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Request

Dear: Court of Clark

6-14-17

I would like to Appeal My PCR Case 2015-CP-42-3427, I would like to Appeal the court ruling ASAP Please,

I would like to do My New PCR Case 2017-CP-420-0162 in the Appeal Court.

write me Back ASAP Please!?

write Back

RECEIVED

JUN 16 2017

Keith A. Smyth #363756 Court of Appeals

BREI: MLT 1065B

4460 Broad River Rd,

Columbia, SC 29210

Thank you!

I did written you last month But i didn't got NO Letter Back!

Keith A. Smyth

RECEIVED

JUN 20 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

Keith A. Smyth #363756

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2017 CP420-0162

APPLICATION **RECEIVED**

POST-CONVICTION RELIEF 1-6-2017

SC Court of Appeals

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 Perry C.I.
- 2. Name and location of Court which imposed sentence Spartanburg Courthouse
- 3. Name of crime(s) of conviction and defendant(s) (if any) No

4. ~~The date~~ (if known) upon which and the offenses for which sentence was imposed:

- (a) 1 CSC with minor Second degree
- (b) 4 CSC with Minor First degree
- (c) 2011GS4200966

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

- (a) April 21, 2015
- (b) 25 yrs to Life

RECEIVED

JUN 20 2017

Revised 3/2007

S.C. SUPREME COURT

2017 JAN 13 11:09:25 AM
M. HOOPER

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?

Lawyer said No cause it's No use to do it, Tim Ray!

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

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

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

results: N/A

i. _____

ii. _____

iii. _____

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

(a) I had Tim Ray would not do it!

(b) _____

(c) _____

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

N/A

H. MORE BILKNEY
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Revised 3/2003

- (a) NOT sentencing Me under the youth offender Law,
- (b) Didn't sentencing Me under the Juvenile Law,
- (c) Legal wrong Sentencing.

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

- (a) NOT sentencing Me under the youth offender Law.
- (b) Didn't sentencing me under the Juvenile Law,
- (c) Legal wrong sentencing,

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

- (a) any petition in a State Court under South Carolina Law? ✓ yes.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? ✓ Yes.
- (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? yes

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. 4 CSC with Minor's 1st degree
 - ii. 1 CSC with Minor 2nd degree.
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Spartanburg County Courthouse
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. December 29, 2010
 - ii. _____
 - iii. _____

M. HOPE BLACKBURN
 JUNE 13 AM 9:25

iv. _____
(d) the date of each such disposition:

i. APRIL 21, 2015

ii. _____

iii. _____

iv. _____

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

i. The Attorney had Mental Evaluation's done -
ii. on me,

iii. _____

iv. _____

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

Yes Spartanburg Courthouse.

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: N/A at this time!

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 previously been presented:

(a) I had written Letters, but Noone would not -
(b) Look in to my case, Like i need them to.
(c) _____

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

M. HOFFER
JAN 17 9:25

- (a) your arraignment and plea? Yes.
- (b) your trial, if any? No trial,
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No Lawyer would not do No Appeals,
- (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. Timothy M. Ray
 - ii. 184 N. Daniel Morgan Ave.
 - iii. Spartanburg, SC 29306
 - iv. P: 864-542-2800, Fax: 864-585-0068
- (b) the proceedings at which each such attorney represented you:
 - i. Timothy M. Ray
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application: I would like relief of this conviction and put me under the youth offender and Juvenile Law.

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

IN HOPE DISTRICT
 2011 JUN 13 AM 9:25
 Revised 3/2003

STATE OF SOUTH CAROLINA

County of Spartanburg

VERIFICATION

I, K.A.S., 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.

Heidi L. Smith
Heidi L. Smith

SWORN to and subscribed before me this 10th
day of January, 2017.

1-10-17

Amy C. Mendenhall
Notary Public (L.S.)

My Commission Expires: 1-23-2021

RECEIVED
JAN 13 11 52 AM '17
M. HOFFER & ASSOCIATES

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

I, K.A. S., 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.

K.A. S.
Applicant

SWORN or affirmed to and subscribed before me this
10th day of January, 2017.

May C. Minkoff
Notary Public

My Commission Expires: 1-22-2017

2017 JUN 13 AM 9:25
ME HOFFER BL ANGLE TX

RICHEY AND RICHEY

A PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

April 15, 2017

Keith Ager Smyth, SCDC# 363756
Broad River Correctional Institutional
4460 Broad River Road
Columbia, SC 29210

Re: Keith Ager Smyth SCDC#363756 vs. The State of South Carolina
Case No: 2015-CP-42-3427

Dear Mr. Smyth:

Please find enclosed a copy of the Notice of Appeal, Affidavit of Service and the Order. I wish you the best in the future and hope everything will work out for you.

RICHEY AND RICHEY, P.A.

Yours truly,


Rodney Richey

RWR/
enclosure

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

April 15, 2017

Alicia A. Olive, Esquire
S.C. Attorney General's Office
Post Office Box 1159
Columbia, SC 29211-1549

Re: Keith Ager Smyth, SCDC# 363759 vs. The State of South Carolina
Case No: 2015-CP-42-3427

Dear Ms. Olive:

Please find enclosed a copy of the Notice of Appeal and Affidavit of Service. If you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/
enclosure

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE FRANK R. ADDY, JR

2015-CP-42-3427

KEITH ADGER SMYTH, SCDC#: 363756

APPELLANT,

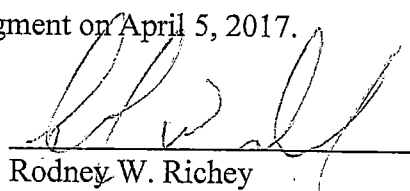
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Keith Adger Smyth appeals the denial of his Post- Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Frank R. Addy, Jr., Circuit Judge on November 8, 2016 and Order issued on March 9, 2017 and filed on March 17, 2017. The Appellant received notice of the judgment on April 5, 2017.



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

Other Counsel of Record:
Alicia A. Olive, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE FRANK R. ADDY, JR

2015-CP-42-3427

KEITH ADGER SMYTH, SCDC#:363756

APPELLANT,

against

STATE OF SOUTH CAROLINA,

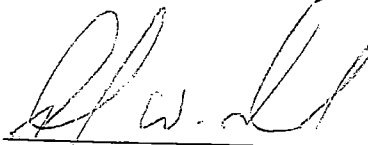
RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on April 15, 2017, addressed to their attorney of record, Alicia A. Olive, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

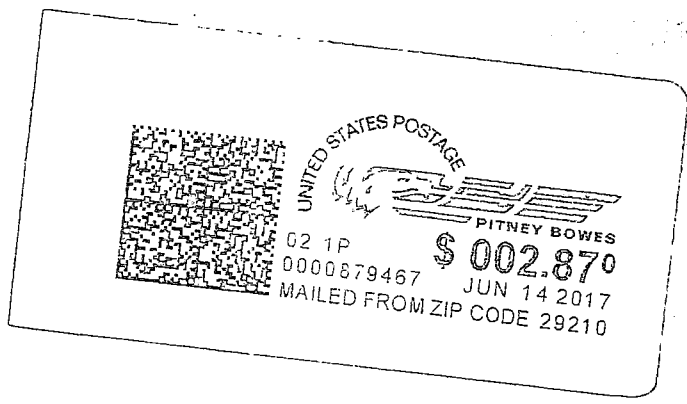
Dated: April 15, 2017

RICHEY & RICHEY, P.A.



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503
(864) 467-0646 FAX

h A. Smyth #363756
.I: MLT 1965B
2 Broad River RD.
Columbia, SC 29210



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JUN 20 2017
C. SUPREME COURT

RECEIVED
JUN 16 2017
SC Court of Appeals

S.C. Court of Appeal
office Location
1015 Sumter street
Columbia, SC 29201

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MAILROOM

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Keith Adger Smyth, #363756,)
)
Applicant,)

Case No. 2015-CP-42-3427

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)

2017 MAR 17 AM 10:57
M. HOPE BLANCHETT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 7, 2015, and Amended Application filed October 14, 2016. Respondent made a Return and Motion for More Definite Statement on February 12, 2016. The Court convened an evidentiary hearing into the matter on November 8, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney Richey, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Timothy Ray, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. 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 Spartanburg County Clerk of Court. In February 2011, the Spartanburg County Grand Jury indicted Applicant for four (4) counts of criminal sexual conduct with a minor, first degree (2011-GS-42-0966, 2011-GS-42-0967, 2011-GS-42-0968, 2011-GS-

MA

~~42-1251), and one count of criminal sexual conduct with a minor, second degree (2011-GS-42-~~
0965). Timothy M. Ray, Esquire ("Counsel") represented Applicant. On April 21, 2015,
Applicant pleaded guilty as indicted before the Honorable J. Derham Cole.¹ Pursuant to a
negotiated sentence, Judge Cole sentenced Applicant to imprisonment for concurrent terms of
twenty-five (25) years for each count of criminal sexual conduct with a minor, first degree, and a
concurrent term of twenty (20) years for criminal sexual conduct with a minor, second degree.
Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

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

1. Unlawful sentence, in that:
 - a. "Not competent";
 - b. "disabilities";
 - c. "Medications [were prescribed] to [Applicant]"

In his Amended Application, Applicant asserts an additional thirty-one (31) claims. This
document is incorporated by reference. At the evidentiary hearing, Applicant proceeded on only
the allegation of involuntary guilty plea.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and
arguments presented at the evidentiary hearing. The Court has further had the opportunity to
observe each witness who testified at the hearing and to closely pass upon their credibility. The
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.

¹ A competency hearing was held prior to the plea on February 10, 2015. (Tr. at 1-51).

