

No. \_\_\_\_\_

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IN THE

**Supreme Court of the United States**

KENNETH EUGENE SMITH,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

---

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPEME COURT OF ALABAMA

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**PETITIONER'S APPENDIX**

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## IN THE SUPREME COURT OF ALABAMA

November 10, 2022

1000976

Ex parte Kenneth Eugene Smith. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Kenneth Eugene Smith v. State of Alabama) (Jefferson Circuit Court: CC-89-1149.80; Criminal Appeals: CR-97-0069).

### ORDER

The "Motion for Stay of Execution and Relief from Unconstitutional Sentence" filed by Kenneth Eugene Smith on November 3, 2022, having been fully considered,

IT IS ORDERED that the Motion is DENIED.

**Parker, C.J., and Bolin, Shaw, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.**

**Wise, J. recuses herself.**

Witness my hand and seal this 10th day of November, 2022.

Megan B. Rhodelske

**Clerk of Court,  
Supreme Court of Alabama**

**FILED  
November 10, 2022**

**Clerk of Court  
Supreme Court of Alabama**



## IN THE SUPREME COURT OF ALABAMA

September 30, 2022

4. The Clerk of this Court shall transmit forthwith a certified copy of this Order electronically or by mailing a copy thereof by United States mail, postage prepaid, to the following:

- the attorney of record for Kenneth Eugene Smith;
- the Governor of Alabama;
- the Attorney General of Alabama;
- the Commissioner of the Alabama Department of Corrections;
- the Clerk of the Alabama Court of Criminal Appeals;
- the Clerk of the Jefferson Circuit Court;
- the Clerk of the Supreme Court of the United States;
- the Clerk of the United States Court of Appeals for the Eleventh Circuit; and
- the Clerk of the United States District Court for the Northern District of Alabama.

**Parker, C.J., and Bolin, Shaw, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.**

**Wise, J., recuses herself.**

I, Megan B. Rhodebeck, Clerk of the Supreme Court of Alabama, do hereby certify the foregoing is a full, true, and correct copy of the judgment and order of the Supreme Court of Alabama regarding Kenneth Eugene Smith as the same appears of record in this Court.

**Witness my hand and seal this 30th day of September, 2022.**



Megan B. Rhodebeck  
Megan B. Rhodebeck  
CLERK OF COURT  
SUPREME COURT OF ALABAMA

Section 13A-6-2(a)(2) and felony murder during an assault in the first degree as set out in Section 13A-6-2(a)(3) of the Code of Alabama, then retired to deliberate and upon the consideration of the law and evidence found the defendant guilty of the capital murder as charged in the indictment. The verdict was unanimous in finding the defendant guilty of the capital offense as charged in the indictment and not of any lesser included offenses.

The Court announced the jury's verdict on Friday, April 26, 1996, and on April 29, 1996, commenced a sentence hearing before the same jury pursuant to Section 13A-5-45 of the Code of Alabama, 1975, as amended. After hearing the evidence during the punishment phase and hearing, the jury was again charged as to the applicable law, advising said jury that if mitigating circumstances outweighed the aggravating circumstances then the punishment would be life imprisonment without eligibility for parole, but if the aggravating circumstances outweighed the mitigating circumstances, the verdict would be death. After due deliberations, the jury returned a verdict affixing the defendant's punishment at life imprisonment without parole, the verdict being one (1) for death and eleven (11) for life imprisonment without parole. The Court then announced the jury's verdict and set the 21st day of May, 1996 at 9:00 a.m. for further hearing as mandated by Section 13A-5-47 of the Code of Alabama, 1975, as amended. At said hearing the defendant, his trial attorneys, and the district attorney were present and ready to proceed. The defendant's attorney introduced defendant's exhibits #1A, 1B, 1C, and 1D. Also called one witness to testify after which the district attorney and the defendant's attorney made closing arguments.

#### FINDING OF FACT

The Court finds from the evidence introduced at trial that the defendant, Kenneth Eugene Smith, and his friend John Forrest Parker, who the defendant recruited and persuaded to assist him prior to March 18, 1988, did on that date after being paid an advance of \$200.00 by Charles Sennett, the husband of the victim, Elizabeth Dorlene Sennett, went to the home of said

his home in Florence, Alabama, also found there was a VCR, the same VCR from the Sennett home which still had blood on it from the killing in the Sennett home.

