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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

ORIGINAL

ALBERT C. SMITH, II,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

CASE NO. 07-GS-38-1079
07-GS-38-1080

STATE OF SOUTH CAROLINA)

versus)

ALBERT CLAYTON SMITH, II,)

DEFENDANT)

TRANSCRIPT OF RECORD

DATE:

FEBRUARY 11, 2009

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

APPEARANCES:

DAVID PASCOE, ESQUIRE
SOLICITOR

KELLEY BURBAGE, ESQUIRE
ASSISTANT SOLICITOR

FOR THE STATE

GLENN WALTERS, ESQUIRE

ATTORNEY AT LAW

FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
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I N D E XPAGE

EXAMINATION BY THE COURT:

ALBERT CLAYTON SMITH, II

4, 6

DEFENSE COUNSEL WALTERS

5

SENTENCE OF THE COURT

28

E X H I B I T S

NONE

1 DATE:

2 FEBRUARY 11, 2009

3 SOLICITOR BURBAGE: WE CALL ALBERT
4 CLAYTON SMITH, THE SECOND. YOUR HONOR, MR. SMITH IS HERE
5 TODAY WITH HIS ATTORNEY, GLENN WALTERS, PLEADING GUILTY
6 TO ONE COUNT OF ARMED ROBBERY, 2007-GS-38-1079, TRUE
7 BILLED BY THE GRAND JURY, AS WELL AS ONE COUNT OF
8 MURDER, 2007-GS-38-1080. YOUR HONOR, HE IS PLEADING
9 GUILTY TO BOTH OF THESE CHARGES WITHOUT NEGOTIATIONS OR
10 RECOMMENDATIONS ON BEHALF OF THE STATE.

11 THE COURT: MR. SMITH, WOULD YOU
12 RAISE YOUR RIGHT HAND AS BEST YOU CAN.

13 (Whereupon, Albert Clayton Smith, II,
14 is duly sworn.)

15 THE COURT: ALRIGHT, YOU NEED TO
16 SPEAK A LITTLE LOUDER NOW, BECAUSE THIS LADY HAS TO HEAR
17 YOU AND TAKE DOWN EVERYTHING THAT WE SAY. SHE'S OUR
18 COURT REPORTER.

19 (NOTE: Blank lines on this page do not indicate any
20 part of record has been omitted. Headers on testimony
21 pages and hard page breaks between testimony are now
22 required by the Court. See next ensuing page for
23 sequential continuation of record.)

1 EXAMINATION OF ALBERT CLAYTON SMITH, II,

2 BY THE COURT:

3 Q. HOW OLD ARE YOU, MR. SMITH?

4 A. TWENTY-NINE.

5 Q. HOW FAR DID YOU GO IN SCHOOL?

6 A. SIX YEARS INTO COLLEGE.

7 Q. HAVE YOU EVER BEEN TREATED FOR DRUG ABUSE, ALCOHOL
8 ABUSE, OR MENTAL ILLNESS?

9 A. NO, SIR.

10 Q. HAVE YOU HAD ANY DRUGS, ALCOHOL, MEDICATION OR
11 ANYTHING IN THE LAST TWENTY-FOUR HOURS THAT WOULD
12 KEEP YOU FROM UNDERSTANDING WHAT'S GOING ON IN
13 COURT TODAY?

14 A. NO, SIR.

15 (NOTE: Blank lines on this page do not indicate any
16 part of record has been omitted. Headers on testimony
17 pages and hard page breaks between testimony are now
18 required by the Court. See next ensuing page for
19 sequential continuation of record.)

EXAM - DEFENSE COUNSEL WALTERS BY THE COURT

5

EXAMINATION OF DEFENSE COUNSEL WALTERSBY THE COURT:

Q. MR. WALTERS, HAVE YOU EXPLAINED TO YOUR CLIENT THE CHARGES HE IS FACING, THE EVIDENCE THE STATE HAS AGAINST HIM, THE POSSIBLE PENALTIES -- OF COURSE, THE PENALTY FOR MURDER IS NO LESS THAN THIRTY YEARS AND UP TO LIFE IN PRISON, AND WHATEVER SENTENCE IS IMPOSED MUST BE SERVED DAY FOR DAY, THERE'S NO EIGHTY-FIVE PER CENT, NO CREDIT OR ANYTHING OF THAT NATURE. IT IS A MOST SERIOUS A VIOLENT OFFENSE. THE PENALTY FOR ARMED ROBBERY IS THIRTY YEARS, WHICH IS AN EIGHTY-FIVE PER CENT, NO PAROLE OFFENSE. IT IS ALSO MOST SERIOUS AND VIOLENT. AND HAVE YOU EXPLAINED TO HIM HIS CONSTITUTIONAL RIGHTS?

A. YES.

Q. AND DO YOU BELIEVE HE UNDERSTANDS THOSE MATTERS?

A. YES, SIR.

Q. AND HOW HAS HE ADVISED YOU HE WISHES TO PLEAD?

A. GUILTY.

Q. DO YOU CONCUR IN HIS DECISION TO PLEAD GUILTY?

A. YES, SIR.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted.)

EXAMINATION OF ALBERT CLAYTON SMITH, II,BY THE COURT CONTINUES:

Q. MR. SMITH, YOUR ATTORNEY TELLS ME THAT HE HAS EXPLAINED TO YOU THE CHARGES THAT YOU ARE FACING, THE EVIDENCE THE STATE HAS AGAINST YOU, THE POSSIBLE PENALTIES, AND YOUR CONSTITUTIONAL RIGHTS. HE SAYS HE BELIEVES THAT YOU UNDERSTAND ALL OF THOSE MATTERS AND YOU WANT TO PLEAD GUILTY. IS THAT RIGHT?

A. YES, SIR.

Q. NOW, IN ORDER TO PLEAD GUILTY YOU HAVE TO GIVE UP CERTAIN RIGHTS THAT YOU HAVE. THE FIRST OF THESE IS YOUR RIGHT TO REMAIN SILENT. THAT IS YOUR RIGHT TO SAY NOTHING ABOUT THESE CHARGES. YOU CANNOT BE FORCED TO TESTIFY AGAINST YOURSELF. BUT WHEN YOU PLEAD GUILTY YOU GIVE UP THAT RIGHT IN ORDER TO ADMIT THE TRUTH OF THE CHARGES AGAINST YOU.

AND YOU HAVE A RIGHT TO A JURY TRIAL. THAT IS YOUR RIGHT TO HAVE A JURY DETERMINE WHETHER OR NOT YOU ARE, IN FACT, GUILTY OF THESE CHARGES BEYOND A REASONABLE DOUBT. A JURY WOULD BASE ITS DECISION ON THE TESTIMONY AND THE EVIDENCE PUT UP BY THE STATE'S WITNESSES. YOUR ATTORNEY COULD CROSS-EXAMINE THOSE WITNESSES AND CALL WITNESSES ON YOUR

EXAM - ALBERT CLAYTON SMITH, II, BY THE COURT

7

1 OWN BEHALF, AND PUT UP ANY DEFENSE YOU MIGHT HAVE
2 TO THE CHARGES. YOU WOULD BE PRESUMED TO BE
3 INNOCENT IF YOU HAD A JURY TRIAL, THE BURDEN WOULD
4 BE ON THE STATE TO CONVINCE ALL TWELVE JURORS OF
5 YOUR GUILT.

6 DO YOU UNDERSTAND BOTH YOUR RIGHT TO REMAIN SILENT
7 AND YOUR RIGHT TO HAVE A JURY TRIAL?

8 A. YES, YOUR HONOR.

9 Q. DO YOU UNDERSTAND THAT IN ORDER TO PLEAD GUILTY
10 YOU HAVE TO GIVE UP BOTH OF THOSE RIGHTS?

11 A. YES, YOUR HONOR.

12 Q. AND THAT'S WHAT YOU WANT TO DO?

13 A. YES, SIR.

14 Q. YOU DON'T WANT A JURY TRIAL?

15 A. NO, YOUR HONOR.

16 Q. THE INDICTMENT NUMBER 1079, WHICH IS THE ARMED
17 ROBBERY, SAYS THAT ON OR ABOUT THE EIGHTEENTH OF
18 MAY, TWO THOUSAND AND SEVEN, IN ORANGEBURG COUNTY,
19 THAT YOU COMMITTED ROBBERY BY FELONIOUSLY TAKING
20 FROM THE PERSON OR PRESENCE OF THE VICTIM, HATTIE
21 PEARL HUNTER, BY MEANS OF FORCE OR INTIMIDATION
22 WHILE YOU WERE ARMED WITH A DEADLY WEAPON SOME
23 CHECKS, TWO CHECKS WITH INTENT TO PERMANENTLY
24 DEPRIVE THE OWNER OF THOSE CHECKS. DO YOU
25 UNDERSTAND THAT CHARGE?

1 A. YES, YOUR HONOR.

2 Q. HOW DO YOU PLEAD TO THAT CHARGE?

3 A. GUILTY.

4 Q. INDICTMENT 1080 SAYS THAT ON OR ABOUT MAY THE
5 EIGHTEENTH, TWO THOUSAND AND SEVEN, IN ORANGEBURG
6 COUNTY, THAT WITH MALICE AFORETHOUGHT, THAT YOU
7 KILLED HATTIE PEARL HUNTER BY MEANS OF STABBING
8 HER WITH A KNIFE AND THAT SHE DIED IN ORANGEBURG
9 COUNTY AS A RESULT OF THAT STABBING. DO YOU
10 UNDERSTAND THAT CHARGE?

11 A. YES, YOUR HONOR.

12 Q. HOW DO YOU PLEAD TO THAT CHARGE?

13 A. GUILTY.

14 Q. NOW, HAS ANYBODY PROMISED YOU ANYTHING OR
15 THREATENED YOU TO GET YOU TO PLEAD GUILTY?

16 A. NO, YOUR HONOR.

17 Q. ARE YOU SATISFIED WITH YOUR ATTORNEY?

18 A. YES.

19 Q. DID YOU TELL HIM EVERYTHING ABOUT BOTH OF THESE
20 CHARGES SO THAT HE COULD GIVE YOU PROPER ADVICE?

21 A. YES, YOUR HONOR.

22 Q. HAS HE FAILED TO DO ANYTHING WHICH YOU THINK HE
23 NEEDS TO DO TO HELP YOU IN THIS CASE?

24 A. NO, YOUR HONOR.

25 Q. DO YOU NEED ANY ADDITIONAL TIME TO TALK WITH HIM?

EXAM - ALBERT CLAYTON SMITH, II, BY THE COURT

9

1 A. NO, YOUR HONOR.

2 Q. HAVE YOU UNDERSTOOD ALL OF THE QUESTIONS THAT I
3 HAVE ASKED YOU?

4 A. YES, YOUR HONOR.

5 Q. HAVE YOU ANSWERED THEM TRUTHFULLY?

6 A. YES, YOUR HONOR.

7 Q. DO YOU UNDERSTAND IF YOU WANTED TO FILE AN APPEAL
8 IN THIS CASE YOU WOULD HAVE TO DO THAT WITHIN TEN
9 DAYS?

10 A. YES, YOUR HONOR.

11 THE COURT: ALRIGHT, I WANT TO HEAR
12 THE FACTS FROM THE SOLICITOR BEFORE I ACCEPT THE PLEA,
13 AND THEN -- I JUST WANT TO HEAR THE FACTS NOW, AND THEN
14 I'LL HEAR FROM ANYBODY ELSE WHO WANTS TO SPEAK. GO
15 AHEAD.

