

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2022-000341

State of South Carolina.....Respondent,

v.

Travis Hines.....Petitioner.

**APPENDIX**

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STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002632

Travis Hines, ..... Petitioner,

vs.

State of South Carolina ..... Respondent.

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA

-----x

TRAVIS LAMONT HINES,

Petitioner,

Case No.

-against-

2016-CP-46-03602

STATE,

Respondent.

-----x

July 31, 2017

York, SC

B E F O R E:

HONORABLE R. LAWTON MCINTOSH

A P P E A R A N C E S:

JUSTIN HUNTER, Esquire

Attorney for the State

LEAH MOODY, Esquire

Attorney for the Petitioner

Aileen Butler

Official Court Reporter

|    |                      |               |              |                  |                |
|----|----------------------|---------------|--------------|------------------|----------------|
| 1  |                      |               |              | <u>I N D E X</u> |                |
| 2  | <u>WITNESS</u>       | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u>  | <u>RECROSS</u> |
| 3  | Travis Hines         |               |              |                  |                |
| 4  | Ms. Moody            | 8             |              |                  | 63             |
| 5  | Mr. Hunter           |               | 29           |                  |                |
| 6  | Christopher Wellborn |               |              |                  |                |
| 7  | Ms. Moody            | 30            |              |                  |                |
| 8  | Mr. Hunter           |               | 46           |                  |                |
| 9  | Ryan Newkirk         |               |              |                  |                |
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No exhibits entered

MR. HUNTER: May it please the Court. The next

1 MR. HUNTER: May it please the Court. The next  
2 case is Travis Hines versus the State of South  
3 Carolina; 2016-CP-46-3602.

4 Your Honor, he was indicted December 2015 in York  
5 County for distribution of heroin, third offense.  
6 Your Honor, he was represented by Mr. Chris Wellborn.  
7 On December 15, 2015 he appeared with Mr. Wellborn  
8 before Judge Hall and moved to have Mr. Wellborn  
9 relieved as counsel. I believe Judge Hall granted  
10 that motion.

11 On December 17, 2015 he appeared pro se and plead  
12 guilty before Judge Hayes. He was sentenced pursuant  
13 to a negotiation to 14 years and I believe the  
14 accompanying proximity charge was dismissed. He did  
15 not file a direct appeal.

16 He filed this current action December 9, 2016. He  
17 is present today, represented by Miss Leah Moody.

18 MS. MOODY: Thank you, Your Honor. May please the  
19 Court.

20 This is Mr. Hines and I'm kind of uncertain how  
21 the Court would like to proceed on this. Mr. Hines  
22 says he has one other witness that is not here.  
23 However, he was -- because of the situation, Mr.  
24 Wellborn was not his attorney at the time that he did  
25 the plea and the PCR application is on that plea and

1 in his allegation he states different things that go  
2 under his representation with Mr. Wellborn.

3 THE COURT: What other witnesses is he proposing  
4 to bring to court.

5 He plead out pro se, right.

6 MS. MOODY: Yes, sir.

7 THE COURT: So what witness would he produce.

8 MS. MOODY: Well, as it relates to Mr. Wellborn.

9 THE DEFENDANT: Yeah, it relates to Mr. Wellborn  
10 and me taking the plea.

11 MS. MOODY: Would you like to take testimony first  
12 to see -- I mean, he indicates that his finance, wife  
13 is a witness to his conversation with Mr. Wellborn.

14 THE COURT: Well, I will proceed. I will leave --  
15 I'll take it under advisement.

16 You need to let your attorney talk first. I will  
17 consider whether or not I will continue it or leave it  
18 open. I probably won't, but I'll think about it.  
19 Okay.

20 Call your witness.

21 THE DEFENDANT: Can I speak right quick, sir?

22 THE COURT: Speak through your attorney. Your  
23 attorney represents you, not you.

24 THE DEFENDANT: I want to fire my attorney because  
25 I haven't talked to my attorney, period.

1 THE COURT: I got you. What is the basis for your  
2 motion? Raise your right hand.

3 Swear or affirm to tell the truth, the whole truth  
4 and nothing but the truth?

5 THE DEFENDANT: I swear to tell the truth?

6 THE COURT: What is the basis for your motion?  
7 Stand up please, sir.

8 THE DEFENDANT: I talked to my attorney one time  
9 prior to this and it was like two weeks ago and she's  
10 suppose to be getting back to me. I hadn't heard  
11 anything. I didn't even know I was coming to court  
12 today.

13 I have evidence. I have evidence that needed  
14 to be into put into evidence. I have witnesses. I  
15 mean, she doesn't even know -- we didn't even talk  
16 about my case. And I am asking her how are we ready  
17 to go to court when we haven't discussed it. I don't  
18 even know what she is going to say up here today. So,  
19 I don't even know what's going on.

20 THE COURT: Miss Moody.

21 MS. MOODY: Your Honor, we have talked about his  
22 case. It's a plea, with no attorney, and I got the  
23 transcript and sent him the transcript that I  
24 received. He asked me for certain things. I've sent  
25 him all those things and we had a phone conversation

1 about his case. He indicated to me that he had a  
2 ten-year offer on the plate. I followed up with what  
3 he said to me. I talked to Mr. Newkirk who is in the  
4 back of the room. I talked to Mr. Wellborn in the  
5 back in the room. Got a copy of his file. And then I  
6 talked to his previous counsel, Mr. McKinnon. Mr.  
7 McKinnon confirmed to me that the offer was what it  
8 said it was, a negotiated 15 years. He fired his  
9 attorney and I can see what happened with that in the  
10 hearing. He fired his attorney and Dan Hall talked to  
11 him about that and he said that he was hiring another  
12 attorney. He named Jack Swerling.

13 He comes back a couple of days later, Your Honor,  
14 and he goes forward with a plea after he talks to Ryan  
15 Newkirk. Jack Swerling was not with him. He got a  
16 14-year sentence instead of a 15-year sentence and it  
17 was a negotiated plea.

18 I looked at the Farreta factors and I looked at the  
19 other transcript to see what exactly happened. The  
20 problem for me is that he had relaid to the Court that  
21 he was going to hire Mr. Swerling but he did not hire  
22 him.

23 The witness that he wants to bring is his finance.  
24 I'm not sure. I don't see her addressing the Court on  
25 the record. He's stating that his attorney was --

1 well, ineffective but on that day that he actually  
2 entered his plea he was his own attorney.

3 THE COURT: Right.

4 THE DEFENDANT: Can I speak?

5 THE COURT: Yes.

6 THE DEFENDANT: That's all in my transcript. But  
7 what I am saying is, I filed a PCR. We haven't talked  
8 as to why I filed ineffective assistance of counsel  
9 and I filed ineffective assistance of counsel because  
10 he never even looked at my Brady motion. He never  
11 went over a motion with me. I mean, we never talked  
12 about it.

13 THE COURT: No, sir. No, no, no, we not going to  
14 do this now. Let me just do this. I will deny your  
15 motion for a continuance. We will proceed and I will  
16 keep it under advisement whether I will keep the  
17 record open.

18 Call your first witness.

19 MS. MOODY: Thank you, Your Honor. Mr. Hines.

20 TRAVIS HINES, called as a witness, having been  
21 duly sworn by The Clerk, was examined and testified  
22 as follows:

23 DIRECT EXAMINATION

24 BY MS. MOODY:

25 Q Mr. Hines, please state your full name for the record?

1 A Travis Lamont Hines.

2 Q Could you talk into that microphone?

3 A Travis Lamont Hines.

4 Q Mr. Hines, where are you currently being held?

5 A Where?

6 Q Where are you in prison?>

7 A Briar River Correctional.

8 Q And what charges are you in prison for?

9 A Distribution of heroin.

10 Q Okay. And this sentence that you received can you  
11 please relay to the Court?

12 A What you mean?

13 Q How long did you receive from the judge to be in  
14 prison?

15 A Fourteen years.

16 Q Okay. Now, originally you had an attorney. Who was  
17 your first attorney in this case?

18 A I don't remember the guy's name. He was public  
19 defender.

20 Q Mr. Mike McKinnon?

21 A Mike McKinnon, yeah.

22 Q Okay. And then you got a second attorney. Why did you  
23 stop being represented by Mr. McKinnon?

24 A Because he was unprofessional when I first met him. He  
25 seemed like he was intoxicated.

1 Q And how long before you got Mr. Wellborn was Mr. Mike  
2 McKinnon your attorney?

3 A Like a week after my initial appearance.

4 Q And he was your attorney until about April?

5 A Yeah.

6 Q And when was your arrest date in this case?

7 A December -- December 29th.

8 Q So from December 29th until April 21st he was your  
9 attorney?

10 A Yes, ma'am.

11 Q Okay. And the Court relieved Mr. McKinnon as your  
12 attorney?

13 A Yes, ma'am.

14 Q And then who did you have as attorney?

15 A Christopher wellborn.

16 Q Was he appointed or was he retained?

17 A He was retained.

18 Q Okay. And so how did you meet Mr. Wellborn?

19 A How did I meet him?

20 Q Yes.

21 A I went to his office.

22 Q Okay. So you contacted him, went to his office for  
23 representation?

24 A Yes, ma'am.

25 Q And how long did he represent you?

1 A Until December 2015.

2 Q Okay. So, he became your attorney in April and he was  
3 relieved in December?

4 A Yes, ma'am.

5 Q Okay. And you filed your post conviction relief  
6 against Mr. Wellborn?

7 A Yes, ma'am.

8 Q Okay. And can you please tell the Court what those  
9 grounds are?

10 A Yes, ma'am. Ineffective assistance of counsel, cause  
11 the counsel's performance was deficient and prejudiced to the  
12 defendant; counsel provided bad advice; counsel's failure to  
13 investigate mitigating circumstances for sentence; counsel's  
14 failure to file motions in a timely manner; counsel failed to  
15 maintain adequate communication with the defendant. That's it.

16 Q Okay, so when you said that he was unprofessional, can  
17 you tell the Court what you mean by unprofessional?

18 A We never went over any of my Brady motion. I never  
19 even knew how much weight I was locked up for. I never knew  
20 anything about my case. But I just knew I was -- I had a  
21 warrant for distribution of heroin basically.

22 Q So --

23 A He told me to get my -- he told me to get my Discovery  
24 from McKinnon and I had to come up here and get some papers from  
25 McKinnon but it was just warrants, police reports. There was no

1 full Brady motion. I've never seen a full Brady motion until  
2 two or three months ago when you sent it.

3 Q So the documents that I sent to you those documents  
4 came from Mr. Wellborn, right?

5 A I don't know. I never seen those until you sent them  
6 to me.

7 Q But you didn't have any other paperwork from Mark  
8 McKinnon?

9 A Yeah, my warrants and police report.

10 Q Okay. And so, when you talked to -- after you got the  
11 warrants and the police report and gave them to Mr. Wellborn,  
12 your testifying that you never discussed with him any of the  
13 Discovery?

14 A I am just finding out how much weight I am locked up  
15 for when you sent me my Brady motion. I've never seen the whole  
16 Brady motion until you sent it to me.

17 Q And so what if anything did you all talk about when you  
18 went to met with him?

19 A Just scenarios. Really we were waiting on the video  
20 tape. That's all it was. We were waiting on the video tape.  
21 We couldn't take a plea. I have recording of me and Mr.  
22 Wellborn talking about this and they say he never offered me ten  
23 years but me and him are talking about the deal and talking  
24 about we can't take a plea until we see this video tape and the  
25 prosecution didn't show him a video tape until November when I

1 hired him in April. So, by the time my plea went from ten years  
2 to 15 years, he still hadn't seen the video tape.

3 Q Okay. So you are saying your plea offer was ten years  
4 in the beginning?

5 A Yes, ma'am.

6 Q And who communicated that offer to you?

7 A Mark McKinnon and Mr. Wellborn, numerous times.

8 Q I'm sorry.

9 A Numerous times. Every time I came to see him before --  
10 from April all the way to October my plea didn't change until  
11 October to 15 years to life without possibility of parole and I  
12 still hadn't seen a video tape or Brady motion or knew what I  
13 was going to court for.

14 Q Okay, so that's -- you just alleged that he was not  
15 professional. So you are saying that's part of his  
16 unprofessionalism?

17 A Yes.

18 Q Okay. And you indicated that he -- in your application  
19 you indicated that he procrastinated?

20 A Yes, he waited to see the videotape. Like he kept  
21 telling me, oh, we haven't seen the video tape. We haven't seen  
22 the videotape. We can't make a decision. And this went on for  
23 months and months and months.

24 So I was like, well, what's the problem, did you file a  
25 motion? And this is on the recording also. Did you file a

1 motion? Ah, no. Well, I'm going to file a very specific motion  
2 to see the videotape and this was six months after I hired him.

3 Q Okay. In that six months between that conversation did  
4 he file anything on your behalf?

5 A Not that I know of because I'd never seen a Brady  
6 motion.

7 Q Did you receive any correspondence from Mr. Wellborn?

8 A No.

9 Q You indicated that there was lack of communication.  
10 How often did you meet with Mr. Wellborn?

11 A Maybe like once a month to take him some money. He  
12 never called me. The only time he called me was to relay the  
13 plea was 15 years to life without the possibility of parole.  
14 Every other time I came to his office to pay him.

15 Q Okay. And then you indicated that because of his lack  
16 of communication that you were put in a position so you were  
17 forced to enter a guilty plea pro se?

18 A Yes. When I -- when I went to take my plea Mr.  
19 Wellborn told me to go with the judge and say yes to all the  
20 questions that he was asking me. So I was basically like do you  
21 want me to lie? He was like no, but if you don't go with what  
22 he is saying then he will not accept your plea. So when the  
23 judge asked me are you satisfied with your counsel I said no,  
24 and he said well, I can't accept your plea. I never really  
25 wanted to fire him but when the judge asked me that that's what

1 happened. He told me I can't take your plea.

2 We never had a hearing after that to ask me why I didn't  
3 want him to be my lawyer or anything like that. The next time I  
4 was in court all I knew is I was relieving Mr. Wellborn and I  
5 was going pro se. I never wanted to go pro se. I said I was  
6 going to get a lawyer. So obviously I didn't want to proceed  
7 pro se. I know nothing about the law.

8 Q Hold on one second.

9 When you went the first time and the judge is asking you  
10 questions about are you satisfied with your lawyer, what was  
11 your plea offer that you were pleading to?

12 A That's when it went up to 15 years of life without the  
13 possibility of parole.

14 Q Was your plea offer 15 years a negotiated sentence?

15 A Yes.

16 Q Okay. So you were going into the courtroom with Mr.  
17 Wellborn and that was in front of Judge Hall on December 15th?

18 A Yes, I think it was Judge Hall.

19 Q Okay. Well, it was in front of a judge is what I am  
20 getting to. You are going on December 15th?

21 A Yeah. I was asking you about that, about that  
22 transcript. I never got that transcript, but I got the other  
23 two from the time where I relieved him and I took my plea but I  
24 never got the the transcript where I went in front of the Judge  
25 and told him that I was not satisfied with my counsel.

1 Q Oh, you are talking about the actually plea?

2 A Yes.

3 Q That he didn't let you --

4 A Yes.

5 Q Okay. But on December 15th that's the same day that  
6 you went?

7 A No, this is a totally different day. I came back a  
8 different day to relieve Mr. Wellborn.

9 Q Okay. So when was the day that you were suppose to  
10 first plead to your charges?

11 A It was a couple of days before that. That's why I said  
12 we weren't ready to go. That's why I said I needed a  
13 continuance.

14 Q I will hand you what is the transcript.

15 A I know you have two. Obviously there's three. That's  
16 why we needed a continuance to talk.

17 Q Hold on.

18 MS. MOODY: Your Honor, may approach?

19 THE COURT: Yes.

20 A Listen to my question first.

21 On December the 15th you talked to Judge Dan Hall with  
22 regard to your wanting to relieve --

23 A That's not the same day. It is the day before that.  
24 That's why I said we needed to talk.

25 Q It is the same day.

1 A It's not.

2 Q On December 15th when you talk to Dan Hall, Judge Hall,  
3 and you talked about Jack Swerling?

4 A No, that's not the same day. That's what I said.

5 Q I am asking you a question, do you recall talking to  
6 Dan Hall --

7 A Yes, I remember.

8 Q -- about Jack Swerling?

9 A Yes.

10 Q And what did you tell the judge on that day about Jack  
11 Swerling?

12 A That I would try to retain him to be my lawyer.

13 Q And so after you told the judge that what happened  
14 after that, did you leave the courtroom?

15 A Yes, I left the courtroom. I called Jack Swerling. He  
16 told me he would call me back. I guess he called up here and he  
17 told me that my trial date had already been set and he wouldn't  
18 have no time to prepare for my trial.

19 Q And that's actually discussed in this, with Judge Hall,  
20 that were you going to go forward in January?

21 A Exactly.

22 Q And then on December 17th you came back and you -- on  
23 this document, this is the transcript of your plea, correct?

24 A Yes.

25 Q And you came back pro se?

1 A Yes.

2 Q Okay. Why did you come back pro se?

3 A Because the lawyer was not going to take my -- I didn't  
4 have enough time to prepare for a trial and he told me by the  
5 end of the court hearing that week that the plea offer would be  
6 gone. They wouldn't give me a plea. It's in my transcript.

7 Q I understand. So when you came back on this particular  
8 day did you have an opportunity to talk to Mr. Newkirk? Did you  
9 have opportunity to talk to him?

10 A Yes, ma'am.

11 Q Okay. And what did you discuss with him?

12 A Taking a plea. I told him I didn't -- I didn't want to  
13 go to jail for a long time. That I had kids. And he told me  
14 there was nothing that he could really do. He told me he didn't  
15 have a problem with giving me ten years or seven years but it  
16 was the Rock Hill Police Department that wanted me to talk to  
17 his boss and they wanted to give me more than ten years and he  
18 was like, man, don't make me give you life. He scratched out  
19 the 15 and put 14 and said that's the best I can do for you.

20 Q So when you say "Man, don't give me life" that's  
21 referring to a notice that he served you?

22 A Yeah, he served me life without the possibility of  
23 parole.

24 Q Okay, and then after he gave you -- or agreed to do 14  
25 years. Was it a negotiated plea?

1 A Yes, ma'am.

2 Q Okay, and you went forward with that plea?

3 A Yes, ma'am,.

4 Q All right. And so, when you talked to the judge on  
5 that day that was in front of Judge Hayes?

6 A Yes, ma'am.

7 Q And did you have opportunity to talk about your  
8 relieving your counsel then?

9 A No, not really. We didn't -- he didn't ask me why I  
10 didn't have a lawyer. He didn't ask me why I relieved him. He  
11 just asked me did I understand waiving my right to counsel and  
12 all that.

13 Q Okay. Now when talked to Judge Hall what, if anything,  
14 did you all talk about with regard to not having an attorney?

15 A Not having an attorney?

16 Q Proceeding without an attorney?

17 A The week of my trial was I had an attorney or didn't  
18 have a trial I was going to trial and they served me with life  
19 without the possibility of parole.

20 Q And did the judge ask you whether you were aware of the  
21 the -- did Judge Hall --

22 A Yeah.

23 Q -- ask you whether you were aware of the dangers of  
24 trying to proceed without an attorney?

25 A He never. Never. He didn't.

1 Q What did you understand about going forward without a  
2 trial?

3 A Understand --

4 Q I mean without a lawyer?

5 A Nothing really. I just knew if I didn't go ahead and  
6 take the plea they were going to give me life without the  
7 possibility of parole.

8 Q And before you withdrew or had Chris Wellborn relieved  
9 as your counsel what did you all talk about in terms of if you  
10 could get a ten year plea offer verses going forward on a 15  
11 year, negotiated deal, or going to trial?

12 A What do you mean what did we talk about?

13 Q Did you all discuss like whether you accepted the  
14 offer, whether they would reduce the offer down to ten years?

15 A Yes, he was -- the first time I came to see McKinnon my  
16 plea was 15. The next time I came to see McKinnon my plea was  
17 15 -- I mean ten years. And then every time I seen Mr. Wellborn  
18 my plea was ten years but he was like I'm going to try to get  
19 you like under a third to a second offense.

20 Now, the whole time I coming to see him it's ten years, ten  
21 years, ten years, ten years and one day he said would you take  
22 seven years. He never said the State offered me seven years but  
23 he asked me would I take seven years. And I said, yeah, but we  
24 still ain't seen the video tape. If I'm guilty maybe I would  
25 take seven years but we haven't seen the video tape. We keep

1 going with this ten years, ten years, ten years all the way up  
2 until October and now they're talking about 15 years of life  
3 without the possibility of parole, but we still hadn't seen the  
4 video tape.

5 Q So you got the life without parole notice?

6 A I didn't get the life without the possibility of parole  
7 notice till December but they didn't say anything about life  
8 without the possibility of parole until October.

9 Q Okay, let me make sure I am clear on this. You didn't  
10 have an official notice from the State as to the life without  
11 parole until December?

12 A Yes, ma'am.

13 Q But in your conversation with Chris Wellborn was he  
14 telling you that they were threatening the life without parole?

15 A No, I never heard life without the possibility of  
16 parole until October.

17 Q Right, that's what I am talking about. When you are  
18 talking to Mr. Wellborn in October, does he relay to you that  
19 there's a potential for them to serve you the life without  
20 parole?

21 A Yes, ma'am.

22 Q And he doesn't say they already said that's what they  
23 are going to do. He just saying there is a potential you could  
24 get it?

25 A Yes, ma'am.

1 Q Okay, and then in December when you came forward and  
2 you were trying to enter your plea had you been -- had he  
3 discussed it or had the State discussed with you guys life  
4 without parole?

5 A No.

6 Q Okay. The judge just said he couldn't take your plea  
7 offer -- I mean your plea that day?

8 A You are talking about the first time?

9 Q Yes.

10 A Yes.

11 Q The second time you came back before the Court and  
12 that's when you relieved Mr. Wellborn?

13 A Yes, ma'am.

14 Q Okay. Did anybody mention life without parole to you?

15 A That's when they served me with the notice of life  
16 without possibility of parole.

17 Q Okay, so at that time you knew you were exposed to  
18 that?

19 A Yes.

20 Q And did you talk to Mr. Wellborn after that?

21 A No, ma'am.

22 Q Did you talk to Mr. Wellborn any more after that?

23 A No, ma'am.

24 Q Okay, and so you came back two days later and you  
25 talked to Mr. Newkirk?

1 A Yes, ma'am.

2 Q Did he say anything else about the life without parole?

3 A Yeah, he said I don't want to give you life. He was  
4 like, it's not me. It's my boss, so ---

5 Q Okay. Now you indicated that you had a tape from  
6 talking with Mr. Wellborn?

7 A Yes, ma'am.

8 Q When did you record Mr. Wellborn?

9 A The a -- it was one time in his office when they raised  
10 my plea from ten to 15 because I didn't understand it. You  
11 know, the whole time I am waiting see this video tape. I didn't  
12 understand why they would raise my plea from 15 to life when we  
13 still hadn't seen it. So like, what happened to the plea, so  
14 when I was in there I just started recording the conversation.

15 Q Did he know he was being recorded?

16 A No, ma'am.

17 Q So, when did Mr. Wellborn get to see the video?

18 A After they raised my plea. Well, October 23rd. After  
19 they raised my plea from ten years to 15 years or they were  
20 going to give my life without the possibility of parole.

21 Q One question. Did he tell you why they raised it from  
22 ten to 15?

23 A Never.

24 Q And then as far as the video, what did you learn was on  
25 the video?

1           A     That I learned that I was on the video but it was no --  
2     there was basically no drug transaction. It was me standing in  
3     front of a bag and that's it really. He say -- he advised me  
4     not to go to trial. I should take a plea.

5           Q     A bag you said?

6           A     Yeah.

7           Q     What kind of bag?

8           A     Just a plastic bag. I was doing something with a  
9     plastic bag.

10          Q     Okay.

11          A     It looked like I probably was messing with drugs. But  
12     he said I never gave anybody anything on the tape but he advised  
13     me not to go to trial and just take the plea and I couldn't  
14     understand why.

15          Q     Okay. So you didn't understand that. Well, did you  
16     all have a discussion about that?

17          A     Yeah.

18          Q     And what was a the discussion?

19          A     Basically said that I looked like I was guilty. So he  
20     was like he didn't want to go to trial. I should take the plea.

21          Q     And the plea at that time was 15 years?

22          A     Yes, ma'am.

23          Q     Okay. So when you came back on the 17th and you  
24     entered a plea on the 17th did someone call you back up to the  
25     courthouse?

1           A     Yeah, Mr. Newkirk just told me to come back the next  
2 day.

3           Q     So you on the 15th he told you to come back the 16th?

4           A     Yeah. He told me to come back the next day. That's  
5 when we talk and had our conversation and he told me come back  
6 and take a plea. I already had signed the plea agreement on the  
7 16th.

