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Nov 15 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHELLIE LAVETTE DAVIS,

APPELLANT

APPELLATE CASE NO. 2018-000366

MOTION TO VACATE SENTENCE
AND REMAND FOR A NEW
SENTENCING HEARING

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order setting aside the thirty-year sentence issued by Judge Thomas A. Russo on April 30, 2014. Following a remand by this Court, and by way of a written Order dated November 5, 2021, the Honorable Walton J. McLeod, IV, the Chief Administrative Judge, General Sessions, in the Eleventh Judicial Circuit, found "the record of the post-trial sentencing hearing cannot be adequately reconstructed."

In accordance with Rule 240(c), SCACR, Counsel submits the following documents to support his motion: Judge McLeod's Order dated November 5, 2021 (Exhibit #1) and the sentence sheet from April 30, 2014 (Exhibit #2). As part of Appellant's prior Motion to Reconstruct the Record of Appellant's Sentencing Hearing Transcript filed on December 6, 2018, this Court has on file four other exhibits: A) pages 924-927 and 930-935 of the trial transcript dated April 21-25, 2014; B) an e-mail from court reporter Bethanie K. Creppon; C) a letter from court reporter Bethanie K. Creppon; and D) an Order Denying Defendant's Motion for Hearing to Reconsider Not Finding Battered Woman During Sentencing.

Procedural History

In May 2011, Ms. Davis was indicted by a Lexington County Grand Jury on one count of murder. She proceeded to trial before the Honorable Thomas A. Russo and a jury on April 21, 2014. Aimee J. Zmroczek and M. Wade Dowtin represented Ms. Davis, and C. Dayton Riddle, III and Shannon A. Davis appeared on behalf of the state. Ms. Zmroczek filed a written notice, pursuant to S.C. Code Ann. § 17-23-170(E), which indicated her intent to offer evidence of battered spouse syndrome at trial.

Following a five-day trial, the jury found her guilty as indicted. Sentencing was deferred to the following week. On April 30, 2014, Judge Russo convened a sentencing hearing.[1] Judge Russo denied Ms. Zmroczek's request to convey "battered spouse" status upon Ms. Davis in accordance with S.C. Code Ann. § 16-25-90. Judge Russo did not issue a written order of his findings.

[1] As noted in the Motion filed with this Court in December 2018, the transcript of that hearing cannot be produced.

Ms. Zmroczek filed a post-trial motion to request a hearing to reconsider Judge Russo's finding regarding battered spouse syndrome on May 8, 2014. For unknown reasons, the Order denying this motion was not filed until February 7, 2018.

Following receipt of that order, a Notice of Appeal was filed this Court on February 28, 2018. Previous appellate counsel for Ms. Davis, Jennifer Roberts, filed a Petition on December 6, 2018 that sought an order remanding the case for reconstruction. This Court requested a Return from the state; a Return was filed on December 12, 2018. The state did not oppose the Petition.

Accordingly, this Court issued an Order granting the motion to remand on January 24, 2019. Counsel for the parties have been diligent in their efforts to reconstruct this case.[2] An agreement was made wherein counsel for both parties obtained affidavits from a total of six witnesses: Shellie Davis (Appellant); Marquis Davis (son of Appellant); William Tyson, Ph.D (expert witness); Aimee Zmroczek (trial counsel); C. Dayton Riddle (former solicitor); and Shannon Davis (solicitor).

An in-person hearing was conducted in this matter on September 30, 2021; the undersigned and opposing counsel Josh Edwards appeared before Judge McLeod in Lexington County. Prior to the hearing, the parties submitted substantive memoranda of law. Following the hearing, both parties offered proposed orders as well. Judge McLeod heard arguments and took the matter under advisement.

