

TURNING STUMBLING BLOCKS INTO STEPPING STONES
by Zachary Smith

Learning how to tie my shoes didn't come easy. If no one was around to help me, my shoes went untied, which often caused me to trip and fall over the shoestrings, skinning up my hands and knees. So I developed an unconventional approach to solve the problem: I started wearing my shoes on the opposite feet while tucking in the shoestrings. My friend's mother noticed, and she asked me, "Why are you wearing your shoes on the wrong feet?" I answered, "Because it makes me run faster." And in truth it did; my shoes fit tighter and stayed on my feet. I eventually learned how to tie my own shoes, but my unconventional approach to solving problems continued.

When I was in the first grade, I had a teacher who had an aversion to me being a lefty; she wanted to make me a convert. So when she caught me writing with my left hand, she'd smack it with a ruler. And even though I developed quick reflexes, she still won the game of slaps--refusing to pass me, making me repeat the first grade. The experience made me feel resentful toward teachers and distrustful of authoritarian figures, planting the seeds of rebellion and independent thinking at an early age. From then on, instead of asking people for help, I preferred to figure things out on my own, developing an insatiable curiosity for taking things apart to study how they worked--toys, bicycles, electronics, locks, etc.

When I was introduced to the Rubik's Cube, I introduced it to the lighter, heating up the stickers and peeling them off to match the colors. I also used the lighter method to open, read, and reseal my parents' mail. And when letters from the school started coming--stating how many days I'd missed--I threw them in the trash. But when the school started calling my mother at work, it was game over.

When I lost my house key I discovered that I could open the door faster using a butter knife than using the key. And when my father learned of my neat trick, instead of encouraging my ingenuity, he balked at it and installed a deadbolt lock, forcing me to climb in and out of my second floor bedroom window whenever I snuck out of the house at night.

Finding workarounds appealed to my subversive nature, so it's not surprising the study of law became not just a necessity to me but an obsession after being convicted of first degree murder, an obsession as natural to me as a fish in water. I ate, slept, and breathed law, night and day, until my conviction was overturned. (State v. Smith, 966 S.W.2d 1 (Mo.App.WD. 1997))

With promethean optimism, I returned to the county jail for a third trial. To stay sharp, I put what I had learned into practice helping other prisoners. I read their discoveries, pointed out the strengths and weaknesses in their cases. I

prepared them for trial, coaching them on their body language and on what to say--and what not to say--when testifying. I exposed the games played by prosecutors and the lies told by court-appointed public pretenders, wreaking havoc on the Jackson County Judiciary.

As I helped others, the number of acquittals--not to mention dismissals--piled up over the twenty-four months I waited to be retried. But all of the successes couldn't compensate me for the devastating defeat I endured when reconvicted and sentenced to life without the possibility of probation or parole and ninety-nine years.

When I returned to prison, I went back to work in the law library. Despite losing again at trial, I felt confident in securing a new trial on my direct appeal. But I made a fatal error: I had filed a 1983 civil rights action against two homicide detectives before winning my direct appeal. (*Smith v. Heimer*, 35 Fed.Appx. 293 (C.A.8 2002)) The case was scheduled for a jury trial in the federal district court around the same time my criminal appeal was being decided. The appellate court ruled against me, setting up an affirmative defense of collateral estoppel for the detectives. (*State v. Smith*, 90 S.W.3d 132 (Mo.App.WD. 2002)) I was forced to settle the case for a thousand dollars.

During my post-conviction proceedings, my trial attorney effectively dodged my subpoena so I couldn't depose him. He had been disbarred and moved to California. To make a sad cowboy song short, the court wrote findings of fact and conclusions of law, finding that I couldn't establish ineffective assistance without presenting court's testimony at the evidentiary hearing.

Four months later, I was taken into the back office and told to make a call home, a phone call no prisoner ever wants to have to make. I was told my father had passed away on August 28, 2005. It was so unexpected; my father wasn't even sick. He went to sleep and never woke up. I was inconsolable but held my emotions in check. My father and I had been close ever since I was little.