8           Q     You did what?

9           A     I signed the plea agreement on the 16th. He told me to  
10 come back to court on the 17th.

11          Q     So this was the same paperwork that you had going  
12 forward on the plea with Mr. Wellborn?

13          A     No.

14          Q     Or it's different paperwork?

15          A     Different.

16          Q     So did you sign a plea affidavit?

17          A     I don't know.

18          Q     Did anybody go over your rights with you before you  
19 entered your pro se plea?

20          A     I don't know. I just -- I knew I had to take a plea  
21 and I just signed the paper. I really don't know an affidavit  
22 or what.

23          Q     Were you advised of your rights?

24          A     The right to counsel and all that?

25          Q     Yes.

1 A Yes, ma'am.

2 Q Who went over that with you?

3 A Mr. Newkirk.

4 Q Then did you have opportunity to go over it -- I mean,  
5 on the transcript you talk to Judge Hayes?

6 A Yes, ma'am.

7 Q And you alleged that you were not made aware of the  
8 dangers in proceeding without counsel?

9 A Yes, ma'am.

10 Q Okay. And what specifically are you saying that Judge  
11 Hayes did not go over with you?

12 A That I had a right to a direct appeal and it's a lot of  
13 things that now that I am reading that I know that he's suppose  
14 to broke down and tell me and ask why I wasn't proceeding with  
15 counsel or did I really want to be pro se. Like the State  
16 versus Bayman (phonetics) or Watts versus State. I mean they  
17 were in the same situation I was in and basically just because I  
18 fired my counsel doesn't mean I wanted to proceed pro se. You  
19 know what I mean. But he never went over anything with me and  
20 try to see why I was going pro se or why I didn't have a lawyer  
21 or did I want to get a lawyer. Basically waived my right to  
22 counsel.

23 Q Who did you talk with when you you made your decision?  
24 After you fired Mr. Wellborn did you talk to anybody about  
25 whether you should take the plea offer or any plea offer for

1 that matter?

2 A My family.

3 Q Who did you talk to about it?

4 A I mean I talked to my family and I told them what the  
5 situation was. I didn't have a lawyer and they were offering 15  
6 years to life without the possibility of parole.

7 Q You keep saying 15 years without the possibility of  
8 parole.

9 A Yes, ma'am.

10 Q Your offer was 15 years negotiated?

11 A Yes, ma'am.

12 Q But they gave you a notice for life without parole if  
13 you go to trial?

14 A Yeah.

15 Q Okay. So you had two choices?

16 A Yeah. Take the 15 years or by the end of the week the  
17 offer would be gone and you would be going to trial with or  
18 without an attorney and life without the possibility of parole  
19 would be your outcome, basically.

20 Q So you discussed that with your family?

21 A Yes, ma'am.

22 Q And you indicated earlier that your finance --

23 A Yes, ma'am.

24 Q Or wife, she was with you at that point in time?

25 A Yeah.

1 Q Was she here at the plea?

2 A Yes, ma'am.

3 Q Okay. And what if anything -- well, you want her to  
4 testify as to your conversation?

5 A With Mr. Wellborn. They're saying they never offered  
6 ten years and she was a witness to every time I met with Mr.  
7 Wellborn and he offered me ten years. She was with me every  
8 time I met with Mr. Newkirk and he said that he didn't have a  
9 problem with giving me ten years but now they don't have it in  
10 their files him where they offered me ten years. And I have  
11 recording with Mr. Wellborn saying they offered me ten years so  
12 she can testify to that. She can testify that I didn't want to  
13 take my plea pro se. That I wanted to get a lawyer. I mean she  
14 was with me ever step of the way. So yeah, I would want her to  
15 testify.

16 Q And that's why you would want the Court to leave the  
17 record open?

18 A Yes, ma'am.

19 Q Now, you indicated that you wanted -- you didn't want  
20 to take the plea without an attorney?

21 A Yes, ma'am.

22 Q Did you contact any other attorneys?

23 A Yes, but once I would tell them that -- when I tell  
24 them about my situation and my trial date was already set and  
25 the circumstances I was going through it was like they probably

1 wouldn't have time to prepare for my case because I waited so  
2 late.

3 Q Now nothing that you went forward pro se what relief  
4 are you seeking from the Court here today?

5 A I want a new trial. I will go to trial on my charges  
6 because now I know what's in my Brady. I know what I'm up  
7 against. I know what I would fight. How I would come into the  
8 situation. I wouldn't take a plea. I would go to trial.

9 Q Even though they served you with --

10 A Life without the possibility of parole. I would  
11 definitely go to trial.

12 Q Is there any other relief you are seeking from the  
13 Court?

14 A No, ma'am.

15 MS. MOODY: No further questions for this witness,  
16 Your Honor.

17 MR. HUNTER: Just briefly.

18 CROSS EXAMINATION

19 BY MR. HUNTER:

20 Q At the plea hearing before Judge Hayes, do you remember  
21 telling him that you were giving up your right to an attorney?

22 A Yes, ma'am -- I mean, yes, sir.

23 MR. HUNTER: That's all I have.

24 THE COURT: All right. Thank you, sir. You may  
25 step down.

1 THE DEFENDANT: Your welcome.

2 THE COURT: Miss Moody, do you have any other  
3 witnesses.

4 MS. MOODY: Your Honor, I would call Chris  
5 Wellborn.

6 THE COURT: Come around Mr. Wellborn.

7 MR. WELLBORN: If please, Your Honor, I would like  
8 to bring my laptop.

9 THE COURT: Sure. If you use it everybody has the  
10 right to look at it, do you understand?

11 MR. WELLBORN: That's fine.

12 CHRISTOPHER WELLBORN, called as a witness, having  
13 been duly sworn by The Clerk, was examined and  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. MOODY:

17 Q Good afternoon Mr. Wellborn.

18 A Good afternoon.

19 Q Could you please state your full name for the record?

20 A Sure. It's Christopher Andrew Wellborn.

21 Q Thank you.

22 Q Do you recall representing Mr. Hines?

23 A I do.

24 Q Do you recall when exactly you became his attorney?

25 A It would have been some time before the 7th of July and

1 the reason I have that is because that's the date that I first  
2 received electronic Discovery from the solicitor's office.

3 Q Okay.

4 A And usually the date that I am hired is the date that  
5 we send out motions both for Brady and also for Kyle's motion.  
6 Also there's a full set that goes under Rule 5-A of the criminal  
7 rules.

8 Q Okay. And how long after you sent those documents or  
9 motions did you receive Discovery from the State?

10 A I can't tell you exactly how many days. I can tell you  
11 I received electronic Discovery as of July 7, 2015, via e-mail.  
12 That e-mail came in at 12:03 p.m.

13 Q Did you have opportunity to review that Discovery?

14 A I did, yes.

15 Q Okay. Did you have opportunity to review it with Mr.  
16 Hines?

17 A Yes.

18 Q What if anything did you give Mr. Hines from the State?

19 A Well, there were still photos as I recall of -- this  
20 was a buy with a confidential informant that came in to his  
21 home. There were still photos. There was an incident report, a  
22 summary. And the real issue from the get go with this  
23 particular case was whether or not this -- Mr. Hines' theory of  
24 the potential defense was in fact this person who is coming in  
25 was not somebody that I was selling to. He was somebody that I

1 think was allegedly selling to him. And so I think his theory  
2 was that he was in buyer relationship not a seller relationship.  
3 But nonetheless -- so there was the issue is whether or not this  
4 person had a video of the actual packaging and everything else.  
5 Ultimately I was after -- and we talked about it. Look this is  
6 a real issue there's a video because if the video shows that  
7 this person in fact is not buying from you, not purchasing from  
8 you, not trying to purchase from you, but is either just there  
9 hanging out or they are there for another reason this is a  
10 potential defense. We discussed that.

11 I indicated that I did not feel comfortable as he's  
12 testified suggesting that someone take a plea without looking at  
13 the video first. I didn't think that was appropriate. He  
14 agreed. We agreed that this should be at least postponed until  
15 I could view the video tape.

16 He also did convey for me early on in the representation  
17 that he had received a ten-year offer. Now that offer was never  
18 made to me. My understanding is that it had to be made to his  
19 previous counsel Mr. McKinnon.

20 Q Okay. Now who indicated he is the only person or did  
21 the State tell you that?

22 A The only person that ever told me, to my recollection,  
23 that he had received or verified that he had received a ten-year  
24 offer was Mr. Hines. The only -- I got during the time of my  
25 representation the initial offer I received was for 15 years.

1 That was from Mr. Newkirk. And let's see, that would have been  
2 -- let's see if I could get you the date; July 7th. This is  
3 from Mr. Newkirk. That came at 12:04 p.m. I have re-sent the  
4 Discovery on Mr. Hines. I understand your trial situation. We  
5 can discuss with him the next docket which is the 27th. Your  
6 defendant was previously represented by Mark McKinnon in the  
7 PD's office. So this is coming from Mr. Newkirk. His offer was  
8 15 years. So I assume that when Mr. Newkirk gave me that  
9 information that in fact had been the offer that had been made  
10 to Mr. McKinnon. I don't know. I didn't represent Mr. Hines at  
11 that time. But that's what Mr. Newkirk represented to me via  
12 e-mail. But here we go, coma, "But Mark talked me down to ten."  
13 There we go. "I will extend that same offer", and this is why I  
14 wanted to make sure I had the e-mails with me. "I extend that  
15 same offer to you but as always I would like to move this case  
16 towards a resolution as soon as possible. Let me know if you  
17 have any additional problems."

18 So that e-mail came to me on July 7th. So Travis is  
19 absolutely correct. At the beginning of my representation we  
20 did receive a continuing offer, the same offer of previous ten  
21 years. And that was something that Mr. Hines knew. That I  
22 knew. We talked about it and the decision that was made between  
23 us was we wanted to see this video because the video might have  
24 given him a defense to the charge that he would otherwise plead  
25 guilty to a ten-year deal on.

1 Q Okay, so back up for one second. The e-mail that you  
2 just read us is from July --

3 A Seventh.

4 Q -- 7th.

5 A 2015 at 12:04 p.m.

6 Q Okay, is there anyway you could get that to your  
7 attorney, a copy of that e-mail?

8 A Can I get it to my attorney?

9 Q I am sorry, the State? The State. I'm sorry.

10 A Absolutely. I can forward it right now if you would  
11 like.

12 Q Sure. Thank you.

13 So, in the beginning there was a ten-year offer. By the  
14 time you all came to court which was in December was that the  
15 the first time you came on the plea?

16 A No. No. So that had changed. I got that e-mail and  
17 then that changed over time. As of the 12th of August I got an  
18 e-mail from Mr. Newkirk at 4:42 p.m. that said "Upon further  
19 review and discussions with management" -- which I assume meant  
20 his supervisors in the solicitor's office -- "Mr. Hines offer  
21 from the State is that he plead to distribution of heroin, third  
22 offense, for a negotiated 18.

23 Q Eighteen years?

24 A Yes. And then the next sentence, "I would like to tell  
25 you upon review of his criminal record which I provided to you

1 he is eligible for a sentence of life without parole. If  
2 necessary in this case the State will be seeking such a  
3 sentence. You previously inquired " -- so obviously I had  
4 inquired from seeing this video from the solicitor's office  
5 prior to this date. "You previously inquired receiving --  
6 reviewing information related to the confidential informant.  
7 I've reviewed that request with senior leadership and no further  
8 information regarding an informant will be released absent your  
9 client rejecting this offer. Please let me know if you have  
10 further questions or concerns."

11 Now that e-mail and the concept of we don't give information  
12 up on a confidential informant -- which by the way Mr. Hines  
13 knew who the confidential informant was so this was no mystery  
14 -- but that concept of we're not going to give you any classic  
15 Giglio and Bagley material unless he rejects the plea offer. I  
16 explained to Mr. Hines that my opinion of that that it was  
17 legally suspect given Justice Toal's memo over ten years ago  
18 that that was something that was in disfavor with the Court.  
19 That that was really meant only for situations where informant's  
20 life was potentially in jeopardy if being released. But it  
21 certainly wouldn't apply to a case where everybody knew who the  
22 the informant was.

23 I later had followup conversations with Mr. Newkirk about  
24 that particular aspect of this elevated offer which had gone  
25 from 10 to 18.

1 Q Now let me ask you this, why did -- did Mr. Newkirk  
2 explain why it went from 10 to 18?

3 A It was quote, upon review and discussions with  
4 management. There was no elaboration as to who exactly  
5 management was and what those discussions were, but management  
6 evidently had informed him that he now was only able to offer a  
7 negotiated 18.

8 Q Okay. So, were you aware that Mr. Newkirk reviewed the  
9 file with his supervisor Misty Shelton?

10 A I didn't know who he reviewed it with. I just know it  
11 was management.

12 Q Okay, but prior to giving the offer to Mr. McKinnon he  
13 reviewed the file?

14 A I don't know. I wasn't involved in case prior to my  
15 engagement.

16 Q Right.

17 A So I don't know who he reviewed the file with when he  
18 talk to Mr. McKinnon and gave that initial ten year offer.

19 Q I guess the reason why I asked you that is because you  
20 indicated that we got the file and you got the offer that was 15  
21 but it had been ten?

22 A Right.

23 Q And they had a basis for it being ten?

24 A Well, let's be clear. The first offer I got was that  
25 he would continue to hold open this ten year offer. The next

1 e-mail I received was we've now jacked it up to 18 because I  
2 reviewed it for management.

3 Q How did you get it to 15?

4 A Well, we are going to get there. What happened next in  
5 the case, after discussing things with Mr. Hines and at this  
6 point as of August 12th I still hadn't seen the video tape nor  
7 had Mr. Hines. Mr. Hines was not particularly happy having ten  
8 that he didn't wanted to do now facing 18 that he really didn't  
9 want to do especially since we hadn't seen the video tape. We  
10 discussed this sort of I guess, you know a nice way to put it,  
11 pressure, sort of extortive process by which you give up your  
12 right to Discovery and take the 18. If you actually want to  
13 exercise your right to Discovery you are going to lose that.  
14 And Mr. Hines was not inclined to do that so I continued to  
15 press on the video tape issue. Ultimately as time went by I  
16 received copies of the drug report. I knew there would be a  
17 drug report after all it was a drug case, and I was allowed to  
18 look at the video tape.

19 Q Let me stop you right there. August 12th -- well, July  
20 7th you received a continued offer of ten years. August 12th  
21 you were up to 18?

22 A Correct.

23 Q But you didn't have -- and I'm not saying this is  
24 you -- but the State had not given you the drug report?

25 A The drug report was sent to me on October 23rd of 2015.

1 Q So, they wanted him to enter a plea -- the state wanted  
2 him to enter a plea without having proof of what they said they  
3 had was in fact on video and in fact was drugs obtained from  
4 this confidential informant?

5 A Right, and I certainly think one way one can look at it  
6 obviously again, I was not recommending that to my client at  
7 that time that he plead guilty without looking at the video.  
8 That we not have full discovery which in a drug case would  
9 include a drug report.

10 Q Okay.

11 Q But again as of the 23rd of October when we received  
12 the drug report via e-mail at that point the offer on the table  
13 was 18 years based on the discussions with quote, management,  
14 end quote.

15 Q Okay. After you got 18, got the drug report, when is  
16 the next time that you discussed any type of plea offer with the  
17 State?

18 A Well, let's see. As of November 4th the offer was  
19 still 18 years. And the email I received then was that he  
20 received a copy of the drug report, had been sent one. That Mr.  
21 Hines will be on the docket for November 16th. His offer of 18  
22 would expire at the conclusion of that term. If he didn't wish  
23 to accept the offer they needed to schedule one of these  
24 hearings that they do up here where people reject the offer on  
25 the record and they would notice him with life without parole.

1 I did convey that to Mr. Hines. Mr. Hines understandably was  
2 upset that his initial offer from ten had now gone up to 18.  
3 And as of that date I still even though I had been requesting  
4 had not seen the video.

5 The video by the way was -- let's see -- as of November 13th  
6 I received an e-mail from Mr. Newkirk saying pursuant to our  
7 conversation this week I'll prepare relevant portions of the  
8 video for you to watch on Tuesday November 17th. And this was  
9 at our suggestion because the State was still playing this sort  
10 of interesting scenario of wow, if we show you this video it's  
11 going to expose our informant and I was still informing the  
12 State my client knows who the informant is. This is his name.  
13 You know, no mystery here. But just so we can make it I guess  
14 give them some comfort I suggested that we do what we do in  
15 Federal Court where we would sign a Protective Order. And so  
16 that was -- that was part of this e-mail, pursuant to our  
17 conversation I will prepare relevant portions of the video for  
18 you to watch. You will have to sign a Protection Order which  
19 you told me you have no problem with. I would like your client  
20 to appear as well to insure he's still in community.

21 Mr. Hines deadline to accept this offer of 18 years is  
22 November 30th the term of Court. I intend to go to trial the  
23 week of December 14th.

24 So as of the 13th of November the offer on the table was  
25 still 18 years. Now ultimately I did review the video on the

1 the 17th of November, and what the video showed there was a lot  
2 of sound. But what the video actually showed was this  
3 particular individual walking in to the home where Mr. Hines  
4 was. There was a discussion. That discussion -- I think there  
5 was a decent chance that jurors hearing the sound would believe  
6 that that discussion was related to drugs and transactions  
7 related to drugs and Mr. Hines was at a table doing something  
8 that if the informant testified -- and we expected the informant  
9 to testify if they went to trial -- the informant would say he  
10 was packaging up drugs?

11 Q Saying that Mr. Hines was packaging up drugs?

12 A Yes. And so this is the conversation that I had with  
13 Mr. Hines after watching the video, which is, okay, we can't see  
14 you during a lot of this video but you are clearly there during  
15 part of the video. You're doing something fiddling with a  
16 package. The informant has been on this tape talking and he's  
17 talking about drugs. This was a controlled buy scenario where  
18 somebody went in. Allegedly they were searched. They had no  
19 drugs on them. They had government money. They came out sans  
20 money with drugs and the only person that they really talked to  
21 was Mr. Hines. So, it was kind of from my standpoint if I were  
22 prosecuting the case it would not be an extraordinary  
23 circumstantial leap to connect the dots and suggest that Mr.  
24 Hines had given the informant the drugs.

25 Q Okay. Well, let me ask you this. You discussed this

1 with him and this is on the 17th. Is this at the courthouse you  
2 are discussing this?

3 A I had a conversation after -- with Mr. Hines after  
4 reviewing the tape on the the 17th of November.

5 I don't believe that that conversation occurred at the  
6 courthouse but it may have occurred at the courthouse. I just  
7 don't know. I can't give you a definitive answer to that. I  
8 would making it up.

9 What I can tell is that we then moved forward towards the  
10 end of November --

11 Q Let me ask you this.

12 A Sure.

13 Q On November 19th did anything happen? Did Mr. Newkirk  
14 provide you with a new offer?

15 A An offer came in at some point and I don't remember the  
16 exact date that knocked this down from 18 to 15. And that was  
17 as Mr. Hines said, that was conveyed. Now Mr. Hines was not  
18 happy about that offer but we kind of went back and forth. We  
19 had discusses in our office. There were some discussions here  
20 at the courthouse later in the hallway. I certainly informed  
21 him that if he wished to go to trial we would go to trial. So,  
22 you know, I'm certainly prepared to try a case if necessary.  
23 But that these were the potential risks and if he chose to go to  
24 trial his offer would not be on the table. That in line with  
25 previous emails would be noticed with a LWOP; life without

1 parole.

2 Q Let me stop you right there. So, the first offer --  
3 let me go back over this -- the first offer is July the 7th, ten  
4 years, August 12th bumps up to 18 years --

5 A Correct.

6 Q -- November 17th somewhere after, but before the end of  
7 November, 15 years?

8 A Correct.

9 Q Okay. And so when you went to court with Mr. Hines the  
10 first time to enter the plea with Mr. Hines the offer was for 15  
11 years?

12 A Correct. And so the date that we were suppose to go to  
13 Court was December 3rd at 9:30 a.m. per an e-mail received from  
14 Mr. Newkirk on November 30th. And it was scheduled in front of  
15 Judge Hall. We had had a conversation on November 30th in which  
16 we agreed that this would be the time for Mr. Hines to enter his  
17 plea. And the reason we had that conversation to reschedule  
18 that particular plea date was because after conversations with  
19 Mr. Hines he was made aware of the plea offer, and I had  
20 informed him about the risks of going to trial and in my mind he  
21 had agreed to accept the offer, otherwise we wouldn't have set  
22 up a plea date. Because I really don't go through the exercise  
23 of setting up a plea date if my client is not intending to  
24 plead.

25 Q Okay. So you all -- and you may have said this -- you

1 all signed the plea affidavit that has the negotiations?

2 A I don't recall whether we got that far or not. Again,  
3 I don't have a copy of the plea affidavit with me. That's  
4 retained by the Court. But if we were going to plead and if we  
5 got that far that plea affidavit in this county would have been  
6 standard practice. I am sure there is a record somewhere  
7 whether a plea affidavit was signed or not.

8 Q But you did go over the rights with him as to that plea  
9 on that day, that did not go?

10 A If we got that far. Again, I know that we had a -- it  
11 was scheduled to take place that day. I don't have a  
12 independent recollection of whether we got that far in the  
13 process. I can tell you that long since, starting in my  
14 representation that dated prior to July 7th it was certainly  
15 made clear to Mr. Hines he had the right to counsel because he  
16 hired one. It was certainly made clear to Mr. Hines that we had  
17 a right to a trial because we discussed the possibility of going  
18 to trial. It was certainly made clear to Mr. Hines that we had  
19 a right to subpoena witnesses, and therefore exercise the  
20 compulsory process clause of the Sixth Amendment and article  
21 ten, section 14 of the South Carolina Constitution although I  
22 don't I quoted the the exact chapter and verse of the South  
23 Carolina Constitution. It was clear to him that he certainly  
24 had confrontation clause rights because that was the big issue  
25 was this informant reliable or not which is why we didn't just

1 jump at that offer of July 7th of ten years. We wanted to see  
2 the video.

3 So all of these constitution rights he was aware of and it  
4 was my understanding I was exercising those rights on his behalf  
5 during this protracted discovery process.

6 Q Well, let me ask you this. Was that confidential  
7 informant available to testify?

8 A To my knowledge he was. I did not have personal  
9 contact with the confidential informant.

10 Q So did you know why they decided -- and probably  
11 not -- but did you understand why they went from 18 to 15?

12 A No. No. I don't know whether it was a bit of  
13 Stockholm syndrome setting in with me constantly pestering about  
14 the case or what it was, but I do know that it happened. That's  
15 all I can tell you.

16 It was never intimated to me what the internal decision  
17 making process in the solicitor's office was.

18 Q Okay. So they didn't say -- you said earlier that  
19 management felt that it needed to be 18. So did management feel  
20 it should go down to 15?

21 A I don't know what management felt. I know I received  
22 emails from the individual assistant solicitor indicating that  
23 he was getting his instructions from management and was passing  
24 on management's feeling.

25 Q Okay. Is it possible you could give those emails to

1 the State?

2 A I will be glad to forward all of them as directed.

3 Q Thank you. Okay. So on December 3rd you go before the  
4 judge. The judge does not accept the plea. At that time did  
5 you -- I mean you were still his attorney after December 3rd,  
6 correct?

7 A I was Mr. Hine's attorney until December 15th when he  
8 appeared in Court seeking to have me relieved.

9 Q Okay. So you all were not there for a plea you were  
10 there for a motion to be relieved?

11 A Mr. Hines requested that I withdraw and so we went in  
12 front of Judge Hall with Mr. Hine's request and Judge Hall was  
13 kind enough to grant his request.

14 Q Okay. And so what was the basis for that relief? Did  
15 you all discuss why he wanted to relieve you?

16 A Mr. Hines discussed why he wanted me to be relieved  
17 with the judge and the judge granted his request.

18 Q Okay. So I guess what I am trying to get at is --

19 A I was not seeking to be relieved, but at risk of  
20 sounding glib there was a sense of relief.

21 Q Okay. All right. So you got relieved. You leave the  
22 courtroom from that point on?

23 A Correct. At that point I was not given any sort of  
24 information or made a party to anything that happened thereafter  
25 until I received this post conviction relief notice.

1 Q Okay. So, did you hear or were you there when the  
2 Judge Hall asked or informed or discussed relieving his counsel,  
3 Mr. Hines's counsel?

4 A When you say Mr. Hines's counsel which one are you  
5 referring to, to me or to McKinnon?

6 Q Of you.

7 A No, I was clearly there when there was a discussion  
8 about relieving me. That would have been required. And I was  
9 standing next to Mr. Hines while he indicated that he wished to  
10 have me relieved and, you know, I indicated before I did not  
11 object to that particular process and so -- yeah.