In his Order dated November 5, 2021, Judge McLeod found "there is no record of credible evidence considered, and no specific findings of fact on record pertaining to the

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2 Counsels' efforts are reflected in the numerous status updates filed with this Court.

discretionary decision made pursuant to S.C. Code Ann. § 16-25-90."[3] Order p. 7. Further, Judge McLeod concluded:

> Due to the enigmatic nature of what occurred at the sentencing hearing and the ambiguity of what the trial and sentencing court weighed in consideration of his ruling, this Court finds the record of the post-trial sentencing hearing cannot be adequately reconstructed. In review of the affidavits that the parties collected at the direction of this Court, and the arguments of counsel presented at the formal hearing, it appears evidence that a meaningful appellate review of the post-trial sentencing hearing is not possible.

Order p. 7.[4]

Discussion

When a trial transcript has been lost or destroyed, the Court may vacate the conviction and sentence and remand for a new trial if meaningful appellate review is not possible. See Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007).

Our state's jurisprudence in the area of reconstruction law supports a finding that despite the efforts of all involved, this matter is incapable of reconstruction; Appellant could not be afforded meaningful appellate review based on the record as it currently exists. The affidavits, gathered both by agreement and at the direction of Judge McLeod, are simply not enough to

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3 This statutory provision allows for parole eligibility for individuals who have "presented credible evidence of a history of criminal domestic violence... suffered at the hands of a household member."

4 In accordance with Frady v. State, the undersigned now moves before this Court for a new sentencing hearing. Op. No. 2015-MO-073 n. 1 (S.C. Sup. Ct. filed November 20, 2015).

afford Ms. Davis meaningful appellate review. The resulting conclusion by Judge McLeod plainly sets forth why she should be given a new sentencing hearing.

In State v. Ladson, Ladson was convicted of first-degree burglary following a three-day trial in November 2004. 373 S.C. 320, 321, 644 S.E.2d 271, 271 (Ct. App. 2007). The court reporter from his trial disclosed that there was no record of the proceedings in August 2005. Id. This Court remanded the matter to the trial court for reconstruction, and a hearing was held in an effort to reconstruct the record. Id.

The state contended that the reconstructed record was sufficient to permit appellate review. By contrast, Ladson argued "the conclusory and summary nature of the purported record on appeal does not permit meaningful appellate review." Id. This Court held: "Because we find the reconstructed record insufficient for meaningful review of direct appeal issues, we reverse, and remand for a new trial." Id.

This Court delved into the trial court's reconstruction attempts. At the start, this Court noted in a footnote: "As the original trial took place more than a year before this reconstruction hearing, it was obviously quite difficult to reconstruct the record." Id. n. 1. Similar to the difficulties displayed in Ms. Davis' case, the Court noted "[i]t was clear from the outset of this hearing that reconstructing the record from scratch, after such a substantial delay, would be an uphill struggle." Id. at 322, 644 S.E.2d 271 at 272. The reconstruction hearing in Ladson was January 5, 2006, approximately fourteen months after trial. In Ms. Davis' case, we are over eighty-four months removed from the sentencing hearing, over **six times longer** than was the case in Ladson.

At the reconstruction hearing in Ladson, the state presented two affidavits from witnesses and "summarized" the testimony of the other witnesses. Id. This Court straightforwardly noted

how the information provided by the state "was conclusory." Id. There was "even a dispute as to whether Ladson testified in his own defense." Id. at 322-23, 644 S.E.2d at 272.

This Court established "the analytical framework for assessing the sufficiency of a reconstructed record." Id. at 323, 644 S.E.2d at 273. This Court concluded that a reconstructed record on appeal must allow for meaningful appellate review. Id. at 326, 644 S.E.2d at 274-74. In Ladson's case in particular, this Court observed how the delay "made a bad situation worse, as the passage of time clearly dimmed the recall of the participants." Id. at 326, 644 S.E.2d at 274. Ultimately, this Court concluded that reconstruction did not permit meaningful appellate review in Ladson's case:

> It is simply unrealistic and unreasonable to think that a trial judge and counsel can—under these circumstances—reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules. The continuing dispute as to whether Ladson even testified (much less the content of his purported testimony) is but one example of the trial court and counsel groping in the dark as to what actually happened at trial.