The Court further finds the jury's recommendation of life without parole at a vote of eleven (11) for life and one (1) for death is a mitigating factor and the Court has considered it at this sentence hearing, and also the exhibits admitted being defendant's exhibits 1A, B, C, and D, and the testimony of Christopher Johnson.

The defendant was asked after the closing arguments if he had anything to say before sentence is imposed and he said no on advice of his attorney.

The Court considering the aggravating circumstances as set out and enumerated in Section 13A-5-49 of the Code of Alabama, as amended:

(A) The Court finds from the evidence introduced at the trial and reintroduced at the punishment hearing before the jury that the defendant, Kenneth Eugene Smith, committed the murder for pecuniary gain, namely for the sum of \$1,000.00. The Court finds that said defendant was, in fact, paid that sum for said intentional killing. The Court finds that this is an aggravating circumstance pursuant to Section 13A-5-49(6) of the Code of Alabama, as amended, and the Court has considered said aggravating circumstance.

The Court finds that the defendant was not a person under sentence of imprisonment; therefore, the Court does not consider the aggravating circumstance listed in Section 13A-5-49(1), Code of Alabama, the Court finding that said aggravating circumstance does not exist in this case.

The Court finds the defendant was not previously convicted of another capital murder, nor previously convicted of a felony involving the use or threat of violence to the person; therefore, the Court does not consider the aggravating circumstance listed in Section 13A-5-49(2), Code of Alabama, the Court finding that said aggravating circumstance does not exist.

The Court finds 2 statutory mitigating circumstances in this cause and that is the age of the defendant at the time of the commission of the crime in that he was 22 years of age. However, the Court does find from the evidence that the defendant was normal and not retarded, had attended high school and worked several jobs, was married and had one (1) minor child.

The Court finds the defendant had no significant history of prior criminal activity.

The Court further finds as to a non-statutory mitigating certain factors, that the defendant appeared to be remorseful for what he had done, and he gave a voluntary confession. However, the defendant did not turn himself in to the police and at the time of his arrest in his home in Florence, Alabama, there was found in his home a VCR that was the property of the victim with blood still on it.

The Court further finds as a non-statutory mitigating, the defendant's good conduct in jail; and in counseling others including family members.

During his tenure in the Colbert County Jail, Tuscumbia, Alabama, he warned a jail-guard of an impending breakout of jail by other inmates. The jail-guard, Alton Hankins, testified to this. While in prison with the Board of Corrections, he has adjusted and upgraded his education and counseled other people.

The Court further finds as a non-statutory mitigating factor, that the defendant was neglected and deprived in his early childhood.

The Court further finds that the capital offense was not committed while the defendant was under the influence of extreme mental or emotional disturbance, accordingly the Court does not consider the mitigating circumstance listed in Section 13A-5-51(2), Code of Alabama, the Court finding that said mitigating circumstance does not exist in this case.

The Court further finds from the evidence that the victim was not a participant in the defendant's conduct or consented to it; therefore, the Court finds that the

mitigating factor and the Court has consider said mitigating factor at this sentence hearing. However, jury was allowed to hear an emotional appeal from defendant's mother. The Court does not find that defendant's problems during his childhood is a mitigating factor.

Also, there was evidence presented to the jury that the husband of the victim was the instigator of the killing of his wife, but the fact that the victim's husband conspired with the defendant and his co-defendants to kill his wife does not make this defendant any less culpable and is not a mitigating factor.

The Court has also considered the Presentence Investigation Report as set out in Section 13A-5-47, Code of Alabama, as amended, in determining a sentence in this cause.

The Court having considered the aggravating circumstances and the mitigating circumstances, finds that the aggravating circumstances due to the nature of the crime and the defendant's involvement in it outweighs the mitigating circumstances presented, and the mitigating factor that the jury recommended a sentence of life without parole and the vote was eleven (11) for life and one (1) for death.

