

No. _____

IN THE
Supreme Court of the United States

KENNETH EUGENE SMITH,

Petitioner,

v.

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, et al.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner seeks leave to file the attached petition for a writ of certiorari without prepayment of fees and to proceed *in forma pauperis*.

Petitioner is currently incarcerated at Holman Correctional Facility in Atmore, Alabama. He previously has sought and been granted leave to proceed *in forma pauperis* in the following courts:

- the United States District Court for the Northern District of Alabama (copy of docket sheet attached as Exhibit 1, *see* Dkt. No. 8); and
- the United States Court of Appeals for the Eleventh Circuit (copy of docket sheet attached as Exhibit 2, *see* Dkt. No. 1).

Due to exigent circumstances, Petitioner is unable to submit a declaration of indigency with a prison account statement with this application.

Respectfully submitted,

Andrew B. Johnson
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/s Robert M. Grass
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January 25, 2024

Counsel for Petitioner

EXHIBIT 1

**U.S. District Court
Northern District of Alabama (Southern)
CIVIL DOCKET FOR CASE #: 2:15-cv-00384-AKK**

Smith v. Dunn et al
Assigned to: Judge Abdul K Kallon
Case in other court: USCA, 19-14543
Cause: 28:2254 Ptn for Writ of H/C - Stay of Execution

Date Filed: 03/03/2015
Date Terminated: 09/12/2019
Jury Demand: None
Nature of Suit: 535 Death Penalty -
Habeas Corpus
Jurisdiction: Federal Question

Petitioner

Kenneth Eugene Smith

represented by **Andrew B Johnson**
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ATTORNEY TO BE NOTICED

V.

Respondent

William G. Sharp, Jr.
Commissioner, ADOC
TERMINATED: 12/07/2015

represented by **Tina Marie Coker Hammonds**
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TERMINATED: 06/01/2018
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

Luther Strange
Attorney General for the State of
Alabama

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Tina Marie Coker Hammonds
(See above for address)
TERMINATED: 06/01/2018
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

Jefferson S Dunn
Commissioner, ADOC

represented by **Richard D Anderson**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Tina Marie Coker Hammonds
(See above for address)
TERMINATED: 06/01/2018
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

Steve Marshall

Date Filed	#	Docket Text
03/03/2015	<u>1</u>	PETITION for Writ of Habeas Corpus, filed by Kenneth Eugene Smith. (Attachments: # <u>1</u> Civil Cover Sheet)(JLC) (Entered: 03/04/2015)
03/03/2015	<u>2</u>	MOTION for Leave to Proceed In Forma Pauperis by Kenneth Eugene Smith. (JLC) (Entered: 03/04/2015)
03/03/2015	<u>3</u>	MOTION for Leave to Appear Pro Hac Vice (Robert M. Grass) by Kenneth Eugene Smith. (JLC) (Entered: 03/04/2015)
03/03/2015		PHV Fee paid for Robert M. Grass in the amount of \$50.00, receipt number B4601060382. (JLC) (Entered: 03/04/2015)
03/03/2015	<u>4</u>	MOTION to File Under Seal by Kenneth Eugene Smith. (JLC) (Entered: 03/04/2015)
03/03/2015	<u>5</u>	Request for service by certified mail filed by Kenneth Eugene Smith. (JLC) (Entered: 03/04/2015)
03/06/2015	<u>6</u>	NOTICE of Appearance by Tina Marie Coker Hammonds on behalf of William G. Sharp, Jr, Luther Strange (Coker Hammonds, Tina) (Entered: 03/06/2015)
04/13/2015	7	ORDER granting <u>3</u> Motion for Leave to Appear PHV. Signed by Judge Virginia Emerson Hopkins on 4/13/15. (KWC) (Entered: 04/13/2015)
05/15/2015	8	ORDER granting <u>2</u> Motion for Leave to Proceed in forma pauperis. Signed by Judge Virginia Emerson Hopkins on 5/15/2015. (Hopkins, Virginia) (Entered: 05/15/2015)
05/15/2015	9	ORDER granting <u>4</u> Motion For Leave to File under Seal. In accordance with III.A of the Civil Administrative Procedure Manual for the CM/ECF System, a copy of any such documents being filed under seal shall be submitted conventionally to the Clerks Office, by the filing party, on paper and on a.pdf formatted disk. Additionally, a