/

A. Summary of Testimony

Applicant testified that he was not competent to stand trial and stated that he was innocent. Applicant testified that when he pleaded guilty he was on Seroquel, which made him tired. He testified the State told him he would receive sixty (60) years to life imprisonment. Applicant testified Counsel did not investigate his case. He testified Counsel advised him to accept the plea offer. Applicant testified he did not want a new trial, but wants a lesser sentence.

Counsel testified he was retained to represent Applicant. He testified he represented Applicant over the course of four (4) years and that they met fairly often during that time. Counsel testified he discussed discovery with Applicant and that Applicant had received copies of the discovery multiple times. Counsel testified that competency was an issue from the beginning. Counsel testified that Applicant was initially found incompetent, and after a period of sixty (60) days in the Department of Mental Health, he was tested again and found competent. Counsel testified he was able to have Applicant declared indigent and to obtain funds to hire mental health experts to examine Applicant. He testified a State v. Blair, 275 S.E.2d 536 (1981) hearing was held after which Applicant was found competent.

Counsel testified that he and Applicant had lengthy discussions about the State's evidence and that Applicant understood the allegations against him. Counsel testified he discussed Applicant's rights with him and that it was Applicant's decision to plead guilty. Counsel testified that if Applicant had indicated he wished to proceed to trial, Counsel would have been prepared to try the case. Counsel testified he had discussions with the Solicitor's Office in an effort to obtain a more favorable plea offer, but the State was confident in its case and was not willing to reduce the agreed upon sentence any further. Counsel testified the State was also unwilling to try him as a juvenile.

B. Guilty Plea

Prior to the guilty plea hearing, a competency hearing was held on February 10, 2015. (Tr. at 1-51). Doctors Tora Brawley and Amanda Salas testified at the competency hearing on behalf of Applicant. The State called Dr. Monica Wright with the Department of Disabilities and Special Needs. (Tr. at 34). Dr. Wright testified that Applicant was initially found incompetent to stand trial, but he was re-evaluated after sixty (60) days of hospitalization. (Tr. at 36-37). Dr. Wright testified that she ultimately determined he was competent to stand trial. (Tr. at 39:6-9). Following the competency hearing, the Court ruled that Applicant was competent to stand trial. (Tr. at 53:6-12).

The plea judge reviewed each charge and potential sentence at the plea hearing. (Tr. at 63-68). Applicant acknowledged he understood each charge and the potential penalty for each during the plea colloquy. (Tr. at 63-68). Applicant acknowledged that he signed a waiver-of-rights form and that Counsel went through it with him line by line. (Tr. at 56-57). Applicant stated he understood everything contained in the form. (Tr. at 57). At the plea, Applicant understood that a guilty plea meant he was giving up his constitutional right to remain silent, have a trial by jury, and confront the witnesses against him. (Tr. at 68-75). Applicant denied that anyone had promised him anything or forced him to plead guilty. (Tr. at 75-76).

Applicant informed Judge Cole that Applicant was on the prescription medication Seroquel at the time of his plea. (Tr. at 79:5). Applicant indicated that the medication helped him to function and understand when he was doing. (Tr. at 79:15-17). Counsel informed the plea judge that he knew of no legal defenses available to Applicant. (Tr. at 78). Applicant was given Miranda² warnings after which he gave a written statement confessing to the sexual battery of four (4) of the five (5) minor victims. (Tr. at 80:6-18). The State expressed that if Applicant

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were to proceed to trial, it was prepared to call witnesses who would testify to the facts in each of the indictments; in some instances, those witnesses would be eye witnesses. (Tr. at 92). Applicant stated repeatedly during the guilty plea hearing that he did not want to go to trial. (Tr. at 72, 85:10, 86:1-17, 89:3-5, 91:7, 94:21-22). Counsel stated that he and Applicant had discussed Applicant's case extensively and that, after viewing the evidence against Applicant and his discussions with Applicant about what he told Counsel happened, Applicant decided to enter his plea. (Tr. at 97:20-98:22). Counsel acknowledged that he explained to Applicant that he had a right to challenge the voluntariness of the statement at trial, but even if the statement was excluded, the jury would still be able to consider the testimony of each of the victims. (Tr. at 100:15-101:20). Applicant also acknowledged he understood this. (Tr. at 101:20-24).

C. Ineffective Assistance of Counsel

Applicant alleged at the evidentiary hearing that his guilty plea was made without the competent advice of counsel. After reviewing the transcript and considering the allegations raised in the application and at the evidentiary hearing, this Court finds plea counsel was not ineffective.

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was deficient, and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in

² Miranda v. Arizona, 384 U.S. 436 (1966).

criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). This Court must presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

Clearly, Applicant suffers from diminished mental capacity. However, in advance of the guilty plea a full competency hearing was held, during which two experts testified on behalf of Applicant. Nevertheless, the court determined Applicant was competent to stand trial. Counsel testified that he met with Applicant many times over the course of four (4) years, and that during this time, he and Applicant had lengthy discussions about the State's evidence and that Applicant understood the allegations against him. Counsel testified he discussed Applicant's rights with him and that it was Applicant's decision to plead guilty. Counsel testified that if Applicant had indicated he wished to proceed to trial, Counsel would have been prepared to try the case. Counsel testified Applicant did not want to go to trial. Counsel testified he had discussions with

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the Solicitor's Office to try to obtain a more favorable plea offer, but the State was confident in its case and was unwilling to reduce the negotiated sentence any further. Based on the record and the testimony presented at the evidentiary hearing, this Court finds Applicant has made no showing to overcome the presumption that Counsel rendered adequate assistance. Therefore, Applicant has failed to satisfy his burden of proving any deficiency in Counsel's performance.

In addition, Applicant testified at the evidentiary hearing that he does not want a trial; rather, he desires a lesser sentence. However, the sentence that Applicant received was a negotiated sentence and the minimum sentence available on the charges he faced. To prove prejudice resulting from the alleged deficient advice of counsel, Applicant was required to show that, but for the alleged deficiency, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 56 (1984). Here, because Applicant provided no evidence that he would have insisted on going to trial rather than pleading guilty, Applicant has made no showing of prejudice.

Therefore, having reviewed the pleadings, considered the applicable law, and reflected upon the record, the Court finds Applicant has failed to carry his burden. Accordingly, this Court finds Applicant's application for post-conviction relief must be denied and dismissed with prejudice.

C. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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M. HOPE CLACKLEY

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IV. CONCLUSION

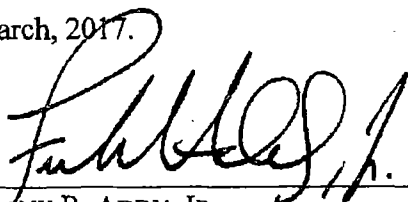
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

IT IS SO ORDERED this 9th day of March, 2017.



FRANK R. ADDY, JR.
Presiding Judge, Seventh Judicial Circuit

2017 MAR 17 AM 10:57
M. HOPE BLACKLEY

Greenwood, South Carolina



U.S. Department of Justice

Civil Rights Division

Disability Rights Section - NYA
950 Pennsylvania Avenue N.W.
Washington, DC 20530

Keith Smyth #363756
430 Oaklawn Rd
Pelzer, SC 29669

MAR 07 2017

Re: Attorney General Alan Wilson, Anthony Leibert

Dear Mr. Smyth:

This is in response to the complaint that you filed with this office alleging a possible violation of the Americans with Disabilities Act (ADA). After carefully reviewing the information that you provided, we have decided not to take any further action on your complaint. Unfortunately, because the Section receives thousands of ADA complaints each year, we do not have the resources to resolve all of them.

It is important to note that the Justice Department has made no determination regarding the merits of your complaint or whether it could be redressed under the ADA or another statute. Moreover, our decision not to take further action does not affect your right to pursue your complaint in another manner. You may wish to contact an attorney or legal service provider to determine what remedies may be available.

In addition, a number of other options are available to you, including consulting state or local authorities or disability rights groups. Enclosed is a list of such organizations serving your area. These listings come from various sources, and our office cannot guarantee that the listings are current and accurate. We suggest that if you contact any of these organizations, you let them know that you have received this letter from us, so that they will not forward your complaint to our office.

The text of the ADA, the Department's regulations, and many technical assistance publications are provided on our ADA Home Page at <http://www.ada.gov>. If you have specific questions about Title II or III of the ADA, or want copies of technical assistance publications sent to you, you may call the ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TTY).

We regret that we are unable to further assist you in this matter.