The Court does find that there is a reasonable basis for enhancing the jury's recommendation sentence for the reasons stated herein that this was a murder for hire and the defendant had the opportunity to reflect and withdrawn from his actions and chose not to do this; he was paid for his actions; that the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was not substantially impaired. Therefore, on this 21st day of May, 1996, with the defendant, Kenneth Eugene Smith, being present and having been convicted by a jury of capital murder and the Court having weighed the aggravating circumstances against the mitigating circumstance and factors, and the Court having found that the aggravating circumstances outweigh the mitigating circumstances and factors;



# IN THE SUPREME COURT OF ALABAMA

November 10, 2022

1000976

Ex parte Kenneth Eugene Smith. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Kenneth Eugene Smith v. State of Alabama) (Jefferson Circuit Court: CC-89-1149.80; Criminal Appeals: CR-97-0069).

## ORDER

The "Motion for Stay of Execution and Relief from Unconstitutional Sentence" filed by Kenneth Eugene Smith on November 3, 2022, having been fully considered,

IT IS ORDERED that the Motion is DENIED.

**Parker, C.J., and Bolin, Shaw, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.**

**Wise, J. recuses herself.**

Witness my hand and seal this 10th day of November, 2022.

*Megan B. Rhodes*

**Clerk of Court,  
Supreme Court of Alabama**

**FILED**

**November 10, 2022**

**Clerk of Court  
Supreme Court of Alabama**



## IN THE SUPREME COURT OF ALABAMA

September 30, 2022

1000976

Ex parte Kenneth Eugene Smith. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Kenneth Eugene Smith v. State of Alabama) (Jefferson Circuit Court: CC-89-1149.80; Criminal Appeals: CR-97-0069).

### **ORDER**

The "State of Alabama's Motion to Set an Execution Date" filed by the State of Alabama on June 24, 2022, having been submitted to this Court,

IT IS ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERED that:

1. Thursday, November 17, 2022, be fixed as the date for the execution of the convict, Kenneth Eugene Smith, who is now confined in the William C. Holman Correctional Facility Unit of the Alabama Department of Corrections prison system located in Atmore, Escambia County, Alabama;

2. The Warden of the William C. Holman Correctional Facility Unit execute the order, judgment, and sentence of law on November 17, 2022, in the William C. Holman Correctional Facility Unit by the means provided by law, causing the death of such convict;

3. The Marshal of the Appellate Courts of Alabama shall deliver, within five (5) days from the date of this Order, a certified copy of this Order to the Warden of the William C. Holman Correctional Facility Unit and make due return thereon to this Court; and



## IN THE SUPREME COURT OF ALABAMA

September 30, 2022

4. The Clerk of this Court shall transmit forthwith a certified copy of this Order electronically or by mailing a copy thereof by United States mail, postage prepaid, to the following:

- the attorney of record for Kenneth Eugene Smith;
- the Governor of Alabama;
- the Attorney General of Alabama;
- the Commissioner of the Alabama Department of Corrections;
- the Clerk of the Alabama Court of Criminal Appeals;
- the Clerk of the Jefferson Circuit Court;
- the Clerk of the Supreme Court of the United States;
- the Clerk of the United States Court of Appeals for the Eleventh Circuit; and
- the Clerk of the United States District Court for the Northern District of Alabama.

**Parker, C.J., and Bolin, Shaw, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.**

**Wise, J., recuses herself.**

I, Megan B. Rhodebeck, Clerk of the Supreme Court of Alabama, do hereby certify the foregoing is a full, true, and correct copy of the judgment and order of the Supreme Court of Alabama regarding Kenneth Eugene Smith as the same appears of record in this Court.

**Witness my hand and seal this 30th day of September, 2022.**



Megan B. Rhodebeck  
Megan B. Rhodebeck  
CLERK OF COURT  
SUPREME COURT OF ALABAMA

## IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

STATE OF ALABAMA

CASE NO. CC 89-1189

KENETH EUGENE SMITH,

DEFENDANT

AMENDED ORDER

WHEREAS, this cause came before the Court on the Motion for New Trial on the 25th day of August, 1997, at which time the defendant present with his attorneys and the prosecutor being present, and after the motion for new trial was heard the prosecutor made a motion for the Court to amend the sentence order of the Court of May 21, 1996, and the Court having considered the same, the Court does amend said sentence which does not make any changes but only sets out the things that the court considered in sentencing the defendant and refines the sentence order. The Court has previously ruled on the motion for new trial by separate order. The Court does now amend the sentence as follows:

The defendant in this case, Kenneth Eugene Smith, was charged by indictment of the Grand Jury of the Circuit Court for the 31st Judicial Circuit of Alabama, in and for Colbert County, Alabama, with the capital offense of murder for a pecuniary or valuable consideration pursuant to the provisions of the Code of Alabama, 1975, as amended, Section 13A-5-40(a)(7).

