him, I

1 believe that he file some sort of *Martinez*, habeas, or
2 something like that. I'm not sure what traction he has at
3 this point for the hearing.

4 If the State would allow, I'd put him up and at least
5 let him preserve the issues that he wanted to be
6 preserved.

7 MR. THOMAS: I would object to that, Your Honor. The
8 -- the application he filed, it simply says (as read):
9 "Counsel ineffective for incorrectly filing an appeal."
10 And anything else he would want to raise at this time
11 would be excessive and untimely.

12 MR. SHAFFER: Your Honor, I --

13 THE COURT: All right. And -- and they're basically
14 consenting to the *Austin* appeal.

15 MR. SHAFFER: Yes, Your Honor. We -- we certainly
16 don't object their consenting ---

17 THE COURT: All right. I'm -- I'm -- I'm going to go
18 ahead then and -- and grant that.

19 MR. THOMAS: And just for the record, I'd move to
20 dismiss the -- he hasn't raised any other claims, but I'd
21 move to dismiss anything related to PCR counsel, other
22 than the failure to file.

23 THE COURT: I think the only thing before us here is
24 this *Austin* appeal, and so ---

25 MR. THOMAS: Very good, Judge.

1 THE COURT: --- I'm going to grant that.

2 MR. SHAFFER: I'll prepare a brief order, Your Honor.

3 THE COURT: Thank you, sir.

4

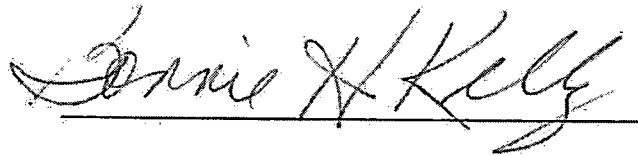
5

-- END OF TRANSCRIPT RECORD ---

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Darlington County, South Carolina, on the 21st day of July, 2014.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

January 2, 2015

COPY

121

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Warren K. Smith, #184653,)

Case No. 2013-CP-16-942

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**ORDER GRANTING APPEAL
PURSUANT TO
AUSTIN V. STATE**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 20, 2013. Respondent made a timely Return on or about May 30, 2014. The Court convened an evidentiary hearing into the matter on July 21, 2014, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The Court had before it general sessions records of the Darlington County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the records from Applicant's post-conviction relief action. Pursuant to S.C. Code Ann. § 17-27-80, the Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In August 2011, the Darlington County Grand Jury indicted Applicant for petit larceny (2011-GS-16-1059), kidnapping (2011-GS-16-1061), first-degree burglary (2011-GS-16-1062) and first-degree assault and battery (2011-GS-16-1063). In May 2012, the Grand Jury indicted Applicant for

TRUE CERTIFIED COPY,
Page 1 of 4

Sam B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

2014 SEP 12 PM 12:42
SCOTT B. SUGGS
CLERK OF COURT/R.O.
DARLINGTON COUNTY, S.C.

FILED

armed robbery (2012-GS-16-0525). Chelsea B. McNeill, Esquire, represented Applicant. On August 29, 2012, Applicant pled guilty to all of the charges as indicted – except the State reduced the armed robbery charge to strong-arm robbery during the plea hearing. The Honorable J. Michael Baxley sentenced Applicant to concurrent terms of thirty (30) days for petit larceny, twenty-five (25) years for kidnapping, twenty-five (25) years for first-degree burglary, ten (10) years for first-degree assault and battery, and fifteen (15) years for strong arm robbery. Applicant did not appeal his plea or sentence.

Applicant filed his first post-conviction relief action on August 28, 2012 (2012-CP-16-0732). Respondent made a timely return on January 17, 2013. The Honorable R. Ferrell Cothran, Jr., convened an evidentiary hearing into the matter on July 16, 2013, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Parker E. Howle, Esquire. Judge Cothran denied relief in an order filed September 9, 2013. Applicant filed a notice of appeal from Judge Cothran's order, but the South Carolina Supreme Court dismissed the appeal as untimely on October 30, 2013.

In his current application, Applicant alleges his prior post-conviction counsel, Mr. Howle, failed to timely file an appeal from Judge Cothran's order.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court finds meritorious Applicant's allegation he was denied an appeal from the decision in his prior post-conviction relief action.