16 SOLICITOR BURBAGE: YES, SIR, YOUR
17 HONOR. THIS INCIDENT OCCURRED ON MAY THE EIGHTEENTH OF
18 TWO THOUSAND AND SEVEN AT THE HOME OF HATTIE HUNTER AT
19 HERE IN ORANGEBURG
20 COUNTY, ORANGEBURG, SOUTH CAROLINA. YOUR HONOR, MR.
21 KINARD, A JESSIE KINARD CAME OVER TO THE HOME TO
22 DISCOVER THAT MRS. HUNTER'S CAR WAS IN THE DRIVEWAY,
23 THAT THE WINDOW WAS BUSTED, THAT THERE WAS A T.V. ON.
24 THEY WERE PLANNING TO GO TO SANTEE THAT DAY AND SHE HAD
25 NEVER HEARD FROM HER THAT DAY. AND HE THEN CALLED LAW

1 ENFORCEMENT AND THE OFFICERS HAD TO GO IN THROUGH THE
2 WINDOW, YOUR HONOR. THEY THEN FOUND MRS. HATTIE HUNTER
3 LYING ON HER BATHROOM FLOOR TOWARDS THE HALLWAY. YOUR
4 HONOR, SHE HAD, SHE -- THE AUTOPSY REVEALED THAT SHE HAD
5 FIFTY-THREE TOTAL STAB WOUNDS, SIX OF WHICH WERE POST
6 MORTEM, YOUR HONOR. THERE WERE STAB WOUNDS TO HER
7 TORSO, HER ARMS, LEGS, NECK AND HER HEAD. SHE HAD
8 MULTIPLE STAB WOUNDS TO HER HEAD, YOUR HONOR, AND FATAL
9 WOUNDS BEING IN HER ABDOMEN AND HER CHEST. YOUR HONOR,
10 IT WAS SHORTLY AFTER THIS INVESTIGATORS WERE ABLE TO
11 DEVELOP THE DEFENDANT AS A SUSPECT. THEY SPOKE WITH A
12 NUMBER OF WITNESSES WHO CAME FORTH STATING THAT THE
13 VICTIM HAD TALKED TO THEM IN THE WEEKS PRIOR ASKING FOR
14 MORE ASSISTANCE. SHE HAD BEEN KNOWN TO GIVE HIM MONEY.
15 SHE HAD STATED TO SOME OF THOSE WITNESSES THAT SHE WAS
16 AFRAID OF THE DEFENDANT, THAT SHE WAS TIRED OF HIM
17 ASKING FOR MONEY AND SHE WAS ASKING FOR SOME HELP, JUST
18 BASICALLY INDICATING TO THEM THAT SHE WAS TIRED OF HIM
19 ASKING FOR MONEY AND WAS GOING TO TELL HIM TO STOP.
20 YOUR HONOR, ALSO, SOME NEIGHBORS SAW THE DEFENDANT'S
21 VEHICLE, OR SAW A VEHICLE MATCHING THE DESCRIPTION OF
22 THE DEFENDANT'S VEHICLE, IT WAS A WHITE MITSUBISHI, IN
23 THE DRIVEWAY IN THE MIDDLE OF THE DAY OVER AT MS.
24 HUNTER'S HOUSE. ALSO, YOUR HONOR, THAT SAME DAY THE
25 DEFENDANT CASHED CHECKS THAT DAY THAT WERE ON AN ACCOUNT

1 OF MS. HATTIE HUNTER'S. IT WAS WRITTEN OUT TO ALBERT
2 SMITH BEARING A FORGED SIGNATURE, AND HE WENT TO THE
3 BANK AND CASHED THAT CHECK, YOUR HONOR. THERE WAS VIDEO
4 EVIDENCE OF THAT, YOUR HONOR, AND ON THAT VIDEO, FROM
5 THE STILL PHOTOS, YOUR HONOR, ONE OF HIS CHILDREN WAS
6 WITH HIM, AT LEAST ONE OF HIS CHILDREN WAS WITH HIM WHEN
7 HE WENT TO CASH THAT CHECK LATER THAT DAY, AFTER THIS
8 INCIDENT. HE ALSO WROTE ANOTHER CHECK, AS WITNESSES
9 PROVIDED INFORMATION, TO PAY HIS RENT. ANOTHER WITNESS
10 WAS ABLE TO SAY THAT HE HAD COME AND PAID HIS RENT WITH
11 ANOTHER ONE OF THESE CHECKS FROM MS. HUNTER'S HOME.
12 YOUR HONOR, THEY GOT A SEARCH WARRANT, THE OFFICERS DID,
13 ON MAY THE NINETEENTH OF TWO THOUSAND AND SEVEN. THEY
14 THEN WENT TO THE DEFENDANT'S RESIDENCE. YOUR HONOR, THEY
15 FOUND A CARD FOR A DOCTOR'S APPOINTMENT BELONGING TO MS.
16 HATTIE HUNTER AT THAT RESIDENCE. THEY ALSO WERE ABLE TO
17 TAKE A NUMBER OF ITEMS AND THOSE WERE TESTED THROUGH
18 SLED, YOUR HONOR. WE HAD A CUTTING FROM A LEFT SHOE,
19 THE RIGHT SHOE, SOME PANTS OF HIS, AS WELL AS A SWAB
20 FROM THE CENTER CONSOLE OF THE MITSUBISHI THAT WAS AT
21 HIS RESIDENCE, ALL OF THOSE WITH MS. HATTIE HUNTER'S
22 BLOOD ON THEM, YOUR HONOR. HE THEN ALSO GIVES A WRITTEN
23 STATEMENT. HE GAVE A WRITTEN STATEMENT ADMITTING THAT
24 HE KILLED HER, AND YOUR HONOR, IN HIS STATEMENT HE
25 INDICATES THAT HIS CHILDREN WERE IN THE CAR. HE WENT

1 INSIDE TO GIVE MS. HUNTER THIS GREETING CARD, AND WHEN
2 HE WENT IN, AND THROUGH HIS STATEMENT, HE THEN GOT THE
3 KNIFE AND THAT HE THEN STABBED HER TO DEATH, YOUR HONOR.
4 HE BASICALLY TOOK THE TWO CHECKS. HE INDICATED HE TOOK
5 THOSE CHECKS, CASHED ONE OF THEM, BOUGHT SOME NEWPORTS,
6 KIND OF WENT BACK HOME THAT NIGHT, HAD SOME DINNER WITH
7 HIS WIFE, WATCHED A BALL GAME, AND HE SPOKE WITH HIS
8 GRANDPARENTS AND HIS PARENTS WHO CALLED TO LET HIM KNOW
9 THAT MS. HUNTER HAD PASSED AWAY, AND THEN HE WENT ON TO
10 BED. THOSE ARE THE EXTENT OF THE FACTS, YOUR HONOR, AND
11 -- THAT'S THE EXTENT OF THE FACTS IN THE CASE.

12 THE COURT: ALRIGHT. I'LL ACCEPT
13 THE PLEA, I FIND A SUBSTANTIAL FACTUAL BASIS FOR THE
14 PLEA, I FIND HIS DECISION TO PLEAD GUILTY IS FREELY AND
15 VOLUNTARILY MADE, HE HAS KNOWINGLY AND INTELLIGENTLY
16 WAIVED HIS RIGHT TO A JURY TRIAL, AND HE'S HAD THE
17 SERVICES OF AN ATTORNEY WITH WHOM HE SAYS HE'S
18 SATISFIED.

19 YES, SIR, I'LL BE GLAD TO HEAR FROM
20 ANYBODY WHO WANTS TO SPEAK ON BEHALF OF THE VICTIM, AND
21 THEN ANYBODY WHO WANTS TO SPEAK ON BEHALF OF THE
22 DEFENDANT.

23 SOLICITOR PASCOE: MAY IT PLEASE THE
24 COURT.

25 THE COURT: YES, SIR.

1 SOLICITOR PASCOE: THANK YOU, YOUR
2 HONOR. I'D LIKE TO POINT OUT THAT SHERIFF LARRY
3 WILLIAMS IS IN THE COURTROOM, YOUR HONOR. I JUST WANT TO
4 POINT THAT OUT BECAUSE I WANT TO PUBLICLY COMMEND HIM
5 AND THANK HIM FOR THE OUTSTANDING JOB HIS AGENCY DID IN
6 THE ARREST OF MR. SMITH. YOU HEARD ABOUT SOME OF THE
7 EVIDENCE THEY COLLECTED FROM THE PHOTOGRAPHS OF HIM
8 CASHING THE CHECKS, STATEMENTS FROM WITNESSES, AND THE
9 BLOOD EVIDENCE, AND THE CONFESSION THAT THEY GOT FROM
10 THE DEFENDANT MAKING THIS A VERY STRONG CASE, THANKS TO
11 THE SHERIFF AND HIS AGENCY.

12 THE COURT: ALRIGHT, SIR.

13 SOLICITOR PASCOE: YOUR HONOR, MS.
14 HATTIE HUNTER DIDN'T HAVE ANY BLOOD RELATIVES IN SOUTH
15 CAROLINA. SHE DID HAVE TWO BLOOD RELATIVES IN NORTH
16 CAROLINA, A LOVING NIECE AND NEPHEW THAT ARE GOING TO BE
17 HEARD, BUT I WANTED YOU TO SEE, SHE HAD A LOT OF FAMILY
18 IN SOUTH CAROLINA. AND THIS IS JUST A FRACTION OF THE
19 NUMBER OF PEOPLE THAT WERE CALLING ME ON A DAILY AND
20 WEEKLY BASIS ASKING ME ABOUT THE STATUS OF THIS CASE
21 BECAUSE OF HOW MUCH THEY LOVED MS. HATTIE HUNTER.

22 BRIEFLY, I'D LIKE TO MAKE ONE
23 REQUEST. YOUR HONOR HAS HEARD THE FACTS OF THE CASE,
24 HOW BRUTAL THIS WAS. I WOULD ASK THE COURT TO CONSIDER
25 A VERY SEVERE SENTENCE, A HARSH SENTENCE, POSSIBLY A

1 LIFE SENTENCE FOR THIS DEFENDANT, BECAUSE HE LITERALLY
2 BUTCHERED THIS WOMAN, YOUR HONOR. HE STABBED HER FIFTY-
3 THREE TIMES, A WOMAN THAT GAVE HIM MONEY ON A WEEKLY
4 BASIS HERSELF, WHENEVER HE NEEDED SOMETHING SHE GAVE IT
5 TO HIM, AND HE KILLED HER. FORTY-SIX OR FORTY-SEVEN OF
6 THOSE STAB WOUNDS WERE PRE-MORTEM. SO, I WOULD ASK YOUR
7 HONOR TO CONSIDER THAT IN THE SENTENCING.

8 THE COURT: ALRIGHT, SIR.

9 SOLICITOR PASCOE: AND AMONG THE
10 PEOPLE THAT WANT TO BE HEARD, WE HAVE JUST FOUR OR FIVE,
11 YOUR HONOR. MS. ROSETTA WHITE, THIS IS HATTIE'S NIECE,
12 MS. HATTIE HUNTER'S NIECE.

13 THE COURT: YES, MA'AM.

14 ROSETTA WHITE: YES, SIR.

15 THE COURT: JUST STATE YOUR NAME.
16 THE COURT REPORTER HAS TO WRITE DOWN EVERYTHING THAT'S
17 SAID, SO PLEASE GIVE HER YOUR NAME AND THEN I'LL BE GLAD
18 TO HEAR FROM YOU.