12 Q Okay.

13 MS. MOODY: Beg the Court's indulgence. No  
14 further questions for this witness. Thank you.

15 MR. HUNTER: Just a couple of things.

16 CROSS EXAMINATION

17 BY MR. HUNTER:

18 Q So the ten-year offer was that rejected by Mr. Hines?

19 A No, it was not rejected. At least I did not convey a  
20 rejection of the offer. What I did convey was that we didn't  
21 have the full discovery and that and as an ethical matter not to  
22 mention a matter which might result sort of ironically in a post  
23 conviction relief action, I did not feel comfortable accepting  
24 an offer on behalf of a client where we didn't have discovery  
25 that indicated he was guilty.

1 Q Okay. So I guess it's fair to say that none of the  
2 offers you received were expressly rejected?

3 A Not by me. Again, what you have to understand through  
4 this whole ten year bump up to 18, knock down to 15 sort of  
5 roller coaster I was still asking for, you know, minor details  
6 such as drug reports, videos, information on the confidential  
7 informant. Just kind of basic criminal defense stuff that you  
8 would expect out of any criminal defense lawyer. And some of  
9 them were more forthcoming than others and required a little  
10 more work to get.

11 Q Okay. So, I believe you said you were -- your exact  
12 words -- pestering the solicitor's office?

13 A Well, I think that's one way. That's certainly puts a  
14 value judgement. I just indicated sort of doing my job. I  
15 mean, I am sure we are all familiar with Brady motions and Kyle  
16 motions and this is basic Brady and Kyle and Rule 5-A material I  
17 was seeking. Whether that would be deemed pestering or simply  
18 doing ones job I think depends on your point of view.

19 Q You think it took a lot longer than it usually does to  
20 obtain all this information?

21 A That really probably opens as a question and opens some  
22 responses that may go beyond the scope of this particular case.  
23 In some cases things are more readily provided by individual  
24 solicitors. In some cases not. And in Mr. Newkirk's defense I  
25 think he was as he indicated in his e-mails he was getting

1 direction from management -- whoever management was -- which may  
2 very well have bogged down the process. I don't think that if  
3 it had just been Mr. Newkirk making the decisions it would have  
4 taken so long.

5 Q Okay.

6 A Is my feeling, but I don't know for sure.

7 Q Okay. And after viewing the video -- and you've  
8 already testified before -- do you think it was in his best  
9 interest to go to trial or plead guilty?

10 A No, I don't think it was in his best interest to go to  
11 trial and I indicated that to him which is why we had come to  
12 the point as of the end of November to handle a plea as of  
13 December 3rd. That was a mutual decision made by Mr. Hines and  
14 myself. I don't get to make those calls whether a someone  
15 pleads guilty or not. That is a client's decision. And so I  
16 don't set up pleas for clients unless the client has indicated  
17 that they are intending to plead.

18 Q Now throughout your representation did you ever -- do  
19 you feel there was a lack of communication between you and Mr.  
20 Hines?

21 A Well, in some areas. I certainly didn't know I was  
22 being audio taped. In fact if I was that would be somewhat less  
23 than commutative. But beyond that I certainly did everything I  
24 could to convey what I had in terms of the case; what was  
25 involved, the photograph or the stills that I had, the

1 Discovery, where we were going in terms of either had received  
2 or had not received information relating to the informant.

3 Was Mr. Hines perfectly candid with me? I can't answer that  
4 question beyond what he said here.

5 Q Okay. And when you received Discovery even if it was  
6 piecemeal did you show him right away?

7 A Well, when you say right away I showed him -- at the  
8 time that I received Discovery, if thereafter he was in my  
9 office for a face-to-face certainly we discussed the Discovery  
10 and talked about it. And I would be surprised if I didn't. You  
11 know, anything that was like a still shot or anything else that  
12 he would have seen. Did I actually give him the incident  
13 reports to read, probably not. Generally we are just going to  
14 review them and go over them. If the client wants to read them  
15 I have no objection.

16 MR. HUNTER: No further questions. Thank you sir.

17 THE COURT: Redirect?

18 MS. MOODY: No, sir, Your Honor.

19 THE COURT: May this witness be excused?

20 MS. MOODY: Yes, sir.

21 MR. HUNTER: No objection.

22 THE COURT: Thank you sir.

23 MR. WELLBORN: Thank you, Your Honor.

24 MS. MOODY: Your Honor, at this time I would like  
25 to call Ryan Newkirk to the stand.

1 THE COURT: Come up Mr. Newkirk.

2 MR. NEWKIRK: Under the same understanding for Mr.  
3 Wellborn I request to bring my computer.

4 THE COURT: Yes, sir.

5 RYAN NEWKIRK, called as a witness, having been  
6 duly sworn by the clerk, was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MS. MOODY:

10 Q Mr. Newkirk, good afternoon.

11 A Good afternoon.

12 Q Could you please state your name for the record

13 A Ryan Robert Newkirk.

14 Q And where are you currently employed?

15 A At the 16th Circuit Solicitor's Office.

16 Q Okay. And on as it relates to Travis Hines were you  
17 employed by the solicitor's office?

18 A Yes, I was.

19 Q And have you been the solicitor on this case? Were you  
20 the only solicitor on this case?

21 A Yes. The case was assigned to me from the outset of  
22 arrest and remain that way until Mr. Hines ultimately plead  
23 guilty?

24 Q Now, you started the case and did you immediately have  
25 a plea offer for Mr. Hines?

1       A     Upon review of my notes I remember receiving all the  
2 information. He was initially represented by Mr. McKinnon of  
3 the public defender's office. I had sent Discovery to Mr.  
4 McKinnon on February the 18th of 2015. And I have in my file a  
5 note that I reviewed the case with a colleague and indicated to  
6 Mr. McKinnon that his plea offer would be for 15 years on  
7 February the 20th. Unfortunately I don't have a note or a  
8 record in my file of when I officially conveyed that offer to  
9 Mr. McKinnon. I do not have that in my file.

10       Q     All right. Do you recall having a conversation with me  
11 about this case?

12       A     I do.

13       Q     And do you recall telling me that you reviewed this  
14 case with Misti Shelton on February 20, 2015?

15       A     Yes. She was one of my supervisors at the time.

16       Q     And do you recall telling me in the course of that  
17 conversation that offer in this case has always been 15 years  
18 negotiated?

19       A     Yes.

20       Q     And would you like to tell me anything about July 7th,  
21 your e-mail to Chris wellborn?

22       A     I have a note in my file that -- from that time that  
23 Mr. Wellborn was retained on the case and that Mr. Hines is on  
24 the docket for July the 13th. I heard Mr. Wellborn's testimony  
25 regarding a ten-year offer to Mr. McKinnon. I don't have any

1 recollection of giving that to Mr. McKinnon nor until Mr.  
2 Wellborn read that e-mail to the Court did I have a specific  
3 recollection of ever conveying that to Mr. McKinnon or Mr.  
4 Wellborn.

5 Q Okay. So would you after you had an opportunity to see  
6 that e-mail would you disagree with that e-mail stating that  
7 offer was ten years?

8 A No. I mean, certainly he provided an e-mail copy. I  
9 am not saying that I didn't do it. When I spoke to you as well  
10 as when I spoke to Justin I just didn't have any notes in my  
11 file of ever conveying an offer of ten years so I didn't recall  
12 to tell anybody.

13 Q Okay. So, at any point did you have any notes about  
14 18-year offer?

15 A No, but I do recall upon hearing Mr. Wellborn discuss  
16 our negotiations I do recall having to make the offer higher  
17 then initially. That I initially -- when I initially reviewed  
18 the case I do recall contacting Mr. Wellborn and telling him  
19 that the offer had to go up after speaking with some other  
20 members of my office. I do recollect that in this case.  
21 Previously based on my notes I did not recollect having to do  
22 that but I do now.

23 Q Okay. And so what was the reason for making the offer  
24 18 years as opposed to ten years that you came down from on July  
25 7th?

1       A     I recall speaking with members of the office as well as  
2 with law enforcement and they had a concern based on Mr. Hines's  
3 prior record, as well as potential involvement in drug activity  
4 in the area that perhaps the offer should be more in the 18-year  
5 range and I recall conveying that to Mr. Wellborn.

6       Q     So from I guess December 26th when you reviewed the  
7 file with Misty Shelton about what the offer should be and  
8 extending the offer to Mr. McKinnon, you didn't discuss the  
9 offer with law enforcement or anyone else in your office?

10      A     No, in February when I received -- I sent the Discovery  
11 to Mr. McKinnon in December of 2015 and my notes indicate that I  
12 discussed the offer with Miss Shelton the 20th of February. It  
13 was not until later that I reach out to additional members of  
14 office and law enforcement. That's correct.

15      Q     I guess what I am trying to understand at the beginning  
16 when you are submitting an offer, law enforcement is not  
17 discussing this. He was arrested in December. You made an  
18 offer in February and then somehow in July or somewhere in  
19 between February and July the offer jumped up to 18 years?

20      A     Yes, that's correct and I as Mr. Wellborn indicated  
21 sent him an e-mail to that regard.

22      Q     I take that back. December to February the offer was  
23 15-years negotiated. February to some point before July 7th the  
24 offer was ten years. Then from July 7th to August 12th the  
25 offer jumps up to 18. So between eight months -- about eight

1 months, law enforcement knew nothing about this offer and they  
2 were all of sudden concerned about Mr. Hines's prior record,  
3 when he was arrested with the same prior record. And you gave  
4 an offer with the same prior record?

5 A Right. I just don't have -- unfortunately I just don't  
6 have -- I don't have a date from when I began those  
7 conversations. I just don't have a date so I don't recall.

8 Q So, essentially when I talked to you about this case  
9 when you indicated to me that the offer was always maintained --  
10 was always and maintained throughout the entire time between  
11 McKinnon and wellborn the offer was always 15 years negotiated,  
12 that is not true?

13 A That's correct. That's what my notes had indicated but  
14 after hearing Mr. Wellborn testify today I had no notes that  
15 indicated that I ever lowered it to ten years. So when I was  
16 speaking to you, I apologize, I just didn't recall that that had  
17 happened.

18 Q Did you have any of those e-mails?

19 A No. No, I did not have any of the e-mails that Mr.  
20 Wellborn had or I would have reviewed them when we had talked  
21 and last spoke to Mr. Hunter.

22 Q So, what is all process in the solicitor's office? Do  
23 you all know all offers that you make to defendants?

24 A Well, it kind of goes on a case by case basis. I mean,  
25 each solicitor is responsible for taking detailed notes

1 regarding the prosecution of the case. It would just appear in  
2 this particular case I did not do a very good job.

3 Q So when you went down from to 15 to 14 that one year,  
4 you discussed making that move to the 14 years with your I guess  
5 your colleague, law enforcement?

6 A No, I mean -- I spoke about that with Mr. Hines  
7 directly. I mean, he came here to the courthouse after he had  
8 relieved Mr. Wellborn and he had indicated to me that if I could  
9 come down at all he would appreciate it. He told me about his  
10 family and so I told him, okay, I understand. I will lower the  
11 offer to 14 years but to be honest with you that's the best I  
12 can do and so we did the paper work and he wanted to spend the  
13 evening with his family and he came back the following day in  
14 order to enter his guilty plea.

15 Q So the original offer being ten years. Going off the  
16 advice of his counsel he does not accept the ten years on July  
17 7th, and also going off of the fact that his counsel tells him  
18 that he needs to see the video before he can properly advice him  
19 as to whether or not he needed to proceed to trial or whether he  
20 needed to accept the plea, Mr. Hines lost that ten-year offer?

21 A Again, I do have notes in my file that I conveyed an  
22 offer of 15 years to Mr. McKinnon so I think initially that's  
23 where I was at.

24 Q I get that but what I am saying is at some point you  
25 came down to ten and he could have accepted that ten on July 7th

1 because his attorney was Wellborn and but for Mr. Wellborn  
2 having the video tape -- the video of the drug transaction where  
3 Mr. Wellborn could have watched it, but because he couldn't get  
4 to it until November there was a Protective Order in place, so  
5 that he could see it, Mr. Hines lost the benefit of the ten-year  
6 offer?

7 A I think to elaborate, Mr. Wellborn did indicate that  
8 our policy is generally not to release the video of a  
9 confidential informant in a drug case unless the defendant is  
10 then willing to not accept an offer from the State, especially  
11 in cases where the life of the confidential informant could be  
12 in danger. Now Mr. Wellborn indicated to me that the defendant  
13 knew who the confidential informant was but I couldn't just take  
14 his word for it. I had to try and protect the confidential  
15 informant especially in Mr. Hines's case who had been convicted  
16 of intimidation of a witness in the past and had been charged  
17 with murder.

18 So in this particular case it was incredibly important  
19 for us to protect the confidential informant. I did send still  
20 shots of the video to Mr. Wellborn and --

21 Q Let me ask you this --

22 A I'm sorry, go ahead.

23 Q If you sent him still shots why couldn't Mr. Wellborn  
24 look at the video? If you trusted him to see that, was it that  
25 you thought Mr. Wellborn was going to go back and tell Mr. Hines

1 who the actual confidential informant was or what? When you are  
2 saying revealing that video are you saying that Mr. Hines is  
3 coming in to watch that video?

4 A No. I mean I sent the still shot and I think initially  
5 Mr. Wellborn had indicated that he wanted a copy of the video.  
6 It wasn't until later that he had said let's get together and  
7 watch it with a Protective Order. And once he had said that I  
8 went and made sure that would be an appropriate way to have the  
9 video reviewed. We had Mr. Wellborn sign a Protective Order and  
10 he came and watched the video.

11 Q So it took you all the way from July to November to  
12 figure out that's an appropriate way to watch the video?

13 A That's correct.

14 Q So then you mention Mr. Hines's previous record or what  
15 have you. Did you look into those charges that he had? Do you  
16 understand the background behind any of those charges; the  
17 murder?

18 A His prior criminal history that related to his ability  
19 to be life -- to be served a life without parole notice, I did  
20 receive certified convictions for additionally the intimidation  
21 of a witness offense that he plead to was in our county and I  
22 did read the incident report for that. But if I recall correctly  
23 the murder charge was in a different county and I did not -- I  
24 did not -- I did not go and pull the incident report from the  
25 other county.

1 Q Perhaps it was in Greenville, the plea?

2 A I just recall that it wasn't here and so I didn't have  
3 ready access to all of the files regarding that.

4 Q Okay. So, outside of that offer was ten, he lost  
5 benefit of that offer because his lawyer did not have all the  
6 Discovery. And Mr. Wellborn did talk about the video, but like  
7 the drug analysis and all that, when did you get the drug  
8 analysis back?

9 A I received the drug report on October the 8th. I'm  
10 sorry, I received the October the 16th and I sent the drug  
11 report to Mr. Wellborn on October the 22nd.

12 Q So you all wanted him to plead to 15 -- excuse me.  
13 First you wanted him to plead to 15. Fifteen then ten then 18  
14 without having drug analysis, or video, and you all moved up on  
15 his offer from ten -- well, 15 to ten to 18, back down to 15,  
16 then 14, but you all had not given -- provided the defense with  
17 any evidence that showed it was drugs or that it was him on the  
18 video?

19 A Again, I provided the incident report as well as still  
20 shots from the video that I had received that showed what  
21 appeared to be the defendant. The video was not watched until  
22 later when the Protective Order was signed and the drug report  
23 was sent to the defense four or five days after I received it.

24 Q Do a lot of defendants plead guilty without having  
25 those documents or having the opportunity to review all the

1 Discovery in a file?

2 A I don't know if I can say what a lot of defendants do.

3 Q But it would be kind of odd to plead to something that  
4 you don't have all the evidence in the case?

5 A I know that certainly defendants have -- can and have  
6 plead waiving the drug report and waiving the right to see the  
7 video. I know that has happened. I wouldn't say that is an  
8 uncommon practice.

9 Q As it relates to Mr. Wellborn, Mr. Wellborn he talks  
10 about badgering or getting on people's nerves at the solicitor's  
11 office. As it relates to him is he someone who would want to  
12 have all the documents in a file?

13 MR. HUNTER: I object to speculation.

14 THE COURT: I will sustain that.

15 Q Mr. Wellborn contacted you about the the Discovery,  
16 correct?

17 A He sent a Brady request and I sent the bulk of  
18 Discovery that I had with the exception of the video at that  
19 time, yes.

20 MS. MOODY: I beg the Court's indulgence. No  
21 further questions for this witness.

22 MR. HUNTER: Just a couple of things.

23 CROSS EXAMINATION

24 BY MR. HUNTER:

25 Q So as far as turning over the evidence to the defense,

1 can you describe the process, the timeline?

2 A As soon as I received the reports from law enforcement  
3 like the incident report, the warrant, the bond information,  
4 that packet is put together and sent to an attorney upon receipt  
5 of a letter of representation and a Rule 5 notice.

6 In this case I sent it to both the public defender's office  
7 when he was represented by Mr. McKinnon and I sent it to Mr.  
8 Wellborn when he was represented by Mr. Wellborn. As additional  
9 evidence comes to our office in this case for example a drug  
10 report, that information is sent so that I'm in compliance with  
11 Rule Five throughout the prosecution of the case. In this case  
12 I sent still shots of Mr. Hines along with the Discovery file as  
13 well.

14 Q And what date was that or around what time?

15 A They would have been sent with the original Discovery  
16 packet whenever I sent those.

17 Q Okay. And as far as the plea negotiations went, did  
18 you ever have any trouble communicating with Mr. Wellborn?

19 A No. No, he is pretty easy to get hold of either by vie  
20 e-mail or phone call.

21 Q Did you ever received any rejections to any of the  
22 offers?

23 A No. No, the only time I recall ever discussing the  
24 offer with anybody besides Mr. Wellborn is when I spoke -- Mr.  
25 McKinnon -- is when I spoke directly to Mr. Hines and he

1 excepted the offer of 14 years at that time.

2 Q That was the only time you ever received acceptance or  
3 rejection?

4 A Well, Mr. Hines came to the courthouse to plead guilty  
5 to the negotiated 15 years with Mr. Wellborn as his attorney.  
6 Mr. Wellborn discussed that. The hearing would have been before  
7 Judge Hall. Judge Hall would not accept the negotiation at that  
8 time because Mr. Wellborn and I had not discussed the  
9 negotiation ahead of time with the judge. The judge took a  
10 brief recess. Mr. Wellborn and I spoke with the judge about the  
11 negotiations. The judge was willing to accept the plea however  
12 Mr. Hines had left the courthouse. So we did have this plea  
13 scheduled but he had left the courthouse. It was later when Mr.  
14 Hines came back that he was unhappy with Mr. Wellborn during the  
15 colloquy and that put a halt to the plea and Mr. Wellborn  
16 addressed that. That was addressed.

17 MR. HUNTER: Beg the Court's indulgence.

18 That's all I have. Thank you.

19 MS. MOODY: Just one question.

20 REDIRECT EXAMINATION

21 BY MS. MOODY:

22 Q Mr. Newkirk --

23 A Yes, ma'am.

24 Q Mr. Hines -- is it safe to say Mr. Hines had a problem  
25 with Mr. Wellborn because there was ten-year offer on the table

1 and the offer all of a sudden changes?

2 A I couldn't tell you why Mr. Hines had a problem with  
3 Mr. Wellborn.

4 MR. HUNTER: I will object to that.

5 THE COURT: I will sustain that.

6 MS. MOODY: No further questions Your Honor.

7 THE COURT: May this witness be excused.

8 MS. MOODY: Yes, sir.

9 MR. HUNTER: Yes, sir.

10 THE COURT: Thank you sir.

11 MR. NEWKIRK: Thank you judge.

12 MS. MOODY: Your Honor, if I might -- if I could  
13 call my client back to the stand for a few questions.

14 THE COURT: Tell me what you intend? I normally  
15 wouldn't let you do that.

16 MS. MOODY: Based on --

17 THE COURT: Plus it's after five and we have been  
18 dragging this case a long way today.

19 MS. MOODY: I understand, Your Honor. As I said  
20 to my client and as I said in the courtroom, I did  
21 contact all the different lawyers that were involved  
22 in this case to try and get to the bottom of this and  
23 initially I thought my client was telling me something  
24 incorrect about the ten years and this testimony that  
25 I gotten from Mr. Wellborn which I asked him for a

1 copy of his file. If I had a copy of all the offers  
2 and the e-mails and what have you, it would have gone  
3 a little bit quicker in my opinion. But after hearing  
4 the testimony coming from him and he does have  
5 e-mails, I say that Mr. Wellborn he was put in a  
6 different position because my client indicated that it  
7 was a ten-year offer. The State just testified that  
8 there was a ten-year offer.

9 Mr. Wellborn has I think reliable e-mails. I just  
10 want my client to be able to testify as to a couple of  
11 issues -- a couple of questions on that.

12 THE COURT: Very briefly. Let me tell you  
13 something Mr. Hines. Do you understand -- and I am  
14 sure your attorney touch on it, but if I grant your  
15 petition you are subject to whatever the maximum is  
16 including life without the possibility of parole; do  
17 you understand that?

18 MR. HINES: I understand that.

19 THE COURT: All right. Go ahead come back around  
20 you are still under oath.

21 Very quickly please.

22 MS. MOODY: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. MOODY:

25 Q Mr. Hines, you recall previously testifying as to the

1 offer that you received from your lawyer?

2 A Yes, ma'am.

3 Q Did you receive the ten-year offer from Mr. McKinnon?

4 A Yes, ma'am.

5 Q Okay. And did you receive a ten-year offer from Mr.  
6 Wellborn?

7 A Yes, ma'am.

8 Q And you talked to Mr. Newkirk right before you entered  
9 your plea, correct?

10 A Yes, ma'am.

11 Q And did you ask him for that ten-year offer?

12 A Yes, ma'am.

13 Q And what did he say about that ten-year offer?

14 A He said he didn't have a problem with giving me ten  
15 years. He didn't have a problem giving me seven years. It was  
16 his boss or the higher ups that wanted to give me more than ten  
17 years.

18 Q And did you alleged in your application any other  
19 grounds?

20 A Yes, ineffective assistance, Ferrata.

21 THE COURT: I am not going back over this. Only  
22 in response to the new information brought out. I  
23 will not let him go back over and redo something that  
24 he's already had a chance to do.

25 MS. MOODY: So I can't ask him about the --

1 THE COURT: Not unless it involves this ten-year  
2 offer that you brought out and that you said was news  
3 to you. Otherwise he had a chance to testify about it  
4 earlier. Okay.

5 MS. MOODY: Can I ask a question and you tell me  
6 whether I can ask it.

7 THE COURT: I am not going to sit here and try to  
8 monitor your case. No, ma'am.

9 MS. MOODY: I understand. I was going to ask him  
10 the ground that he didn't mention on the record as to  
11 that ten-year --

12 THE COURT: If it involves relaying of the  
13 ten-year offer then that's fine. If it is another  
14 ground --

15 MS. MOODY: No, it is involving the ten years.

16 THE COURT: Okay.

17 Q Can you please state the ground involving the ten-year  
18 offer?

19 A Yes. That's the reason that I put he was ineffective  
20 assistance of counsel because of the prosecutorial misconduct  
21 was based on the failure of the prosecutor office to give  
22 attorneys certain materials required by Brady versus Maryland,  
23 importantly his attorney advised him to reject the plea  
24 agreement before they had received all the materials. That is  
25 Judd versus State. So most Federal and State cases addressing

1 the issue have held that Sixth Amendment right to effective  
2 assistance of counsel in a criminal case proceeding applies not  
3 only to the defendant's decision to reject the offer also to  
4 accept the offer; Torro versus Farmin (phonetics). So basically  
5 that's why I filed ineffective assistance of counsel because he  
6 hampered me from taking my ten-year plea because the prosecutor  
7 wouldn't give him the video. That's why I put ineffective  
8 assistance of counsel.

9 THE COURT: I gotcha you.

10 MS. MOODY: I have no further questions.

11 MR. HUNTER: Nothing Your Honor.

12 THE COURT: Thank you. You may step down.

13 If you are going to submit an affidavit by his  
14 finance I will let you do so if it is here by five  
15 o'clock on Thursday. Okay.

16 MS. MOODY: Thank you, Your Honor.

17 THE COURT: And you got to give counsel a copy of  
18 it.

19 MS. MOODY: Yes, sir. Thank you.

20 MR. HUNTER: Your Honor, I was sent by Mr.  
21 Wellborn all those e-mails and he sent it to you as  
22 well.

23 MS. MOODY: Okay.

24 MR. HUNTER: I could print that out tonight and  
25 bring it as part of the packet tomorrow.

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THE COURT: Sure.

MR. HUNTER: If that is okay.

THE COURT: Everything I can look at. I will take  
this under advisement.

MS. MOODY: Thank you, Your Honor.

THE COURT: Thank you.

