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Jun 29 2021

STATE OF SOUTH CAROLINA **SC Court of Appeals**

COUNTY OF MARLBORO

STATE OF SOUTH CAROLINA,

vs.

HANEEF AQUIL CHILDS,

Defendant.

THE COURT OF GENERAL SESSIONS
FOURTH JUDICIAL CIRCUIT

INDICTMENT NOS.: 2017-GS-34-0054;
2017-GS-24-0055;

**MOTION TO WITHDRAW PLEA
AND/OR
MOTION FOR RECONSIDERATION**

COMES NOW THE DEFENDANT, HANEEF AQUIL CHILDS, by and through his undersigned counsel and within the prescribed period by Rule 29 of the South Carolina Rules of Court, files this motion to withdraw his Guilty But Mentally III plea entered May 19, 2021 for the following reasons:

The Defendant was notified on March 11, 2021 that the State intended to proceed with his trial during the May 17, 2021 term of Court. Between the dates of March 24, 2021 and April 20, 2021, the State presented Defendant's counsel with voluminous new evidence that was not provided during the pendency of this case.

During the week of May 3, 2021, the State and Defense engaged in negotiations to reach a plea deal. The terms discussed between the State and Defense was not introduced to the Court as discussed during the plea negotiations. The Defendant waived his right to a jury trial and to assert his affirmative defense of Not Guilty by Reason of Insanity contingent upon the terms reached by the State and his Defense's counsel. The State failed to uphold their part of the plea deal and thereby resulting in the Defendant waiving his constitutional right to proceed with his affirmative defense relying on the State's offer made in writing on May 4, 2021. The Defendant had fully considered the affirmative defense of Not Guilty by Reason of Insanity and retained an expert in the field of forensic psychology to offer evidence during his trial. Defendant's decision

to enter a Guilty But Mentally III was directly related to the terms reached between the State and his counsel and the sole reason he waived his constitutional right to a jury trial. Further, Defendant's counsel acknowledged herein that once the Solicitor failed to state the terms of the plea deal to the Court, the undersigned should have ended all proceedings.

In Smith vs. State of South Carolina, Smith was indicted for murder. Pursuant to a negotiated plea agreement, Smith pled guilty to the lesser included offense of voluntary manslaughter in exchange for testifying against his codefendant. As part of the plea agreement, the State agreed to remain silent as to sentencing. Because Mr. Smith's sentencing was deferred until after his codefendants' trial, the part of the plea agreement relating to sentencing was not placed on the record. During the plea colloquy, Smith stated he understood the sentence for voluntary manslaughter and that the offense was classified as a most serious. Additionally, the plea court judge asked Mr. Smith whether anyone promised him anything to plea guilty and Mr. Smith only indicated the reduction in the offense from murder to voluntary manslaughter. At the subsequent hearing for Mr. Smith's sentencing, the solicitor placed the negotiated plea agreement between the Sate and Smith on the record. The Solicitor acknowledged that Mr. Smith suffered drug related memory impairment which made his testimony against the codefendant concerning. The Solicitor informed the Court that they could not proceed against Smith's codefendant for murder because Smith failed to truthfully articulate his role in the murder. As a result, the State was forced to mitigate the codefendant's charge to accessory after the fact of murder. The Solicitor then requested the sentencing judge impose the maximum sentence upon Smith. Smith's counsel did not object to the Solicitor's sentencing request nor withdrew Smith's guilty plea. Smith was originally sentenced to twenty-seven years. Smith's counsel moved for the sentencing court to reconsider the sentence and Smith's sentence was reduced to twenty-four

years' imprisonment. *Smith v. State*, 407 S.C. 270, 754 S.E.2d 900 (S.C. App. 2014)

Smith appealed his conviction and the appeal was dismissed. Smith then filed an application for post-conviction relief alleging ineffective assistance of counsel. Smith's application for PCR was denied. Smith filed a motion pursuant to Rule 59 (e), SCRCP, which the PCR court denied. Counsel for Smith filed a petition for writ of certiorari. The Court of Appeals granted Smith's petition to consider whether the PCR court erred in failing to find plea counsel was ineffective for not objecting when the solicitor recommended Smith be sentenced to the maximum term of imprisonment in violation of the negotiated plea agreement with the State.