Sincerely,

Carmen Romero
Director of Intake Unit
Disability Rights Section

Enclosures
587139

SOUTH CAROLINA

Independent Living Centers

ABLE South Carolina
136 Stonemark Lane, Suite 100
Columbia, SC 29210
(803) 779-5121 (Voice)
(803) 779-0949 (TTY)
(800) 681-6805 (Voice)
www.able-sc.org/

AccessAbility
7944 Dorchester Road, Suite 5
North Charleston, SC 29418
(843) 225-5080 (Voice)
(843) 225-0231 (TTY)
(866) 874-7730
www.abilitysc.org/

Walton Options
514 West Ave.
North Augusta, SC 29841
(803) 279-9611
www.waltonoptions.org/

Southeast ADA Center
Project of the Burton Blatt Institute
Syracuse University
1419 Mayson Street NE.
Atlanta, Georgia 30324
(404) 541-9001 (Voice/TTY)
(800) 949-4232 (Voice/TTY)
www.adasoutheast.org

Protection & Advocacy
P&A for People with Disabilities, Inc.
3710 Landmark Drive, Suite 208
Columbia, SC 29204
(803) 782-0639 (Voice)
(866) 232-4525 (TTY)

Protection & Advocacy

P&A for People with Disabilities, Inc.
3710 Landmark Drive, Suite 208
Columbia, SC 29204
(803) 782-0639 (Voice)
(866) 232-4525 (Voice/TTY)
pandasc.org/

Vocational Rehabilitation Agency

Vocational Rehabilitation Department
P.O. Box 15
1410 Boston Avenue
West Columbia, SC 29171-0015
(803) 896-6500 (Voice)
(803) 896-6553 (TTY)
(800) 832-7526 (Voice)
scvrd.net/

Client Assistance Program

P&A for People with Disabilities, Inc.
3710 Landmark Drive, Suite 208
Columbia, SC 29204
(803) 782-0639 (Voice)

Agency for the Visually Impaired

South Carolina Commission for the Blind
1430 Confederate Ave.
P.O. Box 2467
Columbia, SC 29202
(803) 898-8731
(888) 335-5951
www.sccb.state.sc.us/

October 26, 2014

Mr. Timothy M. Ray
184 N. Daniel Morgan Ave.
Spartanburg, S.C. 29306

Re: Keith Adger Smyth

Dear Mr. Ray,

I am writing to request independent psychological testing of your client, Keith Smyth. I evaluated Mr. Smyth on August 20, 2014. He does demonstrate cognitive deficits that impede his ability to function on a higher level. It is my professional opinion that his cognitive deficits negatively impact his ability to work with you on his case or to assist in his defense.

In October 2009, Mr. Smyth was deemed incompetent to stand trial based on testimony provided by Dr. Alicia Hall, Ph.D. Later that month a petition was filed in probate court alleging that Mr. Smyth was mentally retarded in need of hospitalization and confinement in a facility for the mentally retarded. In November 2011, Mr. Smyth was again order for a competency to stand trial evaluation. In 2012, a joint evaluation for the Department of Disabilities and Special Needs (DDSN) and the Department of Mental Health (DMH) was arranged as there were indications of a dual diagnosis of mental retardation and mental illness. That joint evaluation identified Mr. Smyth as incompetent to stand trial due to intellectual deficiency and mental illness (Attention-Deficit/Hyperactivity Disorder, ADHD). It appears that these examiners relied on prior psychoeducational testing that identified his I.Q. in a range from 61 (mild mental retardation) to 75 (borderline intellectual functioning). Following that evaluation, Mr. Smyth was committed for competency restoration and subsequent re-evaluation. Psychological testing as conducted in 2013 forensic evaluation appears to be limited to an inventory of legal knowledge in which Mr. Smyth was identified as giving responses indicative of malingering memory deficits and courtroom knowledge. No further psychological testing was conducted although the generated report noted "it was felt that his performance on a daily basis was much higher than previously suspected IQ level." Subsequently, he was opined by the dual examiners to be competent to stand trial despite the opinion that Mr. Smyth continued to have an intellectual deficiency.

Based on my review of the records and evaluation from this past August, Mr. Smyth continues to demonstrate cognitive and functional impairments as previously identified in the 2009 and 2012 evaluations. As the psychological tests that were relied on for these evaluations were done for academic purposes (measurement of intellect and achievement) and as measures of adaptive behaviors, there is a deficiency in the

(Handwritten initials)

information needed to assess other measures of cognitive abilities (e.g., attentional capacity, memory and learning, processing, personality, or effort) as they relate to Mr. Smyth's current competence to stand trial. In short, the tests that have been conducted thus far are insufficient to pick up and measure neurocognitive deficits that impact Mr. Smyth's competency. As Mr. Smyth has previously been identified as having an Intellectual Disability and has been diagnosed and treated for ADHD, it only seems reasonable and prudent for the current evaluation to measure the extent to which his current impairments are impacting his cognition and functional capacity. The measurement of these impairments directly relates to and impacts the ability for this expert to give an opinion that can be understood by the court as to Mr. Smyth's current competence to stand trial.

Thus, I support the request for funds to be available to Mr. Smyth for the purpose of him to be evaluated by a psychologist who is experienced in conducting neuropsychiatric and psychological testing as it relates to the forensic issue of Mr. Smyth's competency to stand trial.



Amanda B. Salas, MD
Consulting Forensic Psychiatrist

TORA L. BRAWLEY, PH.D.
CLINICAL PSYCHOLOGY — NEUROPSYCHOLOGY
803-361-1659 803-497-3526 (FAX)

NEUROPSYCHOLOGICAL EVALUATION

Patient Name: Keith A. Smyth
Date of Birth:
Date of Evaluation: 12/02/2014

REASON FOR REFERRAL:

Mr. Keith Smyth is a 20 year-old, right handed, white male who is currently incarcerated at the Spartanburg County Detention Center. He was referred for a full neuropsychological evaluation in order to determine current cognitive functioning at the request of Dr. Amanda Salas. In a letter dated October 26, 2014, Dr. Salas noted significant cognitive deficits and has requested this evaluation to "measure the extent to which his current impairments are impacting his cognition and functional capacity." Dr. Salas also notes that he has previously been diagnosed with ADHD and Intellectual Disability.

In the clinical interview, Mr. Smyth reports to experience problems with memory "here and there." He states that he thinks the problems have been most noticeable since his medication was changed in March of 2011. He reports the newer medications make him feel sleepy and "loopy." Upon direct questioning, he admitted to difficulty recalling what he has read, decreased concentration, and poor recall of recent conversations. He states that he has "good days and bad days." He rated the severity of these problems as "in the middle."

BEHAVIORAL OBSERVATIONS:

Mr. Smyth was well groomed, alert, and fully ambulatory. His mood was pleasant and friendly and affect was appropriate to the situation. He exhibited good eye contact, and hearing and vision appeared to be adequate for the purposes of this evaluation. He had a notable speech impediment and a very limited vocabulary. He would frequently ask what words meant. He also exhibited perseveration and was often tangential when answering questions. Additionally he was impulsive, child-like and very distractible. His attention span was somewhat limited and he exhibited decreased understanding of directions on several tasks. He was very cooperative to testing and persisted with little encouragement. He repeatedly stated, "This is really fun!" Testing conditions were optimal and these test results are considered to be a valid representation of Mr. Smyth's current level of cognitive functioning.

BACKGROUND INFORMATION:

Mr. Smyth reports that he has been incarcerated since December 2010. He has never been married and has no children. He completed the 9th grade and reports to have been in Special

Education classes throughout his schooling. He states that he was a poor student and thinks he had to repeat a grade but he could not recall which one. He has never held a job and has never had a driver's license.

Psychiatric history is reportedly positive for diagnosis of ADHD. He states that he was an inpatient at Marshall Pickens for 2 weeks in 2006. He reports a history of sexual abuse from age 12-13 years. Currently he reports vegetative symptoms which include difficulties sleeping, weight loss, decreased energy level, feelings of sadness, occasional crying spells, feelings of anxiety and increased irritability. Current life stressors include primarily missing his family and being "homesick."

Family history reveals a maternal aunt with a history of "mental breakdowns." He states that his father died in a car accident when he was very young,

Reported medical history was negative for hospitalizations or serious health problems. He denies the use of alcohol, tobacco or recreational drugs.

PROCEDURES ADMINISTERED:

Wechsler Adult Intelligence Scale- IV (WAIS-IV)
Wechsler Test of Adult Reading (WTAR)
Repeatable Battery for the Assessment of Neuropsychological Status (RBANS)
List Learning
List Recall
List Recognition
Story Memory
Story Recall
Figure Copy
Figure Recall
Line Orientation
Picture Naming
Semantic Fluency
Verbal Series Attention Test
Controlled Verbal Fluency Test
Finger Oscillation
Grooved Pegboard
Trail Making Part A
Trail Making Part B
Short Category Test-Booklet Format
Test of Memory Malingering

TEST RESULTS:

Attention and Concentration: Mr. Smyth was grossly oriented except to the date and the current and past Presidents. On the Verbal Series Attention Test, sustained attention and mental tracking

were severely impaired (1st percentile) for speed as well as for accuracy (1st percentile). Digit span was 3 forward and 3 reversed (1st percentile).

Intellectual Functioning: On the WAIS-IV, results of testing revealed Mr. Smyth to have a Full Scale IQ of 61, (Verbal Comprehension Index 68, Perceptual Reasoning Index 65, Working Memory Index 63, Processing Speed Index 71) placing him overall at the Extremely Low range of intellectual functioning.

Age-corrected subscale scores are as follows:

<u>Verbal Comprehension Subtests</u>	<u>SS</u>	
Similarities	4	2 nd Percentile
Vocabulary	4	2 nd Percentile
Information	5	5 th Percentile
<u>Perceptual Reasoning Subtest</u>		
Block Design	3	1 st Percentile
Matrix Reasoning	3	1 st Percentile
Visual Puzzles	6	9 th Percentile
<u>Working Memory Subtests</u>		
Digit Span	3	1 st Percentile
Arithmetic	4	2 nd Percentile
<u>Processing Speed Subtest</u>		
Symbol Search	4	2 nd Percentile
Coding	5	5 th Percentile

Language Functioning: Conversational speech was fluent but there was a noted speech impediment as well as perseveration. Controlled verbal fluency for the letters F, A and S was poor (4th percentile). On the RBANS, confrontation naming was severely impaired (1st percentile) and semantic fluency for a category was poor (4th percentile).

Motor Functioning: Mr. Smyth is right hand dominant. Simple manual speed on a finger oscillation task was severely impaired (1st percentile) on the right and below average (16th percentile) on the left. Manual dexterity as measured by the Grooved Pegboard Test was severely impaired (2nd percentile) on the right and below average (19th percentile) on the left. Psychomotor speed and visual tracking were borderline (8th percentile) for maintaining a conceptual set (Trail Making Part A).