(END OF TRANSCRIPT )

FORM 5  
CERTIFIED TRUE COPY

2016 CP 460 3402

STATE OF SOUTH CAROLINA

2016 DEC -9 PM 2:28

IN THE COURT OF COMMON PLEAS

County of York

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Travis Hines 310504  
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR  
POST-CONVICTION REVIEW

2016 DEC -9 PM 12:05  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

FILED-RECEIVED

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Correctional Institution
2. Name and location of Court which imposed sentence Moss Justice Center,  
York, SC 29745
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2015 GS 4603685  
(b) \_\_\_\_\_

2016 DEC -9 PM 2:51  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

FILED-RECEIVED

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12/17/15
- (b) 14 years
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Distribution
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence? No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel didn't inform me
- (b) Wasn't aware of process

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) all answers on separate sheet →
- (b) ↓
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) all answers on separate sheet →
- (b) ↓
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

\_\_\_\_\_

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

Revised 3/2003

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) NA

(b) \_\_\_\_\_

(c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? \_\_\_\_\_

(b) your trial, if any? NA

(c) your sentencing? \_\_\_\_\_

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. \_\_\_\_\_

ii. NA

iii. \_\_\_\_\_

(b) the proceedings at which each such attorney represented you:

i. \_\_\_\_\_

ii. AK

iii. \_\_\_\_\_

Revised 3/2003

19. State clearly the relief you seek in filing this application:

N/A

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA

County of Yale

VERIFICATION

I, Travis Hines, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Travis Hines

SWORN to and subscribed before me this 28 day of November, 2016.

Melissa Dany (L.S.)  
Notary Public

My Commission Expires: Dec. 1, 2025

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Travis Lavont Hines, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Travis Lavont Hines  
Applicant

SWORN or affirmed to and subscribed before me this  
6 day of December, 2016.

Melissa Spring  
Notary Public

My Commission Expires: Dec. 1, 2025

Revised 3/2003

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Travis Hines,  
SCDC# 310504,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-3602

RETURN

FILED-RECEIVED  
2017 MAY 22 PM 4:21  
DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on December 9, 2016, would respectfully show this Court:

I.

Applicant is presently in the South Carolina Department of Corrections pursuant to orders of commitment from the York County Clerk of Court. Applicant was indicted at the December 2015 term of the York County Grand Jury for distribution of heroin (2015-GS-46-3685). Christopher Wellborn, Esquire, initially represented Applicant. Ryan Newkirk, Esquire, represented the State. On December 15, 2015, Applicant appeared with counsel before the Honorable Daniel Hall and moved to have Mr. Wellborn relieved as counsel. The court granted Applicant's request. On December 17, 2015, Applicant appeared pro se before the Honorable John C. Hayes, III, and pled guilty as indicted. Pursuant to a negotiated sentence, Applicant was sentenced to imprisonment for fourteen years and the corresponding proximity charge was dismissed (warrant 2014A4610200842). Additionally, Respondent would note that the State served a notice of intention to seek a life without parole sentence on December 15, 2015, but later negotiated the plea to the fourteen year sentence. Applicant did not appeal his guilty plea or sentence.

## II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. "Counsel procrastinated and hindered me from accepting a lesser sentence because he had not yet examined certain evidence."
  - b. "Lack of communication with me as well as the solicitor put me in a position to be forced and coerced to plead guilty pro se"
  - c. "Motions weren't filed and evidence wasn't reviewed in a timely manner and if counsel performed adequately the results would've been different."

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject convictions, record from the South Carolina Department of Corrections, and the transcript from Applicant's guilty plea. Respondent reserves the right to amend its return upon the receipt of other relevant records.

## III.

Applicant alleges ineffective assistance of counsel. These allegations are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on going to trial. Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

#### V.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
(803) 734-3737

May 18, 2017

1) Kirkland Correctional Institution

2) York County, SC 29745

3) Done

4) 2015 GS 46036.85

5) A) 12/17/15.

B) 14 yrs

6) a) After a plea of guilty

7) No

8) NA.

9) A) Counsel didn't inform me

B) wasn't aware of process

10) A) Counsel was ineffective and performance was inadequate

B) Counsel conduct was deficient

C) Counsel was also incompetent and unprofessional.

11) A) Counsel procrastinated and hindered me from accepting a lesser sentence because he had not yet examined certain evidence

B) lack of communication with me as well as the solicitor put me in a position to be forced and coerced to plead guilty Pro. Se.

C) Motions weren't filed and evidence wasn't reviewed in a timely manner and if counsel performed adequately the results would've been different.

12) A) No

B) No

C) No

B) NA

14) No

15) NA

16) I tried putting most of it on the record when I pleaded guilty, but was interrupted before I could completely finish

17) A) yes

B) No

C) No

D) No

E) No

18) A) Christopher Wellborn Rock Hill, SC

B) Plea

19) I hope to get relief by getting my original plea of 7 yrs that I was trying to accept but my ineffective counsel advised me against

20) No

Louis Lince

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK  
STATE VS.

TRAVIS LAMONT HINES

AKA: Travis Hines, Travis L Hines

Race: Black

Sex: M

Age: 29

DOB: [REDACTED]

SS#: [REDACTED]

Address: 528 Whitner Street

City, State, Zip: Rock Hill, SC 29730

DL# [REDACTED]

SID# SC01529907

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Dist/PWD I-II Narc/Heroin 3rd

In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0185

INDICTMENT/CASE#: 2015GS4603685

A/W: 2014A4610200841

Date of Offense: 05/21/2014

S.C. Code §: 44-53-370

CDR Code #: 0185

SENTENCE ORIGINAL

2016 DEC 20 AM 11:53

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

CONVICTED OF or

☒ PLEADS☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (def.'s initials)  
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ryan R. Newkirk, Assistant Solicitor 100830 SC Bar #

Travis Hines  
DefendantPro Se (Knowning Waiver)  
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,  
for a determinate term of 14 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which  
are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.  
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment  
Payment Terms: \_\_\_\_\_ Obtain GED ☐☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_

§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§14-1-212 (Law Enforce. Funding) \$25 \$25.00

§14-1-213 (Drug Court Surcharge) \$150 \$150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ \$ \_\_\_\_\_

TOTAL \$280.00

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Presiding Judge: \_\_\_\_\_

Judge Bar ID: 2467 Judge Code: 2049

Sentence Date: 12-19-15

Clerk of Court/Deputy Clerk:

David Hamilton

Court Reporter:

Wanda Nelson

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

CERTIFIED TRUE COPY INDICTMENT  
2016 DEC 20 AM 11:53

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

At a Court of General Sessions, docketed on December 10, 2015, the Grand Jurors of York County present upon their oath:

**DISTRIBUTION OF HEROIN**

The defendant, Travis Lamont Hines, did on or about May 21, 2014, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Heroin, a schedule I controlled substance narcotic. All in violation of 44-53-370, *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
RYAN R. NEWKIRK  
ASSISTANT SOLICITOR

**WITNESSES**

**DEU**

Witnessing Officer: *Tim B. Smith*

**ARREST WARRANT NUMBER**

2014A4610200841

**ACTION OF GRAND JURY**

**TRUE BILL**

*Shirley Sanders*  
Foreperson of Grand Jury  
Date: *12/10/15*

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS46- *03685*

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**DECEMBER 10, TERM 2015**

**THE STATE**

**VS.**

**TRAVIS LAMONT HINES**

**INDICTMENT FOR**

**DISTRIBUTION OF HEROIN**

SC Code: § 44-53-370  
CDR Code: 0185

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

**Defendant**

I  
hereby appear in my own proper person and plead guilty to the within indictment or to

*Travis Lamont Hines*  
Defendant

**Witness:**

*P. Benfield*  
C.C.C. PLS. AND G.S. Specialist

## ARREST WARRANT

2014A4610200841

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE  
against

2014-15669

Travis Lamont Hines

Address: 722 Clarinda Street

Rock Hill, SC -

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

Sex: M Race: B Height: 5'9" Weight: 130

DL State: \_\_\_\_\_ DL #: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: L. Harrelson - H1721

Offense: Drugs / Distribution of Heroin - 3rd offense

Offense Code: 0185

Code/Ordinance Sec: 44-53-0370(b)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be  
dealt with according to the law.

(L.S.)

Signature of Judge

Date: \_\_\_\_\_

## RETURN

A copy of this arrest warrant was delivered to  
defendant Travis Lamont Hines  
on 5/29/14

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

York County General Sessions  
1675 York Hwy  
-York, SC 29745

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

AFFIDAVIT

ORIGINAL

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA518Personally appeared before me the affiant L. Harrelson whobeing duly sworn deposes and says that defendant Travis Lamont Hinesdid violate the criminal laws of the State of South Carolina (or ordinance of York)

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Distribution of Heroin - 3rd offense

0185

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:That on May 21, 2014, the defendant did willfully and unlawfully violate SC Drug Laws  
by distributing a quantity of Heroin to another. This incident occurred at 722 Clarinda Street, Rock Hill, County of York, South  
Carolina. A criminal records check indicates that Hines has two prior drug convictions.

\*\*\*Police Investigation\*\*\*

\*\*\*Recovery of Evidence\*\*\*

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address Moss Justice Center

York 29745-7428

Affiant's Telephone

CERTIFIED TRUE COPY  
2016 DEC 20 AM 11:53  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/21/2014 defendant Travis Lamont Hines

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York ) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Distribution of Heroin - 3rd offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or  
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as  
soon thereafter as is practicable  
Sworn to and subscribed before me  
on 5/29/2014

Signature of Issuing Judge

Norman Richard Watkins Jr.

Judge Code: 7054

(L.S.)

Judge's Address Moss Justice Center

York, SC 29745-7423

Judge's Telephone (803)628-3095

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

FILED-RECEIVED  
2015 DEC 15 PM 12:25

IN THE COURT OF GENERAL SESSIONS  
SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,  
KEVIN BRACKETT, SOLICITOR GENERAL

DAVID HAMILTON  
C.C.C.R. & G.S.  
YORK COUNTY, SC

NOTICE OF INTENTION TO SEEK LIFE  
IMPRISONMENT SENTENCE

vs

TRAVIS LAMONT HINES,

Indictment: 2015-GS-46-03685

Defendant.

TO: TRAVIS LAMONT HINES

YOU WILL PLEASE TAKE NOTICE that the Solicitor's office intends to seek a life imprisonment sentence pursuant to Section 17-25-45(B), S.C. Code of Laws 1976, as amended, upon the basis that you have two or more prior convictions for a serious offense, to wit:

1. Distribution of Ecstasy within Proximity to a School (2008-GS-46-3000)
2. Distribution of Cocaine within Proximity to a Park (2005-GS-46-02297)

Indictment 2015-GS-46-03685 (Distribution of Heroin 3<sup>rd</sup> Offense) constitutes a serious offense.



Ryan R. Newkirk  
Assistant Solicitor  
Sixteenth Judicial Circuit

York, S.C.

15 Dec, 2015

YORK COUNTY, SC  
CLERK OF COURT  
DAVID HAMILTON  
2015 DEC 20 AM 11:53  
CERTIFIED TRUE COPY

PLEA WAIVER FORM

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

CERTIFIED TRUE COPY

2016 DEC 20 AM 11:52

vs.

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

= defendant's initials required

Travis Lamont Hines,  
Defendant.

Total Time Served (days) [Click here to enter text.](#)

I want to plead guilty, no contest, or enter a plea under N.C. v. Alford to the charges listed below. I understand that the minimum and maximum penalties as well as some of the collateral consequences for the charges to which I am pleading are listed below:

Truebilled ☐ Waiver ☒

Indictment #: 2015GS4603685 CDR: 0185 Statute #: 44-53-370

Original Charge: Dist/PWID I-II Narc/Heroin 3rd

Pleading To: Dist/PWID I-II Narc/Heroin 3rd

Misdemeanor ☐ Felony ☒

Penalty: NLT 10 years to 30 years &/or \$50,000

☐ Non-Violent ☐ Violent ☒ Serious ☐ Most Serious ☐ No Parole ☐ Sex Offender  
Registry  
☐ Mandatory GPS ☒ Increased Punishment for Future Offenses ☐ Murder Day for Day

List General Sessions Charges Being Dismissed: Proximity

List Pending General Sessions Charges not being resolved: None

List Prior Convictions: 8/04- Unlawful Carry; 10/04- Dist. Crack; Prox, 08/08- PWID 1 - 3, Prox. 06/13- Intimidation of a Witness

YOA: ☐ Eligible ☒ Ineligible due to: ☐ Age ☒ Offense ☐ Other: [Click here to enter text.](#)

Currently on Probation? ☐ Yes ☒ No Is this plea a violation of the probation? ☐ Yes ☒ No

☒ I have agreed to plead guilty, no contest, or enter a plea under N.C. v. Alford as part of a plea arrangement. The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea:

Type of Plea

☒ Guilty

☐ N.C. v. Alford

☐ Nolo

☐ Recommendation

☒ Negotiated

☐ Without Recommendation

☒ State is recommending or the negotiation is: <sup>14</sup>15 Years

☒ This plea is not the product of any other promises or any threats whatsoever, except as indicated below:

☒ I understand that, upon entering a plea under N.C. vs. Alford, I will be treated as being guilty whether or not I admit that I am in fact guilty.

☒ I understand that a no contest plea is treated by the Court the same as a plea of guilty.

☒ The Solicitor is making a recommendation to the judge, as listed above. I understand the Judge is not required to accept the recommendation given by the Solicitor and the Judge may accept it, may go below the recommendation, or may go above the recommendation.

☒ This plea is a negotiated plea and the negotiation is listed above. I understand the Judge may refuse to accept the negotiation and that if the Judge refuses, the plea will not go forward.

☒ This plea is without negotiation and I understand I could receive from the minimum to the maximum sentence on each charge to which I am pleading guilty and that those sentences could also be run consecutive to other.

☒ I am not currently under the influence of any intoxicants, drugs, or narcotics.

☒ I currently DO take the following prescribed medications:

STEROIDAL medicine for Head injury

☒ I am entering my plea today freely, voluntarily, knowingly, and intelligently.

☒ I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer, or the court will appoint a lawyer for me if I cannot afford one. I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself. Understanding this, I give up this right.

☒ I understand that I have the right to plead not guilty and be tried by a jury, and that I am presumed innocent until such time as the jury is convinced of my guilty beyond a reasonable doubt. Understanding this, I give up that right.

☒ I understand I have the right to have the Court issue subpoenas to bring my witnesses and evidence to a trial at no cost to me. Understanding this, I give up that right.

☒ I understand I have the right to testify or remain silent at trial. Understanding this, I give up this right.

☒ My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any

Plea Waiver Form

defenses I may have and he or she has done everything I have asked him to do. I am satisfied with his or her services.

☒ I understand that I have the right to remain silent, that is, the right against self-incrimination. Understanding this, I give up this right.

☒ I understand that in a jury trial I have the right to see and hear all witnesses called to testify against me and to confront, cross-examine, and question them.

☒ I give up, for each of the charges listed above, my right to a jury trial, my right to a bench trial (trial by Judge with no jury), my right to confront and cross examine witnesses, my right to remain silent and not incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf.

☒ I understand that by my pleading to each charge, I am waiving all defenses, including, but not limited to the right to challenge any evidence the State may have used in its case against me and the voluntariness of any statements made to law enforcement.

☒ I understand that upon my conviction I may be ordered to pay restitution to any persons directly and proximately injured as a result of my commission of these crimes and that a civil judgement in favor of each person may be docketed against me and will be a lien against any real estate I own now or may own in the future.

☒ I understand that if I am not a citizen of the United States, my plea of guilty, no contest, or my plea under N.C. v. Alford may result in my deportation, exclusion from re-entry to the United States, and denial of naturalization and amnesty.

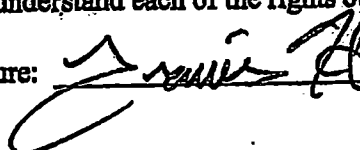
☒ I understand that I have 10 days within which to appeal this guilty plea.

☒ I understand that I am pleading guilty, no contest, or under N.C. v. Alford to the charges shown above.

☒ I now personally plead ☒ guilty; ☐ under N.C. v. Alford; ☐ no contest to the charges above.

### Acknowledgement

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, the effects of any prior convictions and enhancements, have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Defendant's Signature:  Date: 12-15-15

### Defense Counsel's Statement

I, the attorney for the defendant in the above entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges, all discovery provided by the State, and possible defenses with the defendant and the consequences of the plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his or her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Print Name: \_\_\_\_\_ Attorney Signature \_\_\_\_\_ Bar # \_\_\_\_\_

Date: \_\_\_\_\_ Circle One: PD      Retained      Appointed

### Solicitor's Review

I have reviewed this form as completed by the Defendant or by the Defendant with his Defense Attorney for completeness and accuracy.

Solicitors Signature: H. R. Peltier Bar # 100970

Date: 30 Nov 15

### Judge's Confirmation

Upon consideration of the record, evidence or factual presentation offered, answers of defendant, and statements of the lawyer for the defendant and the prosecutor and the contents of this plea and waiver form, the undersigned finds that:

1. There is a factual basis for the entry of the plea,
2. The defendant is satisfied with his/her lawyer's legal services,
3. The defendant is competent to stand trial, and
4. The plea is the informed choice of the defendant and is made freely, voluntarily, knowingly, and intelligently.

The defendant's plea is hereby accepted by the Court.

John C. H. [Signature]  
Judge's Signature

Judge's Code: 2049

Date: 12/12/15

13:45:06 Wednesday, December 21, 2016

CMTI330D  
OMCOMITA  
SCDC# > 310504  
HINES, TRAVIS LAMONT  
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SCDC OFFENDER MANAGEMENT SYSTEM  
RELEASE DATE SCREEN

12/21/16  
C056427

LOC: KIRKLAND

SCDC CLASSIFICATION...: NON-VIOLENT

SEXUAL REGISTRY...: N

SEXUAL PREDATOR...: NOT APP

DNA STATUS...: COMPLETED

GPS REQUIREMENT...: N

PREA DECISION...:

PREA PERP...: NONE

PREA VICTIM...: NONE

CURRENT SENTENCE: 014-00-000  
014-00-000

CONSECUTIVE SENTENCE ...: N  
CURRENT SENT START DATE: 12/16/2015

PROJECTED COMPLETION DATES

MAXOUT DATE ...: 07/06/2022

YOA SIX YEAR DATE: / /

INITIAL PAROLE DATE: 05/06/2018

CURRENT EWC ..: 2 F 7

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

NEXT PAROLE HEARING DATE: 05/06/2018

LABOR CREW/WORK PROG DATE: 07/07/2017  
LABOR CREW DISQ REASON:

TOTAL GT DAYS EARNED .....: 000240  
TOTAL EARNED WORK CREDITS ...: 000158  
TOTAL EDUCATION CREDITS ....: 000000  
TOTAL EXTRA EARNED CREDITS ..: 000  
TOTAL SERVICE TIME EARNED ...: 000367

SUPERVISED REENTRY DATE...: 01/07/22  
ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

# South Carolina Department of Corrections

## Classification Summary Reports

Date: Wednesday, December 21, 2016

### Classification Summary Reports

Inmate Number

310504

Submit

| SCDC ID    | Name                 | Sex/Race | Status                |
|------------|----------------------|----------|-----------------------|
| 00310504   | HINES, TRAVIS LAMONT | M B      | INCARCERATED          |
| Y 00310504 | HINES, TRAVIS LAMONT | M B      | TERMINATED YOA PAROLE |

### Classification Summary Report for HINES, TRAVIS LAMONT :

Create PDF

SCDC# 00310504

CLASSIFICATION SUMMARY REPORT DATED 12/21/2016  
HINES, TRAVIS LAMONT

FBI# 996616DC0

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: KIRKLAND

SECURITY/CUST: 2 MINIMUM IN

CURR INCARC SENT: 14 YRS 0 MOS 0 DAYS

VICTIM WITNESS: SEPREQ:N

MED CLASS: [REDACTED]

INST RESTRICT: NO RESTRICTION

MENTAL CLASS: NMH (NO MENTAL HEALTH TRE

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 30



RESIDENT STABILITY: NA  
DORMROOMBUNK\_CODE: EA2 0002 A  
PROJ MAXOUT DATE: 07/06/2022  
PROJ PAROLE DATE: 05/06/2018  
EWC JOB: FOOD SERVICE AIDE  
ASSIGNMENT: CAFETERIA  
EWC LEVEL: 2F7 EEC LEVEL:-  
EDUC PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

Y00310504

SENTENCE

SENTENCE

<https://www.doc.state.sc.us/classing-reports/summaryReportsList.do?id=00310504&yo...> 12/21/2016

| CURRENT OFFENSES    | YRS | MOS | DYS | COUNTY | START      | V/NV | CAT | INDICT      |
|---------------------|-----|-----|-----|--------|------------|------|-----|-------------|
| HEROIN DISTRIBUTION | 14  | 0   | 0   | YORK   | 12/16/2015 | N    | 2   | 15GS4603685 |

|                           | YRS | MOS | DYS | COUNTY | START      | V/NV | CAT | INDICT     |
|---------------------------|-----|-----|-----|--------|------------|------|-----|------------|
| COMPLETED OFFENSES        |     |     |     |        |            |      |     |            |
| ILL.DRUGS DISTR PROX SCHO | 4   | 0   | 0   | YORK   | 07/28/2008 | N    | 2   | 08GS462997 |
| MARIJUANA POSS INT/DIST   | 4   | 0   | 0   | YORK   | 07/28/2008 | N    | 2   | 08GS462996 |
| ILL.DRUGS DISTR PROX SCHO | 4   | 0   | 0   | YORK   | 07/28/2008 | N    | 2   | 08GS463000 |
| PWID MDMA/ECSTASY 2ND     | 4   | 0   | 0   | YORK   | 07/28/2008 | N    | 2   | 08GS462999 |
| PWID MDMA/ECSTASY 2ND     | 1   | 0   | 0   | YORK   | 07/28/2008 | N    | 2   | 08GS462994 |

PRIOR COMMITMENTS OVER 90 DAYS:

\*INMATE HAS NO PRIORS\*

| PREVIOUS OFFENSES         | PREVSCDCID | YRS | MOS | DYS | COUNTY | START      | V/NV | CAT | INDICT     |
|---------------------------|------------|-----|-----|-----|--------|------------|------|-----|------------|
| CRACK DISTRIB PROX SCHOOL | Y00310504  | 4   | 0   | 0   | YORK   | 07/27/2005 | N    | 2   | 05GS462297 |
| CRACK DISTRIBUTION        | Y00310504  | 4   | 0   | 0   | YORK   | 07/27/2005 | N    | 2   | 05GS462296 |

DETAINERS (HOLD,WANTED,NOTIFY):

\*NO DETAINERS\*

ESCAPES:

\*NO ESCAPE HISTORY\*

CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES HISTORY\*

ASSAULTIVE DISCIPLINARIES:

\*NO ASSAULTIVE DISCIPLINARY HISTORY\*

PREVIOUS ASSAULTIVE DISCIPLINARIES:

\*NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY\*

NON-ASSAULTIVE DISCIPLINARIES:

|            |                     |        |                           |
|------------|---------------------|--------|---------------------------|
| 08/09/2016 | ABUSE OF PRIVILEGES | CLOSED | OTHER ACTION TAKEN/INFORM |
| 06/28/2010 | ABUSE OF PRIVILEGES | CLOSED | OTHER ACTION TAKEN/INFORM |

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

\*NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY\*

HISTORY OF MOVEMENTS:

|            |               |              |                          |
|------------|---------------|--------------|--------------------------|
| 12/22/2015 | KIRKLAND      | INCARCERATED | NEW ADMISSION            |
| 07/30/2010 | UNK           | RELEASE      | EXPIRATION OF SENTENCE   |
| 06/28/2010 | CATAWBA       | INCARCERATED | LABOR CREW               |
| 01/21/2010 | CATAWBA       | WORK-RELEASE | WORK PROGRAM             |
| 01/08/2010 | CATAWBA       | INCARCERATED | LABOR CREW               |
| 11/20/2009 | CATAWBA       | WORK-RELEASE | WORK PROGRAM             |
| 10/23/2009 | CATAWBA       | INCARCERATED | LABOR CREW               |
| 06/17/2009 | CATAWBA       | WORK-RELEASE | WORK PROGRAM             |
| 05/27/2009 | CATAWBA       | INCARCERATED | LABOR CREW               |
| 05/27/2009 | KERSHAW       | INCARCERATED | COURT/PAROLE HEARING VIA |
| 10/09/2008 | CATAWBA       | INCARCERATED | LABOR CREW               |
| 09/16/2008 | WATEREE RIVER | INCARCERATED | ADMINISTRATIVE           |
| 08/19/2008 | KIRKLAND      | INCARCERATED | NEW ADMISSION            |