I received a small inheritance from his estate. Shortly after, some 1099s arrived in the mailroom stating how much money I had received. A Missouri Incarceration Reimbursement Act (MIRA) suit was filed against me. I spanked the State's ass, though, successfully securing a dismissal of the suit, on a statute of limitations defense. (*State ex rel. Nixon v. Smith*, 254 S.W.3d 66 (Mo.App.WD. 2008)) The victory was bittersweet; my post-conviction appeal had been denied five months earlier. (*Smith v. State*, 207 S.W.3d 135 (Mo.App.WD. 2006))

Unsatisfied with their defeat in the MIRA case, the State appealed the dismissal, and the circuit court's judgment was overturned. On remand, the court entered judgment against me,

ordering the Missouri Department of Corrections to collect 90% of any money deposited into my offender account. I appealed but the decision was affirmed. Rather than taking a chance on the State finding the money from my inheritance, I used it to hire an attorney to litigate my federal habeas corpus petition.

Then I focused my attention on the MIRA case but was getting nowhere in state court. I started researching the United States Bankruptcy Code and found--you guessed it--a workaround. On September 14, 2010, I filed a Chapter 7 bankruptcy petition, and enjoyed the automatic stay until I was granted a discharge on March 11, 2011.

The Eighth Circuit Court of Appeals upheld the state court's decision in my criminal case. (Smith v. Kemna, 309 Fed.Appx. 68 (C.A.8 2009)) And the United States Supreme Court denied cert, ending all of my appeals. As I stared at the stack of legal papers, wondering what to do with them, the thought occurred to me that there weren't any books--that I knew of--specifically written for prisoners, to help them attack their convictions in the federal courts, so I decided to write Smith's Guide to Habeas Corpus Relief for State Prisoners Under 28 U.S.C. §2254. I laid out the entire process, step by step, for attacking a conviction in the federal courts. At the end of each chapter, I provided example petitions, motions, form letters, certificates of appealability, notices of appeal, motions for leave to proceed in forma pauperis, appellate briefs, a petition for a writ of certiorari, federal statutes, and procedural rules.

After finishing the habeas book, a guy named Nick approached me and asked if I could help him. The State found out he had eighty-five hundred dollars in an outside bank account and filed a MIRA suit against him. When I decided to take the case, the court had already entered a judgment against him. So I filed a motion for reconsideration and within thirty days, the State had to return the money, depositing the eighty-five hundred dollars into his inmate account. The money came from SSI checks Nick received before coming to prison, which SSI money is exempt from attachments under 42 U.S.C. §407(A).

I started thinking of writing another book after seeing an increase of MIRA actions being filed against prisoners. I did some research and was appalled at learning that eleven other states have similar incarceration reimbursement act statutes. So I wrote Smith's Guide to Chapter 7 Bankruptcy for Prisoners, and included example pleadings, detailed instructions, and a blank set of all the required bankruptcy forms.

I also wrote a letter to Prison Legal News, advising them about how prisoners can defeat their incarceration reimbursement cases. The letter was unsealed and most likely read by the mailroom because not long after, the State seized forty-five dollars from my account. I filed a motion for contempt with

the bankruptcy court, arguing that the State violated the discharge injunction. The court ruled that the MIRA judgment was void with respect to all costs accrued as of the bankruptcy filing, but held the judgment remained valid as to future reimbursement costs and that the costs incurred by the State since my bankruptcy petition were not dischargeable debts.

I appealed and lost; the Eighth Circuit Court of Appeals affirmed the lower court's decision in *Smith v. Missouri*, 530 Fed.Appx. 616 (8th Cir. 2013).

As fate would have it, the Missouri Court of Appeals handed down decisions in *State ex rel. Koster v. Cowin*, 390 S.W.3d 239 (Mo.App.WD. 2013) and *State ex rel. Koster v. Wadlow*, 398 S.W.3d 591 (Mo.App.WD. 2013), holding the attorney general's office could not be reimbursed with assets that were unidentified and not known at the time of the MIRA hearing--meaning the attorney general could not impose future costs for incarceration against a prisoner unless the money was shown to come from a current stream of income that existed when the MIRA judgment was entered.

I filed a motion under Missouri Supreme Court Rule 74.06(b), citing these two cases. The State conceded, filing a satisfaction of judgment motion in the Cole County Circuit Court, on October 16, 2013. All liens against my account were removed.

Since filing my petition for clemency in January of 2009, I had helped a number of other guys file petitions for clemency. During that time, it was apparent that prisoners needed a tool to help them. With some free time on my hands, I began writing *Smith's Guide to Executive Clemency for State and Federal Prisoners*. I wanted to do something different than the first two *Smith Guides*, something with the potential to elevate a prisoner's understanding of not just the clemency process, but the psychology of themselves and others. By combining the two genres, I was able to create an invaluable tool with the potential to revolutionize the rehabilitation process, helping prisoners to turn their stumbling blocks into stepping stones.