

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002632
(2016-CP-46-3602)

State of South Carolina.....Respondent,

v.

Travis Hines.....Petitioner.

REPLY BRIEF

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ARGUMENTS

In reply, Petitioner offers the following brief arguments in reply to the Respondent's brief.

I. The court of appeals erred in affirming the PCR court's decision because a criminal defendant's right and interest supersedes a solicitor's policy of using discovery as a bargaining chip to a plea and any decision to the contrary violates the Constitution and Rule 5(a)(1)(C) of the South Carolina Rules of Criminal Procedure.

Respectfully, Petitioner's claim does not rest on whether Wellborn either viewed the entire videotape or only relevant portions of it. Petitioner however maintains the record supports a finding that he reviewed relevant portions, as determined by the solicitor. The fact that Respondent disagrees with that conclusion is of no moment. Whether trial counsel reviewed all of it or none of it, the right to review discovery, pursuant to the South Carolina statute belongs personally to the defendant as Petitioner argues in his petition for a writ of certiorari. The claim here is that the solicitor's office misconstrues Rule 5(a)(1)(C) of the South Carolina Rules of Criminal Procedure when it denies a defendant access to a relevant discovery unless that defendant, without having the benefit of that discovery, insists on his right to a trial. Petitioner is not requesting any "new rule" in this case, only that the relevant parties abide by the statute that is already in place. To the extent the solicitors are concerned about the well-being of their confidential informants, Rule 5(d)(1) of the Rules of Criminal Procedure provide them with a mechanism that allows them to meaningfully address that issue while providing judicial oversight of their decisions to withhold discovery.

II. This Court should overrule *Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375 (2012).

Respondent argues this Court cannot overrule *Hyman* because the issue was not raised below and therefore is not preserved. But of course the post-conviction relief court was not in a position to overrule a precedent of this Court so Petitioner argues this issue is properly raised for

the first time to this Court. State supreme courts, including this one, clearly have the authority to reconsider prior precedents and overrule those which it chooses to address. *See State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (holding jury instruction that malice may be inferred from the use of a deadly weapon is no longer good law); *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (abolishing *in favorem vitae* in capital cases).

III. The court of appeals erred by finding Hines’s guilty plea was voluntary when the State filed notice to seek LWOP after initially extending an offer of 10 years if Hines waived his right to discovery, and as a way to keep Hines from pursuing access to his discovery, and when the circuit court’s colloquy with Hines was insufficient under existing state law.

For reasons argued in the petition for a writ of certiorari, Petitioner maintains his guilty plea was not voluntary.

CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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