		courtesy copy of all sealed documents shall be delivered to the Clerks Office for delivery to chambers of the undersigned. The courtesy copies shall be 3–holed punched and in binders. The clerk is DIRECTED to file the designated documents under seal. Signed by Judge Virginia Emerson Hopkins on 5/15/2015. (Hopkins, Virginia) (Entered: 05/15/2015)
05/15/2015	<u>10</u>	ORDER that within sixty (60) days from the entry date of this Order, counsel for the Petitioner shall prepare and file with the Court a Memorandum as set out herein. The Respondents shall file an Answer to the Petition in accord with the Rules Governing Section 2254 Cases in the United States District Courts within one hundred twenty (120) days from the entry date of this Order. Signed by Judge Virginia Emerson Hopkins on 5/15/2015. (JLC) (Entered: 05/15/2015)
05/15/2015	<u>11</u>	***FILED UNDER SEAL*** EVIDENTIARY MATERIAL (JLC) (Entered: 05/19/2015)
07/13/2015	<u>12</u>	CERTIFICATION and MEMORANDUM Pursuant to Order <u>10</u> filed by Kenneth Eugene Smith. (Johnson, Andrew) (Entered: 07/13/2015)
08/26/2015	<u>13</u>	MOTION for Extension of Time to File Answer re <u>10</u> Order, (<i>Respondents' Motion for 30–Day Enlargement</i>) by William G. Sharp, Jr, Luther Strange. (Coker Hammonds, Tina) (Entered: 08/26/2015)
08/26/2015	<u>14</u>	ORDER granting <u>13</u> (unopposed) Motion for Extension of Time to Answer re <u>10</u> Order, answer and other documents due 10/14/2015. Signed by Judge Virginia Emerson Hopkins on 8/26/2015. (Hopkins, Virginia) (Entered: 08/26/2015)
10/05/2015	<u>15</u>	MOTION for Extension of Time (<i>Respondents' Motion for 20–Day Enlargement</i>) by William G. Sharp, Jr, Luther Strange. (Coker Hammonds, Tina) (Entered: 10/05/2015)
10/06/2015	<u>16</u>	TEXT ORDER granting <u>15</u> unopposed Motion for Extension of Time (20 days) as set out in motion. Signed by Judge Virginia Emerson Hopkins on 10/6/2015. (KWC) Modified text to correct spelling on 10/6/2015 (KWC) (Entered: 10/06/2015)
10/26/2015	<u>17</u>	MOTION for Extension of Time by William G. Sharp, Jr, Luther Strange. (Coker Hammonds, Tina) (Entered: 10/26/2015)
10/26/2015	<u>18</u>	ORDER granting <u>17</u> (unopposed) Motion for Extension of Time. Respondents' deadline to file an answer, brief, index, and the state court record is extended to December 3, 2015. Signed by Judge Virginia Emerson Hopkins on 10/26/2015. (Hopkins, Virginia) (Entered: 10/26/2015)
12/03/2015	<u>19</u>	RESPONSE to re <u>10</u> (<i>Respondents' Habeas Corpus Checklist</i>) filed by William G. Sharp, Jr, Luther Strange, Jefferson S Dunn. (Coker Hammonds, Tina) (Entered: 12/03/2015)
12/03/2015	<u>20</u>	NOTICE by Jefferson S Dunn, William G. Sharp, Jr, Luther Strange re <u>10</u> Order, (<i>Notice of Manual Filing of Indexed Record</i>) (Coker Hammonds, Tina) (Additional attachment(s) added on 10/29/2020: # <u>1</u> Exhibit Vol. 1, # <u>2</u> Exhibit Vol. 2, # <u>3</u> Exhibit Vol. 3, # <u>4</u> Exhibit Vol. 4, # <u>5</u> Exhibit Vol.5, # <u>6</u> Exhibit Vol. 6, # <u>7</u> Exhibit Vol. 7, # <u>8</u> Exhibit Vol.8, # <u>9</u> Exhibit Vol. 9, # <u>10</u> Exhibit Vol. 10, # <u>11</u> Exhibit Vol.11, # <u>12</u> Exhibit Vol.12, # <u>13</u> Exhibit Vol. 13, # <u>14</u> Exhibit Vol. 14, # <u>15</u> Exhibit Vol. 15, # <u>16</u> Exhibit Vol. 16, # <u>17</u> Exhibit Vol. 17, # <u>18</u> Exhibit Vol. 18, # <u>19</u> Exhibit Vol. 19, # <u>20</u> Exhibit Vol. 20, # <u>21</u> Exhibit Vol. 21, # <u>22</u> Exhibit Vol. 22, # <u>23</u> Exhibit Vol.23, # <u>24</u> Exhibit Vol. 24, # <u>25</u> Exhibit Vol. 25, # <u>26</u> Exhibit Vol. 26, # <u>27</u> Exhibit Vol.27, # <u>28</u> Exhibit Vol.28, # <u>29</u> Exhibit Vol. 29, # <u>30</u> Exhibit Vol.30, # <u>31</u> Exhibit Vol.31, # <u>32</u> Exhibit Vol.32, # <u>33</u> Exhibit Vol.33, # <u>34</u> Exhibit Vol.34, # <u>35</u> Exhibit Vol.35, # <u>36</u> Exhibit Vol.36, # <u>37</u> Exhibit Vol.37, # <u>38</u> Exhibit Vol.38, # <u>39</u> Exhibit Vol.39, # <u>40</u> Exhibit Vol.40, # <u>41</u> Exhibit Vol.41, # <u>42</u> Exhibit Vol.42, # <u>43</u> Exhibit Vol.43, # <u>44</u> Exhibit Vol.44, # <u>45</u> Exhibit Vol.45 Part 1 of 2, # <u>46</u> Exhibit Vol.45 Part 2 of 2, # <u>47</u> Exhibit Vol.46) (AKD,). (Entered: 12/03/2015)
12/03/2015	<u>21</u>	RESPONSE to Petition for Writ of Habeas Corpus by Jefferson S Dunn, William G. Sharp, Jr, Luther Strange.(Coker Hammonds, Tina) (Entered: 12/03/2015)
12/03/2015	<u>22</u>	NOTICE by Jefferson S Dunn, William G. Sharp, Jr, Luther Strange (<i>Notice of Substitution of Party</i>) (Coker Hammonds, Tina) (Entered: 12/03/2015)

