

IN THE ALABAMA COURT OF CRIMINAL APPEALS

NO. _____

EX PARTE STATE OF ALABAMA

IN RE:

STATE OF ALABAMA,

PETITIONER,

VS.

AUSTIN SMITH CLEM,

DEFENDANT.

(39th Judicial Circuit Case No.: CC 2012-770)

PETITION FOR WRIT OF MANDAMUS

TO HONORABLE JAMES W. WOODROOF, JR., CIRCUIT JUDGE
39TH JUDICIAL CIRCUIT

ORAL ARGUMENT REQUESTED

BRIAN C.T. JONES
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IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

EX PARTE STATE OF ALABAMA

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IN RE: STATE OF ALABAMA,

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PETITIONER,

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VS.

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CASE NO: _____

*

AUSTIN SMITH CLEM,

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*

DEFENDANT.

*

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PETITION FOR WRIT OF MANDAMUS

Comes now the STATE OF ALABAMA, and petitions the Alabama Court of Criminal Appeals for a writ of mandamus directing the Honorable James W. Woodroof, Jr., Circuit Judge of the Limestone County Circuit Court, to vacate his sentencing order of November 13, 2013, on the grounds that said order exceeds his judicial authority, and is so contrary to the law as to cause a gross disruption of criminal justice. In support, the State shows as follows:

STATEMENT OF FACTS

On October 25, 2012, a Limestone County grand jury returned an indictment charging Austin Smith Clem with one count of rape in the first degree, two counts of rape in the second degree, and one count of sexual abuse in the second degree. See Exhibit 1. On September 11, 2013, a Limestone County jury found Clem guilty beyond a reasonable doubt of one count of rape in the first degree and two counts of rape in the second degree. See Exhibits 2 and 3. Judge James W. Woodroof, Jr., who presided over the trial, ordered a pre-sentence investigation and set the matter for a sentencing hearing. See Exhibit 3. On October 8, 2013, Clem, through his attorney, filed a post-verdict motion for judgment of acquittal, which Judge Woodroof denied the same date. See Exhibits 4 and 5.

On November 13, 2013, after conducting a sentencing hearing, Judge Woodroof sentenced Clem, as to Count One, rape in the first degree, to a twenty (20) year sentence in the State Penitentiary, split to serve two (2) years in the

Limestone County Community Corrections Program¹, with the balance suspended, and placed Clem on three (3) years of supervised probation. See Exhibit 6. As to Count Two, rape in the second degree, Judge Woodroof sentenced Clem to ten (10) years in the State Penitentiary, split to serve two (2) years in the Limestone County Community Corrections Program, with the balance suspended, and placed Clem on three (3) years of supervised probation. See Exhibit 6. The sentence in Count Two was ordered to run consecutive to the sentence in Count One. See Exhibit 6. As to Count Three, rape in the second degree, Judge Woodroof sentenced Clem to ten (10) years in the State Penitentiary, split to serve two (2) years in the Limestone County Community Corrections Program, with the balance suspended, and placed Clem on three (3) years of supervised probation. See Exhibit 6. The sentence in Count Three was ordered to run concurrent with the sentences in Counts One and Two. See Exhibit 6.

¹ The Limestone County Community Corrections Program is a community based alternative to a traditional prison sentence created for non-violent, low-level offenders pursuant to Ala. Code, 1975 §15-18-170 et seq.

STATEMENT OF THE ISSUES

1. Whether the trial court violated the Alabama split-sentence statute by sentencing the defendant to a twenty (20) year prison sentence, which was split to serve only two (2) years?
2. Whether the trial court violated the Alabama Community Punishment and Corrections Act by sentencing the defendant, who was convicted of rape in the first degree, to serve a split-sentence in a community corrections program?

RELIEF SOUGHT

The State of Alabama respectfully requests that this Honorable Court grant this petition and issue a writ of mandamus directing the Honorable James W. Woodroof, Jr., Circuit Judge of the Limestone County Circuit Court, to vacate his sentencing order in this case, dated November 13, 2013, and re-sentence the defendant according to the provisions of Alabama law.