Id. at 326, 644 S.E.2d at 274.

Much like the case at hand, this Court ultimately held:

> The record before us does not permit meaningful appellate review. **To hold this record is sufficient would guarantee the affirmance of Ladson's conviction and twenty-five year non-parolable sentence without a genuine review.** We would simply be constrained to affirm based on an insufficient record and issue preservation principles. Moreover, it would effectively foreclose and collateral challenge through post-conviction relief or otherwise.

Id. at 327, 644 S.E.2d at 274-75 (emphasis added).

Judge McLeod correctly ruled that this matter cannot be reconstructed. The six affidavits total twelve pages in length. Taken separately or together, they offer no clarity as to what was discussed *in detail* at the hearing. There is no indication as to Judge Russo's findings of fact.

There does not exist enough of a record for the undersigned to argue before this Court that Judge Russo erred in not finding that Ms. Davis was a battered spouse.

In State v. Blackwell-Selim, 392 S.C. 1, 707 S.E.2d 426 (2011), the South Carolina Supreme Court held that the trial court was required to make specific findings of fact on the record for the purposes of early parole eligibility. The Petitioner in that case pled guilty to voluntary manslaughter following the death of her live-in boyfriend. Id. at 2, 707 S.E.2d at 427. During sentencing, she presented evidence showing a history of criminal domestic violence at the hands of her boyfriend, entitling her to early parole eligibility pursuant to S.C. Code Ann. 16-25-90 (Supp. 2010). The plea judge stated "[t]here is no finding of parole eligibility pursuant to [the statute]," however he made no specific findings as to why Blackwell-Selim was ineligible for early parole. Id. at 3, 707 S.E.2d at 427.

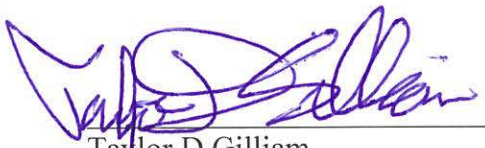
The Court held that the Court of Appeals erred in reviewing the plea judge's finding that Petitioner was not eligible for early parole under § 16-25-90 because "the plea judge failed to make specific findings of fact to support his ruling." Id. at 4, 707 S.E.2d at 428. "Thus, there was nothing for the Court of Appeals to review." Id. The Supreme Court plainly stated: "The circuit court **must** make specific findings in ruling on parole eligibility or ineligibility under 16-25-90." Id. (emphasis added). There was no written order following the April 30, 2014 sentencing hearing in Appellant's case, and the parties were unable to reconstruct either the hearing itself or the trial judge's findings.

In Deaton, supra, the defendant's convictions were set aside and a new trial had where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing Deaton, this Court denied a request for reconstruction in State v. Serrette, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App.

2007) where the reason for the lack of transcript was due to the defendant's absence for a ten-year period, which this Court explained was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript."

In this case, Appellant was not at fault for the absence of her sentencing transcript; rather, the transcript is not available from the court reporter. In light of the court reporter's inability to produce a transcript of Appellant's sentencing hearing, coupled with Judge McLeod's finding that the hearing cannot be adequately reconstructed, Appellant requests this Court order a new sentencing hearing in her case. Petitioner cannot obtain meaningful appellate review based upon the present existing record as found by Judge McLeod in his November 5, 2021 Order.

WHEREFORE, the undersigned counsel requests this Court set aside the thirty-year sentence from 2014 and remand for a new sentencing hearing. If granted, the undersigned will remain on the case, coordinate with the trial court, opposing counsel, and any potential expert witnesses, and assist with the new sentencing hearing. Following the new potential hearing, the undersigned is prepared to raise any and all direct appeal issues arising out of Ms. Davis' trial as well as the new potential sentencing hearing.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of November, 2021.