12/03/2015	<u>23</u>	***FILED UNDER SEAL*** ANSWER to and BRIEF of Kenneth Eugene Smith's Claims from Within his Petition for Writ of Habeas Corpus. (JLC) (Entered: 12/03/2015)
12/03/2015	<u>24</u>	***FILED UNDER SEAL*** Petitioner's Rule 32 Petition, Specifically pages 43-45, Pursuant to the Court's 9 Order. (JLC) (Entered: 12/03/2015)
12/03/2015	<u>25</u>	Brief of Respondent filed by Jefferson S Dunn, William G. Sharp, Jr, Luther Strange. (Coker Hammonds, Tina) (Entered: 12/03/2015)
12/07/2015	26	TEXT ORDER re <u>22</u> Notice of Substitution of party filed by Jefferson S Dunn, Luther Strange, William G. Sharp, Jr.; the Clerk shall substitute the correct party as set out in Notice, doc <u>22</u> . Signed by Judge Virginia Emerson Hopkins on 12/07/2015. (KWC) (Entered: 12/07/2015)
02/12/2016	<u>27</u>	MOTION for Extension of Time to File Response/Reply <i>Brief and Any Request for Evidentiary Hearing</i> by Kenneth Eugene Smith. (Johnson, Andrew) (Entered: 02/12/2016)
02/12/2016	28	TEXT ORDER granting <u>27</u> UNOPPOSED Motion for Extension of Time of fourteen (14)days from March 2, 2016 until March 16, 2016 in which to file his reply to <u>19</u> ; Reply due by 3/16/2016. Signed by Judge Virginia Emerson Hopkins on 2/12/2016. (KWC) (Entered: 02/12/2016)
03/07/2016	<u>29</u>	Unopposed MOTION for Leave to Complete the State Court Record by Kenneth Eugene Smith. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Johnson, Andrew) (Entered: 03/07/2016)
03/08/2016	30	TEXT ORDER granting <u>29</u> Motion for Leave to File. Signed by Judge Virginia Emerson Hopkins on 3/8/2016. (Hopkins, Virginia) (Entered: 03/08/2016)
03/16/2016	<u>31</u>	Brief re <u>1</u> Petition for Writ of Habeas Corpus, <u>21</u> Response to Habeas Petition . (Attachments: # <u>1</u> Exhibit Exhibit 1)(Johnson, Andrew) (Entered: 03/16/2016)
03/16/2016	<u>32</u>	MOTION for Hearing by Kenneth Eugene Smith. (Johnson, Andrew) (Entered: 03/16/2016)
03/16/2016	<u>33</u>	***FILED UNDER SEAL*** Portion of Brief. (Attachments: # <u>1</u> Exhibit 1) (JLC) (Entered: 03/16/2016)
10/03/2016	<u>34</u>	***VACATED*** Per <u>40</u> Order***ORDER SETTING EVIDENTIARY HEARING; This case is hereby SET for an EVIDENTIARY HEARING on December 29 and 30, 2016, at 9:00 a.m. at the Hugo Black U.S. Courthouse in Birmingham, Alabama before Judge Virginia Emerson Hopkins. On or before November 4, 2016, the Petitioner shall file a statement entitled Evidentiary Hearing Narrative Statement as set out herein. Motions in Limine, including any Daubert Motions, must be filed no later than December 2, 2016, and shall be accompanied by supporting memoranda, with pinpoint cites. Oppositions are due no later than December 8, 2016. Signed by Judge Virginia Emerson Hopkins on 10/3/2016. (JLC) Modified on 10/13/2016 (JLC). (Entered: 10/03/2016)
10/06/2016	<u>35</u>	NOTICE of Appearance by Richard D Anderson on behalf of Jefferson S Dunn (Anderson, Richard) (Entered: 10/06/2016)
10/11/2016	<u>36</u>	MOTION for Leave to Appear Pro Hac Vice by Kenneth Eugene Smith. (Attachments: # <u>1</u> Exhibit A)(Johnson, Andrew) (Entered: 10/11/2016)
10/11/2016		PHV Fee paid for Jeffrey H. Horowitz in the amount of \$50.00, Credit Card receipt number 1126-2715954, NDAL receipt #B4601074986. (Johnson, Andrew) Modified on 10/11/2016 (JLC). (Entered: 10/11/2016)
10/11/2016	<u>37</u>	MOTION to Reconsider <u>34</u> Order setting evidentiary hearing and Respondents' Objection to this Court's Order Setting an Evidentiary Hearing by Jefferson S Dunn, Luther Strange. (Anderson, Richard) Modified text on 10/12/2016 (KWC) (Entered: 10/11/2016)
10/12/2016	38	TEXT ORDER GRANTING <u>36</u> Motion for Leave to Appear PHV CONTINGENT upon local counsel filing notice in this case, complying with Local Rule 83.1(b) (revised effective January 15, 2016). Specifically, pro hac counsel may not appear or