REASONS WHY WRIT SHOULD ISSUE

I. MANDAMUS REVIEW IS AN APPROPRIATE REMEDY.

Mandamus review is the appropriate remedy in this case. Mandamus "is an extraordinary remedy, but is appropriate in exceptional circumstances which amount to judicial usurpation of power." Ex parte Nice, 407 So. 2d 874, 878 (Ala. 1981). "[W]hen the trial court has acted without lawful authority, the State has been afforded mandamus relief." Ex parte King, 23 So. 3d 77, 79 (Ala. 2009). Additionally, this Court has held that the "State may file a mandamus petition challenging an illegal sentence." State v. Gaines, 932 So. 2d 118, 119 (Ala. Crim. App. 2004). Here, the State has no remedy to address the trial court's imposition of an illegal sentence other than mandamus relief.

II. THE TRIAL COURT ORDERED AN ILLEGAL SPLIT SENTENCE.

The trial court's imposition of a twenty (20) year sentence with a split to serve only two (2) years violates the Alabama split-sentence statute, which states, in pertinent part, as follows:

" . . . In cases involving an imposed sentence of greater than 15 years, but not more than 20 years, the sentencing judge may order that the convicted defendant be confined in a prison, jail-type institution, or treatment institution for a period not exceeding five years, but not less than three years, during which the offender shall not be eligible for parole or release because of deduction from sentence for good behavior under the Alabama Correctional Incentive Time Act, and that the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation for the period upon the terms as the court deems best. . . ."

Ala. Code (1975), § 15-18-8(a)(1) (emphasis added).

In other words, if an imposed sentence ranges between fifteen (15) years and a day up to twenty (20) years, the sentencing judge may sentence a defendant to a split-sentence ranging between three (3) years and five (5) years. In this case, however, the trial judge sentenced Clem to twenty (20) years in prison, which was split to serve only two (2) years in the Limestone County Community Corrections Program.

This Court addressed this precise issue in State v. Gaines, 932 So. 2d 118 (Ala. Crim. App. 2004). In that case, the trial court sentenced Gaines to twenty (20) years in prison, split to serve two (2) years in the state penitentiary. Id. at 119. The State filed a mandamus

petition, which this Court granted and issued the writ directing the trial court to re-sentence Gaines. This Court held that "[t]he clear wording of the [statute], 'but not less than three years,' establishes a mandatory minimum term of confinement," for a twenty (20) year sentence. Id. at 122. Here, just as in Gaines, the trial court's sentence is illegal because it fails to comply with the three (3) year mandatory minimum split-sentence.

III. ALABAMA LAW PROHIBITS A SENTENCE FOR FORCIBLE RAPE FROM BEING SERVED IN A COMMUNITY CORRECTIONS PROGRAM DESIGNED FOR NON-VIOLENT OFFENDERS.

Rape by force or compulsion, by its very definition, is an act of violence. From the earliest laws of the human race until the modern era, mankind has always placed the crime of rape by force or compulsion among the most despicable offenses deserving of the most severe punishments.

The civilized world's historical classification of the crime of forcible rape as being an offense deserving of the harshest of consequences is based upon sound reasoning. No one would deny that such an act is a particularly insidious, wicked, and sadistic form of violence wherein the victim suffers to satisfy the most base and primitive

urges of the offender. More than any other offense, forcible rape has the potential to inflict severe pain, injury, humiliation, and emotional distress upon the victim, and to create the risk of the spread of sexually-transmitted diseases.

Despite the violent nature of the offense, in this case, the trial court's sentencing order allows Clem to serve the 20 year, split to serve two (2) year sentence in the Limestone County Community Corrections Program. The trial court's order violates the Alabama Community Punishment and Corrections Act (hereinafter the "ACPCA"), and thereby exceeds the court's authority and creates a gross disruption of criminal justice.

The ACPCA states, in relevant part, as follows:

"The following offenders are excluded from consideration for punishment in the community:

(1) Persons who are convicted of offenses as listed in subdivision (14) of Section 15-18-171."

Ala. Code (1975), § 15-18-175(b).

Subdivision (14) states as follows:

"(14) EXCLUDED FELONY OFFENDERS. One who is convicted of any of the following felony offenses: Murder, kidnapping in the first degree, rape in the first degree, sodomy in the first degree, arson in the first degree, trafficking in controlled substances, robbery in the first

degree, sexual abuse in the first degree, forcible sex crimes, lewd and lascivious acts upon a child, or assault in the first degree if the assault leaves the victim permanently disfigured or disabled."

Ala. Code (1975), § 15-18-171(14) (emphasis added).

