

New motion could free K. Smith

BY CASH MICHAELS
FOR THE CHRONICLE

The supporters of Calvin Michael Smith maintain that he is innocent of the 1995 brutal beating of an assistant manager of the former Silk Plant Forest store. Smith, 45, was convicted for assault with a deadly weapon with intent to kill and armed robbery, and after a controversial Winston-Salem Police investigation, sentenced to up to 29 years in prison for the crime.

He has spent over 19 years in custody thus far for a crime he insists he didn't do.

But Smith's current attorney, former U.S. Attorney Walton Holton, filed a supplemental motion for appropriate relief in Forsyth County Superior Court last Friday, seeking to have Calvin Smith released from prison immediately based on time served for the alleged assault, and should not serve further time on the armed robbery conviction.

"The defendant has now served the full sentence of imprisonment imposed in the assault case," the motion states, noting that this is the latest in a series of motions since

July 1999 which were all previously denied.

Holton contends in the motion that regarding the robbery conviction, "...the court was not presented and failed to consider mitigating factors justifying a sentence in the presumptive or mitigating range." The motion then refers back to an April 2008 motion that claimed "ineffective assistance of counsel" based on a case law standard of "...whether a counsel's performance fell below a reasonably objective standard causing prejudice to the defendant."

Case law, Holton maintained in the supplemental motion, made clear that the defendant is entitled to a resentencing "...when mitigating factors are not properly presented for consideration by the court at a sentencing hearing." Thus, the motion continued, Smith's original trial attorney allegedly failed to present a proper defense by not introducing important mitigating facts like an impressive work history since age 16; commendable personal history, in addition to strong family support from his mother, father and sister among others, that constitutionally should have been consid-



Smith

ered by the trial judge during sentencing.

The only mitigating factor considered by the trial judge was a letter from the jail in which Smith had been held for trial, stating that he "impressed an instructor" there while being held in custody.

Under proper consideration, the trial judge could have sentenced Smith to a maximum of nine years in prison.

In 2008, Forsyth County prosecutors declared a conflict of interest in the case. Since then the Attorney General office of Roy Cooper, who was running for governor, has handled it. For nearly a decade, the Silk Plant Forest Truth Committee has been advocating for Smith's release, saying that he was wrongly convicted. The committee as well as supporters at both Winston-Salem State

University and Wake Forest University, and the N.C. NAACP have urged Cooper, including holding rallies outside his office, to join Smith's defense to petition for a new trial, saying that a thorough review of the case by law enforcement experts (including a former FBI agent) revealed "sloppy" investigative police work.

Cooper refused.

In recent months, the Ministers' Conference of Winston-Salem and Vicinity (MCWSV), students from local colleges and universities, and countless other organizations have joined the fight to prove Smith's innocence.

During a short discussion over the phone earlier this week MCWSV president Bishop Todd Fulton

said he was excited that the courts have decided to take another look at the case.

"This is exciting news," Fulton said. "Now we just have to wait and see what happens."

Holton's office told *The Chronicle* at press time Tuesday that no new hearing date or time had been established. According to published reports, a hearing was originally scheduled for 2 p.m. Monday, but for some reason did not take place. However a hearing is expected some time this week, meaning that if Holton's motion is granted, Calvin Smith could be released as soon as this week. That would

still enable him to pursue proving his innocence and clearing his name, but this time from the outside of prison walls.

Earlier this year, the state Supreme Court dismissed Calvin Smith's appeal.

For more information on the trial, visit *The Chronicle's* website or to view complete documents from the trial, visit the city's official website at www.cityofws.org. Be sure to type Silk Plan Forest Report Documents into the search bar.

Chronicle reporter Tevin Stinson contributed to this report.

Local NAACP sets Nov. 22 as election date for new officers

SPECIAL TO THE CHRONICLE

NAACP will have election of Winston-Salem Branch officers and at-large members of the executive committee on Nov. 22 from 12-6 p.m. at 4130 Oak Ridge Drive.

The membership meeting will be held at 7 p.m., when the winners will be announced.

To vote in the branch election, one

must be a member in good standing of the branch 30 days prior to election.

A form of identification is required to vote and membership must be verified.

The pastor of Exodus Baptist Church, Rev. Alvin Carlisle, has announced he will be putting his name in the hat to become the next president of the local NAACP branch.

Isaac "Ike" Howard is the current president of the branch.

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