		file pleadings (other than those related to pro hac status) unless and until such counsel complies with Local Rule 83.1(b). Signed by Judge Virginia Emerson Hopkins on 10/12/2016. (KWC) (Entered: 10/12/2016)
10/12/2016	<u>39</u>	TEXT ORDER GRANTING <u>36</u> MOTION for Leave to Appear Pro Hac Vice. Attorney Jeffrey H Horowitz for Kenneth Eugene Smith added. Signed by Judge Virginia Emerson Hopkins on 10/12/2016. (JLC) (Entered: 10/12/2016)
10/13/2016	<u>40</u>	ORDER GRANTING <u>37</u> MOTION To Reconsider and upon due consideration, the Respondents' Objection to this Courts Order Setting an Evidentiary Hearing is SUSTAINED. The Court's <u>34</u> Order granting the Petitioner's <u>32</u> Motion for Evidentiary Hearing is VACATED. Respondents shall file a Response to the Motion for Evidentiary Hearing no later than 30 days from the date of this Order. Petitioner's Reply is due no later than 30 days after the date on which such Response is filed. Thereafter, the Motion will be under submission and the Court will decide whether an Evidentiary Hearing is appropriate. Signed by Judge Virginia Emerson Hopkins on 10/13/2016. (JLC) (Entered: 10/13/2016)
11/10/2016	<u>41</u>	MOTION for Extension of Time (<i>Respondents' Motion for 14-Day Enlargement of Time</i>) by Jefferson S Dunn, Luther Strange. (Anderson, Richard) (Entered: 11/10/2016)
11/10/2016	<u>42</u>	TEXT ORDER granting <u>41</u> Motion for 14 day Extension of Time. Signed by Judge Virginia Emerson Hopkins on 11/10/2016. (KWC) (Entered: 11/10/2016)
11/28/2016	<u>43</u>	RESPONSE to <i>Motion for Evidentiary Hearing</i> filed by Jefferson S Dunn, Luther Strange. (Anderson, Richard) (Entered: 11/28/2016)
12/28/2016	<u>44</u>	REPLY to Response to Motion re <u>32</u> MOTION for Hearing filed by Kenneth Eugene Smith. (Johnson, Andrew) (Entered: 12/28/2016)
01/12/2017	<u>45</u>	NOTICE by Kenneth Eugene Smith <i>Of Change of Firm Name</i> (Johnson, Andrew) (Entered: 01/12/2017)
04/27/2018	<u>46</u>	ORDER DENYING WITHOUT PREJUDICE <u>32</u> MOTION for Evidentiary Hearing. Signed by Judge Virginia Emerson Hopkins on 4/27/2018. (JLC) (Entered: 04/27/2018)
06/01/2018	<u>47</u>	NOTICE- MOTION to WITHDRAW as attorney by Jefferson S Dunn, Steve Marshall (<i>Notice of Withdrawal</i>) (Coker Hammonds, Tina) Modified title on 6/1/2018 (KWC) (Entered: 06/01/2018)
06/01/2018	<u>48</u>	TEXT ORDER granting <u>47</u> Motion to Withdraw as Attorney. Attorney Tina Marie Coker Hammonds terminated. Signed by Judge Virginia Emerson Hopkins on 6/1/2018. (KWC) (Entered: 06/01/2018)
06/22/2018	<u>49</u>	NOTICE OF REASSIGNMENT. This case is hereby reassigned to Judge Abdul K. Kallon for all further proceedings. Judge Virginia Emerson Hopkins no longer assigned to case. Please use case number 2:15-CV-0384-AKK on all subsequent pleadings.(JLC) (Entered: 06/22/2018)
09/12/2019	<u>50</u>	MEMORANDUM OPINION. Signed by Judge Abdul K Kallon on 9/12/2019. (AFS) (Entered: 09/12/2019)
09/12/2019	<u>51</u>	FINAL JUDGMENT - In accordance with the Memorandum Opinion entered contemporaneously herewith it is ORDERED, ADJUDGED, and DECREED that the petition for writ of habeas corpus <u>1</u> is DENIED; Petitioner's motion for an evidentiary hearing <u>32</u> is DENIED; and the petition is DISMISSED WITH PREJUDICE. The court finds that Smith's claims do not satisfy either standard for granting a certificate for appealability. Therefore, the court DENIES a certificate of appealability with regard to those claims. 28 U.S.C. § 2253(c). Costs of this action are TAXED against Petitioner and in favor of Respondent. Signed by Judge Abdul K Kallon on 9/12/2019. (AFS,) (Entered: 09/12/2019)
09/12/2019	<u>52</u>	TRANSMITTAL LETTER TO USCA (AFS) (Entered: 09/12/2019)
10/10/2019	<u>53</u>	MOTION to Alter Judgment by Kenneth Eugene Smith. (Attachments: # <u>1</u> Exhibit Grass Declaration)(Johnson, Andrew) (Entered: 10/10/2019)