Exhibit 1

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	COURT OF GENERAL SESSIONS IN THE ELEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, RESPONDENT v. SHELLIE DAVIS, APPELLANT	CASE NO.: 2011-GS-32-01037 (Appellate Case No. 2018-000366) **ORDER**

This matter comes before the Court by way of an Order filed in the South Carolina Court of Appeals on January 24, 2019. The Court of Appeals, following a motion filed by Ms. Davis' appellate counsel, remanded this case to the Lexington County Court of General Sessions for reconstruction. An in-person hearing was conducted in this matter on September 30, 2021, wherein Taylor Gilliam, Esquire, appeared on behalf of the Defendant and Josh Edwards, Esquire, appeared on behalf of the State. Prior the hearing, the parties submitted substantive memoranda of law in support of their respective arguments, and subsequently submitted proposed orders for consideration by this Court.

Procedural History

Ms. Davis was indicted by a Lexington County Grand Jury in May of 2011 on one count of Murder. A jury trial was held before the the Honorable Thomas A. Russo on April 21, 2014. Aimee J. Zmroczek and M. Wade Dowtin represented Ms. Davis, and C. Dayton Riddle, III and Shannon A. Davis appeared on behalf of the State. Prior to trial, Ms. Zmroczek filed a written notice pursuant to S.C. Code Ann. § 17-23-170(E), which indicated her intent to offer evidence of battered spouse syndrome at trial.

Following a five-day trial, the jury found her guilty as indicted. Sentencing was deferred to the following week. On April 30, 2014, Judge Russo convened a sentencing hearing, wherein he denied Ms. Zmroczek's request to convey "battered spouse" status upon Ms. Davis in accordance with S.C. Code Ann. § 16-25-90. Judge Russo did not issue a written order of his findings and the transcript of that sentencing hearing cannot be produced.

Ms. Zmroczek filed a post-trial motion to reconsider Judge Russo's finding regarding battered spouse syndrome on May 8, 2014. For unknown reasons to this court, the Order denying this motion was not filed until February 7, 2018.

Following receipt of that Order, a Notice of Appeal was filed with the South Carolina Court of Appeals on February 28, 2018. Previous appellate counsel for Ms. Davis, Jennifer Roberts, filed a Petition with the South Carolina Court of Appeals on December 6, 2018 that sought an order remanding the case for reconstruction. The Court of Appeals requested a Return from the State; a Return was filed on December 12, 2018. The state did not oppose the Petition.

Accordingly, the Court of Appeals issued the aforementioned Order granting the motion to remand on January 24, 2019. Counsel for the parties have been diligent in their efforts to reconstruct this case. They contacted Judge Russo in early 2020[1] and then Judge Addy, who served as Chief Administrative Judge at that time. A conference call occurred with Judge Addy, appellate counsel Taylor Gilliam, and counsel from the Attorney General's Office, Caroline Scrantom, on November 19, 2020.

A follow-up status conference call took place between the Court and the same counsel on January 7, 2021. The Court and the parties noted that reconstruction of this matter would be difficult given the significant time lapse and recommended that the parties initially gather

[1] Judge Russo's term as a circuit judge ended on June 30, 2020.

affidavits from trial participants and witnesses with personal knowledge of the trial and sentencing hearing conducted in 2014. To that end, six affidavits were gathered from attorneys, Ms. Davis, a family member, and an expert witness. This court subsequently scheduled a hearing for the parties to the fully heard on the respective arguments regarding the reconstruction of the record of this case.

AFFIDAVITS OBTAINED IN RECONSTRUCTION

Affidavits were collected from January – March 2021. Each of the sworn affidavits were made exhibits to the record at the reconstruction hearing on September 30, 2021 and can be summarized as follows:

Shellie Davis

Ms. Davis retained Aimee Zmroczek after she was indicted. She remembered that her trial began on April 21, 2014 before Judge Russo. Ms. Davis recalled that the defense strategy at trial was to show that Shellie Davis acted in self-defense. She noted that she testified in her own defense. As can be seen in the trial transcript, Judge Russo initially agreed that Ms. Davis was a battered woman.[2] After the solicitor objected, Ms. Davis recalled Judge Russo instructing the parties that he had not previously had a battered spouse case[3], and he desired to research the issue. She was unable to recollect anything specific about the sentencing hearing the week after her trial in 2014.