This case came on to be tried before the Court and a jury of twelve men and women duly impaneled and sworn as required by law beginning on Tuesday, April 23, 1996 and continuing until its conclusion on May 1, 1996. The makeup of the jury was as follows: Seven (7) black females, four (4) black males, and one (1) white female. The jury after hearing the evidence and the Court's oral charge as to the applicable law, including the lesser included offenses of murder where there is extreme indifference to human life as set out in

Section 13A-6-2(a)(2) and felony murder during an assault in the first degree as set out in Section 13A-6-2(a)(3) of the Code of Alabama, then retired to deliberate and upon the consideration of the law and evidence found the defendant guilty of the capital murder as charged in the indictment. The verdict was unanimous in finding the defendant guilty of the capital offense as charged in the indictment and not of any lesser included offenses.

The Court announced the jury's verdict on Friday, April 26, 1996, and on April 29, 1996, commenced a sentence hearing before the same jury pursuant to Section 13A-5-45 of the Code of Alabama, 1975, as amended. After hearing the evidence during the punishment phase and hearing, the jury was again charged as to the applicable law, advising said jury that if mitigating circumstances outweighed the aggravating circumstances then the punishment would be life imprisonment without eligibility for parole, but if the aggravating circumstances outweighed the mitigating circumstances, the verdict would be death. After due deliberations, the jury returned a verdict affixing the defendant's punishment at life imprisonment without parole, the verdict being one (1) for death and eleven (11) for life imprisonment without parole. The Court then announced the jury's verdict and set the 21st day of May, 1996 at 9:00 a.m. for further hearing as mandated by Section 13A-5-47 of the Code of Alabama, 1975, as amended. At said hearing the defendant, his trial attorneys, and the district attorney were present and ready to proceed. The defendant's attorney introduced defendant's exhibits #1A, 1B, 1C, and 1D. Also called one witness to testify after which the district attorney and the defendant's attorney made closing arguments.

#### FINDING OF FACT

The Court finds from the evidence introduced at trial that the defendant, Kenneth Eugene Smith, and his friend John Forrest Parker, who the defendant recruited and persuaded to assist him prior to March 18, 1988, did on that date after being paid an advance of \$200.00 by Charles Sennett, the husband of the victim, Elizabeth Dorlene Sennett, went to the home of said

im in rural west Colbert County, Alabama with the intent to kill the said Elizabeth Dorlene Sennett.

The Court further finds that the total contract amount for the killing was \$1,000.00.

The Court further finds that the defendant, Kenneth Eugene Smith, and John Forrest Parker drove to the Sennett home and gained entrance to said home where the victim, Elizabeth Dorlene Sennett was present and one, under the pretext that they were there at the invitation of the victim's husband, Charles Sennett, to sit on their land and they wished to come into the home to use the bathroom.

The Court further finds that while the defendant, Kenneth Eugene Smith, and John Forrest Parker were in the Sennett home they attacked the victim, Elizabeth Dorlene Sennett, by beating her with their fists and other objects such as a poker, walking cane, fireplace tongs, and stabbing her 10 times with a survival knife. These objects are admitted into evidence in the case. Presumably the knife was used by John Forrest Parker. These objects of evidence and others were found by law enforcement officers in the pond near the Sennett home.

The Court further finds from the evidence that at the time the victim was being attacked by the defendant, Kenneth Eugene Smith, and John Forrest Parker, the victim, Elizabeth Dorlene Sennett was calling to just stop and they could have anything they wanted, but they continued the beating and stabbing.

The Court further finds that the defendant, Kenneth Eugene Smith, and John Forrest Parker messed up the Sennett home to make it look like a burglary, which was in accordance with their plan and they took from the Sennett home a VCR and stereo.

The Court further finds from the evidence that the defendant, Kenneth Eugene Smith, and John Forrest Parker sometime after the murder were paid by Billy Williams the balance of the money for the killing.

The Court further finds from the evidence that when the defendant, Kenneth Eugene Smith, was arrested at

his home in Florence, Alabama, also found there was a VCR, the same VCR from the Sennett home which still had blood on it from the killing in the Sennett home.