10/16/2019	<u>54</u>	ORDER DENYING <u>53</u> MOTION to Alter Judgment. Additionally, for the reasons stated in the <u>51</u> Final Judgment, the Court declines to issue a Certificate of Appealability. Signed by Judge Abdul K Kallon on 10/16/2019. (JLC) (Entered: 10/16/2019)
11/13/2019	<u>55</u>	NOTICE OF APPEAL as to <u>50</u> Memorandum Opinion, <u>54</u> Order, <u>51</u> Order Dismissing Case by Kenneth Eugene Smith. (Johnson, Andrew) Modified on 11/14/2019 (JLC). (Entered: 11/13/2019)
11/14/2019	<u>56</u>	NOTICE of Transmittal re <u>55</u> Notice of Appeal. (JLC) (Entered: 11/14/2019)
11/14/2019	<u>57</u>	Transmission of <u>55</u> Notice of Appeal, <u>54</u> Order, <u>51</u> Order, <u>50</u> Memorandum Opinion and Docket Sheet to US Court of Appeals re <u>55</u> Notice of Appeal. (JLC) (Entered: 11/14/2019)
11/15/2019	<u>58</u>	USCA Case Number 19-14543 for <u>55</u> Notice of Appeal filed by Kenneth Eugene Smith. (KEK) (Entered: 11/15/2019)
01/09/2020	<u>59</u>	ORDER of USCA GRANTING IN PART and DENYING IN PART Appellant Kenneth Eugene Smith's Motion for Certificate of Appealability re <u>55</u> Notice of Appeal filed by Kenneth Eugene Smith. (JLC) (Entered: 01/09/2020)
03/18/2020		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Northern District of Alabama certifies that the record is complete for purposes of this appeal re: <u>55</u> Notice of Appeal, Appeal No. 19-14543-P. The entire record on appeal is available electronically.(JLC) (Entered: 03/18/2020)
05/27/2021	<u>60</u>	MANDATE of USCA before WILSON, JILL PRYOR AND GRANT, USCJ, AFFIRMING the decision of the District Court with per curiam opinion attached; ISSUED AS MANDATE 05/27/2021. (Attachments: # <u>1</u> Opinion)(AKD) (Entered: 05/27/2021)