19 ROSETTA WHITE: YES, SIR. MY NAME
20 IS INA ROSETTA WHITE. I AM THE ONLY BLOOD NIECE OF
21 HATTIE PEARL WHITE HUNTER. MAY THE SEVENTEENTH -- MAY
22 THE EIGHTEENTH, I'M SORRY, TWO THOUSAND SEVEN, WAS ONE
23 OF THE HAPPIEST DAYS OF MY LIFE AND ONE OF THE SADDEST
24 DAYS OF MY LIFE. WHEN I CAME HOME FROM SCHOOL I CALLED
25 MY AUNT OVER AND OVER AND OVER AGAIN TO TELL HER THAT

1 THE SENIOR CLASS AT TRITON HIGH SCHOOL HAD DEDICATED
2 THEIR YEAR BOOK TO ME. THE MAIN REASON I WAS CALLING
3 HER OVER AND OVER AGAIN WHICH I NEVER GOT AN ANSWER
4 BECAUSE SHE HAD BEEN BRUTALLY MURDERED THAT SAME DAY,
5 THE REASON I WANTED TO TELL HER BECAUSE ON THE COVER
6 PAGE ON THERE HER NAME WAS IN THERE STATING THAT SHE WAS
7 A RETIRED TEACHER AT SOUTH CAROLINA STATE, AND THAT SHE
8 WAS MY AUNT. AND WE ALWAYS TALKED TO EACH OTHER,
9 SOMETIMES TWO AND THREE TIMES A DAY. HER BEST FRIEND,
10 MINNIE JOHNSON, CAN TELL YOU THAT. WE TALKED TWO OR
11 THREE TIMES A DAY. AND I WANTED TO TELL HER, BECAUSE I
12 KNOW SHE WOULD HAVE GOTTEN A BIG KICK OUT OF IT, I CAN'T
13 EVEN GET A YEAR BOOK DEDICATED TO ME WITHOUT YOU HORNING
14 IN ON IT. ABOUT NINE O'CLOCK I WAS CALLED. MY AUNT WAS
15 VERY LOVING. THE DEFENDANT TOOK AWAY THE LAST, CLOSEST
16 RELATIVE THAT I HAVE ALIVE. I'M AN ONLY CHILD. HER
17 BROTHER WAS MY FATHER. ALL OF THEM ARE DEAD. THAT
18 MEANS I HAVE NO ONE EXCEPT FOR MY FIRST COUSIN THAT'S
19 LEFT OF MY FAMILY MEMBERS OF MY FATHER. MY AUNT, I
20 CANNOT TELL YOU, SHE WAS EVERYTHING TO ME. AND FOR HER
21 LIFE, FOR SOMEONE TO STAB A SEVENTY-NINE YEAR OLD ELEVEN
22 MONTH OLD WOMAN OVER FIFTY TIMES, HE DOES NOT DESERVE TO
23 BE ABLE TO WALK AROUND. SHE WAS A CANCER SURVIVOR AND
24 HE TOOK HER AWAY FROM ME, MY FAMILY, THE COMMUNITY. HE
25 DOES NOT DESERVE TO HAVE A LIFE. HE SHOULD NOT BE ABLE

1 -- THE CRIME IS JUST UNSPEAKABLE. EVERYTHING I HAD IS
2 GONE.

3 THE COURT: THANK YOU, MA'AM.

4 SOLICITOR PASCOE: MR. WALTER
5 SEABROOKS, YOUR HONOR.

6 WALTER SEABROOKS: GOOD AFTERNOON.

7 THE COURT: GOOD AFTERNOON.

8 WALTER SEABROOKS: YOUR HONOR, I'M
9 PERHAPS, I DON'T KNOW WHO ELSE IS GOING TO SPEAK, BUT
10 I'M ONE OF PROBABLY HUNDREDS OF STUDENTS THAT MS. HUNTER
11 NOT ONLY TAUGHT BUT ADOPTED. I WAS ONE THAT SHE ADOPTED
12 AND SORT OF KIND OF CARRIED ON AS HER SON. BUT SPEAKING
13 ON BEHALF OF THE STUDENTS AND CERTAINLY THE INVOLVEMENT
14 IN THE ROLE THAT SHE PLAYED IN SO MANY LIVES NOT ONLY IN
15 ORANGEBURG BUT JUST THROUGHOUT THE SOUTHEASTER AREA,
16 BASED ON THE WHAT HAD HAPPENED AND THE CIRCUMSTANCES, IT
17 WAS A ROCKET SITUATION TO MY LIFE THAT WILL NEVER BE THE
18 SAME. AND CERTAINLY, BEING A GOD FEARING PERSON,
19 UNDERSTANDING THAT WE DON'T HAVE THE RIGHT TO TAKE AND
20 GIVE LIFE, I THINK ONE OF THINGS THAT BEEN HAPPENING,
21 AND I THINK MERCY HAS BEEN SHOWN WITH THE POSSIBILITY AS
22 IT RELATES TO THE PERSON THAT COMMITTED THIS CRIME, THE
23 MERE FACT THAT HE HAS AN OPPORTUNITY FOR LIFE IN PRISON,
24 AND I CAN'T SEE, BASED ON THE NATURE OF THIS CRIME, THIS
25 PERSON HAVING AN OPPORTUNITY TO BE OUTSIDE OF THAT ROLE.

1 SO, I PRAY THAT GOD WILL HAVE MERCY ON THAT PERSON'S
2 SOUL AS WELL AS YOU AS THE JUDGE LOOKING AMONG THE
3 CIRCUMSTANCES OF THE CRIME, AND CERTAINLY, JUSTICE WILL
4 BE SERVED. THANK YOU.

5 THE COURT: AND YOUR NAME, SIR?

6 WALTER SEABROOKS: WALTER SEABROOKS.

7 THE COURT: WALTER SEABROOKS?

8 WALTER SEABROOKS: YES, SIR.

9 THE COURT: THANK YOU, SIR.

10 SOLICITOR PASCOE: AND MR. WILLIE
11 THOMPSON, YOUR HONOR.

12 WILLIE THOMPSON: MY NAME IS WILLIE
13 J, INITIAL J., THOMPSON.

14 THE COURT: THANK YOU, SIR.

15 WILLIE THOMPSON: JUDGE WILLIAMSON,
16 OR WILLIAMS, - - -

17 THE COURT: YES, SIR.

18 WILLIE THOMPSON: I WOULD JUST LIKE
19 TO MAKE A FEW STATEMENTS, OR A STATEMENT RATHER THAN DO
20 TOO MUCH DELIBERATING ON ANYTHING SPECIFIC. I WOULD
21 LIKE TO SAY THAT I KNEW HATTIE VERY WELL. I KNEW HER
22 HUSBAND BEFORE HE DIED. I AM A MEMBER OF PARLERDALE. MY
23 ADDRESS IF
24 ORANGEBURG, OF COURSE, AND THAT IS IN PARLERDALE.
25 HATTIE WAS LIKE A FAMILY TO THE WHOLE COMMUNITY. I HEARD

1 IT SAID THAT SHE DIDN'T HAVE ANY BLOOD RELATIVES IN THIS
2 TWO TOO MUCH, BUT CERTAINLY, THE WHOLE COMMUNITY IN
3 PARLERDALE WAS HER FAMILY. I WAS ASKED TO TAKE A POLL
4 -- OH, I DON'T KNOW IF I SAID THIS, I AM PRESIDENT OF
5 THE CIVIC ASSOCIATION, PARLERDALE ASSOCIATION, SO I TOOK
6 A POLL OF OVER THIRTY FAMILIES AND THE POLL WAS TO
7 WHETHER THE COMMUNITY, TO SEE HOW THEY FELT, DID YOU
8 WANT THE DEATH, WANT THEM TO GO FOR THE DEATH PENALTY OR
9 PAROLE -- NOT PAROLE, LIFE WITHOUT PAROLE. AND THIRTY
10 SOME ODD HOUSEHOLDS SAID, LET'S PUSH FOR THE LIFE
11 WITHOUT PAROLE, NOT THE DEATH PENALTY. OH, WE DID HAVE
12 ABOUT FIVE FAMILIES SAYING, WE WANT THE DEATH PENALTY.
13 SO, THE MAJORITY OF PARLERDALE IS HOPING THAT THE YOUNG
14 MAN WHO IS ACCUSED -- OH, INCIDENTALLY, I WANTED TO SAY
15 THIS, I DON'T KNOW THIS YOUNG MAN. THIS IS MY FIRST
16 TIME ACTUALLY SEEING HIM HERE, BUT EVERYBODY KNOWS THAT
17 HE DID A DASTARDLY ACT. I THINK I'VE MADE MY STATEMENT,
18 THE MAJORITY OF THE RESIDENTS IS HOPING THAT HE GETS
19 LIFE WITHOUT PAROLE. THANK YOU.

20 THE COURT: THANK YOU, SIR.

21 SOLICITOR PASCOE: THANK YOU, JUDGE
22 WILLIAMS.

23 THE COURT: THAT'S ALL?

24 SOLICITOR PASCOE: YES, SIR. THANK
25 YOU.

1 THE COURT: ALRIGHT, MR. WALTERS.

2 MR. WALTERS: MAY IT PLEASE THE
3 COURT. YOUR HONOR, AS MY CLIENT STATED, HE'S TWENTY-
4 NINE YEARS OLD, ALBERT CLAYTON SMITH, THE SECOND. YOUR
5 HONOR, HE STANDS BEFORE YOU THE FATHER OF OUR CHILDREN.
6 ONE CHILD IS ELEVEN, ANOTHER IS SEVEN, ANOTHER CHILD IS
7 SIX, AND THE OTHER IS FIVE, FOUR BOYS. YOUR HONOR, HE'S
8 A MEMBER OF NEW MOUNT ZION BAPTIST CHURCH. UNDER THE
9 CIRCUMSTANCES, I KNOW YOUR HONOR IN THE DISPENSATION OF
10 JUSTICE YOU HAVE TO CONSIDER THE SERIOUSNESS OF THE
11 OFFENSES THAT'S BEFORE YOU. I'D ASK THAT YOU ALSO
12 CONSIDER, AND IN NO WAY ARE WE ATTEMPTING TO MITIGATE
13 WHAT HAPPENED TO MS HATTIE HUNTER. MS. HUNTER WAS WELL
14 KNOWN IN THIS COMMUNITY, SHE WAS WELL RESPECTED AT SOUTH
15 CAROLINA STATE UNIVERSITY, SHE CONTRIBUTED TO MANY, MANY
16 PEOPLE'S LIVES. YOUR HONOR, MY CLIENT IS BEFORE YOU AND
17 NUMBER ONE, HE'S ACCEPTED RESPONSIBILITY FOR WHAT
18 OCCURRED. I'D ASK THAT YOU ALSO CONSIDER HIS
19 YOUTHFULNESS, BEING TWENTY-NINE YEARS OLD. IN ADDITION
20 TO THAT, HE HAS NO PRIOR RECORD. AND MANY OF THE
21 DEFENDANTS, WHEN YOU WERE SOLICITOR AND I WAS A PUBLIC
22 DEFENDER, AND MANY OF THE PEOPLE THAT WE HANDLED THAT
23 COME THROUGH THE SYSTEM, THIS YOUNG MAN THAT STANDS
24 BEFORE YOU, IT'S REALLY ODD. HE HAS NO PRIOR RECORD,
25 NEVER BEEN IN TROUBLE BEFORE, AND UNDER THE

1 CIRCUMSTANCES WE HAVE THIS EVENT, THIS TERRIBLE EVENT
2 THAT HAS OCCURRED. I'D ASK THAT YOU CONSIDER, NUMBER
3 ONE, THAT HE STILL HAS SOME GOOD WITHIN HIM. HE STILL
4 CAN CONTRIBUTE TO ALL FOUR OF THOSE BOYS. THERE'S A
5 LOSS OF MS. HATTIE HUNTER BEFORE THE COURT, BUT IN
6 ADDITION TO THAT, THERE'S ALSO THE LOSS THAT WILL OCCUR
7 WITHIN THIS FAMILY AND THESE BOYS WILL BE WITHOUT A
8 FATHER. IN NO WAY ARE WE ATTEMPTING TO MITIGATE WHAT
9 HAPPENED TO MS. HUNTER. IN ADDITION TO THAT, YOUR HONOR,
10 UNDER THE CIRCUMSTANCES WE'RE LOOKING FOR MERCY IN YOUR
11 DISPENSATION OF JUSTICE. IS THERE A POSSIBILITY THAT YOU
12 COULD SEE WITH HIS YOUTHFULNESS AND NO PRIOR
13 INDISCRETIONS, OR THE POSSIBILITY THAT THERE IS SOME
14 GOOD THAT HE CAN CONTRIBUTE TO HIS FAMILY. WE'RE AWARE
15 OF THE FACT THAT THIS IS A HEINOUS CRIME WHEN WE TALK
16 ABOUT THE STAB WOUNDS, WE TALK ABOUT WHAT OCCURRED
17 WITHIN THAT HOME, AND WE'RE ADMITTING OUR RESPONSIBILITY
18 FOR THAT. UNDER THE CIRCUMSTANCES, YOUR HONOR, IF WE
19 LOOK AT THE TOTALITY OF WHAT'S OCCURRED, IT'S SIMPLY A
20 VERY BAD SITUATION. I WOULD ASK THAT THE COURT, AND YOUR
21 HONOR IS WELL KNOWN FOR ATTEMPTING TO REHABILITATE
22 PEOPLE AND ATTEMPTING TO ALLOW PEOPLE TO, NUMBER ONE,
23 ACCEPT RESPONSIBILITY FOR WHAT THEY'VE DONE, AND NUMBER
24 TWO, IN MY TWENTY YEARS OF PRACTICING LAW I KNOW YOU'VE
25 ALWAYS LOOKED FOR THE GOOD IN PEOPLE DESPITE WHAT