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB DESCRIPTION         | START DATE | END DATE   | TERMINATION REASON      | JOB LVL |
|-------------------------|------------|------------|-------------------------|---------|
| FOOD SERVICE AIDE       | 02/05/2016 | -          |                         | 2F7     |
| FOOD SERVICE AIDE       | 02/04/2016 | 02/04/2016 | MI ELIGIBLE FOR LEVEL 2 | 3F7     |
| LABOR CREW/WORK PROGRAM | 06/28/2010 | 07/30/2010 | RELEASED/PAROLED        | 2F5     |
| LABOR CREW/WORK PROGRAM | 01/11/2010 | 06/27/2010 | DEMOTION                | 2F5     |
| LABOR CREW/WORK PROGRAM | 10/23/2009 | 01/08/2010 | INSTIT TRANSFER         | 2F5     |
| LABOR CREW/WORK PROGRAM | 10/10/2008 | 10/22/2009 | LATERAL TRANSFER        | 2F5     |
| FOOD SERVICE AIDE       | 10/03/2008 | 10/09/2008 | INSTIT TRANSFER         | 2F5     |
| CUSTODIAL WORKER        | 09/17/2008 | 10/02/2008 | LATERAL TRANSFER        | 2F5     |
| WARDKEEPER ASSISTANT    | 11/02/2005 | 06/09/2006 | RELEASED/PAROLED        | 2F5     |
| FARM WORKER             | 09/01/2005 | 10/27/2005 | INSTIT TRANSFER         | 2F5     |

HISTORY OF EARNED EDUCATION CREDITS:

\*NO SCHOOL ASSIGNMENTS\*

\*\*\*\*\* END OF REPORT \*\*\*\*\*



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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 01:45:33 PM]

# South Carolina Department of Corrections

Classification Summary Reports

Date: Wednesday, December 21, 2016

## Classification Summary Reports

Inmate Number

310504

Submit

SCDC ID

00310504

Y 00310504

Name

HINES, TRAVIS LAMONT

HINES, TRAVIS LAMONT

Sex/Race

M B

M B

Status

INCARCERATED

TERMINATED YOA PAROLE

### Classification Summary Report for HINES, TRAVIS LAMONT :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 12/21/2016

FBI# 996616DC0

SCDC# Y00310504

HINES, TRAVIS LAMONT

OFFENDER TYPE: YOA5C-INDETERMINATE  
SENTE

INSTITUTION: UNK

SECURITY/CUST: 2 MINIMUM IN

CURR INCARC SENT: 4 YRS 0 MOS 0 DAYS

VICTIM WITNESS: SEPREQ:N

MED CLASS: [REDACTED]

INST RESTRICT: NO RESTRICTION

MENTAL CLASS: NMH (NO MENTAL HEALTH  
TRE

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 30



RESIDENT STABILITY: NA

DORMROOMBUNK\_CODE: 0000

PROJ MAXOUT DATE: 07/27/2009

PROJ PAROLE DATE: 05/31/2006

EWC JOB: NO CURRENT JOB

ASSIGNMENT: BLDING DETAIL BLDG. #3

EWC LEVEL: 0 EEC LEVEL:-

EDUC PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

\*NO PREVIOUS NUMBERS\*

| CURRENT OFFENSES | SENTENCE |     |     |        | START | SENTENCE |     |        |
|------------------|----------|-----|-----|--------|-------|----------|-----|--------|
|                  | YRS      | MOS | DYS | COUNTY |       | V/NV     | CAT | INDICT |
|                  |          |     |     |        |       |          |     |        |

|                           |   |   |   |      |            |   |   |            |
|---------------------------|---|---|---|------|------------|---|---|------------|
| CRACK DISTRIB PROX SCHOOL | 4 | 0 | 0 | YORK | 07/27/2005 | N | 2 | 05GS462297 |
| CRACK DISTRIBUTION        | 4 | 0 | 0 | YORK | 07/27/2005 | N | 2 | 05GS462296 |

COMPLETED OFFENSES

\*NO COMPLETED OFFENSES\*

PRIOR COMMITMENTS OVER 90 DAYS:

\*INMATE HAS NO PRIORS\*

OFFENSES UNDER PREVIOUS NUMBER:

\*NO PREVIOUS OFFENSES\*

DETAINERS (HOLD,WANTED,NOTIFY):

\*NO DETAINERS\*

ESCAPES:

\*NO ESCAPE HISTORY\*

CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES HISTORY\*

ASSAULTIVE DISCIPLINARIES:

\*NO ASSAULTIVE DISCIPLINARY HISTORY\*

PREVIOUS ASSAULTIVE DISCIPLINARIES:

\*NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY\*

NON-ASSAULTIVE DISCIPLINARIES:

\*NO NON-ASSAULTIVE DISCIPLINARIES HISTORY\*

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

\*NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY\*

HISTORY OF MOVEMENTS:

|            |               |                           |                     |
|------------|---------------|---------------------------|---------------------|
| 08/25/2011 | UNK           | TERMINATED YOA PAROLE     | YO A TERM SATISFIED |
| 06/09/2006 | YORK CO       | YO A PAROLE - CONDITIONAL | PAROLE BOARD ACTION |
| 10/27/2005 | TURBEVILLE    | INCARCERATED              | ADMINISTRATIVE      |
| 08/25/2005 | WATEREE RIVER | INCARCERATED              | ADMINISTRATIVE      |
| 08/02/2005 | KIRKLAND      | INCARCERATED              | NEW ADMISSION       |

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB DESCRIPTION      | START DATE | END DATE   | TERMINATION REASON | JOB LVL |
|----------------------|------------|------------|--------------------|---------|
| WARDKEEPER ASSISTANT | 11/02/2005 | 06/09/2006 | RELEASED/PAROLED   | 2F5     |
| FARM WORKER          | 09/01/2005 | 10/27/2005 | INSTIT TRANSFER    | 2F5     |

HISTORY OF EARNED EDUCATION CREDITS:

\*NO SCHOOL ASSIGNMENTS\*

\*\*\*\*\* END OF REPORT \*\*\*\*\*

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Source : SummaryReport.jsp

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 01:45:41 PM]

State of South Carolina., )  
)  
)  
)  
County of York. )

In the General Sessions  
Court of York  
Case No. 2015-GS-46-03685

State of South Carolina., )  
)  
Plaintiff., )  
)  
-vs- )  
)  
Travis Lamont Hines., )  
)  
Defendant. )

Transcript of Record  
Plea

December 17, 2015  
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge.

Mr. Ryan Newkirk, Assistant Solicitor  
Sixteenth Circuit Solicitor's Office  
1675-1A York Hwy.  
York, South Carolina 29745  
803.628.3020  
[Ryan.newkirk@yorkcountygov.com](mailto:Ryan.newkirk@yorkcountygov.com)  
Attorney for the Plaintiff

Mr. Travis Lamont Hines  
Pro Se

Wanda S. Nelson, CVR-Mary  
Official Court Reporter  
To The Honorable John C. Hayes, III  
Sixteenth Judicial Circuit  
Union and York Counties

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

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I N D E X

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| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
|------------|--------------------|------------|-------------|
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No Exhibits were received into the record.

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1 (COURT IN SESSION/ON THE RECORD IN THE MATTER OF STATE  
2 OF SOUTH CAROLINA VERSUS TRAVIS LAMONT HINES AT 11:40 AM.)

3 SOLICITOR NEWKIRK: Travis Hines.

4 (DEFENDANT TRAVIS LAMONT HINES, BLACK MALE, APPROACHES  
5 THE BAR.)

6 THE COURT: All right.

7 SOLICITOR NEWKIRK: Thank you, your Honor, may it  
8 please the court. The next case for the Court's  
9 consideration is the State versus Travis Lamont Hines. Mr.  
10 Hines is present in the courtroom as his own counsel.

11 He's before the Court today on one indictment, Number  
12 2015-GS-46-0-3-6-8-5. That is one count of distribution of  
13 heroin third offense. That is a statutory felony that  
14 carries with it no less than ten years up to thirty years  
15 and a possibility of a fine up to Fifty thousand dollars  
16 and is a serious offense.

17 Your Honor, the negotiation in this case is for a  
18 fourteen year sentence. At the conclusion of the plea the  
19 State will be dismissing an accompanying proximity charge.

20 Your Honor, procedurally Mr. Hines has had two prior  
21 attorneys, Mr. McKinnon with the Public Defender's Office  
22 and Mr. Wellborn of the private, of the York County Bar.

23 Mr. Hines ask the court to relieve Mr. Wellborn of his  
24 service on Tuesday. At that time the State did serve upon  
25 Mr. Hines of those of intention to seek life imprisonment

1 for a January 11 trial. Mr. Hines and I spoke with each  
2 other. I have no doubt in his intelligence or his  
3 understanding of the proceedings. He was advised of his  
4 right to counsel by Judge Hall on Tuesday when he relieved  
5 Mr. Wellborn of his services.

6 The offer to Mr. Hines was fifteen years. Mr. Hines  
7 spoke to me and said if you can give me a few days to speak  
8 with my family I will come back this week. And if you can  
9 reduce the time at all I will come to speak and enter a  
10 plea of guilty. I spoke with law enforcement and was able  
11 to reduce Mr. Hines' offer by a year from fifteen to  
12 fourteen.

13 I tell you all that just to say that he has been  
14 advised of his right to counsel indicated to me he wishes  
15 to proceed on his own and I have no doubt in his competency  
16 or his understanding.

17 THE COURT: Mr. Hines, how old are you?

18 MR. HINES: Twenty-nine.

19 THE COURT: How far did you go in school?

20 MR. HINES: I'm in college right now.

21 THE COURT: Were are you in college?

22 MR. HINES: York Tech.

23 THE COURT: What do you do -- Do you have a job too?

24 MR. HINES: Yes, sir.

25 THE COURT: What do you do?

1 MR. HINES: I'm an electrician's helper.

2 THE COURT: You have a right to have an attorney  
3 represent you in regard to this charge and if you cannot  
4 afford one the State would be required to appoint an  
5 attorney to represent you within some limits. That is you  
6 would be appointed an attorney to represent you if you  
7 wish. If you could not afford one the limitation being  
8 that you are assigned an attorney and that would be your  
9 attorney. Its dangerous for you to proceed without an  
10 attorney since you're not one and there is a benefit in  
11 having an attorney represent you.

12 Do you understand that?

13 MR. HINES: Yes, sir.

14 THE COURT: Do you wish to have an attorney in regard  
15 to this charge or give up that right?

16 MR. HINES: I give up that right.

17 THE COURT: I find Mr. Hines has freely voluntarily  
18 knowingly and intelligently understanding the benefits of  
19 counsel and the danger of self representation exercises his  
20 right to proceed pro s e.

21 You're charged with distribution of heroin on May  
22 21st, 2014 here in York County, South Carolina in violation  
23 of the laws of this state. This carries from ten to thirty  
24 years in jail and it is a felony. It is a serious offense.  
25 A serious offense is the type of offense which if in your

1 lifetime you receive three serious or a combination of  
2 three serious offenses -- a combination of three serious  
3 and most serious offenses you would be subject to being  
4 incarcerated for life without parole. This is a parole  
5 ineligible offense which means you have to serve at least  
6 eighty-five percent of your sentence before you could be  
7 released into an early release program with community  
8 supervision.

9 Do you understand all that?

10 MR. HINES: Yes, sir.

11 THE COURT: And how do you plead to this charge?

12 MR. HINES: Guilty.

13 THE COURT: Other than the negotiated sentence of  
14 fourteen years has anyone made any other promise or threats  
15 to cause you today to enter your plea of guilt?

16 MR. HINES: No, sir.

17 THE COURT: Are you today under the influence of  
18 anything that would cause you to be intoxicated?

19 MR. HINES: No, sir.

20 THE COURT: Are you entering your plea today to the  
21 charge freely and voluntarily, Mr. Hines?

22 MR. HINES: Yes, sir.

23 THE COURT: Have you already served some time on this?

24 MR. HINES: No, sir.

25 SOLICITOR NEWKIRK: Your Honor, may I have a moment?

1 THE COURT: Yeah.

2 (PAUSE.)

3 SOLICITOR NEWKIRK: Your Honor, if you want to  
4 continue I will find out exactly how many days he's  
5 entitled to.

6 THE COURT: Okay. No, we'll . . .

7 SOLICITOR NEWKIRK: Ms. Hamilton's gonna find out for  
8 you.

9 THE COURT: Okay.

10 SOLICITOR NEWKIRK: That's my apologies, your Honor.  
11 I should have calculated that prior to calling the  
12 case.

13 THE COURT: Mr. Hines, you have a right to a trial by  
14 jury on this charge and you are presumed innocent of this  
15 charge until such time as the State is able to prove if it  
16 can your guilt beyond a reasonable doubt. As to the charge  
17 you have the right to remain silent; the right to confront  
18 the witnesses' against you. You have the right to have  
19 your witnesses made to come to court to testify for you.

20 Do you understand you have these rights?

21 MR. HINES: Yes, sir.

22 THE COURT: Do you have any questions about that?

23 MR. HINES: No, sir.

24 THE COURT: I advise you that when you plead guilty  
25 you're giving up the presumption of innocence; your right

1 to a trial; your right to remain silent; your right to  
2 confront witnesses and your right to have witnesses called  
3 to court. Do you understand that?

4 MR. HINES: Yes, sir.

5 THE COURT: Knowing all -- And you give up any defense  
6 that you might have to the charge. Do you understand that?

7 MR. HINES: Yes, your Honor.

8 THE COURT: Knowing all those things I ask again, how  
9 do you plead to distribution of heroin?

10 MR. HINES: Guilty.

11 THE COURT: I'm gonna ask you to listen while I'm  
12 given the facts.

13 SOLICITOR NEWKIRK: Thank you, your Honor.

14 On May the 21st of 2014 the defendant did sell a  
15 quantity of heroin to a confidential informant at the  
16 residence of [REDACTED]. Is that right?

17 THE COURT: You got it right.

18 SOLICITOR NEWKIRK: I got it right. [REDACTED]

19 [REDACTED] in Rock Hill which is in York County, South  
20 Carolina. Your Honor, the incident did occur within one  
21 half mile of a park however I'm dismissing that charge.

22 Mr. Hines has other qualifying offenses in 2005 and  
23 2008 to make this a third offense. Those would be the  
24 substantive facts, your Honor, which I'm still calculating  
25 Mr. Hines as time served credit. And I'd just would like

1 again to point out for the court that this case was set for  
2 trial on January the 11th.

3 THE COURT: Do you agree with those facts, Mr. Hines?

4 MR. HINES: Yes, sir.

5 THE COURT: Mr. Hines, I accept your plea. I find  
6 that it is freely voluntarily knowingly and intelligently  
7 entered. You waived your right to an attorney. The facts  
8 support your plea. Anything you want to say to me before I  
9 sentence you?

10 MR. HINES: Well, your Honor, I just want to apologize  
11 for being up here once again. I was really getting my life  
12 together. I wasn't dealing drugs but I was using drugs and  
13 I just made a mistake by trusting my uncle having a kind  
14 heart in giving him some drugs. And I feel fourteen years  
15 I know I got to pay my debts to society but I feel fourteen  
16 years is a long time for a mistake but thank y'all . . .

17 THE COURT: All right. Thank you.

18 See how many days?

19 SOLICITOR NEWKIRK: Your Honor, I believe he's  
20 entitled to one day credit. I talked to Mr. Hines about  
21 that and confirmed that with the system. He informed me he  
22 bonded out the next day upon arrest.

23 THE COURT: All right. Mr. Hines, the sentence is  
24 fourteen years and I'm giving you credit for the one day.

25 (DEFENDANT, TRAVIS LAMONT HINES, ESCORTED FROM

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COURTROOM.)

(END OF TRANSCRIPT OF RECORD.)

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2016CP4603602

Travis Hines

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP Vol. Nonsuit;  
☐ Rule 43(k), SCRCP (Settled); ☐ Other: \_\_\_\_\_
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

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DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.  
Additional Information for the Clerk: See next page

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
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If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

R. Lawton McIntosh  
Circuit Court Judge

2155  
Judge Code

8-1-17  
Date

For Clerk of Court Office Use Only

This judgment was entered on August 8, 2017, and a copy mailed first class or placed in the appropriate attorney's box on August 8, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock Hill, SC 29730

Justin James Hunter PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Aileen Butler

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The state extended Applicant an offer of (10) years to Parmer and current trial counsel which was not accepted. Current trial counsel refused to review State's discovery before responding - which is ethical & proper. In the meantime, the State changed its offer from (10) yrs to (18) yrs, which it had a right to do. Applicant rejected the State's higher, subsequent offer. The State then gave proper notice of the intent to seek L. to without the possibility of appeal. The notice was proper and properly and timely given to Applicant.

Applicant's petition is denied. RLH (Justin Hunter) The State is to prepare a formal order consistent with this order, the evidence presented & received at the hearing; the briefing and arguments.

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STATE OF SOUTH CAROLINA

-----x

STATE,

Plaintiff,

Case No.

-against-

2015-GS-46-3685

TRAVIS HINES,

Defendant.

-----x

December 15, 2015

York, S.C.

B E F O R E :

HONORABLE DANIEL HALL

A P P E A R A N C E S :

RYAN NEWKIRK, Esquire

Assistant Solicitor

CHRISTOPHER WELLBORN, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

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E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>I.D.</u> | <u>EVD.</u> |
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NO EXHIBITS MARKED

1 MR. NEWKIRK: Travis Hines.

2 Your Honor, Mr. Hines is before the Court today  
3 standing with his retain counsel Chris Wellborn of  
4 York County bar. Before the Court on one Indictment  
5 2015-GS-46-03685, one count of distribution of heroin,  
6 third offense.

7 Your Honor, Mr. Hines was previously before the  
8 Court last term to enter what we believe was a plea of  
9 guilty to that Indictment. He informed the Court at  
10 that time that he was unhappy with Mr. Wellborn as his  
11 counsel. So this hearing has been scheduled on what I  
12 believe will be a motion to be relieved from Mr. -- a  
13 motion to relieve counsel for Mr. Hines.

14 THE COURT: All right. Mr. Wellborn, I will be  
15 glad to hear from you.

16 MR. WELLBORN: Well, I can corroborate what the  
17 solicitor said.

18 THE COURT: What are we doing here?

19 MR. WELLBORN: Well, my understanding is from my  
20 client that he at least as of this morning he is  
21 moving to relieve me.

22 THE COURT: All right. Let me talk to Mr. Hines  
23 then. Mr. Hines I will talk to you a little bit about  
24 your case. I will talk about your representation.  
25 I'm not going to ask anything about the facts of the

1 case. That's for your protection and I tell you not  
2 to talk to me about the facts of the case. This is  
3 purely a hearing to determine your legal  
4 representation and where we go from here.

5 You are Travis Hines, is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Hines, your lawyer tells me that he  
8 believes that you are here wanting to ask that he be  
9 removed as your lawyer, is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Are you prepared to go  
12 forward without a lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right, are you going to represent  
15 yourself?

16 THE DEFENDANT: No, I had talked to Jack Swerling  
17 previously to hiring Mr. Wellborn, but I could not  
18 retain him when I didn't feel I was being represented  
19 properly because I had a lawyer already.

20 THE COURT: Well, let me talk to you about that.  
21 Are you going to hire Mr. Swerling?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Solicitor, when do you intend to call  
24 this case for trial?

25 MR. NEWKIRK: Your Honor at the conclusion of Mr.

1 Wellborn of being relieved I intend to serve Mr.  
2 Hines with life notice and intend to call the case for  
3 trial on January the 11th term in front of either one  
4 of judges that are here that term.

5 THE COURT: All right. Well, let me ask. You  
6 heard what the solicitor said Mr. Hines, they intend  
7 to call the case for trial on January the 11th. Do  
8 you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you understand that regardless who  
11 your lawyer is, that the solicitor controls the  
12 docket, calls the cases as they see fit and whoever  
13 your lawyer is they are going to have to be prepared  
14 and ready for trial on January the 11th. Do you  
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: When do you intend to hire Mr.  
18 Swerling?

19 THE DEFENDANT: Today I guess.

20 THE COURT: All right. Let me do this. Let take's  
21 care of the first issue about Mr. Wellborn. So you  
22 are telling me that you do not want Mr. Wellborn to  
23 represent you, is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I will relieve Mr. Wellborn as your

1 attorney. So Mr. Wellborn, you are no longer  
2 representing Mr. Hines.

3 MR. WELLBORN: Thank you, Your Honor.

4 THE COURT: Wait a minute. We are not through yet  
5 Mr. Hines.

6 All right. Now Mr. Hines, you have no lawyer.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now you are telling me you are going  
9 to hire a lawyer. Will you have a lawyer by January  
10 the 11TH? Do you have something you need to ask me  
11 about that?

12 THE DEFENDANT: Yes, sir. I didn't know just  
13 because I was firing my lawyer I had to go to trial.

14 THE COURT: Well, see your trial, the solicitor  
15 can call your case for trial any time. It has nothing  
16 to do with firing your lawyer. Do you understand  
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: They can call -- in this State the  
20 solicitor can call your case for trial when they see  
21 fit. All right. That's why I am telling you that.  
22 The solicitor has said that they were going to try the  
23 case January the 11th.

24 Now if you hire a lawyer between now and then they  
25 can talk to the solicitor about that, but that's left

1 up to solicitor.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do we have a term of Court before  
4 January the 11th?

5 MR. NEWKIRK: Yes, sir.

6 THE COURT: It's called general sessions, non-jury  
7 the week of the 4th?

8 MR. NEWKIRK: Yes, sir.

9 THE COURT: All right. Why don't we do this. It  
10 seems appropriate that we inform Mr. Hines to be here  
11 on January the 4th. We do have general session  
12 non-jury and we can make sure or unless the solicitor  
13 tells me differently between now and then I think what  
14 we will do Mr. Hines is that at some point if you do  
15 not hire a lawyer -- you already had a Court appointed  
16 lawyer right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And then you fired Mr. McKinnon, is  
19 that correct. Who was your Court appointed lawyer.

20 THE DEFENDANT: Mr. McKinnon, I never fired him. I  
21 just hired --

22 THE COURT: Well, as a practical result you didn't  
23 want Mr. McKinnon to represent you and hired Mr.  
24 Wellborn, right.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And so you have been through two  
2 lawyers. The Court would not appoint you any more  
3 lawyers.

4 THE DEFENDANT: Okay.

5 THE COURT: At some point if you don't have an  
6 attorney I will have to go through and warn you in  
7 detail about representing yourself because that will  
8 be would be what you are left with. If you have not  
9 hired an attorney by January the 4th, and that lawyer  
10 has not sent in a letter of representation and talked  
11 with the solicitor about the case you need to be here  
12 at ten o'clock on January the 4th and we'll go over  
13 and make sure understand your right about representing  
14 yourself. Because again, the solicitor is going  
15 forward with this trial on January the 11th.

16 THE DEFENDANT: Okay.

17 MR. NEWKIRK: Your Honor, pursuant to the rule I am  
18 required to serve Mr. Hines with life notice ten days  
19 prior to trial. January the 4th I would be unable to  
20 do that. I had intended on serving Mr. Hines with  
21 life notice today, however Mr. Hines previous offer  
22 would remain open until the conclusion of the week  
23 until Friday at the end of this Court term. But at  
24 this time I would ask the Court to allow me to serve  
25 Mr. Hines with live notice. I have required all the

1 documentation pursuant to the statute.

2 THE COURT: That is left up to you. You can do  
3 that.

4 MR. NEWKIRK: Your Honor, just to put on the  
5 record I have handed Mr. Hines a copy of my intention  
6 to seek a life without parole sentence if he is found  
7 guilty at trial pursuant to 17-25-45(b) of our codes  
8 of laws. Mr. Hines has two previous convictions that  
9 qualify distribution of Ecstasy within the proximity  
10 to a school that was 2008-GS-46-3000 and distribution  
11 of cocaine within the proximity of a park. That is  
12 2005-GS-46-02297. As you know he is charged with  
13 distribution of heroin, third offense, which  
14 constitutes a serious offense and he is therefore life  
15 eligible.

16 Mr. Hines's offer of 15 years will expire at the  
17 conclusion of this Court term.

18 THE COURT: Thank you.

19 MR. NEWKIRK: Thank you, Your Honor.

20 THE COURT: Thank you Mr. Hines.

21  
22 (END OF TRANSCRIPT)  
23  
24  
25

STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2016CP4603602

Travis Hines

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

Submitted by: The Court

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);  
☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

ORDER OF DISMISSAL

This order ☐ ends ☐ does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
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If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/R. Lawton McIntosh  
Circuit Court Judge

2155  
Judge Code

11/14/2017  
Date

This judgment was entered on November 21, 2017, and a copy mailed first class or placed in the appropriate attorney's box on November 21, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock Hill, SC 29730

Justin James Hunter PO Box 11549 Columbia, SC 29211-1549

---

ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

---

Court Reporter

---

David Hamilton - Clerk of Court

Court Reporter:

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Travis Hines,  
S.C.D.C. #310504,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-3602

ORDER OF DISMISSAL

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SOUTH CAROLINA  
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 9, 2016. Respondent made its Return on or about May 18, 2016. An evidentiary hearing into the matter was convened on July 31, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Chris Wellborn, Esquire, and Assistant Solicitor Ryan Newkirk also testified. Further, this Court has reviewed the Clerk of Court's records regarding the subject convictions, the transcript from Applicant's motion to relieve counsel dated December 15, 2015, the plea transcript dated December 17, 2015, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. This Court also had before it the following exhibits:

1. July 7, 2015 email from Christopher Wellborn to Ryan Newkirk regarding Travis Hines
2. August 12, 2015 email from Ryan Newkirk to Christopher Wellborn regarding Travis Hines
3. October 23, 2015 email from Ryan Newkirk to Christopher Wellborn with attached October 16, 2015 Drug Report submitted on October 8, 2015.