The Court of Appeals found that the plea counsel's failure to object to the Solicitor's recommendation on the record fell below prevailing professional norms. Plea counsel also acknowledged that she did not object when questioned by the sentencing court as to whether the solicitor had correctly and completely stated the plea agreement. The Court also found that the solicitor's promise to remain silent at sentencing was a material term of the plea agreement and that likewise there was enough evidence to demonstrate Smith would not have pled guilty if he had known the solicitor was going to make a sentencing recommendation.

The Court of Appeals REVERSED the PCR court's denial of relief, VACATED Smith's sentence for voluntary manslaughter and REMANDED for resentencing on the charge consistent with the original plea agreement.

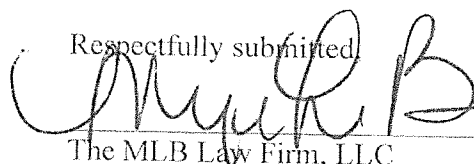
In the Defendant's case, the undersigned acknowledges that she had an obligation to object to the Solicitor's rendition of the plea deal because the terms were incomplete or in the alternative withdraw the Defendant's Guilty But Mentally Ill plea before sentencing was imposed in accordance with *Smith vs. State*.

As such, the Defendant respectfully requests that the Court allow him to withdraw his

plea of Guilty But Mental Ill entered on May 19, 2021 and allow him to proceed with a jury trial with a plea of Not Guilty by Reason of Insanity.

In the alternative, Defendant by and through his undersigned counsel, hereby moves for a reconsideration of his sentence of twenty-five (25) years to the charge of Voluntary Manslaughter imposed on May 19, 2021. Defendant filed this motion based on the Solicitor's failure to recite the full and complete plea agreement terms to the Court as referenced above. Additionally, Defendant files this motion based on the inability to present a clear and concise testimony by his expert, Dr. L. Randolph Waid. Dr. Waid appeared electronically and there were significant interruptions during his testimony. The Defendant had no reason to believe technical difficulties would have significantly impacted Dr. Waid's testimony as it did due to the poor internet connectivity at the courthouse. Most of Dr. Waid's presentation was difficult to hear and understand. Dr. Waid's testimony and the importance of his expertise involving mental illness and the issue of recidivism and compliance by the Defendant is essential to a court's decision relating to the sentence. In addition to the technical difficulties with the mitigating evidence presented by Dr. Waid, the Court did not have the benefit of the State's position during the plea stage, which too could have influenced the outcome of the case.

For the reasons listed above, the Defendant respectfully requests that the Court reconsider the sentence imposed of twenty-five (25) years to a sentence that allows a cap of twenty (20) years based on the State and Defendant's plea terms.

Respectfully submitted,


The MLB Law Firm, LLC
Myesha L. Brown, Esq.
712 North Cedar Street

May 27, 2021
Summerville, South Carolina

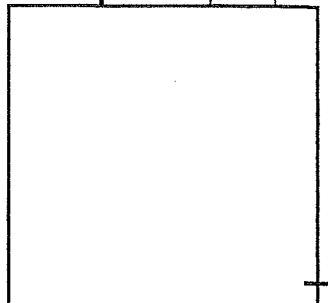
Summerville, South Carolina 29483
Office: (843) 420-1191
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ATTORNEY FOR DEFENDANT