1 THEY'VE DONE. AND THERE ARE MANY, MANY PEOPLE THAT ARE
2 BEFORE THE COURT TODAY, AND ALL OF US KNOW EACH OTHER.
3 AND THESE ARE VERY GOOD PEOPLE THAT ARE SITTING IN THE
4 JURY BOX, AND MS. HUNTER CONTRIBUTED TO ALL OF THEIR
5 LIVES. MS. HUNTER CONTRIBUTED TO MY CLIENT'S LIFE, AND
6 WE HAVE A TERRIBLE EVENT THAT HAS OCCURRED. I'D ASK THAT
7 YOU CONSIDER WHAT I'VE SAID, AND WE HAVE SOME FAMILY
8 MEMBERS HERE TODAY THAT WILL SPEAK ON BEHALF OF THIS
9 YOUNG MAN. AND I WOULD JUST EMPHASIZE AGAIN, HE'S NEVER
10 COMMITTED A CRIME BEFORE, HE'S ADMITTED HIS
11 RESPONSIBILITY, AND OF COURSE, UNDER THE CIRCUMSTANCES,
12 THERE'S A TERRIBLE LOSS. AND HE WILL SPEAK AND ADDRESS
13 WHAT HE HAS DONE, AND MOST IMPORTANTLY, WE OFFER AN
14 APOLOGY TO ALL THE VICTIMS IN THIS CASE. IF WE WANTED
15 TO FILL THIS ROOM WITH EVERYBODY THAT HATTIE HUNTER HAS
16 TOUCHED WE'D HAVE TO GO DOWN PROBABLY TO THE STADIUM AT
17 SOUTH CAROLINA STATE UNIVERSITY. SO, IT'S A BAD EVENT.
18 I'D ASK THAT YOU PLEASE LISTEN TO THE FAMILY MEMBERS,
19 AND OF COURSE, HE'S STANDING BEFORE YOU SAYING, I WILL
20 ACCEPT RESPONSIBILITY FOR WHAT I'VE DONE.

21 YOUR HONOR, AT THIS TIME, I WOULD
22 CALL HIS FATHER FORWARD, MR. ALBERT CLAYTON SMITH,
23 SENIOR.

24 THE COURT: YES, SIR. YOU CAN COME
25 RIGHT UP THERE AND STAND BY YOUR SON. YOU CAN STAND

1 RIGHT THERE WILL BE FINE. JUST STATE YOUR NAME SO THE
2 COURT REPORTER CAN GET IT DOWN.

3 ALBERT CLAYTON SMITH: MY NAME IS
4 ALBERT CLAYTON SMITH. ALBERT CLAYTON SMITH, THE SECOND,
5 IS MY SON. AND FIRST AND FOREMOST I'D LIKE TO OFFER MY
6 CONDOLENCES, MY SINCERE CONDOLENCES FOR MS. HUNTER.
7 I'VE KNOWN MS. HUNTER SINCE NINETEEN SEVENTY-FIVE. I'VE
8 KNOWN DR. HUNTER, HE WAS MY ATHLETIC DIRECTOR, I WAS AN
9 ATHLETIC AT SOUTH CAROLINA STATE. I CAN'T SAY ENOUGH
10 THAT WILL COVER ANY OF THE SORROW THAT YOU HAVE. I DID
11 WANT TO TALK A LITTLE BIT ABOUT MY SON. MY SON, HE'S
12 TWENTY-NINE YEARS OLD. HE'S ONE OF THE MOST WONDERFUL
13 AND CARING MEN THAT I HAVE EVER KNOWN. HE HAS NEVER
14 BEEN ONE BIT OF TROUBLE GROWING UP. I NEVER HAD TO GO
15 TO JAIL TO GET HIM, I NEVER HAD TO GO LOOKING FOR HIM
16 BECAUSE HE WAS OUT LATE. I NEVER HAD TO GO LOOKING FOR
17 HIM BECAUSE HE WAS OUT DRINKING. HE WAS A WONDERFUL KID
18 AND A WONDERFUL MAN. I DON'T KNOW HOW WE GOT TO THIS
19 POINT ON THAT FATEFUL DAY THAT THE EVENT OCCURRED. BUT
20 I AM ASKING THAT YOU SEE IN HIS HEART THAT, FIRST OF
21 ALL, HE IS VERY REMORSEFUL, HE HAS BEEN REMORSEFUL FROM
22 THE VERY BEGINNING. HE IS ALSO ACCEPTING HIS
23 RESPONSIBILITY FOR WHAT HAS OCCURRED, AND I'M JUST
24 ASKING THAT YOU SEE THAT IN HIS HEART, THAT HE HAS FOUR
25 BOYS WHO NOW KNOW THAT THEY CAN BE PRESIDENT OR

23

1 SOMETHING, WHATEVER THEY WANT TO BE. AND MY SON CAN
2 CONTRIBUTE TO THEIR LIVES AND OTHER LIVES IF GIVEN THE
3 OPPORTUNITY AFTER HIS ACCEPTANCES OF HIS RESPONSIBILITY
4 FOR THE EVENT THAT HAS OCCURRED. AND AGAIN, I DID WANT
5 TO SAY I AM VERY SORRY FOR THE LOSS THAT YOU'VE
6 SUFFERED.

7 THE COURT: THANK YOU, SIR.

8 ANGELA GRAY: I'M ANGELA GRAY, I'M
9 AL'S MOM. I DID NOT KNOW MS. HUNTER, BUT, TOO, AM TRULY
10 SORRY. WE DON'T KNOW WHAT HAPPENED, BUT MY CHILD HAS
11 NEVER GIVEN ME ANY TROUBLE. HE WAS A WONDERFUL CHILD
12 GROWING UP, WONDERFUL STUDENT. HE COMPOSES MUSIC, HE
13 HAS A BIG HEART. HE HELPS PEOPLE, HE HELPED PEOPLE IN
14 THE COMMUNITY THROUGH THE CHURCH GROWING UP. I'M ASKING
15 THAT YOU GRANT HIM MERCY. I KNOW WHAT HAPPENED WAS BAD,
16 BUT HE HAS FOUR BEAUTIFUL CHILDREN, AND THEY'RE LOST
17 WITHOUT HIM NOW. I'M SORRY.

18 THE COURT: THANK YOU, MA'AM.

19 ANGELA SMITH: I'M ANGELA SMITH, I'M
20 THE AUNT OF ALBERT.

21 THE COURT: CAN YOU SPEAK A LITTLE
22 LOUDER?

23 ANGELA SMITH: I'M HIS AUNT, I'M
24 ALBERT'S AUNT.

25 THE COURT: OKAY.

1 ANGELA SMITH: I DO WANT TO CONVEY
2 MY CONDOLENCES TO THE FAMILY. I DID KNOW MS. HUNTER.
3 SHE WAS A WONDERFUL, WONDERFUL WOMAN. SHE WAS A GOOD
4 FRIEND TO OUR FAMILY AND A GOOD FRIEND TO OUR COMMUNITY.
5 I DON'T, I CAN'T EXPLAIN THE EVENT THAT OCCURRED, I
6 DON'T UNDERSTAND THE EVENT THAT OCCURRED. I DO KNOW
7 ALBERT'S ALWAYS BEEN A WONDERFUL PERSON. I DON'T KNOW
8 HOW HE GOT TO THAT. HE LOVES HIS MUSIC AND HE GAVE SO
9 MUCH TO HIS KIDS. HE LOVES THEM. HE LOVED MS. HUNTER.
10 I DON'T KNOW HOW ALBERT GOT HERE. I DO THINK HE HAS A
11 LOT TO OFFER THEM STILL. HE TRULY HAS A GIFT AND HE
12 STILL HAS MORE TO OFFER. I DO ASK THAT YOU WOULD GIVE
13 HIM MERCY. I AM VERY SORRY FOR THE LOSS OF MS. HUNTER,
14 SHE WAS WONDERFUL, BUT I DO KNOW THOSE BOYS THAT DO NEED
15 HIM. IF HE CAN'T BE PHYSICALLY WITH THEM, HE CAN GIVE
16 THEM GUIDANCE. THANK YOU.

17 THE COURT: THANK YOU, MA'AM.

18 YES, MA'AM.

19 LASHAWN FOGLE: MY NAME IS LASHAWN
20 FOGLE. ALBERT AND I MARRIED ON JUNE THE SEVENTH, TWO
21 THOUSAND THREE. WE HAVE FOUR BEAUTIFUL BOYS. I WANT TO
22 SAY MY CONDOLENCES ALSO TO THE FAMILY. I ALSO WANT TO
23 TELL YOU SHE WAS MY TEACHER, SHE TAUGHT ME MUSIC. AND I
24 REMEMBER ONE TIME I TOOK MY OLDEST TO CLASS, AND WHERE
25 OTHER PROFESSORS WOULD TURN THE STUDENT AWAY IF THEY HAD

1 A CHILD, SHE SAT MY SON ON HER LAP AND TAUGHT CLASS, THE
2 WHOLE CLASS WITH HIM. AND EVERY TIME I SAW HER SHE
3 ALWAYS ASKED, HOW ARE THE CHILDREN? SHE LOVED THE KIDS.
4 BUT I DO GIVE MY CONDOLENCES. ALBERT IS A LOVING
5 FATHER. MANY TIMES YOU WOULD SEE HIM WITH THE KIDS
6 BECAUSE I WORK ALL THE TIME. HE WOULD HELP WITH
7 HOMEWORK, ANYTHING THEY WOULD DO HE WOULD HELP. HE WOULD
8 SPEND HIS LIFE WITH THEM. THEY ARE BEAUTIFUL KIDS, THEY
9 ASK FOR THEIR DADDY, THEY WANT TO GO SEE THEIR DADDY ALL
10 THE TIME.

11 THE COURT: THANK YOU, MA'AM.

12 MR. WALTERS?

13 MR. WALTERS: THE DEFENDANT WOULD
14 LIKE TO SPEAK, YOUR HONOR.

15 THE COURT: ALRIGHT.

16 DEFENDANT SMITH: FIRST I WOULD JUST
17 LIKE TO SAY TO THE FAMILY MEMBERS, FORMER STUDENTS AND
18 FRIENDS OF MS. HATTIE HUNTER, I AM TRULY SORRY FOR THE
19 EVENTS THAT OCCURRED ON MAY EIGHTEENTH, TWO THOUSAND
20 SEVEN. THERE'S NOTHING I CAN SAY TODAY, TOMORROW OR ANY
21 OTHER DAY TO TAKE BACK WHAT HAPPENED. I AM TRULY SORRY.
22 I JUST HOPE THAT YOU CAN FIND IT IN YOUR HEARTS TO
23 FORGIVE ME. I'M NOT AN EVIL PERSON, I'M NOT -- I HAVE A
24 KIND HEART. THIS WAS A TRAGIC EVENT AND I'VE BEEN
25 PAYING FOR IT EVER SINCE. I JUST ASK YOU TO FORGIVE ME,

1 PLEASE. YOUR HONOR, I'M STANDING HERE BEFORE YOU A
2 HUMBLE MAN WITH A BROKEN HEART AND A DEEP, DEEP CARING
3 SOUL. I JUST ASK YOU TO GRANT ME LENIENCY. I'M TRULY
4 SORRY FOR THE EVENTS THAT HAPPENED THAT DAY. I MISS MY
5 FAMILY, MY KIDS, AND I KNOW THAT I CAN CONTRIBUTE A LOT
6 TO SOCIETY, TO MY KIDS IN SOME WAY. I'VE BEEN -- HE'S
7 GIVEN ME SO MANY BLESSINGS AND I KNOW THAT I CAN GIVE IT
8 BACK AFTER I'VE BEEN -- I JUST ASK YOU TO GRANT ME
9 LENIENCY AND MERCY.