Executive Functioning: On the Short Categories Test, performance for nonverbal abstract reasoning and cognitive flexibility were severely impaired (1st percentile). He was unable to profit from feedback on this task and exhibited notable perseveration. Psychomotor speed and visual tracking were severely impaired (1st percentile) when it was necessary to shift conceptual sets (Trail Making Part B). Verbal abstract reasoning on Similarities was severely impaired (2nd percentile). Verbal fluency was borderline (4th percentile). Matrix reasoning was severely impaired (1st percentile).

Memory Functioning: On the RBANS, immediate verbal memory for prose passages was severely impaired (1st percentile) and delayed recall for the same information after 20 minutes was borderline (7th percentile). Delayed visual memory for a complex design was average (49th percentile). With repetition of four trials, verbal list learning was borderline (6th percentile). Delayed recall of this list was borderline (3rd percentile). Recognition on this task was severely impaired (1st percentile).

Visuospatial Functioning: On the RBANS, Mr. Smyth's ability to copy a complex figure was average (47th percentile). Judgment of line orientation was borderline (5th percentile). Performance on Block Design was severely impaired (1st percentile).

Assessment of Effort/Symptom Validity: On a forced choice test of visual recognition, performance was completely within normal limits with scores of 50/50 on Trial Two and the Retention Trial.

SUMMARY AND IMPRESSIONS:

Mr. Keith Smyth is a 20 year-old, right handed, white male referred was for a full neuropsychological evaluation by Dr. Amanda Salas in order to determine current cognitive functioning. Mr. Smyth has previously been diagnosed with ADHD and Intellectual Disability.

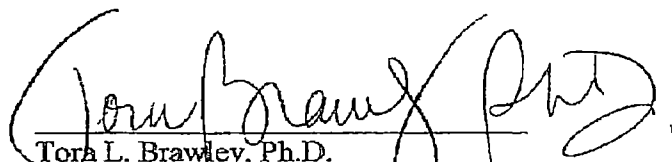
Mr. Smyth is currently performing in the Extremely Low range of intellectual functioning. This is consistent with a diagnosis of Intellectual Disability.

Significant neuropsychological deficits were revealed by this evaluation across all domains of cognitive functioning. Severe deficits were noted in memory, attention and concentration, language, visuospatial, motor and executive functioning. His only area of strength was his ability to copy and recall a complex figure. He also evidenced asymmetry in motor functioning, with performance on his dominant right hand being significantly lower than that of his left hand.

There was no evidence of any attempt to malingering or exaggerate cognitive deficits.

The current pattern of neuropsychological performance is consistent with that of overall severe cognitive dysfunction. The deficits noted here will definitely have an impact on his functional capacity. His ability to participate in anything other than very simple matters should be fully assessed before proceeding. Mr. Smyth will definitely benefit from a very structured environment and he should always have adequate levels of supervision.

I am available to discuss these results as needed. Thank you for allowing me to participate in the evaluation of your patient.


Tori L. Brawley, Ph.D.
Clinical Psychologist-Neuropsychology



Verly A. H. Buscemi, Ph.D.
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 Website: www.dds.sc.gov

JOINT DMH/DDSN FORENSIC EVALUATION

Name: Keith Smyth **Gender:** Male
Address: 3601 Anchor Park Spartanburg, SC **Race:** Caucasian
Date of Evaluation: 06-13-2012 **Date of Birth:**
Place of Evaluation: Forensic Evaluation Service **Age:** 18 years
 Columbia, SC

Examiners: Monica K. Wright, Psy. D. – DDSN Examiner
 Marla Domino, Ph. D. – DMH Examiner

Others Present: Brandi Justice, Psy. D.

Charge(s): Criminal Sexual Conduct with a Minor First Degree (4 counts)
 Criminal Sexual Conduct with a Minor Second Degree (1 count)

Purpose of Evaluation:

This evaluation was conducted pursuant to an order dated 11-29-2011 and signed by the Honorable J. Derham Cole, Presiding Judge of the Spartanburg County Court of General Sessions. The order required that Mr. Smyth initially be evaluated by the Department of Disabilities for competency pursuant to Section 44-23-410, Code of Laws of South Carolina. Due to indications of a dual diagnosis of intellectual disability and mental illness, a joint evaluation was initiated. This evaluation was completed on 06-13-2012.

Summary of Evaluation Results:

Intellectual Deficiency: Yes
Mental Illness: Yes, Attention Deficit Hyperactivity Disorder by history
Competency to Stand Trial: No

Limits of Confidentiality:

Before the interview started, Mr. Smyth was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his defense counsel, the prosecution, and the court. In addition, he was informed of the possibility that the examiner(s) might be called to testify

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 Pee Dee Center - Phone: 843/664-2600
 Saleeby Center - Phone: 843/332-4104

MS

regarding the content and results of the evaluation. He attempted to read a form provided by the Department of Mental Health outlining this information. Although he was able to read several words, his reading was slow and halting. The form was read to him and he interrupted several times with questions that were not related to the evaluation. Specifically, he was interested in his "discovery papers," although he could not explain why having these documents would be important other than indicating that he had been told by other inmates that "discovery papers" were important. He was able to state that the purpose of the evaluation was to "see if I can stand trial." When asked to explain the meaning of his answer he was unable to do so. He also knew that the content of the report would not be confidential and that the report would be distributed to the judge, public defender and the attorney. He stated that the examiners were on "their side" (the prosecutors). He was given the correct information. Mr. Smyth was able to report that the evaluation results would go to the judge.

Evaluation Procedures:

Mr. Smyth was evaluated on 06-13-2011. Mr. Smyth was interviewed for approximately two and one half hours by the undersigned. Drs. Domino and Justice were also present and concur with this report. In addition, the following records and documents were reviewed:

Court Order for Competency Evaluation dated 11-29-2011

*Competency to Stand Trial Evaluation Report 09-03-2009 *

Indictment (s) 02-18-2011

Arrest Warrant, M-124324, 10-01-2010

Arrest Warrant, M-124326, 10-01-2010

Arrest Warrant, M-124327, 10-01-2010

Arrest Warrant, M-124328, 10-01-2010

Arrest Warrant, M-1243210, 10-01-2010

Spartanburg County Sheriff's Office Deputy Report 12-15-2010

Spartanburg County SD Voluntary Statement of Keith Smyth, 12-29-2010

Children's Advocacy Center Report, 02-18-2011

Spartanburg County Sheriff's Office Jail Log, Disciplinary Form 02-08-2012

Spartanburg County Detention Incident Report, 02-27-2012

Spartanburg County Detention Incident Report, 04-24-2012

Spartanburg County Detention Disciplinary Report and Findings, 01-30-2012

Spartanburg County Detention Disciplinary Report and Findings, 01-20-2012

Spartanburg County Detention Incident Report, 05-01-2011

Spartanburg County Detention Incident Report, 05-03-2011

Spartanburg County Detention Incident Report, 05-09-2011

Spartanburg County Detention Incident Report, 04-27-2011

Spartanburg County Detention Incident Report, 04-29-2011

Spartanburg County Detention Incident Report, 07-17-2011

Spartanburg County Detention Incident Report, 07-19-2011

Spartanburg County Detention Incident Report, 09-16-2011

Spartanburg County Detention Incident Report, 09-22-2011

Spartanburg County School District Two Psychological Reevaluation, 11-20-2007

Spartanburg County School District Two Psychological Reevaluation, 09-28-2006

Spartanburg County School District Two Psychological Reevaluation, 08-12-2002

Spartanburg County School District Two Individualized Educational Plan, 2010-11

Spartanburg County School District Two Behavioral Intervention Plan, 2010-11

Spartanburg County Detention Center Inmate Request/ Grievance Forms, multiple dates

Spartanburg County Detention Center Medical Treatment Forms, multiple dates

Relevant History:

Mr. Smyth is an 18-year-old male who was born March 21, 1994 and is currently placed in the Spartanburg County Detention Center as a result of the above listed charges. He reports that he has

been incarcerated since December of 2010. Previously, he was residing in his mother's home in Spartanburg, SC. He reports that he was born in North Carolina, although he has lived most of his life in Spartanburg. He was raised by his mother, grandparents and an aunt. His father reportedly died when he (Mr. Smyth) was six months old. When asked to describe his childhood, he said "good" although he reported an incident of sexual abuse occurring at the age of 13. Apparently, he was able to disclose this information to his family and to authorities, although the perpetrator of the abuse was never prosecuted for the incident. He also reports being placed in foster care at one point, but states that he is not sure of the reason or when the placement occurred. Mr. Smyth has never been married and has no children.

Mr. Smyth attended school until the 10th grade when he was incarcerated for the current charges. He attended Boiling Springs High School where available records indicate he was placed in self-contained classes for Intellectual Disabilities. He stated that he repeated a grade, although he could not remember the grade or where he went to school at the time. Mr. Smyth stated that he has poor reading skills and his attendance was also poor due to being "picked on" by his classmates. He reports being suspended for fighting on the bus. Mr. Smyth also states that he has been arrested two other times, although "they let me go home" on both occasions. He further reported that although he was home, he was on house arrest after his release. His most recent psychoeducational evaluation was included and contained IQ scores in the Intellectually Disabled range of functioning. These scores will be reported in a later section of this report.

Mr. Smyth denied health problems and stated that he has never been hospitalized or had surgery. He also denied a history of seizure disorder. He stated that he is not prescribed any medication other than Trazodone, which he reports taking every day. He was reportedly prescribed a stimulant in the past to improve his focus and decrease his distractibility, although this was discontinued when he was incarcerated. He was also reportedly hospitalized at Marshall Pickens on one occasion although this was not verified by any records contained in his file. There was no information in his file regarding his birth or early development. He was referred to the Department of Disabilities and Special Needs in 2002 for an evaluation regarding eligibility for services, but apparently did not complete that process.