EXHIBIT 2

**General Docket
United States Court of Appeals for the Eleventh Circuit**

Court of Appeals Docket #: 19-14543 Nature of Suit: 3535 Habeas Corpus: Death Penalty Kenneth Smith v. Commissioner, Alabama Dept., et al Appeal From: Northern District of Alabama Fee Status: IFP Granted	Docketed: 11/14/2019 Termed: 04/06/2021
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Case Type Information: 1) Private Civil - Prisoner 2) Death Penalty - State Habeas 3) -

Originating Court Information: District: 1126-2 : 2:15-cv-00384-AKK Civil Proceeding: Abdul K. Kallon, U.S. District Judge Date Filed: 03/03/2015 Date NOA Filed: 11/13/2019
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KENNETH EUGENE SMITH	Petitioner - Appellant	Robert Grass Direct: 212-836-8000 [COR LD NTC Retained] Arnold & Porter Kaye Scholer, LLP 250 W 55TH ST NEW YORK, NY 10019 Jeffrey H. Horowitz [NTC Retained] Arnold & Porter Kaye Scholer, LLP 250 W 55TH ST NEW YORK, NY 10019 Andrew Burns Johnson Direct: 205-521-8295 [COR NTC Retained] Bradley Arant Boult Cummings, LLP Firm: 205-521-8000 1819 5TH AVE N BIRMINGHAM, AL 35203
versus		
COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS	Respondent - Appellee	Richard Anderson Direct: 334-353-2021 [COR LD NTC Government] Alabama Attorney General's Office Firm: 334-242-7300 501 WASHINGTON AVE PO BOX 300152 MONTGOMERY, AL 36130
ATTORNEY GENERAL STATE OF ALABAMA	Respondent - Appellee	Richard Anderson Direct: 334-353-2021 [COR LD NTC Government] (see above)

SERVICE		Attorney General, State of Alabama [NTC Government] Alabama Attorney General's Office Firm: 334-242-7300 501 WASHINGTON AVE PO BOX 300152 MONTGOMERY, AL 36130

KENNETH EUGENE SMITH,

Petitioner - Appellant,

versus

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL STATE OF ALABAMA,

Respondents - Appellees.