10 THE COURT: THANK YOU, SIR.

11 ANYTHING ELSE, MR. WALTERS?

12 MR. WALTERS: I BELIEVE THAT'S IT,
13 YOUR HONOR.

14 THE COURT: THERE ARE A NUMBER OF
15 REASONS THAT SENTENCE IS IMPOSED BY A COURT. OF COURSE,
16 THE ONE THAT EVERYBODY THINKS ABOUT AND MOST PEOPLE
17 ONLY THINK ABOUT IS PUNISHMENT. BUT THERE ARE OTHER
18 REASONS FOR A SENTENCE. ONE IS TO TRY TO REHABILITATE
19 THE DEFENDANT; ONE IS TO, AS A DETERRENT TO OTHER
20 PEOPLE TO KEEP THEM FROM COMMITTING CRIMES SUCH AS THIS;
21 AND ONE IS TO PROTECT THE PUBLIC FROM ANY FUTURE SUCH
22 CONDUCT BY THE DEFENDANT. IN THIS PARTICULAR CASE I
23 THINK ONLY ONE OF THOSE IS REALLY APPLICABLE AND THAT'S
24 PUNISHMENT. IT'S A TERRIBLE CRIME, IT'S TERRIBLE TO
25 TAKE ANYBODY'S LIFE. IT'S TERRIBLE TO HAVE DONE IT THE

1 WAY THAT YOU DID THAT, MR. SMITH. I DID NOT KNOW MS.
2 HUNTER. I'VE HEARD A LOT ABOUT HER, AND APPARENTLY
3 SHE WAS ALMOST A MOTHER TO THE ENTIRE COMMUNITY. SHE
4 TOOK IN A LOT OF STUDENTS AND OTHERS WHO WERE
5 DISADVANTAGED, COULD NOT, THAT NEEDED THE LOVE THAT SHE
6 COULD GIVE THEM, AND SHE SHOWED THAT LOVE TO THE
7 ENTIRE COMMUNITY EVEN THOUGH SHE HAD NO BLOOD CHILDREN
8 HERSELF. FOR SOME REASON I THINK THAT MS. HUNTER
9 WOULD PROBABLY WANT YOU, MR. SMITH, TO BE ABLE TO SEE A
10 LIGHT AT THE END OF THE TUNNEL, NO MATTER HOW FAINT THAT
11 LIGHT MIGHT BE. AND A LIFE SENTENCE WOULD EXTINGUISH
12 THAT LIGHT COMPLETELY. NOBODY KNOWS HOW LONG YOU'RE
13 GOING TO LIVE. NOBODY KNOWS HOW LONG ANY OF US IS GOING
14 TO LIVE. AND SO, THE SENTENCE THAT I'M GOING TO IMPOSE
15 GIVES YOU A FAINT LIGHT, SOMETHING TO HOPE FOR. WHAT
16 YOU DO WITH YOUR LIFE WHILE YOU ARE SERVING THESE MANY
17 YEARS YOU'RE GOING TO BE IN THE PENITENTIARY IS ENTIRELY
18 UP TO YOU. A LOT OF PEOPLE TRY TO MAKE THEMSELVES,
19 SOMETHING OUT OF THEMSELVES AND ARE SUCCESSFUL IN DOING
20 THAT. AND I HOPE YOU WILL DO THAT, REALIZING THAT YOU
21 ARE SOLELY RESPONSIBLE FOR THE PREDICAMENT YOU FIND
22 YOURSELF IN. I DON'T CLAIM TO HAVE ANY SPECIAL
23 DISPENSATION FROM UP ABOVE OR SPECIAL WISDOM IN THESE
24 MATTERS, BUT THAT'S KIND OF HOW I SEE THIS PARTICULAR
25 CASE.

SENTENCE OF THE COURT

THE SENTENCE ON INDICTMENT 2007-38-1079, ARMED ROBBERY, IS THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF THIRTY YEARS.

ON INDICTMENT 2007-38-1080, THE CRIME OF MURDER, THE SENTENCE OF THE COURT IS THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF FORTY YEARS.

THESE SENTENCES ARE CONCURRENT. YOU WILL GET CREDIT FOR TIME SERVED.

GOOD LUCK TO YOU, SIR.

MR. WALTERS: THANK YOU, YOUR HONOR.

SOLICITOR PASCOE: THANK YOU, YOUR HONOR.

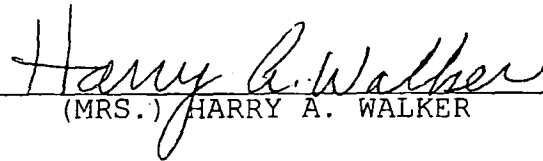
SOLICITOR BURBAGE: THANK YOU, YOUR HONOR.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE ELEVENTH DAY OF FEBRUARY, 2009.

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

DATE: MARCH 30, 2010


(MRS.) HARRY A. WALKER

2010-CP-38-00139

STATE OF SOUTH CAROLINA

County of Orangeburg

In the Court of Common Pleas

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

2010 JAN 26 P 1:06

Albert C. Smith II, #333203
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.APPLICATION FOR
POST-CONVICTION RELIEF**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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention McCormick Correctional Facility, 386 Redemption Way, P3 A174, McCormick, South Carolina, 29879
2. Name and location of Court which imposed sentence Orangeburg County - Court of General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-GS-38-1079, Armed Robbery
 - (b) 2007-GS-38-1080, Murder
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2007-GS-38-1079 - 11 Feb. 09 - 30 year - sentence - concurrent
 - (b) 2007-GS-38-1080 - 11 Feb 09 - 40 year - sentence - concurrent
 - (c) _____

5. 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

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No

7. If you answered "yes" to (6), list

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

i.

ii.

iii.

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

i.

ii.

iii.

(c) the date of each such result:

i.

ii.

iii.

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

i.

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) Was not aware that appeal could be filed on guilty plea

(b)

(c)

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

(a) Ineffective Assistance of Counsel

(b) Subject Matter Jurisdiction

(c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Trial Counsel failed to advise Applicant of his rights under common

(b) Law

(c) Trial Court was not operating in it's proper, original jurisdiction

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NA

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? N/A

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

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

i. Attorney Glen Walters P.O. Box 1346
348 St Paul Street Orangeburg, SC 29116

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

Vacation of both convictions and sentences

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

No

STATE OF SOUTH CAROLINA

County of Darlington

VERIFICATION

I, Albert Clayton Smith, II, 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.

Albert Clayton Smith, II

SWORN to and subscribed before me this 14

day of January, 192010

J C Franklin (L.S.)
Notary Public

My Commission Expires: 12.16.2019

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

I, Albert Clayton Smith, II, 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 therefor.

Albert Clayton Smith, II

Applicant

SWORN or affirmed to and subscribed before me this

14 day of January, 192010

J C Franklin
Notary Public

My Commission Expires 12.16.2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2010-CP-38-0139
	)	
Albert C. Smith, #333203,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 26, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Armed Robbery (2007-GS-38-1079), Murder (2007-GS-38-1080), and Possession of a Weapon During Commission of a Violent Crime (2007-GS-38-1078). Applicant was represented by Glenn Walters, Esquire. On February 11, 2009, the Applicant pled guilty before the Honorable James C. Williams, Jr. Applicant was sentenced to concurrent terms of thirty (30) years imprisonment for Armed Robbery and forty (40) years imprisonment for Murder. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South

Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. "Trial counsel failed to advise Applicant of his rights under common law."
2. Subject matter jurisdiction.
 - a. "Trial court was not operating in its proper, original jurisdiction."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The

indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90. See also S.C. Code § 17-19-20. Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, *supra*.

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

A review of the record clearly indicates that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 472 S.E.2d 38 (S.C. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The respondent moves for summary dismissal pursuant to South Carolina Code Ann. §17-27-70 on the basis that there is no genuine

issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the allegation that the court lacked subject matter jurisdiction be summarily dismissed and an evidentiary hearing be held on Applicant's allegation of ineffective assistance of counsel.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

May 5, 2010.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF ORANGEBURG

CIRCUIT COURT
2006-CP-38-0859

3
4 ALBERT C. SMITH II,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9 Post Conviction Relief Hearing

10 Heard on Wednesday, December 8, 2010

11 Orangeburg, South Carolina

12 BEFORE:

13 THE HONORABLE EDGAR W. DICKSON
14
15

16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
18 Charles T. Brooks III, Esq.

19 Counsel on Behalf of the Respondent, State of SC;
20 Mary S. Williams, Esq.
21
22

23 Cheri L. Young, RPR
24 Circuit Court Reporter
P O Box 1154
25 Aiken, SC 29802-1154

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1 ON WEDNESDAY, DECEMBER 8, 2010 AT 3:51 P.M.:

2 MS. WILLIAMS: Albert Smith.

3 THE COURT: This is -- you're Mr. Albert C.
4 Smith?

5 THE APPLICANT: Yes, sir.

6 THE COURT: Hey, Mr. Smith.

7 THE APPLICANT: How are you?

8 THE COURT: You're represented by Mr. Brooks?

9 THE APPLICANT: Yes, sir.

10 THE COURT: Mr. Brooks, you're ready to proceed
11 on this?

12 MR. BROOKS: I am, Judge. Your Honor, we would
13 call Mr. Smith to the stand.

14 THE COURT: Mr. Smith, if you'd come on up here.

15 MR. BROOKS: Judge, before we begin, my client,
16 he would like to ask the Court for a continuance in this
17 matter.

18 THE COURT: Okay. And the reason for a
19 continuance?

20 MR. BROOKS: Well, on behalf of my client he
21 feels that he's not ready. This is his only bite at the
22 apple. I did explain to him that, you know, I do a fair
23 number of post conviction reliefs.

24 THE COURT: You do more than a fair number.

25 MR. BROOKS: Sometimes. The Court will know that

ALBERT CLAYTON SMITH II - DIRECT

1 I'm being truthful and I told him that I was prepared. I
2 explained all of that to him. Of course, he's got a
3 40-year sentence and --

4 THE COURT: When did he file his post conviction
5 relief?

6 MR. BROOKS: He filed it back in February of '09.

7 MS. WILLIAMS: January 2010, sir.

8 THE COURT: February of 2010?

9 MS. WILLIAMS: January.

10 THE COURT: Oh. January of 2010. So it's
11 been --

12 MR. BROOKS: It is a guilty plea. I did explain
13 to him about that.

14 THE COURT: Okay. You know, we're here.
15 Mr. Walters has been here earlier today. I'm going to
16 deny his motion for continuance. Okay. He can tell me
17 everything now.

18 MR. BROOKS: We'll call Mr. Smith to the stand.

19 THE COURT: Mr. Smith, come on up here, please,
20 sir.

21 ALBERT CLAYTON SMITH II, having been duly sworn,
22 was examined and testified as follows:

23 THE COURT: Thank you, sir. If you'd have a seat
24 and get comfortable. And then, Mr. Smith, I'm going to
25 need for you, once you get comfortable there, if you'd

ALBERT CLAYTON SMITH II - DIRECT

1 just state your full name for the record, sir.