Rape by force or compulsion must be treated by the criminal justice system as a violent offense. To suggest otherwise runs afoul of thousands of years of both sound jurisprudence and experience. Community corrections programs that are accustomed to supervising and counselling drug and other non-violent offenders are ill-equipped to either supervise or provide corrective counselling for rapists and other violent sex offenders.

In this case, a Limestone County jury found Clem guilty of rape in the first degree beyond a reasonable doubt. Under Alabama law, an offender convicted of rape in the first degree is ineligible to serve any part of his sentence in a community corrections program. The sentencing order, therefore, violates the ACPCA by directing that Clem serve the split portion of his sentence in the Limestone County Community Corrections Program.


CONCLUSION

WHEREFORE, the premises considered, Petitioner prays that the Court grant the petition and order that an answer to the petition be filed by the respondents.

Submitted this the 16th day of November, 2013.



BRIAN C.T. JONES (JON086)
DISTRICT ATTORNEY
COUNSEL FOR PETITIONER



JAMES C. AYERS, JR. (AYE002)
CHIEF DEPUTY DISTRICT ATTORNEY
COUNSEL FOR PETITIONER




MATTHEW R. HUGGINS (HUG048)
ASSISTANT DISTRICT ATTORNEY
COUNSEL FOR PETITIONER

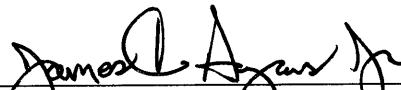
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CERTIFICATE OF SERVICE

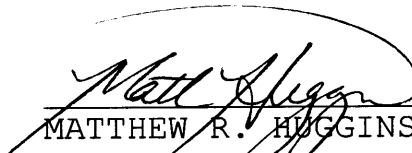
I certify, this the 16th day of November, 2013, that I have this day served copies of this petition on the respondent judge and all other parties to the action in the trial court by placing the same in each party's respective courthouse box.



BRIAN C.T. JONES (JON086)
DISTRICT ATTORNEY
COUNSEL FOR PETITIONER



JAMES C. AYERS, JR. (AYE002)
CHIEF DEPUTY DISTRICT ATTORNEY
COUNSEL FOR PETITIONER



MATTHEW R. HUGGINS (HUG048)
ASSISTANT DISTRICT ATTORNEY
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CIRCUIT COURT OCTOBER TERM 2012

A TRUE BILL, presented to the judge Presiding in open Court by the Foreperson of this Grand Jury, and filed in open court this 25 day of October, 2012.

Rebecca D. Ekins
Grand Jury Foreperson

Charles Page Jr.
Clerk of the Circuit Court
of LIMESTONE County
39TH Judicial Circuit

10/25/12
Date

INDICTMENT**THE STATE OF ALABAMA**

vs.

AUSTIN SMITH CLEM WM 06/01/1988**Hair: BRO Eyes: HZL Height: 5 ft 8 in Weight: 200 SID:****Address: 2220 WINDSCAPE DR APT 70, ATHENS, AL 35611****alias****None Reported****CHARGES:**

1. RAPE BY FORCIBLE COMPULSION CLASS: TYPE:
2. RAPE SECOND LESS THAN 16 CLASS: TYPE:
3. RAPE SECOND LESS THAN 16 CLASS: TYPE:
4. SEXUAL ABUSE SECOND DEGREE CLASS: TYPE:

Previous Bond \$ _____ Bail fixed at \$ 65,000 this 25 day of October, 2012.

Robert M. Baker

Judge Presiding

THE STATE OF ALABAMA
LIMESTONE COUNTY

CIRCUIT COURT

Prosecutor:

BRIAN C.T. JONES
DISTRICT ATTORNEY
39TH JUDICIAL CIRCUIT

THE STATE OF ALABAMA, LIMESTONE COUNTY
Circuit Court - 39TH Judicial Circuit

AUSTIN SMITH CLEM, whose name is otherwise unknown to the Grand Jury, a male, did engage in sexual intercourse with COURTNEY ELAINE ANDREWS, a female, by forcible compulsion, in violation of Section 13A-6-61 of the Code of Alabama,

COUNT 2

The Grand Jury of said county further charge that, before the finding of this indictment, AUSTIN SMITH CLEM, whose name is otherwise unknown to the Grand Jury, a male, did engage in sexual intercourse with COURTNEY ELAINE ANDREWS, a female, who was less than sixteen years of age and more than twelve years of age, the said AUSTIN SMITH CLEM being sixteen years or older and at least two years older than the said COURTNEY ELAINE ANDREWS in violation of Section 13A-6-62 of the Code of Alabama,