4. November 4, 2015 email from Ryan Newkirk to Christopher Wellborn regarding Travis Hines
5. November 13, 2015 email from Ryan Newkirk to Christopher Wellborn regarding Travis Hines

## I. PROCEDURAL HISTORY

Applicant is presently in the South Carolina Department of Corrections pursuant to orders of commitment from the York County Clerk of Court. Applicant was indicted at the December 2015 term of the York County Grand Jury for distribution of heroin (2015-GS-46-3685). Christopher Wellborn, Esquire, initially represented Applicant. Ryan Newkirk, Esquire, represented the State. On December 15, 2015, Applicant appeared with counsel before the Honorable Daniel Hall and moved to have Mr. Wellborn relieved as counsel. The court granted Applicant's request. On December 17, 2015, Applicant appeared *pro se* before the Honorable John C. Hayes, III, and pled guilty as indicted. Pursuant to a negotiated sentence, Applicant was sentenced to imprisonment for fourteen years and the corresponding proximity charge was dismissed (warrant 2014A4610200842). Additionally, Respondent would note that the State served a notice of intention to seek a life without parole sentence on December 15, 2015, but later negotiated the plea to the fourteen year sentence. Applicant did not appeal his guilty plea or sentence.

### PCR Allegations

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. Counsel procrastinated and hindered me from accepting a lesser sentence because he had not yet examined certain evidence.
  - b. Lack of communication with me as well as the solicitor put me in a position to be forced and coerced to plead guilty *pro se*.
  - c. Motions weren't filed and evidence wasn't reviewed in a timely manner and if counsel performed adequately the results would've been different.
  - d. Applicant was not advised of his right to counsel and self-representation.

- e. Applicant was not advised of his right to an appeal.
- 2. Prosecutorial misconduct by Assistant Solicitor Ryan Newkirk

## II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient: Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

### III. RELEVANT TESTIMONY

#### Applicant's Testimony

Applicant testified that Assistant Public Defender Mark McKinnon initially represented him. He testified that he was presented with a fifteen-year plea offer and a ten-year plea offer during this time. Applicant testified that he later retained Chris Wellborn ("Counsel") in April 2015.

Applicant alleged that Counsel was incompetent and unprofessional and never got discovery from the State. He testified that he is just now finding out the weight of the drugs. Applicant testified that Counsel told him that he was waiting on the videotape of the confidential informant buy and Counsel was only able to see this videotape in November 2015, after the plea offer had increased to eighteen years. Applicant testified that the videotape did not show a drug transaction but Counsel told Applicant that it looked like he was guilty. Applicant testified that Counsel was ineffective for hindering his ability to accept a plea to a lesser sentence because he had not seen the video.

Applicant testified that Counsel was ineffective for lack of communication and procrastinated, which hindered Applicant from accepting a lesser sentence. He testified that he met with Counsel once a month. Applicant testified that he received a ten-year plea offer while represented by Mr. McKinnon. Applicant testified that he also received a ten-year offer while represented by Counsel. He testified that Counsel said he would try to get a seven-year plea offer to a second offense charge. Applicant testified that the plea offer increased to fifteen years in October 2015 and Counsel relayed this to him. Applicant further testified that he was told about the potential for a sentence of life without parole in October 2015 but it was not official until December 2015.

Applicant testified that he was forced to plead guilty *pro se*. He testified that he appeared before Judge Hall with Counsel to plead guilty but he told the judge he was not satisfied with Counsel so Judge Hall would not take the plea. He testified that he appeared with Counsel before Judge Hall on December 15, 2015 to have Counsel relieved. Applicant testified that he called Jack Swerling to represent him but Mr. Swerling said that since the trial date was already set, he would not have enough time to prepare for his case. Applicant testified that Judge Hall told him that the case would move forward whether or not he was represented by an attorney the week of January 11, 2016.<sup>1</sup> Applicant further testified that Judge Hall did not go over his Faretta<sup>2</sup> warnings at this hearing.

Applicant testified that he spoke with Assistant Solicitor Ryan Newkirk and asked for a lower plea offer and Mr. Newkirk stated he could not give him a lesser amount of time. Applicant testified that Mr. Newkirk then relayed a fourteen-year plea offer and had him sign a plea agreement on December 16, 2015. Applicant testified that he then appeared before Judge Hayes on December 17, 2015 to plead guilty.<sup>3</sup> He testified that Judge Hayes never told him about his right to appeal, nor did Judge Hayes inquire as to why Applicant was proceeding *pro se*.

Applicant alleged prosecutorial misconduct for the State's failure to give information in regard to the plea offers.

#### Chris Wellborn's Testimony

Counsel testified that he was retained in April 2015 and sent his letter of representation to the York County Solicitor's Office.<sup>4</sup> He testified that on or about July 7, 2015 he received the electronic discovery from the State, which included still photos from the confidential informant

<sup>1</sup> December 15, 2015 Transcript p. 4, ll. 14-25; p. 5, ll. 1-15.

<sup>2</sup> Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975)

<sup>3</sup> Applicant's Guilty Plea Transcript December 17, 2015.

<sup>4</sup> Chris Wellborn filed a Motion/ *Brady* Motion and Rule 5 on or before April 23, 2015. See York County, Sixteenth Judicial Circuit Public Index, Case Number 2014A4610200841.

(CI) buy. He could not open the attached file and, at 11:25 a.m. sent an email response to Assistant Solicitor Ryan Newkirk requesting that he resend the attached file.<sup>5</sup> He testified that he did not want Applicant to plead guilty before they viewed the videotape of the CI buy.

Counsel testified that Applicant told him that he had received a ten-year offer while being represented by Mr. McKinnon. Counsel testified that he received an email reply from Mr. Newkirk on July 7, 2015 at 12:03 p.m. He testified that this reply email explained that the original offer sent to Mr. McKinnon was fifteen years but Mr. McKinnon talked him down to ten years.<sup>6</sup> The reply email also explained that the State would extend the ten-year plea offer for Counsel to relay to Applicant. Counsel testified that he told Mr. Newkirk that he wanted to see the CI buy video.

Counsel testified that he received another email from Mr. Newkirk on August 12, 2015 at 4:42 p.m. that that stated

"that upon further review and discussions with management, Mr. Hines offer from the State is that he plea to Distribution of Heroin 3rd offense for a negotiated 18 years. I would also like to tell you that upon review of his criminal record, which I have provided to you, he is eligible for a sentence of Life without Parole. If a trial is necessary in this case, the State will be seeking such a sentence. You previously inquired about reviewing information related to the confidential informant. I have reviewed that request with senior leadership and no further information regarding the informant will be released absent your client rejecting his offer. Please let me know if you any further questions or concerns."<sup>7</sup>

Counsel testified that by August 12, 2015 he had still not seen the CI buy video and did not want Applicant to plead guilty before receiving full discovery. On October 23, 2015, Counsel received the Drug Report from Mr. Newkirk.<sup>8</sup>

On November 4, 2015, Mr. Newkirk sent Counsel an email that stated:

<sup>5</sup> July 7, 2015 email from Christopher Wellborn to Ryan Newkirk regarding Travis Hines.

<sup>6</sup> Id.

<sup>7</sup> August 12, 2015 email from Ryan Newkirk to Christopher Wellborn regarding Travis Hines.

<sup>8</sup> October 23, 2015 email from Ryan Newkirk to Christopher Wellborn with attached October 16, 2015 Drug Report submitted on October 8, 2015.

Counsel testified that he appeared with Applicant before Judge Hall on December 15, 2015 for Applicant's motion to relieve him as counsel.<sup>11</sup> He testified that he did not have any knowledge of the case after that hearing.

Counsel further testified that Applicant did not reject the ten-year or fifteen-year plea offers. He testified that during that time, they were waiting to see the CI video and needed more information to make an informed decision about whether or not to plead guilty.

#### **Assistant Solicitor Ryan Newkirk's Testimony**

Assistant Solicitor Ryan Newkirk testified that Mark McKinnon was originally appointed on the case and he provided to Mark McKinnon the State's first plea offer February 20, 2015 after reviewing the file with Misti Shelton. The State's first plea offer was for fifteen years. He testified that he did not have a current recollection that shows a ten-year offer. He testified that the plea offer was increased to eighteen years in August 12, 2015, without Counsel Wellborn seeing the video, because of a concern among law enforcement and the Solicitor's Office based on Applicant's prior record and drug activity in the area. Mr. Newkirk testified that he did not consult with law enforcement.

Mr. Newkirk testified that from December 2015 to February 2015 the plea offer was for fifteen years. He testified that the offer was reduced to ten years from February 2015 to July 2015. He testified that in August the offer was increased to eighteen years. Mr. Newkirk testified that the ultimate plea offer was for fourteen years.

Mr. Newkirk testified that he did not want to risk exposing the CI because Applicant had been charged with murder and intimidation of a witness in the past. He testified that from July to November 2015, he and Counsel discussed making a protective order to allow Counsel to view the CI video.

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<sup>11</sup> Transcript, December 15, 2015.

"I sent you a copy of the drug report for Mr. Hines' case. I have placed him on the docket for the November 16, 2015 term of court. His offer of 18 years will expire at the conclusion of that term. If Mr. Hines would like to accept that offer, we need to schedule the plea for this term. If your client does not wish to accept the offer, I would like to schedule an offer rejection /Life without parole hearing that term. We could also discuss trial dates at that time if Mr. Hines does not wish to accept. Please advise what day of the week would be best for you."<sup>9</sup>

On November 13, 2015, Mr. Newkirk sent Counsel an email that stated:

"Pursuant to our previous conversation this week, I will prepare the relevant portions of the video for you to watch on Tuesday November 17, 2015. You will have to sign a protection order, which you told me you had no problem with. I would like your client to appear as well to ensure he is still in the community. Failure to appear will result in my requesting a bench warrant from the court. Mr. Hines' deadline to accept his offer of 18 years is the November 30th term of court. I intend on trial the week of December 14th. I will provide you with the life notice and certified convictions next week to ensure that I have complied with the 10 day requirement. Please let me know if you have any additional questions concerning this."<sup>10</sup>

Counsel and Mr. Newkirk signed a protective order on November 17, 2015 to view the video. Counsel testified he viewed the video on November 17, 2015, which showed the CI walking into Applicant's home and discussing a drug transaction along with Applicant sitting at a table packaging drugs. Counsel testified he relayed this information to Applicant. Counsel further testified that after he viewed the video, the plea offer decreased from eighteen years to fifteen years and he relayed this plea offer to Applicant. Counsel testified that he told Applicant the risk of going to trial would be a possible sentence of life without parole.

Counsel testified that he appeared with Applicant before Judge Hall on December 3, 2015 to plead guilty to the fifteen-year offer. He testified that Judge Hall went over Applicant's rights but did not accept the plea. That same day, Mr. Newkirk emailed Counsel stating the date for a Motion to Relieve Mr. Wellborn as counsel was set for December 15th and Applicant was on the docket.

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<sup>9</sup> November 4, 2015 email from Ryan Newkirk to Christopher Wellborn regarding Travis Hines.

<sup>10</sup> November 13, 2015 email from Ryan Newkirk to Christopher Wellborn regarding Travis Hines.

Mr. Newkirk further testified that he received a letter from Chris Wellborn on April 20, 2015 stating he was retained by Applicant. Further, Mr. Newkirk gave Counsel the Discovery and allowed him time to review it. Mr. Newkirk sent the drug report on October 23, 2015, and he had not seen the drug report for himself until October 16, 2015. He testified that he already provided Counsel with the incident report and still shots from the CI buy video. On November 17, 2015, Mr. Newkirk testified Counsel had a Protective Order and Counsel was able to review the video. Mr. Newkirk testified that it was not uncommon for defendants to plead guilty before seeing the entire video. He testified that Judge Hall did not accept Applicant's guilty plea on December 3, 2015 because he had not heard the terms of the negotiated plea.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcript from Applicant's motion to relieve counsel dated December 15, 2015, the plea transcript dated December 17, 2015, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. This Court also had before it the five email exhibits listed above and presented during the PCR hearing.

Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented. As a matter of general impression, this Court finds the testimony of Applicant's counsel to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

### **Ineffective Assistance of Counsel**

Applicant alleged that Counsel was ineffective by procrastinating and preventing him from accepting a lower plea offer because he had not yet received discovery or viewed the evidence in a timely manner. Applicant testified that Counsel did not see the CI videotape until after the plea offer had been increased from ten years to eighteen years. This Court finds Counsel was in communication with Mr. Newkirk throughout Applicant's case and received the State's plea offers and discovery materials. Mr. Newkirk provided credible testimony that he turned over discovery to Applicant as he received it. This Court finds that Counsel acted ethically and properly in waiting to review all discovery before advising Applicant to accept a guilty plea offer. Testimony from Counsel and Mr. Newkirk show that the two were in constant communication over the video evidence and eventually developed a protective order to allow Counsel to view the CI video. This Court finds that Counsel acted reasonably in advising Applicant to see the evidence before pleading guilty. Applicant has failed to show that Counsel was deficient in viewing the evidence in a timely manner as Counsel testified that he received and shared all discovery with Applicant including stills from the CI buy. Thus, this Court finds that Counsel did not procrastinate or prevent Applicant from accepting the plea offers because he was actively accumulating all evidence and working with the State to view the video.

Applicant further alleged that Counsel was ineffective for failing to communicate with Applicant and the solicitor, which led to Applicant being forced and coerced into pleading guilty. This Court finds that Applicant has failed to show that Counsel failed to communicate as the testimony shows that Counsel and Applicant met at least once a month and Counsel relayed all plea offers that he received from the State. As stated above, the testimony shows that Counsel received discovery and communicated with the State throughout his representation to view the

CI video. Applicant has failed to prove that he was prejudiced as he has failed to show exactly what communication Counsel should have undertaken or how this would have changed the outcome. Furthermore, this Court finds that Applicant has failed to prove that Counsel's actions forced him to plead guilty. During the plea colloquy, Applicant informed the plea judge that he was entering his plea freely and voluntarily and that no one had made promises or threats to cause him to plead guilty. Applicant made a motion to relieve Counsel from his case and given no indication that he was forced into making that motion. Accordingly, Applicant has failed to meet his burden of proving that Counsel was ineffective in this regard. This allegation must be dismissed.

**Applicant was not advised of his right to counsel and self-representation**

Applicant alleged that he was not advised of his right to counsel and self-representation. This Court finds this allegation is without merit. Applicant was aware of his right to counsel as he was represented by the public defender's office and hired Mr. Wellborn to represent him. The record reflects that on December 15, 2015, Applicant appeared with Mr. Wellborn before Judge Hall and moved to relieve Mr. Wellborn. Applicant told the court that he was not happy with Mr. Wellborn and was going to hire Jack Swerling to represent him. Judge Hall granted his motion to relieve Mr. Wellborn. Applicant appeared on December 17, 2015 *pro se* before Judge Hayes to plead guilty. At the beginning of the plea colloquy, Judge Hayes inquired as to Applicant's background, asking him his age, how far he proceeded in school, and his occupation. See Applicant's Guilty Plea Transcript p. 5-6. Judge Hayes then proceeded with the following colloquy:

The Court: You have a right to have an attorney represent you in regard to this charge and if you cannot afford one the State would be required to appoint an attorney to represent you within some limits. That is you would be appointed an attorney to represent you if you wish. If you

could not afford one the limitation being that you are assigned an attorney and that would be your attorney. It's dangerous for you to proceed without an attorney since you're not one and there is a benefit in having an attorney represent you. Do you understand that?

Applicant: Yes, sir.

The Court: Do you wish to have an attorney in regard to this charge or give up that right?

Applicant: I give up that right.

The Court: I find Mr. Hines has freely voluntarily knowingly and intelligently understanding the benefits of counsel and the danger of self-representation exercises his right to proceed *pro se*.

Guilty Plea Transcript p. 6.

It is well-established that a defendant may waive the right to counsel and proceed *pro se*. Dearybury v. State, 367 S.C. 34, 39, 625 S.E.2d 212, 215 (2006) (citing Faretta v. California, 422 U.S. 806 (1975)). Although a defendant's decision to represent himself may be to his own detriment, it "must be honored out of that respect for the individual which is the lifeblood of the law." Id. The proper inquiry is whether the record demonstrates that Applicant "made an informed choice to proceed *pro se*, with 'eyes open,'" in ruling on whether he made a knowing and voluntary waiver of counsel. Watts v. State, 347 S.C. 399, 402-03, 556 S.E.2d 368, 370 (2001).

Absent a specific inquiry by the trial court into the hazards of proceeding *pro se*, reviewing courts must examine the record to determine whether a defendant had sufficient background or was apprised of his rights by some other source. Gardner v. State, 351 S.C. 407, 412, 570 S.E.2d 184, 185 (2002). When determining if an accused has a sufficient background to understand the dangers of self-representation, the courts consider factors including: (1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether the accused knew the nature of the charge(s) and of the possible penalties; (4) whether the accused was represented by counsel

before trial and whether that attorney explained to him the dangers of self-representation; (5) whether the accused was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether the accused knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment. Gardner, 351 S.C. at 412-13, 570 S.E.2d at 186-87.

Here, the plea judge inquired Applicant's age and educational background where Applicant stated he was twenty-nine years old, still in college, and worked as an electrician's helper. It is clear Applicant was aware of the nature of the crimes and potential penalties as the plea judge informed him of this and he was previously served with the State's notice to seek life without parole before negotiating a plea deal with Mr. Newkirk. This Court finds that the plea court conducted a proper Faretta hearing, after which the plea court found Applicant freely, voluntarily, knowingly, and intelligently understood the benefits of counsel and the dangers of self-representation and exercised his right to proceed *pro se*. Applicant has failed to meet his burden of showing that the plea judge acted improperly or that he was not properly advised of his right to counsel and self-representation. This Court finds Applicant was well aware of his right to counsel and the plea judge conducted the proper inquiry. As Applicant has failed to meet his burden of proof, this allegation must be dismissed.

**Applicant was not advised of his right to an appeal**

Applicant alleges he was not advised of his right to an appeal. This Court finds this allegation must be dismissed. The South Carolina Supreme Court has held:

...absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to appeal from a guilty plea... The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal.

Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (S.C. 1995). See also Jones v. State, 382 S.C. 589, 677 S.E.2d 20 (2009); Turner v. State, 380 S.C. 223, 670 S.E.2d 373 (2008).

Applicant has not provided any proof that extraordinary circumstances existed requiring the plea judge to proactively advise Applicant of his right to appeal. As Applicant proceeded *pro se*, Mr. Wellborn was under no duty to advise him of this right as he had already been relieved as counsel when Applicant pled guilty. Because Weathers remains good law in South Carolina regarding guilty plea appeals, this Court finds that Applicant has not shown any extraordinary circumstances exist following his guilty plea. Applicant was noticed for LWOP but was able to work out a negotiated guilty plea with Mr. Newkirk to allow him to plead guilty to a sentence of fourteen years and a corresponding proximity charge would be dismissed. He has failed to show that he would have appealed this plea. Furthermore, the detailed plea waiver form was signed and initialed by Applicant, and includes Applicant's initials by the sentence stating "I understand that I have 10 days within which to appeal this guilty plea." This Court further finds that the plea judge was under no duty to advise Applicant of his right to appeal, and this allegation must be dismissed.

#### Prosecutorial Misconduct

Applicant alleged that the State committed prosecutorial misconduct by failing to share information. It is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

This Court finds that Mr. Newkirk provided credible testimony that he turned over all

evidence as he received it. Mr. Newkirk testified that he provided photographs from the CI buy but did not allow Counsel or Applicant to see the video while the plea offers were pending to protect the CI. He ultimately worked with Counsel to form a protective order and allowed Counsel to view the videotape in November. This Court finds that Applicant has failed to prove that the State committed prosecutorial misconduct. This Court finds that the State turned over discovery materials including photographs from the CI buy. This Court finds that the State has not committed prosecutorial misconduct for failing to share information

To the extent that Applicant alleges prosecutorial misconduct surrounding the plea offers, this Court finds that this allegation must be dismissed. Although Mr. Newkirk initially testified that there was not a ten year plea offer, his email to Counsel reveals that he did extend a ten year offer to Counsel and Applicant's former counsel, Mr. McKinnon. Applicant and Counsel both testified that they received a ten year offer. This Court finds that the State exercised within its rights when it increased the plea offer from ten years to eighteen years as the offer was not accepted by Applicant. This Court finds that Applicant has failed to show that the State acted inappropriately with regard to the plea offers as there is evidence that all plea offers were extended to Applicant and Counsel. This Court further finds that the State committed no misconduct as it gave Applicant proper and timely notice of its intent to seek life without the possibility of parole. Applicant has failed to prove that the State committed prosecutorial misconduct, and this allegation must be dismissed.

## V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing

professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

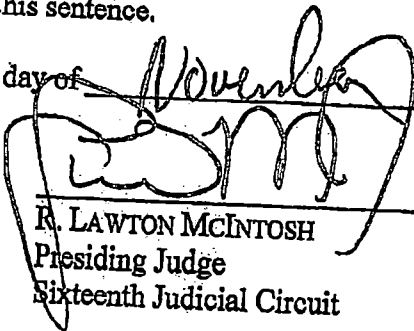
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of November, 2017.

Anders, South Carolina

  
R. LAWTON MCINTOSH  
Presiding Judge  
Sixteenth Judicial Circuit

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Presiding in York County

Case No. 2016-CP-46-3602

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DEC 29 2017

Travis Hines, #310504, ..... Appellant,

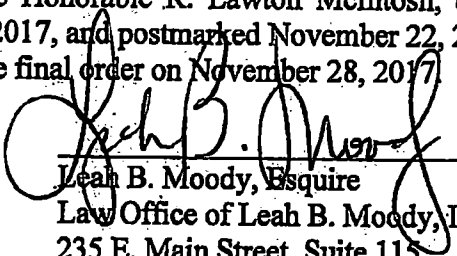
**S.C. SUPREME COURT**

v.

State of South Carolina, ..... Respondent.

NOTICE OF APPEAL

Travis Hines appeals the order of the Honorable R. Lawton McIntosh, dated November 14, 2017, mailed on November 21, 2017, and postmarked November 22, 2017. Appellant received written notice of entry of the final order on November 28, 2017.

  
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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

CERTIORARI TO YORK COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002632

Travis Hines, ..... Petitioner,

vs.

State of South Carolina ..... Respondent.

OPENING BRIEF OF PETITIONER

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AUG 01 2019

SC Court of Appeals

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### Questions Presented

Did the Post Conviction Relief Judge err in failing to find that the sentencing judge failed to establish that Travis Hines was adequately informed of the dangers of self representation and the advantages of having an attorney represent him at the time of the plea hearing when the record established that such issues were only dealt with in a *pro forma* fashion?

Did the Post Conviction Relief Judge err in failing to find the State committed misconduct when Travis Hines was required to plea without having the opportunity to review the video and did not obtain from the plea judge a waiver to his right to review the video?

## STATEMENT OF THE CASE

### *Procedural History*

Travis Hines entered a pro se plea to distribution of heroin on December 17, 2015. Judge John C. Hayes sentenced him to 14 years in prison. On December 9, 2016, Mr. Hines filed his Post Conviction Relief Petition. App. at 69. The State filed its Return on May 22, 2017. App. at 75. A hearing on the Post Conviction Relief hearing was held on July 31, 2017 before the Honorable R. Lawton McIntosh. By Order dated November 14, 2017, his Post Conviction Relief petition was denied. Mr. Hines filed his Notice of Appeal on December 28, 2017.

### *Factual History*

Travis Hines was arrested on December 26, 2014, on a charge of distribution of heroin that allegedly occurred on May 21, 2014. App. at 84. He was originally appointed by Mike McKinnon of the office of the York County Public Defenders Office to represent him. Discovery in this case was sent to Mr. McKinnon, but it did not include the drug report or the video of the alleged buy. App. at 58. The State, while Mr. McKinnon was representing Mr. Hines, offered a 10 year sentence for a guilty plea. Some time before July 7, 2015, Mr. Hines retained the services of Christopher Welborn as his attorney. Mr. Welborn sent the State his Rule 5 discovery request and his *Brady* motion. Mr. Welborn also originally received a 10 year plea offer. App. at 33, ll12-13. The State advised Mr. Welborn that the plea offer was based upon Mr. Hines not viewing the video tape of the alleged buy. App. at 35, ll 3-5. Mr. Welborn advised Mr. Hines that the proposal by the State to withhold the discovery unless the plea offer was rejected was “legally suspect.” App. at 35, ll 15-18. Mr. Welborn further testified that Mr. Hines in fact knew

who the informant was without looking at the video tape. App. at 35, l 12-13.