2 THE APPLICANT: Albert Clayton Smith the Second.

3 THE COURT: Thank you, Mr. Smith. Mr. Brooks,
4 your witness.

5 DIRECT EXAMINATION

6 BY MR. BROOKS:

7 Q. All right. Mr. Smith, you had Mr. Walters
8 representing you in this case; correct?

9 A. Correct.

10 Q. And you and I talked about the remedies on your post
11 conviction relief application; is that correct?

12 A. Correct.

13 Q. I want to make sure you understand that if I do what
14 I'm sometimes capable of doing, according to Ms. Williams,
15 and get the Court to grant post conviction relief
16 application, that would put you at a point where you would
17 get a new trial.

18 Of course you could face life or, I don't know,
19 possible death sentence because of what you were charged
20 with. Do you understand that?

21 A. Yes.

22 Q. And knowing that, it's still your desire to get a new
23 trial; is that correct?

24 A. Yes.

25 Q. Okay. Now, you ended up pleading guilty to this

ALBERT CLAYTON SMITH II - DIRECT

1 matter; is that correct?

2 A. Correct.

3 Q. And you received a sentence of 40 years?

4 A. Correct.

5 Q. You filed an application alleging ineffective
6 assistance of counsel against Mr. Walters; is that
7 correct?

8 A. Correct.

9 Q. Now, do you think you had enough time in talking with
10 Mr. Walters in preparing your case?

11 A. I believe we had enough time. I just, the -- it's
12 like I mentioned to you, Mr. Walters, the night before I
13 took the plea I asked him, do you feel that we can win
14 this if we took it to trial.

15 And he was real hesitant and I just went, went with
16 the plea.

17 Q. Okay. Now, do you feel Mr. Walters was ready?

18 A. I don't know if it was the fact he was ready or not.
19 I don't, I don't know, but it was something that made him
20 hesitant. I don't, I don't know.

21 Q. Let me simply or help you out. We're alleging that
22 Mr. Walters was ineffective. That's what you filed in
23 your application.

24 A. Yes.

25 Q. Tell the Court what you think he did that he shouldn't

ALBERT CLAYTON SMITH II - DIRECT

1 have done or didn't do that he should have done.

2 A. Well, I believe that Mr. Walters was pretty much, you
3 know, doing his job, but I just felt that before all of
4 this even started which like I explained to you as far
5 operating out of, you know, the correct jurisdiction. My
6 rights under common law, you know.

7 Q. Elaborate on that.

8 A. The United States Constitution says that the courts
9 operate under equity and morality, maritime and common
10 law. And I didn't know my rights under common law. And
11 didn't know my rights, if I did, I might have withdrawn or
12 squashed (sic) my indictments. I might have withdrew my
13 plea and wanted to go to trial.

14 Q. Okay. Or you might not have pled at all?

15 A. Correct.

16 Q. And gone forward to trial?

17 A. Correct.

18 Q. And you feel that that's something that you feel like
19 the State of South Carolina didn't have jurisdiction even
20 to address your matter?

21 A. I don't believe that it was held in one of those
22 three, oh -- excuse me. Yeah. Held in one of those three
23 jurisdictions.

24 Q. And you think that that's something that Mr. Walters
25 should have raised; is that correct?

ALBERT CLAYTON SMITH II - DIRECT

1 A. I feel it should have been raised. I'm not saying
2 that he did it intentionally but it wasn't, it wasn't
3 raised. I'm not saying that he didn't tell me
4 intentionally. I'm not saying that. I just don't feel
5 that it was raised.

6 Q. All right. Do you feel that you were under duress or
7 coercion when you entered your guilty plea?

8 A. Well, I felt that that was a definite moment, you
9 know, defining moment when he hesitated when I asked him
10 if he could win it, if we could win at trial.

11 Q. As a result of that, you felt compelled --

12 A. That I was, I was more inclined to go ahead with this
13 plea especially when it went on and said if I didn't take
14 the plea the death penalty was going to be put on the
15 table.

16 Q. And, now, if you were able to convince the Court to
17 press the reset button, and start over and you have a new
18 trial and all the evidence that you know of in the case
19 against you --

20 A. Yes.

21 Q. -- do you feel that you would be successful at a
22 trial?

23 A. Yes.

24 Q. And that you would be acquitted?

25 A. Yes.

ALBERT CLAYTON SMITH II - DIRECT

1 Q. And you do understand that the death penalty could be
2 on the table?

3 A. I do.

4 Q. Now, is there anything else you want to tell the Court
5 as to why you should get a new trial? This is the time.

6 A. No. I just feel like I'd like to read a memorandum of
7 law into the record if it please the Court.

8 Q. You're going to do what now?

9 A. Read a memorandum of law into the record.

10 THE COURT: If he has a copy of it, he's welcome
11 to submit it into the record. I'll be glad to read it
12 if -- you got a copy?

13 THE APPLICANT: Yes, sir.

14 THE COURT: How long is it? You can hand it to
15 your attorney at the and if that's the only copy you have
16 we'll make a copy. Okay?

17 THE APPLICANT: Okay.

18 THE COURT: I'm sure it probably defers to the
19 one Mr. Brooks did.

20 MR. BROOKS: Is this it right here?

21 THE APPLICANT: Yes, I got a copy.

22 MR. BROOKS: You have your own copy?

23 THE APPLICANT: I have my own copy.

24 THE COURT: If you'd show that to Ms. Williams.

25 I'm going to accept that.

ALBERT CLAYTON SMITH II - CROSS

1 MR. BROOKS: (Hands document to Ms. Williams.)

2 MS. WILLIAMS: That's fine.

3 THE COURT: We'll make a copy.

4 (Thereupon, Applicant's Exhibit No. 1, memorandum
5 of law, was marked for evidence.)

6 THE COURT: We'll run copies.

7 MS. WILLIAMS: Are you going to make a copy right
8 now?

9 (Pause.)

10 THE COURT: Mr. Brooks, any other questions?

11 BY MR. BROOKS:

12 Q. Mr. Smith?

13 A. Yes, sir.

14 Q. Now we got the memorandum of law in the record. Is
15 there anything else that we need to talk about in terms of
16 Mr. Walters' representation?

17 A. No.

18 Q. Is there anything else?

19 A. No.

20 MR. BROOKS: Answer any questions of
21 Ms. Williams.

22 THE COURT: Your witness, Ms. Williams.

23 CROSS-EXAMINATION

24 BY MS. WILLIAMS:

25 Q. Mr. Smith, do you recall signing a guilty plea

GLENN WALTERS, SR. - DIRECT

1 checklist, going through some items with Mr. Walters and
2 initialing next to those items?

3 A. Yes, ma'am.

4 Q. And did you expect your attorney to give you an honest
5 appraisal of your case? Did you expect him to tell you
6 honestly what he thought?

7 A. Yes.

8 MS. WILLIAMS: Thanks. That's all.

9 THE COURT: Okay. Anything on redirect?

10 MR. BROOKS: No other questions, Judge.

11 THE COURT: All right. Thank you, Mr. Smith.

12 You may step down.

13 THE APPLICANT: Thank you.

14 MR. BROOKS: We would call Mr. Walters to the
15 stand.

16 THE COURT: Okay.

17 GLENN WALTERS, SR., having been duly sworn, was
18 examined and testified as follows:

19 THE COURT: State your full name for the record,
20 please, sir.

21 THE WITNESS: Glenn Walters, Sr.

22 THE COURT: Your witness, Mr. Brooks.

23 DIRECT EXAMINATION

24 BY MR. BROOKS:

25 Q. Mr. Walters.

GLENN WALTERS, SR. - DIRECT

1 A. Yes, sir.

2 Q. How are you today, sir?

3 A. Fine, sir. How are you?

4 Q. Doing wonderful. You were representing Mr. Smith in
5 this case?

6 A. Yes, sir.

7 Q. Can you briefly surmise what the State's case was
8 against him?

9 A. Yes. Hattie Hunter in this particular case was the
10 victim. Hattie was a professor at South Carolina State.

11 Originally when my client's grandfather was hired as
12 the president at South Carolina State University, I was
13 the student government president. And your client was
14 about seven or eight years old and that's when he was
15 introduced to Hattie Hunter.

16 And Hattie would keep him. She was like a grandmother
17 figure. And she would make sure he was okay and things of
18 that nature.

19 And during that time when his grandfather was
20 president, you know, he was actively on the campus and he
21 was a grandchild of the president of the college. His
22 grandfather subsequently received a presidency in Florida
23 and he left South Carolina State. Albert continued to
24 live in the community and he went on to school at South
25 Carolina State University, and he continued the

GLENN WALTERS, SR. - DIRECT

1 relationship with Hattie Hunter.

2 Hattie was very popular in the community. All of us
3 knew her. Anybody that went to South Carolina State knew
4 Hattie. Hattie did not have any children of her own and
5 she was actively involved with every kid on campus that
6 needed books, needed assistance, or some type of
7 grandmotherly figure to associate with. And Hattie was
8 very active in the community and all the kids knew her.

9 He maintained that relationship with Hattie.

10 And in the State's case there was an investigation
11 because Jesse Kinard, who's also a professor at South
12 Carolina State University, went by Hattie's house. The
13 television was on, the lights were on, and he noticed
14 something peculiar around the house.

15 Also there was an individual, we called him Coach.
16 Coach assisted with the college football team. Coach said
17 it seemed peculiar that the television was on and no one
18 would come to the door and things of that nature.

19 And Hattie was old. What happened was that Jesse
20 called the police and they showed up. So neighbors had
21 seen a car that was owned by the Defendant in this
22 particular case that was outside of the residence at a
23 particular time.

24 Mr. Smith admitted in his statement that he had gone
25 to Bi-Lo and bought her a mother's day card so she

GLENN WALTERS, SR. - DIRECT

1 could -- he could go by the boys. He has four boys. He
2 has one child that is a stepchild. He met his wife at
3 South Carolina State. And then he had three children with
4 her during the time he was going to South Carolina State.
5 He was at South Carolina State about seven years, and he
6 hadn't gotten his degree. He was in the music
7 department.

8 During that time he maintained a relationship with
9 Hattie but it grew from a relationship of a grandmother
10 taking care of a kid and looking after him and
11 grandmother -- Hattie stayed in contact with his
12 grandparents and they all had a good relationship, but he
13 overstayed his stay in the relationship. He continued to
14 borrow money from Hattie to pay his rent and other bills.
15 He continuously was going by Hattie's house.

16 And of course Hattie felt uncomfortable because now
17 the relationship had changed dramatically. He had moved
18 from being a small toddler to a college student but he
19 couldn't finish his degree. He had gone -- he'd been at
20 school about seven years.

21 And what happened was is that during this particular
22 period of time, he was behind on his rent and the
23 individuals that were seeking the rent were on his back.

24 And the investigation determined that on that
25 particular day he was there because his vehicle was seen.

GLENN WALTERS, SR. - DIRECT

1 Hattie was stabbed over 40 times. There were some stab
2 wounds that were postmortem. There was about 20.

3 And what they determined was that he paid his rent
4 that day, you know. When he paid his rent he had two
5 checks where Ms. Hattie Hunter's name was forged on those
6 checks. He paid the bills. He paid the bills with the
7 checks.

8 And this is from his statement, his confession. He
9 went in the house, the boys were out in the car. He had
10 gone in. There was a discussion with regards to the money
11 that he needed. He also went to drop off the card that he
12 had purchased from Bi-Lo for her, and everything else was
13 a blur. But the result was that Hattie was dead and she
14 had been stabbed numerous times.

15 He left her residence with the boys in the car. He
16 drove back to the house he was staying in and at that
17 time, I think he and his wife were already divorced,
18 because there was monetary pressure between the two of
19 them.

20 This young lady had a child with another individual
21 and then she had three children for him. They marry. He
22 has insufficient funds to take care of the family. And I
23 think they were in the process of getting a divorce or
24 they were already divorced but they were staying at a
25 residence. The boys got out. He goes inside the house.