"The right to seek appellate review of the denial of PCR is expressly authorized by state law." Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. §

17-27-100). "A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived." Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted). Even if the post-conviction court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine "whether he was prejudiced by his failure to obtain review of a meritorious issue." Odom, 337 S.C. at 263, 523 S.E.2d at 756 (1999).

Applicant's prior post-conviction counsel was present at the hearing on this matter, but did not testify. Respondent's counsel represented prior counsel admitted he did not file a notice of appeal within thirty (30) days of receiving notice of judgment. See Rule 203, SCACR. The Court also examined the notice of appeal prior counsel did file and the Supreme Court's order dismissing the appeal. Those documents indicate prior counsel received the clocked order on September 12, 2013, and filed the notice of appeal on October 17, 2013.

The uncontested evidence reveals prior post-conviction counsel did not timely file a notice of appeal from Judge Cothran's order of dismissal. Therefore, the Court affirmatively finds Applicant requested and was denied an opportunity to seek appellate review. Accordingly, the Court hereby grants Applicant's request for a review of his post-conviction relief action pursuant to Austin v. State.

III. CONCLUSION

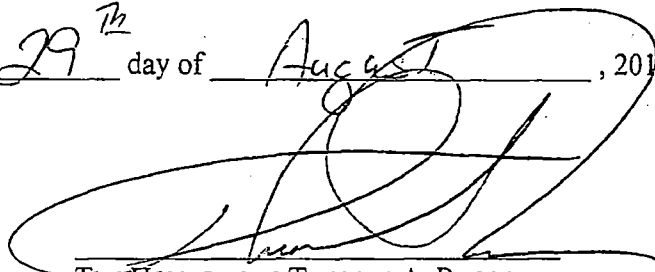
Based on the foregoing, the Court finds and concludes Applicant is entitled to an appeal of his prior post-conviction relief action pursuant to Austin v. State.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Counsel and Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), for the appropriate procedure for securing appellate review pursuant to Austin v. State.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief seeking an appeal pursuant to Austin v. State is granted; and
2. Applicant must be remanded to the custody of the Department of Corrections.

AND IT IS SO ORDERED this 29th day of August, 2014.


THE HONORABLE THOMAS A. RUSSO
Presiding Judge

Lexington, South Carolina

FILED
2014 SEP 12 PM 12:42
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,

Page 4 of 4 B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA

0-30 days
IN THE COURT OF GENERAL SESSIONSCOUNTY OF Darlington
STATE VS.
Warren Kelvin Smith

AKA:

Race: Black Sex: M Age: 48DOB: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: PETT LARCENYINDICTMENT/CASE#: 2011-GS-16-1059A/W#: J670381Date of Offense: 2/18/2011S.C. Code §: 16-13-30(A)CDR Code #: 3419

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-13-30(A) of the S.C. Code of Laws, bearing CDR Code # 3419
☒ 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.ATTORNEY: Michelle Bruce 76335 x 2112 w SC Bar# Defendant Chelma McNeill 78940
McKenzie, Patti L SC Bar# Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 30 days☐ 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$
§ 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
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 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 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

PTUP days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code: 2121Sentence Date: 5/7/12

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

Larceny/Petit or simple larceny - \$2,000 or less

§16-13-30(A)

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Darlington County present upon their oath:

PETIT LARCENY

CDR: 3419 16-13-0030(A)

That Warren Smith did in Darlington County on or about February 18, 2011, take and carry away the personal goods of Marilyn Raines, valued at two thousand (\$2,000.00) dollars or less, described as follows: a bag of money, with intent to deprive the owner permanently of such property, and to convert the goods to his own use, in violation of Section 16-13-0030(A), S. C. 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.


WILLIAM B. ROGERS, JR.
SOLICITOR

E. A. Hodge
WITNESSES

Patricia Ray

Darlington County Sheriff

Law Enforcement Case #:

335

WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
J670381

ARRESTED ON: 2011-02-23

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

Date

AUG 25 2011

VERDICT

Peit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-16-1059

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
August 2011

THE STATE

vs.