Without Mr. Hines formally rejecting the 10 year plea offer, the state increased the offer to 18 years. App. at 35, l23 to 36, l 7. Subsequently, the offer to Mr. Welborn was reduced to 15 years. Mr. Welborn further testified that as of August 12, 2015, Mr. Hines did not want to take the offer especially as he had not seen the video tape of the alleged buy. App. 37, ll 4-15. As Mr. Welborn stated “[P]ressure, sort of extortive process by which you give up your right to discovery and take the 18.” App. 37, ll 10-12.

Mr. Welborn further testified that he received the drug report on October 23, 2015. App. at 37, l 25. As of November 4, 2015, the offer was still 18 years. Mr. Welborn still had not seen the video. As he stated, “I was not recommending that to my client at that time that he plead guilty without looking at the video.” App. at 38, ll 6-7. On November 13, 2016, Mr. Welborn received an email from the solicitor stating that Mr. Welborn could view the portion of the video that the state determined to be relevant, but Mr. Welborn would have to sign a protective order. Mr. Welborn was able to review the portion of the video the State deemed relevant on November 17, 2015. App. 39, ll 5-20.

Assistant Solicitor Ryan Robert Newkirk confirmed the testimony of Mr. Welborn as to the policy of not showing the video to the defendant in a criminal case until the plea offer has been rejected and the case is going to trial. App. 56. ll 7-20. He acknowledged that it took from July until November 17 for Mr. Welborn, but not Mr. Hines, to be able to view the portion of the video the State deemed relevant. He testified that he did provide Mr. Welborn some stills from the video. Mr. Newkirk acknowledged that some defendants plea without ever looking at the video. He testified:

I know that certainly defendants have - - can and have plead waiving the drug report and waiving the right to see the video. I know that has happened. I wouldn't say that is an uncommon practice. App. at 59, ll 5-8.

Mr. Hines testified he did not understand how the plea offer went from 10 years to 15 years without his, or his lawyer, ever seeing the video. App. 13, ll 1-2. His complaint about Mr. Welborn was that Mr. Welborn had not obtained the video for him to view. App. 13, ll 20-22. On December 15, 2015, he appeared before Judge Daniel Hall to relieve Mr. Welborn as his attorney. At that hearing, Mr. Hines expressed a desire to hire another attorney. When asked by Judge Hall if he was going to represent himself, Mr. Hines responded "no." App. 113, ll 14-19. Thus, at that hearing, the judge had no need to give the warnings pursuant to *Faretta v. California*, 422 U.S. 806 (1975).

At the December 15, 2015 hearing to relieve Mr. Welborn, the state formerly notified Mr. Hines that they would be seeking life without parole. App. 118, ll 4-8. At that hearing, Judge Hall erroneously informed Mr. Hines, "And you understand that regardless who your lawyer is, the solicitor controls the docket . . . ." App. 114, ll 10-12. Mr. Hines expressed a desire to hire another lawyer that day. App. 114, ll 17-19.

Two days later, on December 17, 2015, Mr. Hines appeared before Judge John C. Hayes entering his plea without an attorney. At that plea, the solicitor represented to the Court:

I have no doubt in his intelligence or his understanding of the proceedings. He was advised of his right to counsel by Judge Hall on Tuesday when he relieved Mr. Welborn of his services. App. 101, ll 2-5.

\* \* \*

I tell you all that just to say that he has been advised of this right to

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<sup>1</sup> *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012)

counsel indicated to me he wishes to proceed on his own, and I have no doubt in his competency.  
App. at 101, ll 13-16.

After inquiring about his educational background, Judge Hayes had the following colloquy with Mr. Hines concerning his right to self representation:

THE COURT: You have the right to have an attorney represent you in regard to this charge and if you cannot afford one the State would be required to appoint an attorney to represent you within some limits. That is you would be appointed an attorney to represent you if you wish. If you could not afford one the limitation being that you are assigned an attorney and that would be your attorney. Its dangerous for you to proceed without an attorney since you're not one and there is a benefit in having an attorney to represent you.

Do you understand that?

MR. HINES: Yes, sir.

THE COURT: Do you wish to have an attorney in regard to this charge or give up that right?

MR. HINES: I give up that right.

THE COURT: I find Mr. Hines has freely voluntarily knowingly and intelligently understanding the benefits of counsel and the danger of self representation exercises his right to proceed pro-se. App. 102, ll 2-20.

After this discussion, Judge Hayes accepted the plea and sentenced Mr. Hines to 14 years in prison. Mr. Hines still had not seen the video. Judge Hayes did not ask if there were any outstanding discovery issues.

## Argument

### Question I

**Did the Post Conviction Relief Judge err in failing to find that the sentencing judge failed to establish that Travis Hines was adequately informed of the dangers of self representation and the advantages of having an attorney represent him at the time of the plea hearing when the record established that such issues were only dealt with in a *pro forma* fashion?**

#### *Standard of Review*

The first question to be answered is what is the standard of review in this case. As the waiver of the right to counsel involves at least a mixed question of law and facts, the standard of review should be *de novo*. The Fourth Circuit Court of Appeals acknowledges that the circuit are split as to the proper standard of review. “The proper standard of review when a defendant fails to object to a right-to-counsel waiver<sup>1</sup> is a question that has divided our sister circuits.” *United States v. Ductan*, 800 F.3d 642, 647 (4th Cir. 2015). As the waiver of a right to counsel is the waiver of a serious right, the proper standard should be *de novo*. As the Ninth Circuit has said, “Our requirements for reviewing the validity of a *Faretta* waiver are predicated on the fact that we do not expect pro se defendants to know the perils of self-representation, and consequently, we cannot expect defendants to recognize that they have not been correctly and fully advised, let alone to point out the court's errors. Accordingly, plain error review would be inappropriate, and we instead perform the simple *de novo* review in which we have customarily engaged.”

*United States v. Erskine*, 355 F.3d 1161, 1166–67 (9th Cir. 2004); *State v. Watlington*, 216 N.C. App. 388, 716 S.E.2d 671 (2011)(applying a *de novo* standard of review.) Not all states agree.

*State v. Watson*, 900 A.2d 702, 713 (2006)(“Accordingly, we will apply a bifurcated standard of review, reviewing any express or implicit factual findings for clear error, and the legal conclusion to be drawn from those facts *de novo*.”)

### *Argument*

A defendant under the Constitution of the United States of America has the right of self representation. *Faretta v. California*, 422 U.S. 806 (1975). This is subject to one rule - the court must adequately inform the defendant of the dangers and disadvantages of self representation. Among those dangers is the knowledge that an attorney can be of assistance in handling and investigating the case. The record in this case fails to establish that Travis Hines proceeded to waive his right to counsel with a full understanding of those rights and the consequences of self representation. The warnings required under *Faretta* apply to a guilty plea. *Osbey v. State*, 425 S.C. 615, 825 S.E.2d 48 (2019). They even apply to a re-sentencing hearing. *Wilson v. State*, 947 So. 2d 1225 (Fla. Dist. Ct. App. 2007)

This case should be controlled by *Osbey v. State*, 425 S.C. 615, 825 S.E.2d 48 (2019). At the plea, the assistant solicitor went through the history of the case including that Mr. Hines had relieved his retained counsel the previous week. He did not, however, advise the judge that Mr. Hines had stated at the previous hearing he was going to retain counsel for the case. App. at 113, ll 20-22. The assistant solicitor told the plea judge, “I tell you all that just to say that he has been advised of his right to counsel . . . .” App. at 101, ll 13-14. Apparently relying upon that representation, the plea judge conducted a very cursory examination about the dangers of self representation. In *Osbey* the defendant had been before the court on two occasions for a plea, once for a probation violation and once for a parole violation. This knowledge was not sufficient

to find Mr. Osbey knew the dangers of self representation.

The South Carolina Supreme Court in *Watts v. State*, 347 S.C. 399, 556 S.E.2d 368, \_\_\_\_ (2001) said “The judge did not ask Petitioner a single question about why he relieved his counsel or if he wished to have counsel present.” The same is true in this case. At the previous hearing to relieve counsel with whom Mr. Hines was not satisfied, Mr. Hines expressed every intent to obtain his own counsel. The judge, accepting his plea, never asked if he had contacted another attorney, why he dismissed his former attorney, whether that attorney had discussed with him the dangers of self representation, or any defenses he may have to the charges. The plea judge never asked Mr. Hines if he had had the opportunity to review the discovery so that he could make an intelligent decision to plea guilty.

In *Gardner v. State*, 351 S.C. 407, 570 S.E.2d 185 (2002) the South Carolina Supreme Court listed ten factors to be considered by the trial judge to determine if the defendant knowingly and intelligently waived his right to Counsel and elected to represent himself. Among those factors is “whether the exchange between the accused and the court consisted of merely *pro forma* answers to *pro forma* question.” *Id.* at 413, 570 S.E.2d at 187. Here the questions were in fact mere *pro forma* questions. When Mr. Hines was asked about the dangers of self representation, it was part of a series of three factors being stated by the plea judge. He simply answered “Yes, sir” to all three without any inquiry by the judge as to whether he understood each factor individually. App. 102, ll 2-13. He was never told what the dangers of self representation were. What Mr. Hines understood to be the dangers of self representation is not known, if he even understood that to be a separate issue from the other two factors.

Mr. Hines did state in the Plea Waiver Form that he understood “[T]here is a danger in

self representation.” App. at 87. But this waiver is questionable when the same form also shows Mr. Hines placed his initials beside the first statement that says, “The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea.” App. at 86. On the next page, Mr. Hines initials are also beside a statement that says, “My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any defenses I may have and he or she has done everything I have asked them to do. I am satisfied with his or her services.” App. 87-88. This statement cannot apply to Mr. Welborn as the previous week Mr. Welborn was relieved because he would not, or could not, obtain the video tape of the alleged drug buy. Obviously someone said “Initial here” without fully informing Mr. Hines of the meaning of the statement.<sup>2</sup>

Another factor the judge seeking a waiver of counsel must determine is “whether the accuse’s waiver resulted from either coercion or mistreatment.” *Id.* Both are present in this case. The plea judge was not told that just two days before, when Mr. Hines relieved his counsel and was going to obtain other counsel, the State gave Mr. Hines their notice to seek life without parole. Notwithstanding these coercive factors, the plea court never asked Mr. Hines if the fact the state was going to seek life without parole was the deciding factor in his determination to plea guilty. Whether the plea judge knew Mr. Hines was facing life without parole is not known. While this was not physical mistreatment, it certainly was coercive in that he was threatened with life without parole. The plea judge was not informed that Mr. Hines had not had the opportunity to review all the discovery. This fact in prevented Mr. Hines from knowing all the facts about

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<sup>2</sup> A solicitor could very easily prepare a *Faretta* Waiver Form which would contain all of the requirements of *Faretta*. This form could then be used by the court to determine if a defendant truly understands the dangers of self representation.

his case before he entered his plea. Knowing the facts of one's case would seem to be a requirement for a free and voluntary plea.

If the plea judge had asked Mr. Hines, "Have you had the opportunity to review all the discovery?" and Mr. Hines had said, "no," the plea judge would not have taken the plea without a further waiver of the right of Mr. Hines to review the evidence against him. Had the plea judge conducted a basic inquiry as to why Mr. Hines relieved his previous counsel, the discovery issue would have been revealed.

"In a PCR action, if the record fails to demonstrate the petitioner made an informed choice to proceed pro se with 'eyes open,' then the petitioner did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial." *Gardner* at 402-403, 556 S.E.2d at \_\_\_\_\_. The record in this case does not demonstrate that Mr. Hines proceeded with his "eyes open." Further demonstrating this is the fact that while the plea judge informed Mr. Hines of his rights, he did so in a group so that the record is not clear as to whether Mr. Hines understood each individual right. In *Gardner*, the South Carolina Supreme Court took note of the failure of the plea judge to inform the defendant of her rights under *Boykin v. Alabama*, 395 U.S. 238 (1969). The Court said:

[A]lthough the guilty plea proceedings did not consist merely of *pro forma* questions and answers, the transcript on its face poses several other problems which would indicate the plea itself was not knowing and voluntary. This Court and the United States Supreme Court have held that before a court can accept a guilty plea, a defendant must be advised of the federal and state constitutional rights he or she is waiving. *Id.* at 413, 570 S.E.2d at \_\_\_\_\_.

The record in this case establishes both that the waiver of counsel and the dangers of self representation were mere *pro forma* and did not fully inform Mr. Hines of the rights he was

waiving. The South Carolina Supreme Court has since 2014 mandated that a "Faretta Warning" form be signed by every defendant proceeding pro se in magistrate's court. See Form SCCA 684. The rights on that form are more substantial than the rights read to Mr. Hines in this case. A defendant facing 14 years in prison should be informed of the dangers of self representation on a level at least equal to one facing 30 days in jail. The record in this case as a matter of law is inadequate to establish Travis Hines was properly informed of the dangers of self representation. He should be granted a new trial.

This Court should establish a proper procedure of trial judges when confronted with a defendant desiring to represent himself. The Ninth Circuit Court of Appeals has suggested the following language:

The court will now tell you about some of the dangers and disadvantages of representing yourself. You will have to abide by the same rules in court as lawyers do. Even if you make mistakes, you will be given no special privileges or benefits, and the judge will not help you. The government is represented by a trained, skilled prosecutor who is experienced in criminal law and court procedures. Unlike the prosecutor you will face in this case, you will be exposed to the dangers and disadvantages of not knowing the complexities of jury selection, what constitutes a permissible opening statement to the jury, what is admissible evidence, what is appropriate direct and cross examination of witnesses, what motions you must make and when to make them during the trial to permit you to make post-trial motions and protect your rights on appeal, and what constitutes appropriate closing argument to the jury.

*United States v. Hayes*, 231 F.3d 1132, 1138–39 (9th Cir. 2000)

Even this suggestion should be further broken down into individual questions. The *Faretta* warnings should be like this:

The court will now tell you about some of the dangers and disadvantages of representing

yourself.

1. You will have to abide by the same rules in court as lawyers do. Even if you make mistakes, you will be given no special privileges or benefits, and the judge will not help you. Do you understand?
2. The government is represented by a trained, skilled prosecutor who is experienced in criminal law and court procedures. Do you understand?
3. Unlike the prosecutor you will face in this case, you will be exposed to the dangers and disadvantages of not knowing the complexities of jury selection, what constitutes a permissible opening statement to the jury, what is admissible evidence, what is appropriate direct and cross examination of witnesses, what motions you must make and when to make them during the trial to permit you to make post-trial motions and protect your rights on appeal, and what constitutes appropriate closing argument to the jury. Do you understand?
4. If you fail to make a proper objection at the proper time, you may forfeit that issue on appeal in the event of a guilty verdict. Do you understand?

These question, in addition to making a determination as to the intellectual capabilities of a defendant would clearly and unequivocally explain to a defendant seeking to represent themselves the pitfalls of self-representation. In the Benchbook for U.S. District Court Judges, (Federal Judicial Center March 2013) 6<sup>th</sup> Ed. § 1.02 Assignment of counsel or pro se representation at 6-7, fourteen question are suggested to be asked. While some apply to federal court only, a modification for state court would not be difficult.

While a guilty plea might not require such an extensive examination, at the very least the defendant should be informed that without the assistance of counsel he may be waiving defenses

that he does not know about because he is representing himself. He should be informed that if he enters a plea any valid defense he has, even if he does not know about it, will be waived. No such basic information was given to Mr. Hines. The waiver of counsel in this case does not comply with the requirements of *Faretta*.

## Question II

**Did the Post Conviction Relief Judge err in failing to find the State committed misconduct when Travis Hines was required to plea without having the opportunity to review the video and did not obtain from the plea judge a waiver to his right to review the video?**

The testimony in this case establishes that while Christopher Welborn had the opportunity to review the portion of the video that the State deemed relevant, Mr. Hines never had the opportunity to do more than review a couple of still pictures. The testimony shows that Mr. Hines wanted to review the video and that Mr. Welborn agreed that he should have the opportunity.

Over ten years before this case arose, then Chief Justice Jean H. Toal issued a Memorandum dated March 1, 2004 saying the it was a violation of Rule 3.4, RLDE, Rule 407, SCACR to make a plea agreement contingent upon the defendant not viewing all the discovery. As Chief Justice Toal warned in the Memorandum "This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel based on the claim that the plea was not voluntary because the applicant did not have access to the solicitors file." The future is now here. Assistant Solicitor Ryan Robert Newkirk confirmed that the practice of making the plea contingent up not reviewing the discovery continues as of the date of the

hearing notwithstanding the Memorandum issued by Chief Justice Toal over ten years earlier.

App. at 59, ll 5-8.

The lower court found “Mr. Newkirk provided credible testimony that he turned over all evidence as he received it.” App. 134 to 125. There is simply no basis in the record to reach this determination. As noted above, Mr. Newkirk testified it is the policy of his office in some cases, and this being one, not to turn over all the relevant evidence unless the defendant rejects the plea offer. There truly can be no more difficult a decision than to be forced to either accept a plea offer of 14 years and not review all the discovery, or view the discovery and run the risk of life without parole. No defendant should be forced to make this decision.

Of course a defendant may waive the right to view the discovery if he believes it is in his best interest to do so. But that did not happen in this case. The State knew Mr. Hines had not seen the discovery. While Mr. Welborn, after viewing the relevant portion of the video, might conclude that Mr. Hines was involved in drugs in the video, it is not Mr. Welborn’s call. App. at 40, ll 12-24. The final decision of a client to enter a plea is that of the client, but a client who has not seen all the discovery that is available, truly cannot make an informed decision. While Mr. Welborn may draw one conclusion from the video, Mr. Hines could have as easily pointed out why Mr. Welborn was wrong, if he had had the opportunity to view the video.

Utah has a very specific Rule that requires the discovery be given to the defendant before he signs a plea agreement. The Rule provides, “(b) Timing of prosecutor’s disclosures. The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead.” Utah R. Crim. P. 16

Thus, as Travis Hines notwithstanding his desire to view the video of the alleged buy, had

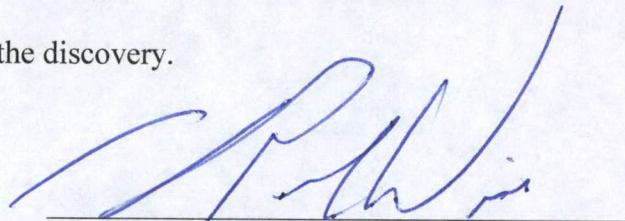
not seen the video, his plea of guilty was, as a matter of law, not freely and voluntarily given and should be set aside. If this Court does not reverse the order of the Post Conviction Relief judge, the only thing that can be guaranteed is that more defendants will be entering pleas without having viewed all the discovery. In some cases the result may indeed be proper. In some cases it will not be proper. No one will know unless the defendant actually views the video or knowingly and intelligently waives that right.

This Court should reverse the order of the lower court and grant Travis Hines a new trial.

### CONCLUSION

For the foregoing reasons this Court should reverse the lower court and hold that the record in which Travis Hines waived his right to counsel and elected to represent himself fails to establish that the waiver was knowingly and intelligently given and remand this case to the lower court for a new trial. This Court should further hold that a solicitor cannot make a plea offer contingent upon the defendant not reviewing all the discovery.

July <sup>30<sup>th</sup></sup> 2019



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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**ORIGINAL**

CERTIORARI TO YORK COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2017-002632

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**RECEIVED**  
DEC 04 2019  
SC Court of Appeals

TRAVIS HINES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**BRIEF OF RESPONDENT**

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IN THE COURT OF APPEALS

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CERTIORARI TO YORK COUNTY  
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### **RESPONDENT'S STATEMENT OF THE ISSUES**

- I. Did the post-conviction relief court correctly find Petitioner was aware of his right to counsel and knowingly, intelligently, and voluntarily waived his right to counsel after being adequately informed of the dangers of proceeding *pro se* by two different judges prior to entering his guilty plea *pro se*?
- II. Did the PCR Court properly deny Petitioner's claim that the State committed prosecutorial misconduct by offering the Petitioner a plea contingent on Petitioner not viewing the video and further did not obtain a waiver of his right to view the video during his guilty plea?

## STATEMENT OF THE CASE

Petitioner is presently in the South Carolina Department of Corrections pursuant to orders of commitment from the York County Clerk of Court. During the December 2015 term, the York County Grand Jury indicted Petitioner for distribution of heroin (2015-GS-46-3685). Assistant Public Defender Mike McKinnon (McKinnon) originally represented Petitioner, but was effectively relieved when Petitioner hired Christopher Wellborn, Esquire (Wellborn). Assistant Solicitor Ryan Newkirk (Newkirk) of the Sixteenth Circuit Solicitor's Office prosecuted Petitioner's case.

On December 15, 2015, Petitioner appeared before the Honorable Daniel Hall and moved to have Wellborn relieved as counsel. Prior to the court relieving Petitioner's counsel, Petitioner was informed by the State that they intended to call the case for trial on January 11, 2016. Petitioner told the court he understood his case would be called for trial the week of January 11, 2016 and intended to hire another attorney that day. The court granted Petitioner's request and relieved Wellborn as his counsel. The court informed Petitioner that it would not appoint Petitioner any more lawyers. The court further indicated that he needed to hire an attorney prior to January 4, 2016, and if he had not, the court would need to make sure he understood his right to represent himself because the State would be proceeding to trial on January 11, 2016.

On December 17, 2015, Petitioner appeared *pro se* before the Honorable John C. Hayes, III, and pled guilty as indicted. Pursuant to negotiations between Petitioner and the State, Judge Hayes sentenced Petitioner to a term of fourteen years imprisonment.<sup>1</sup> Petitioner signed a Plea Waiver Form, which indicated Petitioner understood and waived his rights. Petitioner did not appeal his guilty plea or sentence.

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<sup>1</sup> Petitioner's corresponding proximity charge (warrant 2014A4610200842) was dismissed.

Petitioner filed his application for post-conviction relief on December 9, 2016 alleging ineffective assistance of counsel on the following grounds:

- 1) "Counsel procrastinated and hindered me from accepting a lesser sentence because he had not yet examined certain evidence."
- 2) "Lack of communication with me as well as the solicitor put me in a position to be forced and coerced to plead guilty."
- 3) "Motions weren't filed and evidence wasn't reviewed in a timely manner and if counsel performed adequately the results would've been different."

Respondent made its Return on May 22, 2017. On July 31, 2017, an evidentiary hearing was held at the Moss Justice Center in York, South Carolina before the Honorable R. Lawton McIntosh. Petitioner was represented by Leah Moody, Esquire. Respondent was represented by Assistant Attorney General Justin Hunter. At the evidentiary hearing, Petitioner testified on his own behalf. Wellborn, and Newkirk testified for the State. By order filed August 8, 2017, Judge McIntosh denied Petitioner's application in its entirety.

Petitioner filed a timely notice of appeal and a Petition for Writ of Certiorari.

## STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 179 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Caprood, 338 S.C. at 109, 525 S.E.2d at 517; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the [proceeding] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

## ARGUMENT

### **I. The Post-Conviction Relief Court properly found Petitioner was adequately informed of the dangers of self-representation and the advantages of having an attorney represent him at the time of the plea.**

Petitioner asserts he was not properly informed of the dangers of self-representation prior to proceeding *pro se* in his guilty plea. However, the post-conviction relief court properly denied Petitioner post-conviction relief, as Petitioner was adequately informed by two separate judges of the dangers of proceeding *pro se* and Petitioner knowingly and intelligently waived his right to counsel. This Court should affirm the decision of the lower court.

To establish a valid waiver of counsel, Faretta requires the accused be: (1) advised of the right to counsel; and (2) adequately warned of the dangers of self-representation. Bridwell v. State, 306 S.C. 518, 413 S.E.2d 30 (1992) (citing Faretta v. California, 422 U.S. 806; Prince v. State, 301 S.C.2d 575, 576 (1990) (“Faretta requires that a defendant ‘be made aware of the dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open.’”) (citation omitted).

In evaluating the voluntariness of a defendant’s waiver of counsel, the only standard is whether the “record demonstrates the defendant’s decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied.” Gardner v. State, 351 S.C. at 411-412, 570 S.E.2d at 186 (2002) (internal citations omitted).