The Court further finds the jury's recommendation of life without parole at a vote of eleven (11) for life and one (1) for death is a mitigating factor and the Court has considered it at this sentence hearing, and also the exhibits admitted being defendant's exhibits 1A, B, C, and D, and the testimony of Christopher Johnson.

The defendant was asked after the closing arguments if he had anything to say before sentence is imposed and he said no on advice of his attorney.

The Court considering the aggravating circumstances as set out and enumerated in Section 13A-5-49 of the Code of Alabama, as amended:

(A) The Court finds from the evidence introduced at the trial and reintroduced at the punishment hearing before the jury that the defendant, Kenneth Eugene Smith, committed the murder for pecuniary gain, namely for the sum of \$1,000.00. The Court finds that said defendant was, in fact, paid that sum for said intentional killing. The Court finds that this is an aggravating circumstance pursuant to Section 13A-5-49(6) of the Code of Alabama, as amended, and the Court has considered said aggravating circumstance.

The Court finds that the defendant was not a person under sentence of imprisonment; therefore, the Court does not consider the aggravating circumstance listed in Section 13A-5-49(1), Code of Alabama, the Court finding that said aggravating circumstance does not exist in this case.

The Court finds the defendant was not previously convicted of another capital murder, nor previously convicted of a felony involving the use or threat of violence to the person; therefore, the Court does not consider the aggravating circumstance listed in Section 13A-5-49(2), Code of Alabama, the Court finding that said aggravating circumstance does not exist.

The Court finds that the defendant did not knowingly create a great risk of death to many persons, therefore, the Court does not consider the aggravating circumstance listed in Section 13A-5-49(3), Code of Alabama, the Court finding that said aggravating circumstance does not exist.

The Court finds that this offense was not committed while the defendant was engaged or was an accomplice in the commission of or an attempt to commit, or flight after committing, or attempting to commit rape, robbery, burglary or kidnapping, therefore, the Court does not consider the aggravating circumstance listed in Section 13A-5-49(4), Code of Alabama, the Court finding that said aggravating circumstance does not exist.

The Court does not find that the offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody, therefore the Court does not consider the aggravating circumstance listed in Section 13A-5-49(5), Code of Alabama, the Court finding that said aggravating circumstance does not exist.

The Court does not find that the offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws; therefore the Court does not consider the aggravating circumstance listed in Section 13A-5-49(7), Code of Alabama, the Court finding that said aggravating circumstance does not exist.

The Court does not find that the offense was especially heinous, atrocious or cruel compared to other capital offenses, therefore the Court does not consider the aggravating circumstance listed in Section 13A-5-49(8), Code of Alabama, the Court finding that said aggravating circumstance does not exist.

(B) The Court now proceeds to consider the mitigating circumstances as set out and enumerated in Section 13A-5-51 of the Code of Alabama, as amended, and other mitigating circumstances proved at the punishment hearing before the jury.

The Court finds 2 statutory mitigating circumstances in this cause and that is the age of the defendant at the time of the commission of the crime in that he was 22 years of age. However, the Court does find from the evidence that the defendant was normal and not retarded, had attended high school and worked several jobs, was married and had one (1) minor child.

The Court finds the defendant had no significant history of prior criminal activity.

The Court further finds as to a non-statutory mitigating certain factors, that the defendant appeared to be remorseful for what he had done, and he gave a voluntary confession. However, the defendant did not turn himself in to the police and at the time of his arrest in his home in Florence, Alabama, there was found in his home a VCR that was the property of the victim with blood still on it.

The Court further finds as a non-statutory mitigating, the defendant's good conduct in jail; and in counseling others including family members.

During his tenure in the Colbert County Jail, Tuscumbia, Alabama, he warned a jail-guard of an impending breakout of jail by other inmates. The jail-guard, Alton Hankins, testified to this. While in prison with the Board of Corrections, he has adjusted and upgraded his education and counseled other people.

The Court further finds as a non-statutory mitigating factor, that the defendant was neglected and deprived in his early childhood.

The Court further finds that the capital offense was not committed while the defendant was under the influence of extreme mental or emotional disturbance, accordingly the Court does not consider the mitigating circumstance listed in Section 13A-5-51(2), Code of Alabama, the Court finding that said mitigating circumstance does not exist in this case.