FILED
2021 MAY 28 A 9:37
ANITA M. WILLIAMS
CLERK OF COURT
FAMILY DIVISION

ARREST WARRANT
2016A3420100297

STATE OF SOUTH CAROLINA
 County/ Municipality of
BENNETTSVILLE

THE STATE
against



HANEEF AQUIL CHILDS
Address: 704 W. MAIN ST.
BENNETTSVILLE SC 29512
Name: _____ SSN: 195-68-9312
Race: B Height: 5-8 Weight: 160
State: SC DL#: 100995816
DOB: 01/10/1988 Agency OR#: SC0350100
Rescuing Agency: CITY OF BENNETTSVILLE
Rescuing Officer: DET. IRA DEASE III
Offense: MURDER
Offense Code: 0116

Arrested on: 16-03-0010, 16-03-0020
is warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
MARLBORO SC. The accused
to be arrested and brought before me to be
held with according to law.
Date: 12/03/2016 Signature of Judge _____ (L.S.)
Time: _____
RETURN

copy of this arrest warrant was delivered to
defendant HANEEF AQUIL CHILDS
Signature of Constable/Law Enforcement Officer
Signature of Constable/Law Enforcement Officer
RETURN WARRANT TO:
MUNICIPAL COURT
103 E. MARKET STREET / PO BOX 1253
BENNETTSVILLE, SC 29512

STATE OF SOUTH CAROLINA
 County/ Municipality of
BENNETTSVILLE

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 678

Personally appeared before me the affiant DET. IRA DEASE, III who
being duly sworn deposes and says that defendant HANEEF AQUIL CHILDS
did within this county and state on 12/03/2016 to 12/03/2016 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of BENNETTSVILLE)
in the following particulars:
DESCRIPTION OF OFFENSE: 16-03-0010, 16-03-0020 / MURDER

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THAT HANEEF AQUIL CHILDS DID IN MARLBORO COUNTY, ON OR ABOUT DECEMBER 03, 2016, WILLFULLY, FELONIOUSLY, AND
INTENTIONALLY KILL THE VICTIM, (JACKIE PURVIS), WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED, BY MEANS OF SHOOTING
THE VICTIM IN THE HEAD ONE TIME, AND THE VICTIM DID DIE AS A PROXIMATE RESULT THEREOF ON OR ABOUT DECEMBER 03, 2016 IN
MARLBORO COUNTY, IN VIOLATION OF SECTION 16-03-0010, S.C. CODE OF LAWS, 1976, AS AMENDED, INCIDENT LOCATION 704 W. MAIN ST.
BENNETTSVILLE, SC. CITY LIMITS

Signature of Affiant
STATE OF SOUTH CAROLINA
 County/ Municipality of
BENNETTSVILLE

Affiant's Address 243 EAST MAIN STREET
BENNETTSVILLE SC 29512
Affiant's Telephone 843-479-3620

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/03/2016 defendant HANEEF AQUIL CHILDS
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of BENNETTSVILLE) as set forth below:
DESCRIPTION OF OFFENSE: MURDER / MURDER

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me)
on 12/03/2016)
Judge Code: JUDGE1

Judge's Address 103 EAST MARKET ST. / PO BOX 1253
BENNETTSVILLE SC 29512
Judge's Telephone 843-479-1582
Issuing Court: Magistrate Municipal Circuit
Case: 7949-16

ORIGI

WITNESSES

I Dease

Bennettsville Police Department

Law Enforcement Case #:

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
2016A3420100297

ARRESTED ON: 2016-12-13

ACTION OF GRAND JURY

True Billed

07 MAR 2017

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:

2017-GS-34-0054

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
MARCH 2017

THE STATE

vs.

Haneef Aquil Childs

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

COPY

William B. Rogers, Jr., Solicitor

COUNTY OF MARLBORO

)
)

Murder / Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on MARCH 7, 2017, the Grand Jurors of Marlboro County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Haneef Aquil Childs did in Marlboro County, on or about December 3, 2016, willfully, feloniously, and intentionally kill the victim, Jackie Purvis, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about 12/3/2016 in Marlboro County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


WILLIAM B. ROGERS, JR.
SOLICITOR