COUNT 3

The Grand Jury of said county further charge that, before the finding of this indictment, AUSTIN SMITH CLEM, whose name is otherwise unknown to the Grand Jury, a male, did engage in sexual intercourse with COURTNEY ELAINE ANDREWS, a female, who was less than sixteen years of age and more than twelve years of age, the said AUSTIN SMITH CLEM being sixteen years or older and at least two years older than the said COURTNEY ELAINE ANDREWS in violation of Section 13A-6-62 of the Code of Alabama,

COUNT 4

The Grand Jury of said county further charge that, before the finding of this indictment, AUSTIN SMITH CLEM, whose name is otherwise unknown to the Grand Jury, being nineteen years old or older, did subject to sexual contact COURTNEY ELAINE ANDREWS, who was less than sixteen years old but more than twelve years old, in violation of Section 13A-6-67 of the Code of Alabama,

AGAINST THE PEACE AND DIGNITY OF THE STATE OF ALABAMA.

BRIAN C.T. JONES

District Attorney

THE STATE OF ALABAMA, LIMESTONE COUNTY
Circuit Court - 39TH Judicial Circuit

39TH Judicial Circuit

WITNESSES:

JASON THREET, ATHENS POLICE DEPT., ATHENS, AL 35611

Exhibit #2

IN THE CIRCUIT COURT FOR LIMESTONE COUNTY, ALABAMA

STATE OF ALABAMA

vs.

AUSTIN SMITH CLEM,

Defendant.

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Case No. CC 12-770

GUILTY VERDICT COUNT I

We, the Jury, find the Defendant, Austin Smith Clem, guilty of the offense of Rape, 1st, as charged in Count I of the Indictment.

Dated this 11th day of September, 2013.

Mark H. Whitt
Foreperson Signature

MARK H. WHITT
Foreperson Printed Name

NOT GUILTY VERDICT COUNT I

We, the Jury, find the Defendant, Austin Smith Clem, not guilty of the offense of Rape, 1st, as charged in Count I of the Indictment.

Dated this _____ day of September, 2013.

Foreperson Signature

Foreperson Printed Name

IN THE CIRCUIT COURT FOR LIMESTONE COUNTY, ALABAMA

STATE OF ALABAMA,

vs.

AUSTIN SMITH CLEM,

Defendant.

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Case No. CC 12-770

GUILTY VERDICT
COUNT II

We, the Jury, find the Defendant, Austin Smith Clem, guilty of the offense of Rape, 2nd, as charged in Count II of the Indictment.

Dated this 11th day of September, 2013.

Mark H. Whitt
Foreperson Signature

MARK H. WHITT
Foreperson Printed Name

NOT GUILTY VERDICT
COUNT II

We, the Jury, find the Defendant, Austin Smith Clem, not guilty of the offense of Rape, 2nd, as charged in Count II of the Indictment.

Dated this _____ day of September, 2013.

Foreperson Signature

Foreperson Printed Name

IN THE CIRCUIT COURT FOR LIMESTONE COUNTY, ALABAMA

STATE OF ALABAMA,

vs.

AUSTIN SMITH CLEM,

Defendant.

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Case No. CC 12-770

**GUILTY VERDICT
COUNT III**

We, the Jury, find the Defendant, Austin Smith Clem, guilty of the offense of Rape, 2nd, as charged in Count III of the Indictment.

Dated this 11th day of September, 2013.

Mark H. Whitt
Foreperson Signature

MARK H. WHITT
Foreperson Printed Name

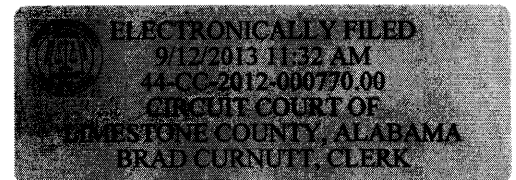
**NOT GUILTY VERDICT
COUNT III**

We, the Jury, find the Defendant, Austin Smith Clem, not guilty of the offense of Rape, 2nd, as charged in Count III of the Indictment.

Dated this _____ day of September, 2013.