GLENN WALTERS, SR. - DIRECT

1 The police determined that his vehicle was outside the
2 residence.. They go in to question him and what do they
3 find on his clothing, they found the blood from Hattie
4 Hunter. The blood matched up. There was blood all over
5 his clothes and he couldn't explain why he had blood on
6 his clothes.

7 In addition to that, there was blood that was found on
8 the dashboard and other parts of the car. I don't think
9 the boys were present when the murder occurred but
10 nevertheless there was the actual physical evidence that
11 had clearly identified someone was there when Hattie was
12 killed.

13 So you had blood all over his pants, all over his
14 clothes. And in addition to that, it was inside of the
15 vehicle.

16 He was arrested and then he gave a confession, a full
17 statement. And as far as a confrontation within the home
18 he just said simply it was a blur.

19 And that was the State's case.

20 So we had individuals that put him at the residence.
21 We had physical evidence that indicated he was at the
22 residence. We had two forged checks that he had presented
23 to various individuals for bills. And we had a forged
24 name of Hattie Hunter on both of the checks.

25 So -- and we didn't have anyone else as far as a

GLENN WALTERS, SR. - DIRECT

1 particular suspect in this case. And then we had the, the
2 actual physical evidence that tied him to that particular
3 evidence. So that was the State's case.

4 Q. Did you go over all of that with Mr. Smith?

5 A. Yes. We carefully discussed it. There were meetings
6 that were set up at the jail where he signed a waiver and
7 he allowed his grandparents and his father to also have
8 this information, and his mother. And we met at the jail
9 to discuss his case.

10 We carefully went through the evidence they had
11 against him and the confession. And we attempted to
12 discuss this to say that, you know, how can we explain
13 this. How can we explain the blood on your clothes?

14 How can we explain the fact -- I think one of the
15 checks had a little blood on it. How can we explain that
16 the checks that you received from Hattie, the signature is
17 forged and on that particular day you needed money? How
18 can we explain the blood inside of the car? And of course
19 this woman was stabbed over 40 or 50 times.

20 It was a bad case. But, in asking the questions as to
21 why did this happen and why are you the particular
22 individual that's the subject of the controversy, he could
23 not put forward any logical reason that would explain the
24 physical evidence.

25 So you had physical evidence against him and you had a

GLENN WALTERS, SR. - CROSS

1 motive; he needed the money. And he couldn't explain why
2 he was there on that day and the stars aligned and he was
3 the individual that somehow coincided with everything,
4 that he was the individual that was there.

5 MR. BROOKS: No other questions.

6 THE COURT: Ms. Williams, do you have any
7 questions?

8 MS. WILLIAMS: Do you have copies?

9 THE COURT: If you'd give -- this is Plaintiff's
10 Exhibit One, a copy. If you'd give an extra copy to
11 Mr. Brooks and then that's your exhibit.

12 (Thereupon, Applicant's Exhibit No. 1, memorandum
13 of law, was received into evidence. State's Exhibit No.
14 1, guilty plea checklist, was marked for identification.)

15 CROSS-EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Mr. Walters, I'm going to show you this document. And
18 can you tell me briefly if you recall that document, going
19 over that with Mr. Smith?

20 A. Yes, ma'am. It's a guilty plea checklist.

21 Q. And did y'all go through that document before his plea
22 was entered?

23 A. Yes, ma'am.

24 Q. And discussed the rights and the various items that he
25 was going to need to know before he pled guilty?

GLENN WALTERS, SR. - CROSS

1 A. Yes, ma'am.

2 Q. And did he initial next to each of those items?

3 A. Yes, ma'am

4 MS. WILLIAMS: Your Honor, I'm going to move that
5 as State's Exhibit One.

6 THE COURT: Mr. Brooks?

7 MR. BROOKS: No objection.

8 THE COURT: Introduced into evidence as State's
9 Exhibit One.

10 (Thereupon, guilty plea checklist, was received
11 into evidence as State's Exhibit No. 1.)

12 BY MS. WILLIAMS:

13 Q. Did you share with him your appraisal of his chances
14 at trial, things of that nature as well?

15 A. Yes. That was carefully explained to him and he
16 signed a waiver and it was also done with his family
17 present. I didn't want him operating in a vacuum where it
18 was just the two of us.

19 And he actively sought the input of his family. And I
20 asked him, look, do you want to sign a waiver so they can
21 offer their input? His mother got a copy of the Rule
22 Five. His dad got a copy of the Rule Five. His
23 grandfather got a copy of the Rule Five and he signed a
24 waiver to allow Coach Jeffries to know information with
25 regards to his case.

GLENN WALTERS, SR. - CROSS

1 Q. And did you see any jurisdictional challenge to be
2 made based on the indictment or any other legal basis?

3 A. No. And this argument that the Defendant has put
4 forward about the US Constitution is, I believe it started
5 with the Moorish Science Temple. And they argued that you
6 can live in America but you can opt out and you don't have
7 to be under the Constitution of the United States. Some
8 of same stuff that Papa Johnson used to put forward.

9 It started with the Moorish Temple where you argue
10 that the Constitution governs maritime, admiralty and a
11 couple other issues but you have a right to live in
12 America and travel the roads and use the facilities but
13 you can opt out of being under the laws and jurisdiction
14 of the United States of America.

15 So you run up on black folk that will say, I don't
16 have a driver's license but I'm going to drive a car. I'm
17 not going to pay car taxes but I'm going to continue to
18 drive, or I don't have to pay individual income taxes and
19 I can continue to live in America.

20 And ultimately -- and that catches on in prisons and
21 other places and ultimately in the end it led to our
22 former sheriff was convicted and numerous other people
23 wherein they had been convicted because their position is
24 that we're here in America, but we're not part of America.

25 MS. WILLIAMS: I don't think I have anything else

1 for him.

2 THE COURT: Anything on redirect?

3 MR. BROOKS: No other questions, Judge.

4 THE COURT: Thank you, Mr. Walters. I appreciate
5 it.

6 THE WITNESS: Yes, sir.

7 THE COURT: Your next witness, Mr. Brooks.

8 MR. BROOKS: Judge, that's the Applicant's case.

9 THE COURT: All right. Mr. Smith, what I'm going
10 to do is -- I haven't had a chance to read your
11 memorandum. What I will do is I'll go back and read your
12 memorandum and read a copy of the transcript and I'll get
13 back with y'all with my decision.

14 Thank y'all. Appreciate it.

15 END OF CASE: 4:30 P.M.

16 * * *

17 CERTIFICATE OF REPORTER

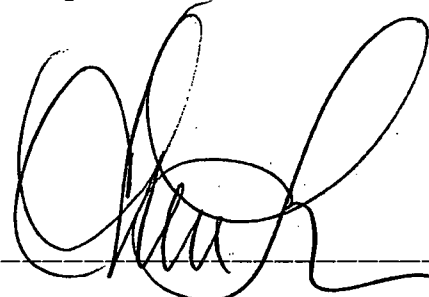
18 I, Cheri L. Young, Registered Professional Reporter,
19 and Official Court Reporter for the State of South
20 Carolina, do hereby certify that the foregoing transcript
21 of proceedings heard on Wednesday, December 8, 2010, in
22 Orangeburg, South Carolina, was reported by me using
23 machine shorthand and realtime computer-aided translation
24 and is a true, accurate and complete transcript of the
25 proceedings had and evidence introduced in the hearing of

1 the matter.

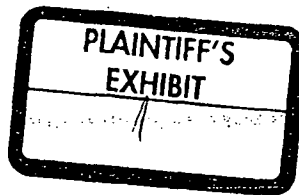
2 I do further certify that I am neither of kin, counsel
3 nor interest to any party hereto.

4 I have hereunto set my hand this Saturday, the 30th
5 day of October, 2011.

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A handwritten signature in black ink, appearing to read 'Cheri L. Young', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke at the end.

Cheri L. Young, RPR
Official Court Reporter



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF Orangeburg	)	In The <u>1st</u> Judicial Circuit
	)	
Albert C. Smith, II, #333203	)	Case No. 2010-CP-38-139
Applicant,	)	
v.	)	Memorandum of Law in Support of
	)	Application for Post Conviction
State of South Carolina	)	Relief and Motion for Summary
Respondent.)	)	Judgment pursuant to Rule 56,
		S.C.R.Civ.Proc.

This action comes by way of an Application for Post Conviction Relief pursuant to the South Carolina Uniform Post Conviction Act, S.C. Code Ann. §17-27-10, et seq.; which was filed on January 26, 2010 with the Orangeburg County Clerk of Court. The Applicant was represented by Glen Walters, Esq., of the Orangeburg County Bar. The State was by Kelley H. Burbage, of the Orangeburg County Solicitors' Office. The Applicant was indicted for armed robbery (Ind. #2007-GS-38-1079) and murder (Ind. #2007-GS-38-1080) by the Orangeburg County Grand Jury. He was tried before the Honorable James Williams on February 11, 2009. Upon pleading guilty, the Applicant was convicted and sentenced to forty years for murder and thirty years for armed robbery. Both sentences were ran concurrent.

The Applicant now comes before this Honorable Court in this Memorandum of Law and motion for Summary Judgment pursuant to Rule 56, S.C.R.Civ.Proc. and F.R.C.Proc.

In his current application, the Applicant contends that he is being held unlawfully where:

- 1) He was denied effective assistance of counsel, and
- 2) the trial court lacked complete subject matter jurisdiction where it was not operating in its true jurisdiction under common-law.

Issue I

In opposition of the Respondents' Return, the Applicant will demonstrate in full clarity, beyond a reasonable doubt; that he was denied effective assistance of counsel in his criminal case. As this Court is aware, all those

Who are accused of a criminal offense are guaranteed the right to effective assistance of counsel under the Sixth Amendment and Article 1, §14. The federal Supreme Court has made it clear that in order for an applicant to properly prevail on a claim of ineffective assistance of counsel, he/she must satisfy a two prong test under *Strickland v. Washington*, cited at 466 U.S. 668, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984) See also *Butler v. State*, 286 S.C. 441, 334 S.E. 2d 813 (1985); *Cherry v. State*, 300 S.C. 115, 386 S.E. 2d 624 (1989)

In relations to the first prong, which would be the performance of the trial counsel, the Applicant would show that his trial counsel was ineffective by failing to properly inform of his right to be tried under common-law jurisdiction and not under the jurisdiction of equity. See *Lawful Judicial Operating Jurisdictions of the United States*, Article 3, §2 of the U.S. Constitution.

Article 3, §2 authorizes only three legal judicial operating jurisdictions: admiralty/meritime, equity, and common-law which was set forth by the legislative powers of Congress on September 17, 1787. These three jurisdictions are still enforce under the legislative powers of the United States. U. S. Constitution, 19th Amendment

In the case at bar, the Applicant would show that he was not aware in full detail, of the nature of the offense or that he was being tried in a court of equity. The Applicant would show that in order for his guilty plea to be completely legal, he must have a full understanding of what he is being called to do. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L. Ed. 2d 274 (1969)

In *Boykin v. Alabama*, supra, the Supreme Court ruled that in order for a guilty plea to be valid, it must be entered into 1) knowingly, 2) intelligently, and 3) voluntarily. These three principles are the same principles of contract law. Contracts only apply under equity jurisdiction. The Applicant would show that his trial counsel failed to inform him of the jurisdiction that he was being tried in. Applicant would also show before this Court that by the exercise of due diligence, he discovered the right to be tried under common law pursuant to §1-207, 1-308, and 1-103 of the Uniformed Commercial Code (U.C.C. or the Code). The Code remains in enforce.

Next, the Applicant asserts that his trial counsel failed to ensure that his rights to due process were met in full. He states that his trial counsel failed to ensure that Applicant fully understood his right to a preliminary hearing or the judicial process that he was going to go through. Applicant states that his trial counsel was uncooperative in bringing the Applicant to court for a bond hearing and that he never saw his indictments before he went to trial.