Marquis Davis

Mr. Davis is Ms. Davis' oldest son. He remembered attending every day of his mother's trial. At the time, he was enrolled at the University of South Carolina as a freshman and noted that April 2014 was a very stressful time in his life. He had no specific recollections regarding the

[2] Trial transcript p. 924, ll. 5 – 16.
[3] Trial transcript p. 933, ll. 2 – 8.

sentencing hearing. He recalled addressing the judge and requesting leniency for his mother. Those remarks do not appear in the trial transcript from April 21 – 25, 2014.

Aimee Zmroczek, Esquire

Ms. Zmroczek has been practicing law since 2008. She was retained to represent Ms. Davis. She noted that Judge Russo found by a preponderance of the evidence that Ms. Davis was a battered woman after the jury returned a guilty verdict. The trial transcript accurately reflects this assertion. Ms. Zmroczek recalled that Judge Russo reconvened the parties and witnesses for a hearing on April 30, 2014. She had no specific recollections of the sentencing, nor could she recall who testified. She did not retain any notes from the sentencing hearing.

William M. Tyson, Ph.D.

Dr. Tyson is a licensed psychologist. He earned his M.S. degree in Clinical Psychology in 1982. He earned his Ph.D. in Clinical Psychology a few years later. He was contacted by Ms. Zmroczek in April 2014 about testifying in Ms. Davis' case. He recalled that on "April 30, 2014, I testified at Ms. Davis' trial." He was unable to remember much of the specific details of his testimony. He could not recall what questions were asked of him or whether any documents or exhibits were discussed at the hearing.[4]

C. Dayton Riddle, Esquire

Mr. Riddle was the Deputy Solicitor in Lexington County in 2014. Along with Shannon Davis, he prosecuted this case. Based on his recollection, neither party called any witnesses to deliver testimony regarding battered spouse syndrome at the sentencing hearing. Further, Mr.

[4] The records reflect that Ms. Davis was convicted on April 25, 2014, and that the sentencing hearing occurred on April 30, 2014. Dr. Tyson's affidavit refers to his testimony at trial, but references the date of the sentencing hearing. None of the affiants appear to recall Dr. Tyson testifying at a post-trial sentencing hearing.

Riddle recalls that "the only evidence presented to the trial court on the applicability of the battered spouse statute . . . was presented during Ms. Davis' trial."

Shannon Davis, Esquire

Ms. Davis was an Assistant Solicitor in the 11th Judicial Circuit in 2014. From what she could recall, she did not believe Ms. Zmroczek called any witnesses for the purposes of the sentencing hearing convened subsequent to the trial. Further, Ms. Davis recalled: "During Ms. Davis' case-in-chief, Ms. Zmorczek called Ms. Davis and a few of Ms. Davis' friends. These witnesses discussed the issue of abuse during their testimonies. Ms. Zmorczek also called Dr. Donna Schwartz-Watts Maddox who was retained to examine and evaluate Ms. Davis, and Dr. William Tyson, who discussed battered women's syndrome and who did not offer an opinion on whether Ms. Davis suffered from battered women's syndrome."

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the above affidavits and heard the arguments of counsel. Set forth below are the relevant findings of fact and conclusions of law regarding the reconstruction of Ms. Davis' April 30, 2014 sentencing hearing.

Discretion in determining how to proceed with a reconstruction of an unavailable transcript lies with the trial court. Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9, 13 (Ct. App. 2012). This Court acknowledges that a reconstruction hearing will never be so effective as to provide a verbatim recreation of every question and response elicited during the original hearing. When a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed so as to allow for meaningful appellate review. Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373

S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). Where portions of stenographic notes are lost prior to transcription, it is appropriate for the judge to accept affidavits of counsel and the court reporter to determine what transpired. China v. Parrott, 251 S.C. 329, 333–34, 162 S.E.2d 276, 278 (1968).