Behavioral Observations/Mental Status Examination:

Mr. Smyth was seen at the Department of Mental Health and was brought to the appointment by law enforcement. He was slightly below average in height and weight and wore glasses. He was adequately groomed. Eye contact was within normal limits during the evaluation. His facial expressions were limited and he displayed a habitual twitch of his nose and mouth which appeared to be a response to loose eyeglasses rather than a "tic." Mr. Smyth's articulation was poor and speech volume was soft. There was a long response latency as if Mr. Smyth needed extra time to discern what was being asked of him. Mr. Smyth was alert and oriented to person, place, time and situation. It is believed that he was putting forth his best effort at all points of the current evaluation. His concentration and attention skills were adequate. His effort during the evaluation was appropriate. His thought process was difficult to assess, but was generally logical and goal-directed.

Mr. Smyth was able to correctly state his address, as well as personal information such as his full name, date of birth, and age. He was able to recite the days of the week without difficulty. He could not name the current president and previous president of the United States, even with cueing. He was unable to answer questions about the value of money. He was able to register and repeat three objects, although there was a significant delay in his verbal response. After an approximately 5 minute delay, Mr. Smyth was able to recall these items with significant cueing (2-3 per item). Mr. Smyth was also able to identify concrete similarities between objects. He could not tell time on an analog clock. He named two types of coins, but had difficulty with single digit addition and subtraction.

Mr. Smyth stated that he is currently having irregular sleep patterns, but had difficulty describing how sleep is difficult for him. He denied appetite problems. He reported adequate energy. Mr. Smyth characterized himself as "depressed," although he noted that this was due to his current circumstances. He denied

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symptoms of psychosis, mania or other significant psychological impairment. Mr. Smyth specifically denied visual and auditory hallucinations as well as delusions and suicidal ideation.

Previous Psychological Testing:

11-20-2007	Stanford-Binet-V Adaptive Behavior Assessment System	FSIQ=64 Composite=55
09-28-2006	Wechsler Intelligence Scale for Children Adaptive Behavior Assessment System	FSIQ=61 Composite= 56
08-12-2002	Stanford-Binet Intelligence Scale -V Vineland Adaptive Behavior Scales	FSIQ=75 Composite=62

Competency to Proceed:

Mr. Smyth did not know the formal name of his charges and these were provided for him. He stated that he knew the charges meant "rape" but was then unable to define the word "rape." When asked about the seriousness of his charges, Mr. Smyth replied that he was in "some" trouble but did not believe it was serious "because it's not murder." Mr. Smyth was unable to describe the difference between a felony and a misdemeanor. He was educated and when asked later was unable to restate the information. Mr. Smyth stated that murder was the most serious charge and that trespassing was also serious. He then stated that he did not know the meaning of trespassing. It was explained to him and he was then able to verbalize that his charges were not as serious as murder but more serious than trespassing.

Mr. Smyth knew the name of his attorney, "Timothy Ray," and reported that he has met with him several times since the beginning of his case. Mr. Smyth seemed concerned that he had not spoken to Mr. Ray in several months. He stated that his attorney's job is to "help me" and "fight for me." He knew that his attorney wanted him to be found "not guilty." When asked to define "not guilty," Mr. Smyth stated "it means you did it." He was given the correct information. Mr. Smyth was then asked to define the role of the solicitor. He stated that the solicitor is "in the middle" and wants the defendant found "guilty." He was educated on this concept as well. Mr. Smyth did not know if he should speak to the solicitor without his attorney present. Attempts were made to help him reason through this decision, although he was unable to apply information he had been given about the solicitor (e.g., wants a guilty verdict, is against the defendant) to determine the correct course of action. When he was unable to do so, the information was given to him. He was similarly unable to verbalize the roles of the judge and the jury and was provided this information as well.

Mr. Smyth was asked to verbalize the roles of witnesses which he defined as "they saw you do something." When asked if a witness was for or against him, he stated that a witness is always on the side of the defendant. He was also unable to define or give examples of evidence. Mr. Smyth was unable to explain the concept of a plea bargain. He did know that he could plead guilty or not guilty. Mr. Smyth knew that a possible penalty was house arrest and he was able to define this consequence. He was unable to verbalize the requirements of other penalties such as probation and fines. He stated that he hoped he would get "time served," although he was unable to state the meaning of the phrase. Mr. Smyth also thought that another possible penalty was for him to be hospitalized for life.

Conclusion:

Keith Smyth was referred to the Department of Disabilities and Special Needs in 2002, although it appears that the intake process and subsequent determination were never completed. While in school, he was classified as a student with an Intellectual Disability. He was been placed in self-contained classes and also received instruction on functional and daily living skills. Psychoeducational testing indicates deficits in

intellectual functioning as well. During this evaluation, his performance was consistent with an individual in the low range of intellectual functioning. Although he was able to provide some information, he was frequently unable to use information to reason and make a decision. He also seemed to "parrot" information that had been given to him by other inmates and did not seem to know where he could obtain reliable information (i.e., from his attorney) as opposed to questionable information.

Mr. Smyth also has a diagnosis of Attention Deficit Hyperactivity Disorder and has been prescribed medication in the past. Records suggest he was also hospitalized at Marshall Pickens on one occasion for unknown reasons. He is currently prescribed Trazodone for sleep. Otherwise, there is no previous history of treatment for mental illness. He denied symptoms of mental illness other than difficulties related to his current incarceration. He did not demonstrate symptoms of mental illness during the current evaluation, including symptoms of ADHD.

Regarding competency to stand trial, it is our opinion that Mr. Smyth does not have the capacity for a factual or rational understanding of the various court processes or of the possible penalties if found guilty, and that he does not have the ability to adequately follow legal proceedings. Likewise, it is the examiners' clinical opinion that he would have difficulty effectively communicating with his attorney in developing a defense. Since the deficits are developmental in nature, and not likely to improve with treatment, the likelihood of restorability is believed to be low. As a result we offer the following:

Intellectual Deficiency:	Yes
Mental Illness:	Yes, Attention Deficit Hyperactivity Disorder by history
Competency to Stand Trial:	No

Monica K. Wright, Psy. D.
FOIL Monica K. Wright, Psy. D.
State-Level Psychological Examiner
SC License # 871
SCDDSN Central Office

Date signed: 7/25/12

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Beverly A. H. Buscemi, Ph.D.
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David A. Goodell
Associate State Director
Operations
Susan Kreh Beck
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JOINT DMH/DDS/DFORENSIC EVALUATION

Name: Keith Smyth **Gender:** Male
Address: 3601 Anchor Park Spartanburg, SC **Race:** Caucasian
Dates of Evaluation: 06-20-2013 and 10-31-2013 **Date of Birth:**
Place of Evaluation: Forensic Evaluation Service **Age:** 19 years
Columbia, SC

Examiners: Monica K. Wright, Psy. D. – DDSN Examiner
Marla Domino, Ph. D. – DMH Examiner

Charge(s): Criminal Sexual Conduct with a Minor First Degree (4 counts)
Criminal Sexual Conduct with a Minor Second Degree (1 count)

Purpose of Evaluation:

This evaluation was conducted pursuant to an order dated 10-23-2012 and signed by the Honorable J. Derham Cole, Presiding Judge of the Spartanburg County Court of General Sessions. The order required that Mr. Smyth be committed and hospitalized in the Forensic Division of the Department of Mental Health for competency restoration.

Limits of Confidentiality:

Before the interview started, Mr. Smyth was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his defense counsel, the prosecution, and the court. In addition, he was informed of the possibility that the examiner(s) might be called to testify regarding the content and results of the evaluation. When queried about this information, he stated it was ordered by a "judge" and was about "to stand trial" which he interpreted as "to see if I can go home"; he was provided clarification about the nature of this exam. He also knew that the content of the report would not be confidential and would be distributed to the judge, public defender and the attorney. He was reminded about these examiners' neutrality. He asked several questions about when he would be released from jail and accessing medical care; he was referred to the appropriate professionals about these concerns although he continued to repeat similar questions throughout this exam.

Summary of Evaluation Results:

Intellectual Disability: Yes
Mental Illness: No
Competency to Stand Trial: Yes

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Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

WR

Evaluation Procedures:

Mr. Smyth was initially evaluated (pursuant to a court order dated 11-29-2011) jointly by DDSN and DMH on 6-13-2012. Following that evaluation, he was committed to the South Carolina Department of Mental Health's forensic hospital for competency restoration from 04-22-2013 until 06-21-2013. He was reevaluated on 06-20-2013 and, due to his lack of cooperation at that time, another appointment on 10-31-2013 was scheduled, at which time this exam was completed.

Mr. Smyth was evaluated on 06-20-2013 and 10-31-2013. Mr. Smyth was interviewed for approximately two and one half hours by these examiners on 06-20-13 and two hours 15 minutes on 10-31-2013. Dr. Domino was also present and concurs with this report. Timothy Ray, attorney for the defendant, was present on 10/31/13.