Even though an indictment is merely a notice to inform the accused of what it is that he/she is called to defend against. State v. Faile, 43 S.C. 52, 20 S.E. 798 (1895); State v. Wilkes, 353 S.C. 462, 578 S.E. 2d 717 (2003), it is vital part to the beginning of an defendant's process of perfecting a proper defense. Thus, making it a very important part of his/her discovery pursuant to Rule 5, S.C.R.Crim.Proc. Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963)

By the Applicant being denied direct access to his indictments, to view for himself. He would not have truly known or understood what he was really contending with. Had his trial counsel operated on or above the professional "norm", the Applicant would have had the legal option(s) such as moving to quash his indictments, withdrawing his guilty plea, or properly reserving his rights under the Code. Therefore, the second prong of prejudicial effect on the Applicant' case is satisfied.

ISSUE II

The Applicant argues that the trial court lacked total jurisdiction to accept his guilty plea. applicant would show that under federal and state jurisprudence did not act under the doctrine of §1-103 of the Code. The trial court actually tried the Applicant's case in the jurisdiction of equity, which is civil. Under the doctrine of the Code, as well as Article 3, §2, the trial court is bound to operate in either one of three jurisdictions: admiralty/meritime, equity, or common-law, which have been set forth by federal legislature.

All courts under the controlling jurisdiction of the United States have the power to hear a case and render a judgment only when that court proceeds in its true operating jurisdiction.

Notice To The Court

The Applicant, Albert C Smith, II, #333203, does hereby lawfully reserve his rights under the Uniform Commercial Code §1-207, §1-308, and §1-103 which states that I have reserved my right not to be compelled to perform under any contract or commercial agreement that I did not enter knowingly, voluntarily, and intentionally. And furthermore, I do ^{not} accept that liability of the compelled benefit of any unrevealed contract or commercial agreement.

The Code also states "The Code is complimentary to the Common Law,

which remains in force, except where displaced by the code. A statute should be construed in harmony with the Common Law, unless there is a clear legislative intent to abrogate the Common Law. The Code cannot be read to preclude Common Law action."

Motion For Summary Judgment

On April 19, 2010, the Applicant filed a Motion for Default against the Respondent for failure to respond to his P.C.R. application where he initially filed his Application for Post Conviction Relief on January 26, 2010. Pursuant to rule 12(A), S.C.R.Civ.Proc., the Respondent had sixty (60) days to respond to the allegations made in this case. Nor has the Respondent produced any evidence to contradict the Applicant's allegations. Therefore the Applicant respectfully request summary judgment to be granted against the Respondent.

Conclusion and Disclaimer

The Applicant would also like to place into the record that his Notice To The Court and this Disclaimer are being done in fear of imminent retaliation against myself by the courts of South Carolina as well as the Officers/Staff of S.C.D.C. A copy of this Memorandum of Law has been given to several family members to present to the media outlets in the surrounding states in the event that the Applicant gets transported to another institution without request or put on any form of segregation from the general population. The Applicant prays that this Honorable Court grants him the relief that he seeks.

Without Prejudice

UCC 1-207, 1-308, 1-103

Date: September 3, 2010.

/s/ Albert C. Smith, II

Albert C. Smith, II, #333203

McCormick Correctional Facility

386 Redemption Way, F3-A174

McCormick, South Carolina, 29899

Sworn to and Subscribed before me on
this 03 day of Sept, 2010.

J. C. Franklin
Notary Public

My commission Expires: 12-16-2019

2010-CP-38-00139

Honorable Winnifa B. Clark
Orangeburg County Clerk of Court
P.O. Box 1000
Orangeburg, South Carolina, 29116

21 January, 2010

Re: Application for Post Conviction Relief

Dear Ma'am,

Please find enclosed is a copy of an Application for Post Conviction Relief and a Certificate of Service to be clock stamped and filed in your office.

Also find enclosed is a return copy of said documentation to be clock stamped and returned to me in the self-addressed stamped envelope.

/s/ Albert C. Smith 333203
Albert C. Smith, #333203

FILED FOR RECORD
WINNIFA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2010 JAN 26 P 1:06

cc: files

Certificate of Service

I, Albert C. Smith, #333203, do certify that a copy of an Application for Post Conviction Relief has been served on the Honorable Winnifia B. Clark, Orangeburg County Clerk of Court, P.O. Box 1000, Orangeburg, South Carolina, 29116 on the effective date of 22 January, 2010 by depositing one original copy and a return copy of said documentation into the United States mail by delivering said documentation to the McCormick Correctional Facility Mailroom Clerk.

Date: January 22, 2010

/s/ Albert C. Smith 333203
Albert C. Smith, #333203
McCormick Corr. Facility
386 Redemption Way
McCormick, S.C., 29899

FILED FOR RECORD
WINNIFIA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2010 JAN 26 PM 1:06

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	2010-CP-38-0139
Albert C. Smith, II, #333203,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

201 JUN 18 P 2:32
 RECEIVED
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 26, 2010. An evidentiary hearing into the matter was convened on December 8, 2010, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Glenn Walters, Esquire ("Counsel"). This Court had before it the records of the Orangeburg County Clerk of Court, the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Armed Robbery (2007-GS-38-1079), Murder (2007-GS-38-1080), and Possession of a Weapon During Commission of a Violent Crime (2007-GS-38-

ATTEST: TRUE COPY

[Signature]
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

1 of 6
[Signature]

1078). Applicant was represented by Glenn Walters, Esquire. On February 11, 2009, the Applicant pled guilty before the Honorable James C. Williams, Jr. Applicant was sentenced to concurrent terms of thirty (30) years imprisonment for Armed Robbery and forty (40) years imprisonment for Murder. Applicant did not appeal his conviction and sentence.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Trial counsel failed to advise Applicant of his rights under common law."
2. Subject matter jurisdiction.
 - a. "Trial court was not operating in its proper, original jurisdiction."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, *supra*). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

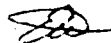
To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him.

Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

Applicant testified that he had adequate time to meet with Counsel. Applicant stated that on the night before his trial, he asked Counsel if they could prevail at trial, and Counsel appeared hesitant. Applicant stated that as a result, he entered a guilty plea. Applicant did agree that Counsel should be honest with his client. Counsel testified as to the facts of the case, noting that of particular difficulty to the defense would be the inability to explain the physical evidence linking Applicant to the murder and the fact that Applicant did have a motive. A guilty plea checklist was introduced into evidence wherein Applicant initialed next to each section detailing various aspects of the guilty plea.

After due deliberation, review of the plea transcript, and consideration of the testimony and exhibits presented at PCR hearing, I find that Applicant has failed to demonstrate ineffective assistance of counsel. Counsel's performance was well within reasonable professional norms.



Counsel's candor with his client when asked about chances of success at trial was not unreasonable. Further, Applicant's decision to plead guilty rather than face potentially greater consequences at trial does not render his plea involuntary. See Sanders v. Leeke, 254 S.C. 444, 175 S.E.2d 796 (1970) (allegation that lawyer suggested defendant may face death penalty at trial does not constitute coercion such as to render guilty plea involuntary); Satterwhite v. State, 325 S.C. 254, 481 S.E.2d 709 (1997) (that defendant may have entered a guilty plea in order to obtain his release from lock-up does not render the plea involuntary); Parker v. North Carolina, 397 U.S. 790, 90 S.Ct. 1458, 25 L.Ed.2d 785 (1970) (otherwise valid plea is not involuntary because induced by the defendant's desire to limit the possible maximum penalty to less than that authorized if there is a jury trial). Applicant's plea was not rendered involuntary by his legitimate fear of conviction, especially based on the facts of his case. Applicant has not shown that Counsel's advice was deficient in any regard.

Applicant's claim regarding subject matter jurisdiction is likewise without merit. "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494 (2005). Counsel's failure to set forth the arguments regarding subject matter jurisdiction as set forth in Applicant's memorandum was not unreasonable under professional norms.

Finally, even if Applicant had demonstrated some error by Counsel, under the circumstances of this case, I find that Applicant has failed to carry his burden of demonstrating that he would have otherwise insisted on a trial.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

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

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8th day of July, 2001.



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Honorable Edgar W. Dickson, Circuit Court Judge

Case No: 2010-CP-38-0139

Albert C. Smith, II.....Appellant
S.C.D.C. No.: 333203

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 26th day of July, 2011, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on July 26, 2011 addressed to the following as indicated below:

South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Robert Corney, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Albert Smith, II, 333203
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina, 29899

Dated: July 26, 2011


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

WITNESSES

DOCKET NO. 2007GS38-1078

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury. 76

The State of South Carolina

County of

ORANGEBURG

Defendant

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

INV. J. ETHRIDGE

Arresting Agency:

Orangeburg Co. Sheriff Dept.

COURT OF GENERAL SESSIONS

August 06, 2007 TERM

Defendant

ARREST WARRANT NUMBER

K236705

Arrested: May 20, 2007

Witness:

THE STATE

vs.

C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Albert Clayton Smith, II

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF CERTAIN
CRIMES

ATTEST: TRUE COPY
W. B. Black
CLERK OF COURT
ORANGEBURG COUNTY, S.C.

VERDICT

SC Code: 16-23-490

CDR Code: 0549

Class: FEL-F

Foreperson of Grand Jury
Date: August 8, 2007

Foreperson of Petit Jury
Date:

REC-0 PM 12:15

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2007GS38-1078

At a Court of General Sessions, convened on August 06, 2007 the Grand Jurors of Orangeburg County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION OF CERTAIN
CRIMES**

That Albert Clayton Smith, II, did in Orangeburg County, on or about May 18, 2007, while committing the violent crime of Murder and/or Armed Robbery, have in his possession and/or did visibly display a firearm during the commission of the aforementioned crime(s) and as a result violated Section 16-23-490, Code of Laws of South Carolina, 1976, as amended.

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

Thomas B. Scott, III

Thomas B. Scott, III SOLICITOR

WITNESSES

INV. J. ETHRIDGE

Arresting Agency:
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

K236704

Arrested: May 20, 2007

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: August 8, 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007GS38-1079

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

August 06, 2007 TERM

**THE STATE
vs.**

Albert Clayton Smith, II

**Indictment for
ARMED ROBBERY**

SC Code: 16-11-0330
CDR Code: 0139
Class: FEL-A(V)

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

Defendant

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

Defendant

Witness:

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

RECORD
CLERK
AUG -8 PM 12:15

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2007GS38-1079

At a Court of General Sessions, convened on August 06, 2007, the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That Albert Clayton Smith, II, did in Orangeburg County, on or about May 18, 2007, commit robbery by feloniously taking from the person or presence of the victim, Hattie Pearl Hunter, by means of force or intimidation goods or monies of Hattie Pearl Hunter such goods or monies being described as two checks, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of Section §16-11-330 of the South Carolina Code of laws, (1976 as amended).

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

Thomas B. Scott, III

Thomas B. Scott, III SOLICITOR

WITNESSES

INV. J. ETHRIDGE

Arresting Agency:
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

K236703

Arrested: May 20, 2007

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury AUG 08 2007
Date: August 8, 2007 Date

VERDICT

DOCKET NO. 2007GS38-1080

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

August 06, 2007 TERM

THE STATE

vs.

Albert Clayton Smith, II

Indictment for

MURDER

SC Code: 16-03-10

CDR Code: 0116

Class: FEL-EXM

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

Defendant

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

Defendant

Witness:

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

2007 TRUE BILL

AUG - 08 PM 12:15

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2007GS38-1080

At a Court of General Sessions, convened on August 06, 2007 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That Albert Clayton Smith, II, did in Orangeburg County, on or about May 18, 2007, with malice aforethought, kill one Hattie Pearl Hunter by means of stabbing the victim with a knife, and the said victim did die as a proximate result thereof. This offense being in violation of the Common Law of South Carolina, and Section 16-3-10 of the Code of Laws of South Carolina, as amended.

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

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

Thomas B. Scott, III

Thomas B. Scott, III SOLICITOR