Warren Smith

INDICTMENT FOR

Larceny/Petit or simple larceny - \$2,000 or less

§16-13-30(A)

CDR Code: 3419

William B. Rogers, Jr., Solicitor

128

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Darlington
STATE VS.Warren Kelvin SmithINDICTMENT/CASE#: 2011-GS-16-1061A/W#: J670376Date of Offense: 2/18/2011S.C. Code §: 16-03-0910CDR Code #: 0095

AKA:

Race: Black Sex: M Age: 48DOB: [REDACTED]

Address:

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: KIDNAPPING

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

McKenzie, Patti L76335
SC Bar#DefendantChelva McNeill
Attorney for Defendant78940
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 1 years
and/or to pay a fine of \$ 133.90; provided that upon the service of 1 days/months/years and/or payment
of \$ 133.90; plus costs and assessments as applicable*; the balance is suspended with probation for 1months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. T.M. S.W. 2/22/14☐ 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 PTUPTotal: \$ 133.90 plus 20% fee: \$ 26.78 days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>✓</u>
§ 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	\$ <u>✓</u>
§ 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	\$ <u>✓</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

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:

Lower Fines NO SEXUAL COMPONENT☐ Appointed PD or appointed other counsel, T.D.
§ 47.12 requires \$500 be paid to Clerk KIDNAPPING.
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

Michelle Norton
Pamela Carter

Presiding Judge

Judge Code:

Sentence Date:

2121
5/7/12

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

INDICTMENT FOR
Kidnapping / Kidnapping

§16-03-0910

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Darlington County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Warren Smith did in Darlington County on or about February 18, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Marilyn Raines, without authority of law, in violation of Section 16-03-0910, S. C. 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.


WILLIAM B. ROGERS, JR.
SOLICITOR

130
STATE OF SOUTH CAROLINA

15-116
IN THE COURT OF GENERAL SESSIONS

COUNTY OF Darlington
STATE VS.
Warren Kelvin Smith

INDICTMENT/CASE#: 2011-GS-16-1062
A/W#: H123382
Date of Offense: 2/18/2011
S.C. Code § : 16-11-0311
CDR Code #: 0079

AKA: _____

Race: Black Sex: M Age: 48

DOB: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ 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.

WITNESSES: Andrew Bruce 76335 M. J. [unclear] Chelsea [unclear] 78940
McKenzie, Patti L 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 2 1/2 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 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: 11 - GS - 16 - 1061
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Time v. [unclear] 2/22/14
☐ 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 beginning _____

*Fine: \$ _____ Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ ☒ Fine may be pd. in equal, consecutive weekly/monthly

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

§ 14-1-212 (Law Enforce. Funding) \$25 \$ ☒

§ 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 (SCCJA Surcharge) \$5 \$ ☒

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Presiding Judge _____

Judge Code: 212

Sentence Date: 5/7/16

Clerk of Court/ Deputy Clerk Michelle Norton

Court Reporter: Pamela Carter

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

INDICTMENT FOR

Burglary / Burglary (After June 20, 1985) - First
degree

§16-11-0311

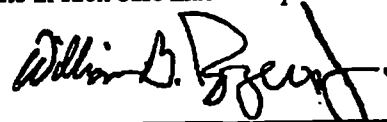
At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of
Darlington County present upon their oath:

BURGLARY, 1ST DEGREE

CDR: 0079 16-11-0311

That Warren Smith did in Darlington County on or about February 18, 2011 enter the dwelling
of Marilyn Raines located at [REDACTED], Lamar area of Darlington County, without
consent and with the intent to commit a crime therein and the defendant having a prior record of
two or more convictions for burglary or housebreaking, in violation of Section 16-11-0311(A),
Code of Laws of South Carolina, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
SOLICITOR

EA Hodge

WITNESSES

Patricia Ray

Darlington County Sheriff

Law Enforcement Case #:

335

WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
H123382

ARRESTED ON: 2011-02-23

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

Date

[Signature]
AUG 25 2011

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:

2011-GS-16-1062

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:

August 2011

THE STATE

vs.