The Court further finds from the evidence that the victim was not a participant in the defendant's conduct or consented to it; therefore, the Court finds that the

mitigating circumstance listed in Section 13A-5-51(3), Code of Alabama, does not exist and the Court does not consider it.

The Court does not find from the evidence that the defendant was an accomplice in a capital offense committed by another person and that his participation was relatively minor. The Court finds from the evidence in this case that the defendant, Kenneth Eugene Smith, and John Forrest Parker both killed the victim by beating and hitting her with different objects and stabbing her while the victim was pleading with them. Therefore, the Court finds that the mitigating circumstance listed in Section 13A-5-51(4), Code of Alabama, does not exist and the Court does not consider it.

The Court does not find from the evidence that the defendant acted under extreme duress or under the substantial domination of another person; therefore, the Court finds that the mitigating circumstance listed in Section 13A-5-51(5), Code of Alabama, does not exist and the Court does not consider it.

The Court does not find from the evidence that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; the Court had evidence before it regarding the defendant's actual actions during and after the murder of Elizabeth Dorlene Sennett which demonstrate that his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was not substantially impaired. The defendant's actions in throwing away the murder weapons after the killing, his attempting to make it look like a burglary, and other evidence that was presented, is all evidence that the defendant at the time in question appreciated that his conduct was criminal, and that he might be apprehended and for that reason did what he could to avoid apprehension. Accordingly, the Court finds that the mitigating circumstance listed in Section 13A-5-51(6), Code of Alabama, does not exist and the Court does not consider it.

The Court does find that the jury's recommendation

a mitigating factor and the Court has consider said mitigating factor at this sentence hearing. However, jury was allowed to hear an emotional appeal from defendant's mother. The Court does not find that defendant's problems during his childhood is a mitigating factor.

Also, there was evidence presented to the jury that the husband of the victim was the instigator of the killing of his wife, but the fact that the victim's husband conspired with the defendant and his co-defendants to kill his wife does not make this defendant any less culpable and is not a mitigating factor.

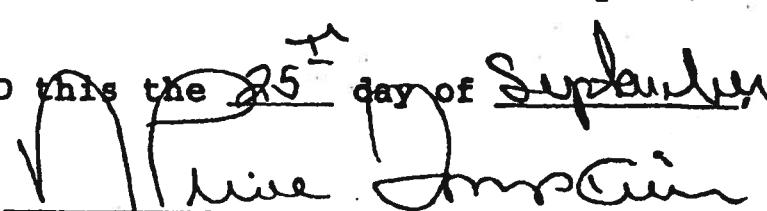
The Court has also considered the Presentence Investigation Report as set out in Section 13A-5-47, Code of Alabama, as amended, in determining a sentence in this cause.

The Court having considered the aggravating circumstances and the mitigating circumstances, finds that the aggravating circumstances due to the nature of the crime and the defendant's involvement in it outweighs the mitigating circumstances presented, and the mitigating factor that the jury recommended a sentence of life without parole and the vote was eleven (11) for life and one (1) for death.

The Court does find that there is a reasonable basis for enhancing the jury's recommendation sentence for the reasons stated herein that this was a murder for hire and the defendant had the opportunity to reflect and withdrawn from his actions and chose not to do this; he was paid for his actions; that the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was not substantially impaired. Therefore, on this 21st day of May, 1996, with the defendant, Kenneth Eugene Smith, being present and having been convicted by a jury of capital murder and the Court having weighed the aggravating circumstances against the mitigating circumstance and factors, and the Court having found that the aggravating circumstances outweigh the mitigating circumstances and factors;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court, and it is the judgment of the Court, and the sentence of law that the defendant, Kenneth Eugene Smith, suffer death by electrocution. The Sheriff of Jefferson County, Alabama is directed to deliver Kenneth Eugene Smith to the custody of the Director of the Department of Corrections and the designated executioner shall, at the proper place for execution of one sentenced to suffer death by electrocution, cause a current of electricity of sufficient intensity to cause death in the application and continuance of such current to pass through the said Kenneth Eugene Smith until the said Kenneth Eugene Smith is dead. May God have mercy on you!

DONE AND ORDERED this the 25 day of September  
1997.

  
Diane Thompson

cc: Gary Alverson✓  
Christopher Johnson✓  
Polly Conradi - ORIGINAL✓  
Director, Board of Corrections✓  
Sheriff of Jefferson County, Alabama✓