- 11/14/2019 [1](#) DEATH PENALTY APPEAL DOCKETED. Notice of appeal filed by Attorney Andrew Burns Johnson for Appellant Kenneth Eugene Smith on 11/14/2019. Fee Status: IFP Granted; COA Denied in USDC. [Entered: 11/15/2019 04:54 PM]
148 pg, 896.31 KB
- 11/14/2019 [2](#) USDC judgment denying COA as to Appellant Kenneth Eugene Smith was filed on 09/12/2019. Docket Entry 51. [Entered: 11/15/2019 05:28 PM]
2 pg, 69.74 KB
- 11/15/2019 [3](#) APPEARANCE of Counsel Form filed by Andrew Burns Johnson for Kenneth Eugene Smith. [19-14543] (ECF: Andrew Johnson) [Entered: 11/15/2019 05:35 PM]
1 pg, 412.7 KB
- 11/15/2019 [4](#) *MOTION for certificate of appealability filed by Kenneth Eugene Smith. Opposition to Motion is Unknown.* [4] [19-14543] (ECF: Andrew Johnson) [Entered: 11/15/2019 05:42 PM]
66 pg, 305.51 KB
- 11/15/2019 [5](#) Declaration of Andrew B. Johnson in Support of Motion for Certificate of Appealability filed by Attorney Andrew Burns Johnson for Appellant Kenneth Eugene Smith. [19-14543] (ECF: Andrew Johnson) [Entered: 11/15/2019 05:50 PM]
161 pg, 14.8 MB
- 11/18/2019 [6](#) APPEARANCE of Counsel Form filed by Richard Dearman Anderson for Attorney General State of Alabama and Commissioner, Alabama Department of Corrections. [19-14543] (ECF: Richard Anderson) [Entered: 11/18/2019 12:39 PM]
1 pg, 68.99 KB
- 11/18/2019 [7](#) APPEARANCE of Counsel Form filed by Robert Grass for Kenneth Eugene Smith. [19-14543] (ECF: Robert Grass) [Entered: 11/18/2019 03:35 PM]
1 pg, 524.15 KB
- 12/06/2019 [8](#) Certificate of Interested Persons and Corporate Disclosure Statement filed by Attorney Andrew Burns Johnson for Appellant Kenneth Eugene Smith. On the same day the CIP is served, the party filing it must also complete the court's web-based stock ticker symbol certificate at the link here <http://www.ca11.uscourts.gov/web-based-cip> or on the court's website. See 11th Cir. R. 26.1-2(b). [19-14543] (ECF: Andrew Johnson) [Entered: 12/06/2019 03:42 PM]
5 pg, 98.81 KB
- 12/13/2019 [9](#) Certificate of Interested Persons and Corporate Disclosure Statement filed by Attorney Richard Dearman Anderson for Appellees Attorney General State of Alabama and Commissioner, Alabama Department of Corrections. On the same day the CIP is served, the party filing it must also complete the court's web-based stock ticker symbol certificate at the link here <http://www.ca11.uscourts.gov/web-based-cip> or on the court's website. See 11th Cir. R. 26.1-2(b). [19-14543] (ECF: Richard Anderson) [Entered: 12/13/2019 02:30 PM]
5 pg, 119.11 KB
- 01/09/2020 [10](#) **ORDER: Motion for certificate of appealability filed by Appellant Kenneth Eugene Smith is GRANTED IN PART AND DENIED IN PART. [4] CRW** [Entered: 01/09/2020 11:52 AM]
3 pg, 85.3 KB
- 02/18/2020 [11](#) Appellant's brief filed by Kenneth Eugene Smith. [19-14543] (ECF: Andrew Johnson) [Entered: 02/18/2020 03:36 PM]
56 pg, 5.2 MB
- 02/18/2020 [12](#) Appendix filed [Volume I and Volume II VOLUMES] by Appellant Kenneth Eugene Smith. [19-14543] (ECF: Andrew Johnson) [Entered: 02/18/2020 03:44 PM]
565 pg, 52.11 MB
- 02/19/2020 13 Received paper copies of EBrief filed by Appellant Kenneth Eugene Smith. [Entered: 02/19/2020 11:29 AM]
- 02/19/2020 14 Received paper copies of EAppendix filed by Appellant Kenneth Eugene Smith. 2 VOLUMES - 2 COPIES. [Entered: 02/19/2020 11:31 AM]
- 03/02/2020 15 Received paper copies of EAppendix filed by Appellant Kenneth Eugene Smith. 2 VOLUMES - 3 COPIES [Entered: 03/09/2020 05:10 PM]
- 03/17/2020 [16](#) Appellee's Brief filed by Appellee Commissioner, Alabama Department of Corrections. [19-14543] (ECF: Richard Anderson) [Entered: 03/17/2020 03:27 PM]
32 pg, 191.19 KB
- 03/20/2020 26 Received 7 paper copies of EBrief filed by Appellee Attorney General State of Alabama.**Paper copies of the briefs are located in DP Clerk's office** [Entered: 11/03/2020 02:20 PM]
- 04/06/2020 [17](#) Reply Brief filed by Appellant Kenneth Eugene Smith. [19-14543] (ECF: Andrew Johnson) [Entered: 04/06/2020 02:16 PM]
30 pg, 199.22 KB
- 04/07/2020 18 Received reply paper copies of EBrief filed by Appellant Kenneth Eugene Smith. [Entered: 04/09/2020 09:54 AM]
- 04/09/2020 [19](#) Notice of deficient Reply brief filed by Attorney Andrew Burns Johnson for Appellant Kenneth Eugene Smith. Deficiencies: The document in brief should be printed on one side of each page. --[Edited 04/09/2020 by GAF] [Entered: 04/09/2020 09:58 AM]
2 pg, 15.79 KB
- 04/14/2020 20 Received CORRECTED paper copies of EBrief filed by Appellant Kenneth Eugene Smith. All deficiencies have been corrected [Entered: 04/17/2020 10:30 AM]