In addition, the following records and documents were reviewed:

Court Order for Ongoing Pre-Trial Inpatient Detention of Defendant dated 11-23-2012
Court Order for Competency Evaluation dated 11-29-2011
Competency to Stand Trial Evaluation Report authored by Alicia V. Hall, Ph.D., 09-03-2009
Indictment (s) 02-18-2011
Arrest Warrant, M-124324, 10-01-2010
Arrest Warrant, M-124326, 10-01-2010
Arrest Warrant, M-124327, 10-01-2010
Arrest Warrant, M-124328, 10-01-2010
Arrest Warrant, M-1243210, 10-01-2010
Spartanburg County Sheriff's Office Deputy Report 12-15-2010
Spartanburg County SD Voluntary Statement of Keith Smyth, 12-29-2010
Children's Advocacy Center Report, 02-18-2011
Spartanburg County Sherriff's Office Jail Log, Disciplinary Form 02-08-2012
Spartanburg County Detention Incident Report, 02-27-2012
Spartanburg County Detention Incident Report, 04-24-2012
Spartanburg County Detention Disciplinary Report and Findings, 01-30-2012
Spartanburg County Detention Disciplinary Report and Findings, 01-20-2012
Spartanburg County Detention Incident Report, 05-01-2011
Spartanburg County Detention Incident Report, 05-03-2011
Spartanburg County Detention Incident Report, 05-09-2011
Spartanburg County Detention Incident Report, 04-27-2011
Spartanburg County Detention Incident Report, 04-29-2011
Spartanburg County Detention Incident Report, 07-17-2011
Spartanburg County Detention Incident Report, 07-19-2011
Spartanburg County Detention Incident Report, 09-16-2011
Spartanburg County Detention Incident Report, 09-22-2011
Spartanburg County School District Two Psychological Reevaluation, 11-20-2007
Spartanburg County School District Two Psychological Reevaluation, 09-28-2006
Spartanburg County School District Two Psychological Reevaluation, 08-12-2002
Spartanburg County School District Two Individualized Educational Plan, 2010-11
Spartanburg County School District Two Behavioral Intervention Plan, 2010-11
Spartanburg County Detention Center Inmate Request/ Grievance Forms, multiple dates
Spartanburg County Detention Center Medical Treatment Forms, multiple dates
Bryan Psychiatric Hospital Discharge Summary 06-21-2013 (ditto below)
Psychological Consultation by Dr. Sandra Stader, 05-29-2013

Treatment notes from SCDMH, admission date: 04-22-13
Spartanburg Mental Health Center records (dated 10-02-06 through 11-03-08)
Mr. Smyth's adult and juvenile criminal records.
SCDDSN Eligibility Determination Letter dated 10/29/2012

Relevant History:

Mr. Smyth is a 19-year-old male who was born March 21, 1994 and is currently placed in the Spartanburg County Detention Center as a result of the above listed charges. He reports that he has been incarcerated since December of 2010. Previously, he was residing in his mother's home in Spartanburg, SC. He reports that he was born in North Carolina, although he has lived most of his life in Spartanburg. He was raised by his mother, grandparents and an aunt. His father reportedly died when he (Mr. Smyth) was six months old. When asked to describe his childhood, he said "good" although he reported an incident of sexual abuse occurring at the age of 13. Apparently, he was able to disclose this information to his family and to authorities, although the perpetrator of the abuse was never prosecuted for the incident. He also reports being placed in foster care at one point, but states that he is not sure of the reason or when the placement occurred. Mr. Smyth has never been married and has no children.

Mr. Smyth attended school until the 10th grade when he was incarcerated for the current charges. He attended Boiling Springs High School where available records indicate he was placed in self-contained classes for Intellectual Disabilities. He stated that he repeated a grade, although he could not remember the grade or where he went to school at the time. Mr. Smyth stated that he has poor reading skills and his attendance was also poor due to being "picked on" by his classmates. He reports being suspended for fighting on the bus. Mr. Smyth also states that he has been arrested two other times, although "they let me go home" on both occasions. He further reported that although he was home, he was on house arrest after his release. His most recent psychoeducational evaluation was included and contained IQ scores in the Intellectually Disabled range of functioning. These scores will be reported in a later section of this report.

Mr. Smyth denied health problems and stated that he has never been hospitalized or had surgery. He also denied a history of seizure disorder. He stated that he is not prescribed any medication other than one for sleep. He was reportedly prescribed a stimulant in the past to improve his focus and decrease his distractibility, although this was discontinued when he was incarcerated. He was also reportedly hospitalized at Marshall Pickens on one occasion although this was not verified by any records contained in his file. There was no information in his file regarding his birth or early development. Mr. Smyth was found eligible for DDSN services under the category of Intellectual Disability on 10/29/2012.

Mr. Smyth was hospitalized for restoration of competency on April 22, 2013 and remained in the hospital until June 21, 2013. During his hospitalization, treatment personnel noted that he was oppositional on occasion, but most of the time was able to name his charges, verbalize the possible pleas, verbalize roles of courtroom personnel, and was also able to make telephone calls to his attorney. Although he stated that he could not read and refused to spell simple words like "cat," the staff noted that he was also able to "write notes to the doctor using correct spelling and grammatical content." He would also reportedly request books to read and was observed completing crossword puzzles. He would at times present with "baby talk" which he would cease when confronted. According to file information, his performance on tests of response style administered by consulting psychologist Dr. Stader during that hospitalization was indicative of malingering memory deficits and courtroom knowledge. The conclusion of

treatment personnel was that Mr. Smyth met the criteria for malingering, demonstrating inconsistent performance and "cognitive deficits that seem implausibly severe and inconsistent with previously demonstrated capabilities." It was also noted that "it was felt that his performance on a daily basis was much higher than previously suspected IQ level." He was discharged on no psychotropic medications and with diagnoses of malingering of both cognitive and legal knowledge, pedophilia, antisocial personality disorder, and "possible" borderline intellectual functioning:

Spartanburg Mental Health Center records indicate he was seen from October 2006 through November 2008 for symptoms diagnosed as indicative of attention deficit hyperactivity disorder and oppositional defiant disorder. A fax to the examiners from that facility reflect no contact with Mr. Smyth at any time in 2013. Spartanburg County Detention Facility records reflect occasional prescription of Trazodone (mood stabilizer) or Vistaril (for sleep disturbance) in 2011. Recent jail records note complaints of injuries after an altercation with an officer (02/27/13) and a peer (03/23/13), sleep problems and "stress" (07/10/13), and an over 20-pound weight loss (09/17/13). A "rule out" diagnosis of schizophrenia was offered in July 2013 but, per available jail records, was not substantiated and it is unclear how or why that diagnosis was suggested (e.g., there are no objective observations of psychosis by jail staff). Nonetheless, Seroquel (antipsychotic) was recommended although it was unclear from records if it was ever administered.

Behavioral Observations/Mental Status Examination:

On October 31, 2013, Mr. Smyth's presentation was largely consistent with his first evaluation. He was alert and he was oriented to date, situation, time, place and person. He reported adequate appetite and excessive sleep, although he did note that he was taking medication to assist him in obtaining sleep. His recent and remote memory were within normal limits. He did not evidence significant deficits in his long-term memory, attention, or concentration. He described difficulties with jail staff and peers which suggested these poor relationships were caused by the nature of Mr. Smyth's charges and his oppositional behavior. He denied current symptoms of mania, psychosis, or perceptual disturbance. Mr. Smyth's responses to informational questions were approximate. For example, when asked to perform simple single digit calculations, his response to 7-2 was "4" and 8+4 was "10". He did not endorse suicidal and homicidal ideation or plan. He did note that he had been angry in the past month, although this appeared to be frustration regarding being unable to return home.

Psychological Testing:

During the October 31, 2013 evaluation, the Inventory of Legal Knowledge (ILK) was administered and his responses were below chance, suggesting that he was not putting forth his best effort on the measure which is consistent with his performance on prior testing. These results were below that of the ILK administered by Dr. Stader in May 2013 in which she opined was "suggestive of a feigned response style. His results are typical of individuals who respond randomly and have minimal investment in demonstrating their true knowledge. This, his understanding and ability to participate in the legal process is likely better than what he portrayed during the evaluation." It is moreover notable that Mr. Smyth's score on today's (10/31/13) ILK was lower than his May 2013, giving the timing of their administrations (i.e., after a competency restoration period versus during a competency restoration period, respectively).

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Previous Psychological Testing:

09-25-2012	Wechsler Adult Intelligence Scale-IV Vineland Adaptive Behavior Scales	FSIQ=57 Composite=60
11-20-2007	Stanford-Binet-V Adaptive Behavior Assessment System	FSIQ=64 Composite=55
09-28-2006	Wechsler Intelligence Scale for Children Adaptive Behavior Assessment System	FSIQ=61 Composite=56
08-12-2002	Stanford-Binet Intelligence Scale -V Vineland Adaptive Behavior Scales	FSIQ=75 Composite=62

Diagnostic Impressions:

On 10-29-2012 Keith Smyth was found eligible for services from the Department of Disabilities and Special Needs under the category of Intellectual Disability. While in school, he was classified as a student with an Intellectual Disability. He was placed in self-contained classes and also received instruction on functional and daily living skills. Psychoeducational testing indicates deficits in intellectual functioning as well. During his evaluation and hospitalization he demonstrated verbal and written skills which were higher than measures of intellectual functioning would predict. Due to his scores on tests of intellectual functioning as well as his educational placement and eligibility for DDSN services, a diagnosis of Intellectual Disability is being assigned. However, his presentation during a current inpatient admission and the results of psychological testing suggest his functioning to be at a higher level. Given his apparent feigning of cognitive and intellectual deficits, it is difficult to ascertain the extent of the limitations he genuinely has. Regardless, it is the opinion of these examiners that Mr. Smyth is competent to stand trial (see below).

Mr. Smyth also has a diagnosis of Attention Deficit Hyperactivity Disorder and has been prescribed medication in the past. Records suggest he was also hospitalized at Marshall Pickens on one occasion for unknown reasons. He is currently prescribed Trazodone for sleep. Otherwise, there is no previous history of treatment for mental illness. He denied symptoms of mental illness other than difficulties related to his current incarceration. He did not demonstrate symptoms of mental illness during the current evaluation, including symptoms of ADHD.