Foreperson Signature

Foreperson Printed Name



IN THE CIRCUIT COURT OF LIMESTONE COUNTY, ALABAMA

STATE OF ALABAMA

V.

CLEM AUSTIN SMITH
Defendant.

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Case No.: CC-2012-000770.00

ORDER

The above-styled matter came before the Court for trial by jury. The jury having been duly impaneled, sworn and charged by the Court according to law, upon their oaths do say:

Count I - "We, the Jury, find the Defendant, Austin Smith Clem, guilty of the offense of Rape, 1st, as charged in the Indictment. Dated this 11th day of September, 2013. Mark H. Whitt, Foreperson."

Count II - "We, the Jury, find the Defendant, Austin Smith Clem, guilty of the offense of Rape, 2nd, as charged in the Indictment. Dated this 11th day of September, 2013. Mark H. Whitt, Foreperson."

Count III - "We, the Jury, find the Defendant, Austin Smith Clem, guilty of the offense of Rape, 2nd, as charged in the Indictment. Dated this 11th day of September, 2013. Mark H. Whitt, Foreperson."

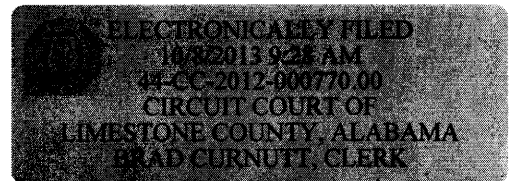
IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT that the Defendant, Austin Smith Clem, is adjudged guilty of Count I - Rape, 1st; Count II - Rape, 2nd; Count III - Rape, 2nd. The Defendant is Ordered incarcerated in the Limestone County Jail.

IT IS ORDERED BY THE COURT that a pre-sentence investigation is to be conducted and a sentence hearing is set on November 13, 2013 at 9:00 A.M.

DONE this 11th day of September, 2013.

/s/ JAMES W. WOODROOF
CIRCUIT JUDGE

Exhibit #4



IN THE CIRCUIT COURT OF LIMESTONE COUNTY, ALABAMA

THE STATE OF ALABAMA, ex rel.,

PLAINTIFFS,

VS.

CASE NUMBER: CC-2012-770

AUSTIN SMITH CLEM,

DEFENDANT.

POST VERDICT MOTION FOR JUDGMENT OF ACQUITTAL

COMES NOW the Defendant, by and through his attorney of record, and moves this Honorable Court for a judgment of acquittal after the verdict, and re-alleges each ground given in the Defendant's original Motion for Judgment of Acquittal at the end of the State's case.

Respectfully submitted on this the 8th day of October, 2013.

s/Dan C. Totten

DAN C. TOTTEN, TOT001
ATTORNEY FOR DEFENDANT
212 SOUTH JEFFERSON STREET
ATHENS, ALABAMA 35611
PHONE # 256-232-1287
FAX #: 256-232-4288

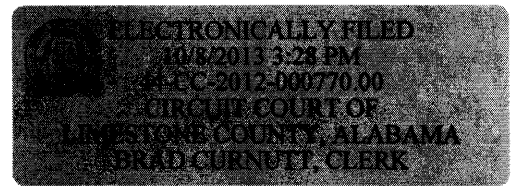
CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have on this date served a copy of the foregoing upon the District Attorney for Limestone County, Alabama, the Honorable Brian C.T. Jones, via e-file, on this the 8th day of October, 2013.

s/Dan C. Totten

DAN C. TOTTEN

Exhibit #5



IN THE CIRCUIT COURT OF LIMESTONE COUNTY, ALABAMA

STATE OF ALABAMA

V.

CLEM AUSTIN SMITH
Defendant.

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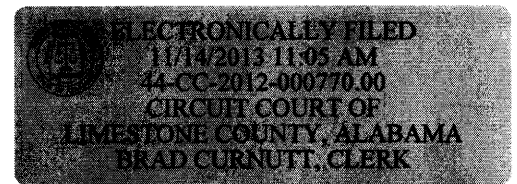
Case No.: CC-2012-000770.00

ORDER

DEFENDANT'S POST VERDICT MOTION FOR JUDGMENT OF ACQUITTAL is hereby **DENIED**.

DONE this 8th day of October, 2013.

/s/ JAMES W. WOODROOF
CIRCUIT JUDGE



IN THE CIRCUIT COURT OF LIMESTONE COUNTY, ALABAMA

STATE OF ALABAMA

V.