A reconstructed record on appeal should allow for "meaningful appellate review." State v. Ladson, supra. It is important to note that, the inability to prepare a complete transcript, in and of itself, does not necessarily present a ground for reversal. State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). The trial court has discretion in determining how to reconstruct missing portions of a transcript, so long as this discretion is within the limits required by procedural due process. Adams v. H.R. Allen, Inc., 397 S.C. 652, 658, 726 S.E.2d 9, 13 (Ct. App. 2012). The burden is on the appellant to establish that the "incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review. In re D.W.,615 S.E.2d 90, 94 (2005).

Here, The Court of Appeals ordered this Court to schedule "such hearings [this Court] deems appropriate," to determine whether a record of the sentencing hearing could be adequately reconstructed. Upon review of the affidavits collected during the reconstruction phase, there is conflicting remembrance of what, if any, testimony was provided at the sentencing hearing. The affidavits collected for the record in this remand can arguably be used to support both of the parties respective arguments regarding "meaningful appellate review."

In considering a request for early parole eligibility under S.C. Code Ann. § 16-25-90, the circuit court "must make specific findings of fact" on record. State v. Blackwell-Selim, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011). The state contends that its two witnesses recall no live testimony at the sentencing hearing, furthermore, none of the affidavits indicate that there was any testimony

provided at the hearing. Being that the crux of the Defense's appeal regards Judge Russo's decision to deny defense counsel's request to convey "battered spouse" status upon Ms. Davis in accordance with S.C. Code Ann. § 16-25-90, it would be essential for the appellate court to review what findings of fact, if any, were made during the sentencing phase. Judge Russo did not issue a written order of his initial findings, and his subsequent Order denying reconsideration only provided that he "heard sufficient expert witness testimony for both the State and the Defendant prior to sentencing . . ." In sum, there is no record of credible evidence considered, and no specific findings of fact on record pertaining to the discretionary decision made pursuant to S.C. Code Ann. §16-25-90.

Due to the enigmatic nature of what occurred at the sentencing hearing and the ambiguity of what the trial and sentencing court weighed in consideration of his ruling, this Court finds the record of the post-trial sentencing hearing cannot be adequately reconstructed. In review of the affidavits that the parties collected at the direction of this Court, and the arguments of counsel presented at the formal hearing, it appears evident that a meaningful appellate review of the post-trial sentencing hearing is not possible.

IT IS SO ORDERED.

Walton J. McLeod, IV
Chief Administrative Judge – General Sessions
Eleventh Judicial Circuit

Lexington, South Carolina
November 5, 2021

Exhibit 2

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)
STATE VS.)
Shellie Lavette Davis)
AKA:)
Race: Black Sex: F Age: 41)
DOB: SS#:)
Address:)
City,State,Zip: Columbia, SC 29229-8117)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3201037
A/W#: J816953
Date of Offense: 9/22/2010
S.C. Code § : 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: Murder / Murder

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒§17-25-45

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

Solicitor | 4728 SC Bar# | Defendant | Attorney for Defendant | 77193 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 ~~days/months~~ (years) or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

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SPECIAL CONDITIONS:

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100 00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25 00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5 00
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: ☒ To receive any mental health treatment as deemed necessary by the Dept. of Corrections.

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

Clerk of Court/ Deputy Clerk Bill Carrig II
Court Reporter: S. Patterson
Presiding Judge
Judge Code: 2141
Sentence Date: 4-30-2014

SCCA/217 (03/2011)

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHELLIE LAVETTE DAVIS,

APPELLANT

APPELLATE CASE NO. 2018-000366

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Motion for to Vacate in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Shellie Lavette Davis, #359781, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 15th day of November, 2021.

Taylor D Gilliam
Appellate Defender

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

ATTORNEY FOR APPELLANT