Competency to Proceed:

Mr. Smyth stated that he has "four" charges that occurred "three years ago" in "10". When asked to name his charges, he stated "criminal sexual conducts [sic]" noting he incurred these charges because "they say I had sex with them ... the kids." When asked if he knew the alleged victims, he stated "they [are] my friends." Mr. Smyth gave other information about the alleged charges, including the location and the number of alleged victims. Mr. Smyth was unable to verbalize the reason that people could get in trouble for sexual activity and appeared to minimize the significance of his charges (e.g., stated, "I didn't kill nobody"). He eventually stated that the charges were the result of the victims being "minors" which he defined as under the age of 17. He was educated that the charges are felonies and are serious, although when asked again at the end of this exam identified his charges as "misdemeanors." He was asked to give an example of a charge that is less serious than his and he stated "driving past a red light."

When asked about possible pleas, Mr. Smyth reported that he could plead "guilty" or "not guilty." He stated that "not guilty" means "you didn't do it." He denied knowing the meaning of "guilty,"

although he did report that after someone is found guilty they are "put on house arrest or in prison." He reported no knowledge of a plea related to mental illness (Not Guilty by Reason of Insanity) but stated he could ask "Tim" (defense counsel) if he wished for further information. Mr. Smyth stated that when he is in court, others present are "my family, lawyer, solicitor [and] judge." He stated that his lawyer is his advocate and that the "judge" and "solicitor" are against him; even after educated, he provided the same response when asked a similar question towards the end of this exam. He stated that the "judge" is in charge of the court and, with prompting, noted the judge is "on both sides." He stated the judge's job is "to see what side is right." Mr. Smyth was unable to identify the defendant in his case and was educated on this. However, even after educational attempts, he continued to identify "the kids" as the defendant in his case.

Mr. Smyth's lawyer was present during the evaluation and Mr. Smyth was able to identify him. Mr. Smyth stated that the role of his lawyer was to "help me ... to get me home ... to talk to people for me [like] the judge and solicitor." Mr. Smyth knew that he would not be forced to follow the advice of his lawyer, but stated that he "might let me go home" if he did. He stated he can assist his attorney by being "good" and not committing any crimes. When asked about the role of the solicitor, Mr. Smyth replied that the solicitor was impartial and so he was given the correct information. When asked later, he noted the solicitor's job is to "make you plead ... to make a deal" and to imprison the defendant. When Mr. Smyth was asked to describe a trial, he reported "they say where I can go home or go to prison." He alleged that his family can help decide his disposition. He described a witness as "someone that said I took something from you" and identified several possible witnesses in his case. Mr. Smyth was able to verbalize some components of a plea bargain and he was able to retain information provided to him.

Due to Mr. Smyth appearing to intentionally provide erroneous responses to questions about his legal knowledge, this exam was stopped and psychological testing (see above) was administered. Subsequent to that measure, Mr. Smyth expressed a desired plea and appeared to have a realistic assessment regarding the likely outcome(s) of his case. It is notable that when asked a question directly (e.g., what is evidence, what is the solicitor's job), he provided an erroneous response or asserted no knowledge of the concept. However, when asked a question in which it was assumed that he knew the legal concept being discussed (e.g., what evidence might the solicitor have against you), he provided an accurate response that reflected logical thought processes.

Conclusion:


After his initial competency evaluation in June 2012, these examiners opined Mr. Smyth to be incompetent to stand trial and unlikely to be restored to competence, due to symptoms of intellectual deficiency. Subsequently, he was hospitalized for a 60 day restoration period. During the course of his hospitalization, his performance on written measures of competency was generally poor. His verbal performance was inconsistent, at times he could demonstrate legal knowledge while at other times he insisted that he did not know information that he had known a short time earlier. Hospital records also indicate that his behavior was oppositional on the unit, as he made demands of "respect" and did not follow requests of staff. He was given tests to specifically measure the possibility of feigning cognitive deficits. His response style on these measures was indicative of feigning both memory difficulties and courtroom knowledge. One of these measures was repeated in the October 31, 2013 evaluation and the results were also indicative of feigning a lack of courtroom knowledge.

Mr. Smyth's performance has been variable during each of the evaluations with these examiners. While these examiners initially opined him to be "unlikely" to be restored to competence, a 60 day hospitalization provided more information regarding his cognitive abilities and legal knowledge. Despite evidence of feigning of cognitive deficits and legal knowledge,

AS

and given his ability to demonstrate written and verbal communication that are higher than he reported, it is believed that he currently has the capacity for a factual and rational understanding of the various court processes, and that he does have the ability to adequately follow legal proceedings. Likewise, it is the examiners' clinical opinion that he would be able to effectively communicate with his attorney in developing a defense, should he choose to do so. This does not suggest that he has no cognitive deficits - simply that his deficits (as he presented to these examiners and to his inpatient staff) appeared exaggerated. As a result we offer the following:

Intellectual Disability:	Yes
Mental Illness:	No
Competency to Stand Trial:	Yes



FOR Monica K. Wright, Psy. D.
State-Level Psychological Examiner
SC License # 871
SCDDSN Central Office

Date signed: 12/18/13

Beverly A. H. Buscemi, Ph.D.
State Director
David A. Goodell
Associate State Director
Operations
Kathi K. Lacy, Ph.D.
Associate State Director
Policy
Thomas P. Waring
Associate State Director
Administration



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April 27, 2012

Anthony Leibert, Esq.
Spartanburg County Solicitor's Office
180 Magnolia Street
Spartanburg, South Carolina 29306

RE: The State of South Carolina vs. Keith Smyth
Spartanburg County General Sessions Court

Dear Mr. Leibert:

In accordance with the Court order issued by the Honorable J. Durham Cole, a competency to stand trial evaluation was initiated by the Department of Disabilities and Special Needs. However, there were indications of a dual diagnosis of mental retardation and mental illness. As such, per the Court Order and S.C. Code Ann. 44-23-410, no opinion on competency is offered at this time. The Department of Disabilities and Special Needs and the Department of Mental Health will arrange a joint evaluation in order to render a final report on the defendant's competency to stand trial.

This one (1) page document is certified to be the original notification of the finding of a dual diagnosis to the Court, Solicitor, and Defense Counsel.

Sincerely,

Gordon Brown, Jr., Ph.D.
Office of Clinical Services
Division of Operations

Date: 4/27/12

Cc: Timothy Ray, Defense Counsel
Tami Lee, Forensic Evaluation Services, DMH
Tana Vanderbilt, DDSN General Counsel
File

Beverly A. H. Buscemi, Ph.D.

State Director

David A. Goodell

Associate State Director

Operations

Kathi K. Lacy, Ph.D.

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July 26, 2012

Mr. Marcus Kitchens
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, SC 29306

RE: Keith A. Smyth

Dear Mr. Kitchens:

In accordance with the Court Order issued by the Honorable J. Durham Cole, Judge of the Seventh Judicial Circuit, General Sessions Court, an evaluation on the above named individual was conducted jointly by the South Carolina Department of Disabilities and Special Needs and the South Carolina Department of Mental Health.

Please file the enclosed Forensic Evaluation with the court.

Please contact me at (803) 898-9694 should you have any questions or need additional information.

This five (5) page document is hereby certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. §44-23-410 or 17-24-10 (1976) et. seq.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gordon E. Brown, Jr.' with a stylized flourish at the end.

Gordon Brown, Jr., Ph.D.
Office of Clinical Services
Division of Operations

Enclosure

cc: Anthony Leibert, Esq., 7th Circuit Solicitor's Office
Timothy Ray, Esq., Defense Counsel
Tamika Lee, DMH Forensic Services
Tana Vanderbilt, Esq., General Counsel, DDSN
File DISTRICT I

DISTRICT II

P.O. Box 239
Clinton, SC 29325-5328
Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/833-2733

9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

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Beverly A. H. Buscemi, Ph.D.
State Director
David A. Goodell
Associate State Director
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December 18, 2013

Ms. Hope Blackley
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, SC 29304

RE: Keith Adger Smyth

Dear Ms. Blackley:

In accordance with the Court Order issued by the Honorable J. Durham Cole, Judge of the Seventh Judicial Circuit, General Sessions Court, an evaluation on the above named individual was conducted jointly by the South Carolina Department of Disabilities and Special Needs and the South Carolina Department of Mental Health.

Please file the enclosed Forensic Evaluation with the court.

Please contact me at (803) 898-9694 should you have any questions or need additional information.

This seven (7) page document is hereby certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. §44-23-410 or 17-24-10 (1976) et. seq.

Sincerely,

Gordon E. Brown, Jr., Ph.D.
Office of Clinical Services
Division of Operations

Enclosure

cc: Anthony Leibert, Esq., 7th Circuit Solicitor's Office
Timothy Ray, Esq., Defense Counsel
Tamika Lee, DMH Forensic Services
Tana Vanderbilt, Esq., General Counsel, DDSN
DDSN File
DISTRICT I

P.O. Box 239
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DISTRICT II

Coastal Center - Phone: 843/873-5750
Peë Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

**PROTECTION AND
ADVOCACY FOR
PEOPLE WITH
DISABILITIES, INC.**

The Protection & Advocacy System for South Carolina

April 11, 2011

FAX: 864-503-4560; MAILED 4/11/11

Sheriff Chuck Wright
Spartanburg County Sheriff's Office
8045 Howard Street
Spartanburg, SC 29303

In re: Keith Adger Smyth

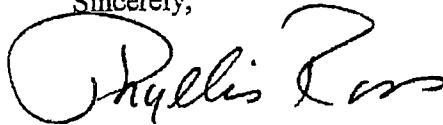
Dear Sheriff Wright

I am writing to request all records, information and investigative reports in your possession (Family and General Sessions) concerning Keith Adger Smyth. Enclosed is a release signed by Mr. Smyth. Also enclosed are copies of P&A's access authority.