CLEM AUSTIN SMITH
Defendant.

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Case No.: CC-2012-000770.00

ORDER

In the above-styled matter the defendant came before the Court this date with his attorney, the Hon. Dan C. Totten, for a sentence hearing. The Hon. James C. Ayers, Jr. and Matthew R. Huggins representing the State of Alabama. The defendant having been adjudged guilty of the offenses of Count I - Rape, 1st; Count II - Rape 2nd; Count III - Rape, 2nd, on September 11, 2013, and sentencing was deferred.

IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT that defendant is sentenced as follows:

(X) Count I - Twenty (20) years in the State Penitentiary, split sentence, to serve two (2) years in LCCCP, balance suspended and placed on three (3) years supervised probation.

(X) Count II - Ten (10) years in the State Penitentiary, split sentence, to serve two (2) years in LCCCP, balance suspended and placed on three (3) years supervised probation. Sentence to run consecutive with sentence in Count I.

(X) Count III - Ten (10) years in the State Penitentiary, split sentence, to serve two (2) years in LCCCP, balance suspended and placed on three (3) years supervised probation. Sentence to run concurrent with sentences in Count I and Count II.

Defendant is **ORDERED** to pay the following:

- (X)** Court Costs
- (X)** Restitution \$ **1,631.00**
- (X)** Bail Bond Fee \$ **750.00**

Special Conditions of Placement in LCCCP and Probation:

- (X)** Defendant shall remain gainfully employed.
- (X)** Defendant shall attend and complete counseling as appropriate and related to the

offenses convicted of. Said counseling shall be arranged, monitored and approved by LCCCP.

(X) Defendant shall have no contact with victim or victim's family.

(X) Defendant shall register through the Limestone County Sheriff's Department with appropriate authorities as a sexual offender.

(X) Defendant shall pay court-ordered monies consistent with the payment plan approved by LCCCP.

(X) Defendant shall comply with rules and regulations of LCCCP and State Board of Pardons and Parole.

DONE this 13th day of November, 2013.

/s/ JAMES W. WOODROOF
CIRCUIT JUDGE

Exhibit #7

State of Alabama Unified Judicial System Form ARAP-1C 8/91	REPORTER'S TRANSCRIPT ORDER – CRIMINAL See Rules 10(c) and 11(b) of the Alabama Rules of Appellate Procedure (A.R.App.P.)	Criminal Appeal Number _____ - _____
--	--	--

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ CIRCUIT COURT
 ☐ DISTRICT COURT
 ☐ JUVENILE COURT OF _____ Limestone COUNTY
 _____, Appellant
 State of Alabama

v.
 ☐ STATE OF ALABAMA
 ☐ MUNICIPALITY OF _____ Austin Smith Clem

Case Number	CC 2012-770	Date of Judgment/Sentence/Order	November 13, 2013
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Date of Notice of Appeal Oral: _____ Written: _____	Indigent Status Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE / DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 28(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, **CODE OF ALABAMA 1975**).

Signature _____	Date _____	Print or Type Name _____
-----------------	------------	--------------------------

PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED. Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R.App.P.)):

MARK PROCEEDINGS REQUESTED:	COURT REPORTER(S)
A. <input type="checkbox"/> TRIAL PROCEEDINGS – Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.	_____
B. <input type="checkbox"/> ORGANIZATION OF THE JURY – This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)	_____
C. <input type="checkbox"/> ARGUMENTS OF COUNSEL – Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)	_____

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY):

ADDITIONAL PROCEEDINGS REQUESTED	DATE	COURT REPORTER(S)
D. <u>Sentencing Hearing</u>	<u>November 13, 2013</u>	<u>Carrie Webster</u>
E. _____	_____	_____
F. _____	_____	_____
G. _____	_____	_____

IMPORT NOTICE : The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceedings in the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A.R.App.P.)

PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT STATUS HAS NOT BEEN REVOKED; OR, (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

Signature <u>Brian C.T. Jones</u>	Date <u>11-16-13</u>	Print or Type Name <u>Brian C.T. Jones</u>
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DISTRIBUTION : Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals, (2) the District Attorney, (3) the Attorney General or the municipal prosecutor in lieu of the District Attorney and the Attorney General if the appeal is from a municipal conviction, and (4) to each Court Reporter who reported proceedings designated for inclusion in the reporter's transcript.