08/11/2020	<input type="checkbox"/> 21	Telephonic Oral Argument Scheduled. Argument Date: Tuesday, 11/17/2020, at 2:00 p.m. Eastern Time. [Entered: 08/11/2020 03:52 PM]
08/11/2020	<input type="checkbox"/> 22 2 pg, 26.37 KB	Calendar issued as to this case to be orally argued telephonically on Tuesday, November 17, 2020, at 2:00 p.m. EDT. Counsel are directed to electronically acknowledge receipt of this calendar by docketing the Calendar Receipt Acknowledged event in ECF. [Entered: 08/11/2020 04:04 PM]
08/11/2020	<input type="checkbox"/> 23	Attorney Richard Dearman Anderson for Appellees Attorney General State of Alabama and Commissioner, Alabama Department of Corrections hereby acknowledges receipt of a copy of the printed calendar for 11/17/2020. Richard D. Anderson 334-353-2021 will present argument. [19-14543] (ECF: Richard Anderson) [Entered: 08/11/2020 04:29 PM]
08/12/2020	<input type="checkbox"/> 24	Attorney Robert Grass for Appellant Kenneth Eugene Smith hereby acknowledges receipt of a copy of the printed calendar for 11/17/2020. Robert Grass (212) 836-8064 will present argument. [19-14543] (ECF: Robert Grass) [Entered: 08/12/2020 12:02 PM]
10/09/2020	<input type="checkbox"/> 25	Attorney Andrew Burns Johnson for Appellant Kenneth Eugene Smith hereby acknowledges receipt of a copy of the printed calendar for 11/17/2020. Robert Grass 212-836-8064 will present argument. [19-14543] (ECF: Andrew Johnson) [Entered: 10/09/2020 10:05 AM]
11/06/2020	<input type="checkbox"/> 27 15 pg, 743.92 KB	Supplemental Authority filed by Appellant Kenneth Eugene Smith. [19-14543] (ECF: Robert Grass) [Entered: 11/06/2020 09:31 AM]
11/17/2020	<input type="checkbox"/> 28	Oral argument held by Teleconference. Oral Argument participants were Robert Grass for Appellant Kenneth Eugene Smith and Richard Dearman Anderson for Appellees Commissioner, Alabama Department of Corrections and Attorney General State of Alabama. [Entered: 11/17/2020 04:47 PM]
04/06/2021	<input type="checkbox"/> 29 13 pg, 242.8 KB	Opinion issued by court as to Appellant Kenneth Eugene Smith. Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions . [Entered: 04/06/2021 03:24 PM]
04/06/2021	<input type="checkbox"/> 30 1 pg, 82.46 KB	Judgment entered as to Appellant Kenneth Eugene Smith. [Entered: 04/06/2021 03:28 PM]
04/27/2021	<input type="checkbox"/> 31 34 pg, 2.2 MB	Petition for panel rehearing only filed by Appellant Kenneth Eugene Smith. [19-14543] (ECF: Andrew Johnson) [Entered: 04/27/2021 04:16 PM]
05/19/2021	<input type="checkbox"/> 32 2 pg, 129.95 KB	ORDER: The Petition for Panel Rehearing filed by Appellant Kenneth Eugene Smith is DENIED. [32] [Entered: 05/19/2021 10:36 AM]
05/27/2021	<input type="checkbox"/> 33 2 pg, 721.95 KB	Mandate issued as to Appellant Kenneth Eugene Smith. [Entered: 05/27/2021 10:59 AM]
10/20/2021	<input type="checkbox"/> 34 1 pg, 52.83 KB	Notice of Writ of Certiorari filed as to Appellant Kenneth Eugene Smith. SC# 21-579. [Entered: 10/21/2021 03:27 PM]
12/09/2021	<input type="checkbox"/> 35	Checked status of certiorari 21-579 filed as to Appellant Kenneth Eugene Smith - Pending. [Entered: 12/09/2021 10:37 AM]
01/20/2022	<input type="checkbox"/> 36	Checked status of certiorari 21-579 filed as to Appellant Kenneth Eugene Smith - Pending. DISTRIBUTED for Conference of 2/18/2022. [Entered: 01/20/2022 05:45 PM]
02/22/2022	<input type="checkbox"/> 37 1 pg, 62.04 KB	Writ of Certiorari filed as to Appellant Kenneth Eugene Smith is DENIED. SC# 21-579. [Entered: 03/03/2022 03:03 PM]

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