Warren Smith

INDICTMENT FOR

Burglary / Burglary (After June 20, 1985) -
First degree

§16-11-0311

CDR Code: 0079

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Darlington
STATE VS.Warren Kelvin Smith

AKA:

Race: Sex: [REDACTED]DOB: [REDACTED]

Address:

City, State, Zip:

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 & BATTERY 1ST DEGREE0-10 yrs 133
IN THE COURT OF GENERAL SESSIONSINDICTMENT/CASE#: 2011-GS-16-1063A/W#: J670375Date of Offense: 2/18/2011S.C. Code §: 16-030600(C)(1)CDR Code #: 3412

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-030600(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
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:

Michelle Patten
McKenzie, Patti L

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 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years
and/or to pay a fine of \$ 100; provided that upon the service of 10 days/months/years and/or payment
of \$ 100; plus costs and assessments as applicable*; the balance is suspended with probation for 10months/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: 11-GS-16-1061
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Time since 2/22/11☐ 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 EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	
§ 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	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ ✓
§ 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 (SCCJA Surcharge)	\$5	\$ ✓
3% to County (if paid in installments)	\$	\$ 31.50
TOTAL	\$	\$ 133.90

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2121Sentence Date: 5/2/12

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

Assault/Assault & Battery 1st degree

§16-030600(C)(1)

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Darlington County present upon their oath:

ASSAULT AND BATTERY
FIRST DEGREE

CDR: 3412, 16-3-600(C)

That Warren Smith did in Darlington County on or about February 18, 2011, commit, offer to commit or attempt to commit an unlawful act of injury with the present ability to do so to Marilyn Raines and the act occurred during the commission of a robbery, burglary, kidnapping or theft, in violation of Section 16-3-600(C) of S.C. 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.


WILLIAM B. ROGERS, JR.
SOLICITOR

E. C. Hodge
WITNESSES

Patricia Ray

Darlington County Sheriff

Law Enforcement Case #:

335

WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
J670375

ARRESTED ON: 2011-02-23

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

Date

AUG 25 2011

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-16-1063

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
August 2011

THE STATE

vs.

Warren Smith

INDICTMENT FOR

Assault/Assault & Battery 1st degree

§16-030600(C)((1)

CDR Code: 3412

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Darlington
STATE VS.Warren Kelvin Smith

AKA:

Race: Black Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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
w/minor 1st or Lewd Act)☐ §17-25-45The 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.

APPEAR:

Michelle Patten
McKenzie, Patti LSC Bar# 76335

Defendant

Attorney for Defendant

SC Bar# 78940

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 15 days/months/years or☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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: 11-65-16-1061The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Time served 2/22/11☐ 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: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 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	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ ✓
§ 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 (SCCJA Surcharge)	\$5	\$ ✓
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-16-0525A/W#: DAR0912Date of Offense: 2/18/2011S.C. Code § : 16-11-0330(A) 0325CDR Code #: -0139 0137

SENTENCE SHEET

Referred to C/L Robbery by the Court.☐ CONVICTED OF or ☒ PLEADSC/L Robbery

Michelle Patten 76335 SC Bar# Defendant Attorney for Defendant 78940
McKenzie, Patti L SC Bar# Defendant Attorney for Defendant SC Bar#

 days/hours Public Service EmploymentObtain 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 FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2121Sentence Date: 5/7/12

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON) Robbery / Armed Robbery, robbery while armed or
) allegedly armed
)
) §16-11-0330(A)

At a Court of General Sessions, convened on May 3, 2012, the Grand Jurors of Darlington County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Warren Kelvin Smith did in Darlington County on or about February 18, 2011, while armed with a deadly weapon, to wit: an unknown object, take and carry away personal property of Marilyn Raines from or in the immediate presence of Marilyn Raines with intent to deprive Marilyn Raines of possession by use of force, threats or intimidation, to wit: did strike the victim brutally to her head area and torso, forcing her into the home and give him a bag of money, in violation of Section 16-11-0330(A), S. C. 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.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Patricia Ray

Darlington County Sheriff

Law Enforcement Case #: 201102-0381

836

WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
DAR0912

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date MAY 03 2012

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-16-0525

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
May 2012

THE STATE

vs.

Warren Kelvin Smith

INDICTMENT FOR

Robbery / Armed Robbery, robbery while
armed or allegedly armed

§16-11-0330(A)

CDR Code: 0139

201 Ross St.

9-6-63

William B. Rogers, Jr., Solicitor