Protection and Advocacy for People with Disabilities, Inc. (P&A) is the federally and state mandated protection and advocacy system for South Carolina. P&A was established in 1977 by state law, S.C. Code Ann. 43-33-310 et seq., to protect the rights of people with disabilities.

Since P&A is a non-profit organization established to protect individuals with disabilities, we request that you waive any copying fees. If fees will be incurred, please contact me before copying at (803-217-6716) or ross@pandasc.org Mail to: Phyllis Ross, 3710 Landmark Drive, Suite 208, Columbia, SC 29204.

Sincerely,



Phyllis M. Ross
Advocate
Central Office

PMR:me

Enclosures: as stated

CENTRAL OFFICE
SUITE 208
3710 LANDMARK DRIVE
COLUMBIA, SC 29204
(803) 782-0639
(Voice and TTY)
FAX (803) 790-1946

PIEDMONT OFFICE
SUITE 106
545 N. Pleasantburg Drive
GREENVILLE, SC 29607
(864) 235-0273
1-800-758-5212
(Voice and TTY)
FAX (864) 233-7962

INFORMATION AND REFERRAL
Toll Free:
1-856-275-7273
(Voice)
1-856-232-4525
(TTY)
Email:
info@protectionandadvocacy-sc.org

PEE DEE OFFICE
2137 B HOFFMEYER ROAD
FLORENCE, SC 29501
(843) 662-0752
1-800-868-0752
(Voice and TTY)
FAX (843) 662-0786

LOW COUNTRY OFFICE
1569 SAM RITTENBERG BLVD.
CHARLESTON, SC 29407
(843) 763-8571
1-800-743-2553
(Voice and TTY)
FAX (843) 571-0880

PROTECTION AND
ADVOCACY FOR
PEOPLE WITH
DISABILITIES, INC.

The Protection & Advocacy System for South Carolina

April 11, 2011

FAX: 864-596-3421; MAILED 4/11/11

Larry Powers
Director
Spartanburg County Detention Center
950 California Avenue
Spartanburg, SC 29303

In re: Keith Adger Smyth

Dear Mr. Powers:

I am writing to request all records, information and investigative reports in your possession concerning Keith Adger Smyth. Enclosed is a release signed by Mr. Smyth. Also enclosed are copies of P&A's access authority.

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Sincerely,



Phyllis M. Ross
Advocate
Central Office

PMR:me

Enclosures: as stated

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1569 SAM RITTENBERG BLVD.
CHARLESTON, SC 29407
(843) 763-8571
1-800-743-2553
(Voice and TTY)
FAX (843) 571-0880

PROTECTION AND
ADVOCACY FOR
PEOPLE WITH
DISABILITIES, INC.

The Protection & Advocacy System for South Carolina

April 11, 2011

FAX: 864-596-3421; MAILED 4/11/11

Larry Powers
Director
Spartanburg County Detention Center
950 California Avenue
Spartanburg, SC 29303

In re: Keith Adger Smyth

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Since P&A is a non-profit organization established to protect individuals with disabilities, we request that you waive any copying fees. If fees will be incurred, please contact me before copying at (803-217-6716) or ross@pandasc.org Mail to: Phyllis Ross, 3710 Landmark Drive, Suite 208, Columbia, SC 29204.

Sincerely,



Phyllis M. Ross
Advocate
Central Office

PMR:me

Enclosures: as stated

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1-800-743-2553
(Voice and TTY)
FAX (843) 571-0880

**PROTECTION AND
ADVOCACY FOR
PEOPLE WITH
DISABILITIES, INC.**

The Protection & Advocacy System for South Carolina

June 9, 2011

Edwin Haskel, Esq.
Smith & Haskel
PO Box 3545
Spartanburg, SC 29304

In re: Keith Adger Smyth

Dear Mr. Haskel:

It is my understanding that you are the Spartanburg County Attorney. Enclosed with this correspondence is:

- (1) P&A access authority
- (2) My letter to Sheriff Chuck Wright dated April 11, 2011
- (3) Release signed by Keith Adger Smyth

On April 11, 2011, I requested records concerning an investigation into alleged sexual misconduct by Mr. Smyth. Although a juvenile at the time of the alleged crime, he was being tried as an adult and held in DJJ Detention until his 17th birthday. The investigative officer for Spartanburg Sheriff's Office was Nichole Cantrell.

On March 21, 2011, Mr. Smyth was transferred to Spartanburg County Detention Center. Shortly thereafter he alleged sexual abuse by another detainee. Nichole Cantrell was also the investigating officer in this case. My April 11th letter also requested reports of this incident.

On April 26, 2011, I received a call from April at the Spartanburg County Sheriff's Department, stating the records on Keith had been turned over by the Investigator, Nichole Cantrell, to Tony Libert at the Solicitor's Office. According to April, it was now necessary for me to secure records from the Solicitor. She also said they would have to redact any juvenile information. I was also told if I had any questions, I was to contact Investigator Cantrell, that she was the one to release records.

CENTRAL OFFICE
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FAX (803) 790-1946

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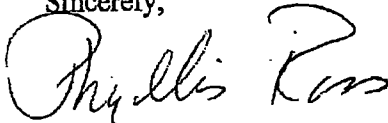
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Edwin Haskel, Esq.
June 9, 2011
Page 2

Due to your role as County Attorney and given P&A's access authority, I am requesting these records through your office. As Mr. Smyth has authorized P&A to obtain this information in order to work on his behalf, I am also requesting these records not be redacted.

If you have any questions or concerns, please contact me at P&A's Central Office, direct line 803-217-6706 or via cell

Sincerely,

A handwritten signature in cursive script that reads "Phyllis Ross". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Phyllis M. Ross
Central Office

PMR:me

Enclosures: as stated

PROTECTION AND
ADVOCACY FOR
PEOPLE WITH
DISABILITIES, INC.

Mr. Ray

The Protection & Advocacy System for South Carolina

June 9, 2011

Edwin Haskel, Esq.
Smith & Haskel
PO Box 3545
Spartanburg, SC 29304

In re: ~~Keith Adger Smyth~~

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Edwin Haskel, Esq.

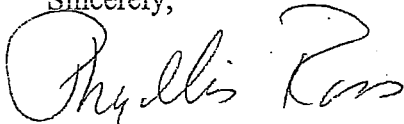
June 9, 2011

Page 2

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If you have any questions or concerns, please contact me at P&A's Central Office, direct line 803-217-6706 or via cell 803-917-6708.

Sincerely,

A handwritten signature in cursive script that reads "Phyllis Ross". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Phyllis M. Ross
Central Office

PMR:me

Enclosures: as stated

PROTECTION AND
ADVOCACY FOR
PEOPLE WITH
DISABILITIES, INC.

January 21, 2012

The Protection & Advocacy System for South Carolina

Mr. Keith Adger Smyth
Spartanburg Detention Center
950 California Avenue
Spartanburg, SC 29303

Dear Mr. Smyth:

This is written in response to your letter dated January 1, 2012. Unfortunately as per P&A policy, I cannot keep your case open if not working on any current issues. Your current issue involves criminal charges for which you have an attorney. P & A does not handle criminal issues; I must close your case.

That does not mean I do not want updates on how you are doing. Enclose are some P&A envelopes for this purpose.

Also, I am sending a copy of this letter to your attorney Mr. Timothy Ray. If Mr. Ray needs P&A assistance he can contact me in our Columbia office.

Sincerely,

Phyllis M. Ross / JMS
Phyllis M. Ross
Advocate, Central office

Enclosures: as stated

xc: Timothy Ray, Esq.

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PROTECTION AND
ADVOCACY FOR
PEOPLE WITH
DISABILITIES, INC.

January 21, 2012

The Protection & Advocacy System for South Carolina

Mr. Keith Adger Smyth
Spartanburg Detention Center
950 California Avenue
Spartanburg, SC 29303

Dear Mr. Smyth:

This is written in response to your letter dated January 1, 2012. Unfortunately as per P&A policy, I cannot keep your case open if not working on any current issues. Your current issue involves criminal charges for which you have an attorney. P & A does not handle criminal issues; I must close your case.

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Also, I am sending a copy of this letter to your attorney Mr. Timothy Ray. If Mr. Ray needs P&A assistance he can contact me in our Columbia office.

Sincerely,



Phyllis M. Ross
Advocate, Central office

Enclosures: as stated

xc: Timothy Ray, Esq.

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**PROTECTION AND
ADVOCACY FOR
PEOPLE WITH
DISABILITIES, INC.**

The Protection & Advocacy System for South Carolina

December 30, 2011

Mr. Keith Adger Smyth
Spartanburg County Detention Center
950 California Avenue
Spartanburg, SC 29303

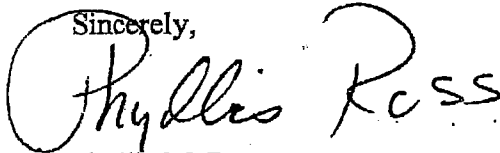
Dear Mr. Smyth:

Since I haven't heard from you or your attorney, Mr. Ray, since August, I am closing your case. Mr. Ray has my contact information if he needs to talk with me.

P&A values the opinions of our clients on our performance and solicit their suggestions as to how we might better assist them. We would appreciate it if you would take a few minutes to complete the enclosed questionnaire and return in the envelope provided. The completed survey will be held in strictest confidence.

If you should need P&A services in the future, do not hesitate to contact me.

Sincerely,



Phyllis M. Ross
Advocate, Central Office

PMR:me

Enclosures: as stated

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