Here, Petitioner was appointed McKinnon from the Sixteenth Circuit Public Defender’s Office and effectively relieved McKinnon when he retained Wellborn. (App. 116.) Then on December 15, 2015, Petitioner relieved Wellborn at a hearing before Judge Hall. During that hearing, Petitioner was informed by the State that Petitioner’s case was being called for trial the

week of January 11, 2016. Petitioner was also served with notice that the State would be seeking life without parole if Petitioner was convicted at trial. Petitioner explained he had plans on hiring Jack Swerling and indicated to Judge Hall he would be hiring him “today[.]” (App. 114.) Petitioner clearly understood the benefit of counsel as he hired one defense attorney and indicated to the court he would be hiring another prior to proceeding with his case. Petitioner was provided time to hire Jack Swerling, or any other defense attorney of his choice, however, Petitioner failed to do so. Instead, Petitioner approached Newkirk after the hearing and just two days later Petitioner knowingly, intelligently, and voluntarily, entered his guilty plea before Judge John C. Hayes, III. During his guilty plea Newkirk informed Judge Hayes, “[Petitioner] has been advised of his right to counsel indicated to me he wishes to proceed on his own and I have no doubt in his competency or his understanding.” (App. 101.) During that hearing, the following colloquy occurred:

**Judge Hayes:** You have a right to have an attorney represent you in regard to this charge and if you cannot afford one the State would be required to appoint an attorney to represent you within some limits. That is you would be appointed an attorney to represent you if you wish. If you could not afford one the limitation being that you are assigned an attorney and that would be your attorney. Its dangerous for you to proceed without an attorney since you’re not one and there is a benefit in having an attorney represent you. Do you understand that?

**Petitioner:** Yes, sir.

**Judge Hayes:** Do you wish to have an attorney in regard to this charge or give up that right?

**Petitioner:** I give up that right.

**Judge Hayes:** I find [Petitioner] has freely voluntarily knowingly and intelligently understanding the benefits of counsel and the danger of self representation exercises his right to proceed pro se.

(App. 102.) Petitioner then proceeded through a thorough colloquy with Judge Hayes where he waived his constitutional rights, indicated he was guilty, agreed with the facts set forth by the State, and apologized to the court for “being up here once again.” (App. 106.)

Petitioner alleges he was not adequately warned regarding the dangers of self-representation; specifically Petitioner claims he did not know he may be waiving defenses when he chose to enter his guilty plea. However, Petitioner was arrested on December 26, 2014, bonded out on December 27, 2014, and had counsel within days of his arrest as McKinnon filed a Brady motion in Petitioner’s case by January 5, 2015. Petitioner had the benefit of counsel from at least January 2015 until December 15, 2015 when he appeared before Judge Hall and voluntarily relieved his second attorney, Wellborn, whom he had retained. Petitioner was only without counsel for *one full day* prior to entering the guilty plea, which he negotiated on his own behalf on December 17, 2015. For the nearly one year prior to his guilty plea, Petitioner had the benefit of counsel. Wellborn testified he filed discovery motions and reviewed discovery and potential defenses with Petitioner. (App. 31-32.) Wellborn also testified he received copies of the drug report, viewed the CI video, and communicated to Petitioner the contents of the video. (App. 39-40.) Wellborn testified he reviewed Petitioner’s constitutional rights with him and “. . . it was certainly made clear to [Petitioner] he had a right to counsel because he hired one.” (App. 43.) Wellborn went on to testify Petitioner was fully aware of his right to trial, but he felt it was not in Petitioner’s best interest to proceed to trial. (App. 43, 48.) Wellborn testified Petitioner made the decision by “the end of November to handle a plea as of December [3, 2015]. That was a mutual decision by [Petitioner] and myself. I don’t get to make those calls whether someone pleads guilty or not. That is a client’s decision.” (App. 48.)

Based on Wellborn's testimony, it is clear Petitioner, with the full benefit of his retained counsel, had decided to enter a plea in his case prior to relieving Wellborn. Although Petitioner indicated to Judge Hall that he intended to hire Jack Swerling, Petitioner chose to forgo counsel and enter into plea negotiations with Newkirk on his own behalf. At that time, Petitioner was fully aware of his constitutional rights, potential defenses, and had reviewed discovery with Wellborn. Petitioner was fully apprised of the case against him, and had already made the decision to enter a plea prior to relieving Wellborn. Petitioner's claim that he was unaware of the dangers of proceeding *pro se* are meritless as he was only *pro se* for one full day before entering the guilty plea he had previously decided to enter while he had the benefit of counsel.

Further, during Petitioner's plea hearing, Judge Hayes conducted the following colloquy with Petitioner:

**Judge Hayes:** [Petitioner], how old are you?

**Petitioner:** Twenty-nine.

**Judge Hayes:** How far did you go in school?

**Petitioner:** I'm in college.

**Judge Hayes:** Were [sic] are you in college?

**Petitioner:** York Tech.

**Judge Hayes:** What do you do - - Do you have a job too?

**Petitioner:** Yes, sir.

**Judge Hayes:** What do you go?

**Petitioner:** I'm an electrician's helper.

(App. 101-102.) In State v. Cash, the court listed ten factors in determining whether a defendant had sufficient background to make a valid waiver of counsel. Specifically, the court listed:

(1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment.

State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct.App.1992).

In Cash this Court found Cash had a sufficient background to understand the disadvantages of self-representation. Specifically, the court noted Cash was forty-six years old, had six years of college, and had been previously involved in criminal proceedings. Id. at 44. The court noted Cash understood the nature of the charges against him and the possible penalty. Id. The court noted there was no indication Cash was represented by counsel before trial or that an attorney advised him of the difficulty of self-representation, the record showed that Cash appreciated the difficulty of his particular case. Id. The court cited to Cash's statement that he could do a better job of preparing his defense than a public defender. Id. The court cited that there was no indication Cash was attempting to delay or manipulate the proceeding in declining the assistance of counsel. Id. at 45. The trial judge appointed stand by counsel for Cash. Id. The court noted that Cash was aware that he would be required to comply with the procedural rules. Id. The court noted that Cash was aware prior to trial of possible legal challenges he could raise in defense to the charge against him. Id.

Similarly, Petitioner also has a college level education, has been involved in criminal proceedings previously, understood the charges and potential sentence in his case, and was aware of the possible defenses he could raise at trial. However, unlike Cash, Petitioner also had the

benefit of his *retained counsel*, Wellborn, for all but one full day prior to entering his guilty plea. Wellborn testified he reviewed discovery with Petitioner, viewed the CI videotape, communicated to Petitioner what was on the video, and had indicated to Petitioner he did not feel it was in his best interest to proceed to trial. (App. 31, 41, 48.) According to Wellborn, Petitioner already decided to plead guilty by the end of November prior to relieving Wellborn on December 15, 2015.

Petitioner alleges he did not proceed *pro se* with his “eyes open” because the plea judge did not inform Petitioner of his rights individually, rather he explained them in a group. (BOP. 10.) However, the record shows Petitioner was informed of his right to counsel individually at the outset of his guilty plea hearing. (App. 102.) Petitioner responded he understood that right, and stated, “I give up that right” when Judge Hayes asked Petitioner if he wished to have an attorney represent him on his charge. (App. 102.) Petitioner’s remaining rights were clearly explained by Judge Hayes, and Petitioner was provided several opportunities to ask questions. Petitioner indicated he understood his rights and wanted to plead guilty. (App. 105.)

Petitioner also asserts his case should be controlled by Osbey v. State, 425 S.C. 615, 825 S.E.2d 48 (2019). However, Petitioner’s case is distinguishable from Osbey because Osbey *never* had the assistance of counsel in his case despite his testimony that he attempted to have counsel appointed. Osbey was told by “a court official” on three separate occasions that he would have to submit an application through the public defender’s office in order to obtain a public defender. On the date of his plea, Osbey told the plea court he was trying to obtain an attorney the week before his plea, but was told it was too late. Osbey entered a guilty plea and was sentenced to eight years in prison, followed by three years probation. Id. at 617-618, 825 S.E. 2d at 49. On appeal from the denial of his post-conviction relief application, this Court found the record did not show that Osbey had been warned of the dangers of self-representation.

Here, unlike Osbey, Petitioner was appointed counsel (McKinnon) within days of his arrest in December 2014. Petitioner later retained Wellborn and enjoyed the benefit of his representation for nearly six months until Petitioner elected to have him removed just two days before entering his guilty plea. Additionally, unlike Osbey, Petitioner did not tell Judge Hayes he was trying to obtain an attorney during his guilty plea proceeding, rather Petitioner was again informed of his right to counsel, warned about the dangers of proceeding *pro se*, and elected to waive his right to counsel and enter the guilty plea he negotiated *pro se*. (App. 102.) Petitioner, unlike Osbey, had the benefit of two attorneys while his case was pending, Petitioner was also able to review and discuss the discovery with Wellborn, and, according to Wellborn's testimony, Petitioner had already decided to enter a guilty plea well before Petitioner relieved him. Further, Judge Hall gave Petitioner until January 4, 2016 to obtain his *third* attorney, but Petitioner chose to forgo hiring Jack Swerling as Petitioner testified he intended to do *that day*, and sought out Newkirk to negotiate his own plea deal, which ended up being one year *less* than the plea offer Wellborn negotiated. Petitioner chose to proceed to court on December 17, 2015, without counsel to accept that plea. Petitioner was questioned about whether he wanted counsel, and Petitioner waived his right to counsel and knowingly, intelligently, and voluntarily entered his guilty plea.

Petitioner alleges his waiver through the Plea Waiver Form is questionable because of the following statements he initialed on the form:

I have agreed to plead guilty, no contest, or enter a plea under N.C. v. Alford as part of a plea arrangement. The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea.

My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any defenses I may have and he or she has done everything I have asked him to do. I am satisfied with his or her services.

(App. 86-88.) Petitioner signed this form on December 15, 2015, the same day he relieved Wellborn. By that date, according to Wellborn's testimony, Petitioner had reviewed discovery with Wellborn, was provided information regarding what was on the CI videotape, and had reviewed any possible defenses with Wellborn, so, although Petitioner claims he was not satisfied with Wellborn's representation, Wellborn clearly informed Petitioner of the "factual and legal issues" surrounding his case. Further, Wellborn testified Petitioner made the decision to plead guilty at the end of November before relieving Wellborn and entering his guilty plea *pro se*. Petitioner also initialed next to several statements explaining Petitioner's various rights he is waiving by entering his guilty plea. Among the rights listed is Petitioner's right "to be represented by a lawyer at all stages of the proceedings. ...I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself. Understanding this, I give up this right." (App. 87.) Petitioner initialed next to each of the enumerated rights he chose to waive and signed the document. (App. 86-89.) Petitioner clearly understood his right to counsel and the benefit of counsel because on the same day he signed the Plea Waiver form he relieved his *retained* counsel and told Judge Hall he intended to hire Jack Swerling "today." It is unreasonable to believe that was Petitioner's actual intention since he sought out Newkrik immediately after his hearing and negotiated his own plea deal. The Plea Waiver Form shows Petitioner's intention was to waive his right to counsel, and take advantage of a favorable plea deal.

Petitioner further alleges Judge Hayes did not inquire as to why Petitioner dismissed his former attorney, whether that attorney had discussed the dangers of proceeding *pro se*, or if he had the opportunity to review his discovery. There is no script during Faretta hearings a judge must undertake with a defendant in order for their waiver to be valid. The record before this Court clearly shows Petitioner was aware of his right to an attorney, warned on the record regarding the

dangers of proceeding *pro se*, and elected to proceed *pro se* in entering the guilty plea he negotiated for himself with Newkirk the day he relieved Wellborn. Judge Hayes correctly found Petitioner “freely voluntarily knowingly and intelligently” invoked his right to proceed *pro se*. (App. 106.)

Ultimately, Petitioner knowingly and intelligently waived his right to counsel and proceeded *pro se* in his guilty plea. As the record shows, on the same day Petitioner relieved Wellborn, Petitioner sought out Newkirk, negotiated his plea deal, and signed the Plea Waiver Form establishing the terms of his negotiated guilty plea and waiving his rights. The record also shows, Petitioner was aware of his right to counsel, provided an opportunity to retain counsel, and elected to waive that right and proceed *pro se* in his guilty plea proceeding where he was able to take advantage of the plea offer he negotiated. Petitioner has failed to establish that he received inadequate warnings regarding self-representation and did not know the disadvantages of proceeding *pro se* in his plea. The post-conviction relief court properly denied relief and this Court should affirm the lower court’s decision.

**II. The Post-Conviction Relief Court properly denied Petitioner’s assertions that the State committed prosecutorial misconduct by making his plea contingent on Petitioner not viewing the video and by not obtaining a specific waiver of his right to view the video during his guilty plea.**

Petitioner argues, pursuant to Brady v. Maryland, 373 U.S. 83 (1963), the State committed prosecutorial misconduct and his plea was not voluntarily entered because the State did not disclose the video of the drug transaction to him personally. The South Carolina Supreme Court has already rejected that such a requirement exists in Hyman v. State, 397 S.C. 35, 45–47, 723 S.E.2d 375, 380–81 (2012), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The post-conviction relief court properly denied this allegation and this Court should affirm the post-conviction relief court’s decision.

Petitioner alleges the post-conviction relief court erred in finding Newkirk's testimony credible that he turned over "all evidence as he received it." (BOP. 14.) However, the post-conviction relief court properly found Newkirk's testimony credible as it was corroborated by Wellborn at the evidentiary hearing. Wellborn testified he received electronic discovery from the State on July 7, 2015. (App. 31.) Wellborn testified the discovery included still photos from the CI drug buy. (App. 31.) Newkirk complied with Brady and the holding in Hyman in providing that information to Wellborn at that time.

The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." Porter v. State, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2006) (internal citation omitted). Brady evidence is either favorable exculpatory evidence or favorable impeachment evidence. Porter, 368 S.C. at 384, 629 S.E.2d at 356 (citing United States v. Bagley, 473 U.S. 667, 676 (1985)). "Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense." Id. (citing State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998)). A "reasonable probability" is demonstrated when the suppression "undermines confidence in the outcome of the trial." Id. (quoting United States v. Bagley, 473 U.S.667, 678). The State must disclose Brady evidence even when a criminal defendant does not specifically request the evidence. Id. (citing United States v. Agurs, 427 U.S. 97, 107 (1976)).

In Gibson, the South Carolina Supreme Court set forth "framework" to evaluate Brady violation claims. The Court held:

[An applicant] may challenge the voluntary nature of his guilty plea in a PCR action by asserting an alleged Brady violation. ...Consequently, we utilize the following framework to evaluate the success of a PCR applicant's claim: (1) whether the evidence in

question was favorable to the applicant; (2) whether the prosecution knew or had the evidence in its possession; (3) whether the prosecution suppressed the evidence; and (4) whether the evidence was material to Petitioner's guilt or punishment. We held that these factors applied in the guilty plea context to both exculpatory evidence and evidence to be used for impeachment purposes.

Gibson v. State, 334 S.C. 515, 514 S.E.2d 320, 324 (1999), (internal citations omitted).

Further, Gibson found that disclosure to Petitioner personally was not required in order for the solicitor to satisfy Brady. The Court also stated Brady would not apply to the disclosure of inculpatory evidence.

Under the present facts, it is undisputed that the solicitor disclosed the videotape to defense counsel. Therefore, in order to find that this action amounts to impermissible suppression under Brady, we must first assume that the Constitution requires disclosure of Brady evidence to a criminal defendant *personally*. We are unwilling to make that sweeping assumption, and find that disclosure to defense counsel was satisfactory under the present circumstances. Further, because we deem the manner of disclosure appropriate, Petitioner cannot satisfy the materiality prong of Brady. ...Finally, Petitioner has not proven that the videotape was favorable to him. By all accounts, including defense counsel's testimony, the videotape depicted Petitioner engaged in a drug transaction with a confidential informant. Because the evidence is *inculpatory*, Brady is inapplicable.

Gibson, 334 S.C. 515, 514 S.E.2d 320, 324 (1999), (emphasis in original quote).

In Hyman, the South Carolina Supreme Court found disclosure to Petitioner personally was *not required* in order for the State to satisfy Brady. Hyman also clearly states that making the video available for defense counsel to view and providing still photographs from the video to the petitioner was an "appropriate balance."

...the State not only disclosed the existence of the videotape, but also made the evidence available for inspection by defense counsel. The State even took the extra step of generating still photographs to assuage Petitioner's concerns about the contents of the videotape. ...Here, the State struck the appropriate balance by allowing defense counsel to view the videotape and providing Petitioner with stills

during negotiations. Therefore, under these circumstances, the manner and extent of disclosure to defense counsel was satisfactory under Rule 5 of the South Carolina Rules of Criminal Procedure.

Hyman, 397 S.C. 35, 47-48, 723 S.E.2d 375, 381 (2012).

The South Carolina Supreme Court further stated, “Petitioner was fully aware of the inculpatory nature of the videotape throughout the negotiations and the guilty plea proceedings. Consequently, Petitioner has failed to prove how the outcome would have been different had he chosen not to plead guilty after he watched the videotape for himself.” Id.

Here, as the record establishes, Petitioner was initially offered a ten year plea agreement based on the condition that Petitioner not view the CI video that led to his charges. The State indicated the condition was based on protecting their CI from being known to Petitioner since Petitioner had a history of witness intimidation and homicide. (App. 56-57.) As in Hyman, the State provided stills from the video to Wellborn and Petitioner for review and, after signing a “protective order,” allowed Wellborn to view the video. (App. 39-40.) After viewing the video, Wellborn advised Petitioner that “it was kind of from my standpoint if I were prosecuting the case it would not be an extraordinary circumstantial leap to connect the dots and suggest [Petitioner] had given the informant the drugs.” (App. 40.) By the time the assessment of the video had been made by Wellborn, the ten year plea offer had expired and thereafter Petitioner sought to relieve Wellborn. On December 15, 2015, Judge Hall granted Petitioner’s motion to relieve Wellborn and Petitioner immediately undertook negotiating his plea offer with the State *pro se* the same day.

Petitioner asserts the State withholding the video from Petitioner’s view is tantamount to misconduct in this case. However, the State made Petitioner aware of the existence of the video and provided still photographs from the video early in the process, which, as Hyman establishes, “struck an appropriate balance.” Additionally, after signing a protective order, Wellborn, was

allowed to view the video and provided Petitioner with information that the video was not favorable to their case. (App 40.)

Petitioner's assertion that his guilty plea was not freely and voluntarily given because he was not able to view the video is without merit. As in Hyman, Petitioner here cannot satisfy any of the factors set forth in Gibson. The record shows that Wellborn was able to view the video and believed the video to be persuasive evidence that Petitioner was involved in a drug transaction, which would make the evidence inculpatory and immune from a Brady challenge. Therefore, Petitioner is unable to meet the criteria necessary to challenge the voluntariness of his guilty plea.

Further, Petitioner has failed to establish any resulting prejudice from any alleged deficiency. Petitioner failed to establish that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). During the December 15, 2015, hearing where Petitioner relieved Wellborn, Petitioner told Judge Hall that he was going to hire Jack Swerling "today." During that same hearing, Petitioner was informed his case would be going to trial in January of 2016. Rather than hiring new counsel as he claimed he intended to do that day, Petitioner pursued Newkirk and entered into plea negotiations immediately following the hearing to relieve Wellborn. Newkirk testified Petitioner came to him, "after he had relieved [Wellborn] and he had indicated to me that if I could come down at all he would appreciate it. He told me about his family and so I told him, okay, I understand. I will lower the offer to 14 years but to be honest with you that's the best I can do and so we did the paper work and he wanted to spend the evening with his family and he came back the following day in order to enter his guilty plea." (BOP. 55.) It is clear Petitioner never intended

on hiring new counsel or proceeding to trial on his charges. Accordingly, Petitioner has failed to meet the prejudice prong of his burden set forth in Strickland.

Petitioner is unable to show actual prosecutorial misconduct. The State actions were consistent with the South Carolina Supreme Court's holding in Hyman because the State reached an "appropriate balance" by providing stills from the video and allowing Wellborn to view the video in order to protect the identity of the CI. Petitioner showed no effort on behalf of the State to hide or suppress the video from Petitioner's knowledge. Further, the video contained evidence that was not favorable to Petitioner, which would make it inculpatory evidence, and therefore, immune from a Brady challenge. The post-conviction relief court properly denied relief and this Court should affirm the post-conviction relief court's decision.

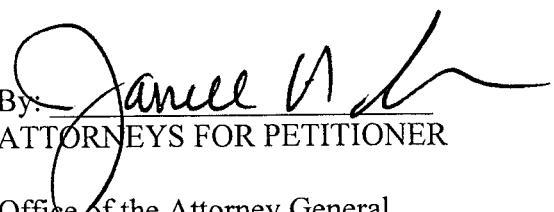
#### CONCLUSION

For the foregoing reasons, the decision of the post-conviction relief court should be affirmed.

Respectfully submitted,

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December 4, 2019

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

CERTIORARI TO YORK COUNTY  
In the Court of Common Pleas  
Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.2017-002632

Travis Hines ..... Petitioner,  
vs  
The State ..... Respondent.

REPLY BRIEF

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## Argument

### Question I

**Did the Post Conviction Relief Judge err in failing to find that the Sentencing Judge failed to establish that Travis Hines was adequately informed of the dangers of self representation and the advantages of having an attorney represent him at the time of the plea hearing when the record established that such issues were only dealt with in a *pro forma* fashion?**

The State argues that “Petitioner was adequately informed by two separate judges of the dangers of proceeding *pro se* and Petitioner knowingly and intelligently waived his right to counsel.” Br. of Resp. at 6. As noted in the Opening Brief, Mr. Hines told Judge Hall he was going to hire an attorney. Judge Hall never discussed the dangers of self representation with Mr. Hines. After being told by the State that Mr. Hines understood the proceedings, Judge Hayes did not conduct a detailed discussion of self representation.

The State attempts to distinguish *Osbey v. State*, 425 S.C. 615, 825 S.E.2d 48 (2019) on the ground that Mr. Osbey never had an attorney and Mr. Hines had the services of two attorneys. This is a distinction without a difference. The issue in this case was whether Mr. Hines was adequately warned of the dangers of self representation. The issue is not did he know of his right to have an attorney. Knowing one has the right to counsel is not the same as knowing the dangers of self representation. Neither attorney testified they advised Mr. Hines of the dangers of self representation. This Court cannot assume, based on a silent record, that either attorney explained to Mr. Hines the dangers of self representation. “Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence

which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.” *Carnley v. Cochran*, 369 U.S. 506, 516 (1962).

The State has also contended that Mr. Hines “[W]as aware f the possible defenses he could raise at trial.” Br. of Resp. at 10. The recrd in this case does not show Mr. Hines was aware of any defenses as the subject of defenses is virtually non-existent in the record. In addition, as neither Mr. Hines nor Mr. Welborn had seen the entire video, neither would be in a position to say whether there were defenses available to Mr. Hines based upon a review of all the discovery.

The State has cited *State v. Cash*, 309 S.C. 40, 419 S.E. 2d 811 (Ct. App. 1992) for the proposition that Mr. Hines was intelligent enough and experienced enough to understand the dangers of self representation. An important difference between *Cash* and this case is the Court in *Cash* stated, “His testimony at the remand hearing demonstrates he believed he could do a better job of preparing his defense than the public defender could.” *Id.* at 44, 419 S.E.2d at 814. No such testimony exists in this case. In fact nothing in this record even suggests that Mr. Hines ever wanted to proceed in any fashion other than with an attorney, until the day of the plea.

## Question II

**Did the Post Conviction Relief Judge err in failing to find the State committed misconduct when Travis Hines was required to plea without having the opportunity to review the video and did not obtain from the plea judge a waiver to his right to review the video?**

In discussing this issue, the State has set up the strawman of a violation of *Brady v.*

*Maryland*, 373 U.S. 83 (1963). In the opening brief, *Brady* or any similar case is not cited. No attorney who has ever represented Travis Hines knows if a violation of *Brady* has occurred. The reason for this statement is that no attorney who has ever represented Mr. Hines has ever seen the complete video of the alleged drug deal. The second argument in this petition is the failure of the State to comply with its basic obligation under Rule 5 of the South Carolina Rules of Criminal Procedure.

This case is not controlled by *Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375 (2012). First, unlike this case, Mr. Hyman was represented by an attorney through the guilty plea. Second, the attorney for Mr. Hyman had seen the entire video. He saw the entire video before the plea offer expired. The Court found that the defense counsel testified the video “‘clearly’ depicted Petitioner engaged in a drug transaction.” *Id.* at 40, 397 S.E.2d at 377. Further, the Post Conviction Relief judge in *Hyman* found that Mr. Hyman had told his attorney that “he wanted her to watch the video tape.” *Id.* As the Post Conviction Relief judge found Mr. Hyman got what he asked for in having his lawyer review the tape and the entire video was seen in the manner requested by Mr. Hyman prior to the expiration of the original plea offer, there was no ineffective assistance of counsel.

The State in its brief notes that Christopher Welborn “testified the discovery included still photos from the CI drug buy.” Br. of Resp at 15. The State has contended that “Newkirk complied with Brady and the holding in *Hyman* in providing that information to Welborn at that time.” *Id.* The fact is undisputed that Mr. Welborn never had the opportunity to review the entire video. The entire video is part of the discovery in this case. The State simply cannot claim they complied with Rule 5 and *Hyman* when all the discovery which would have been introduced at

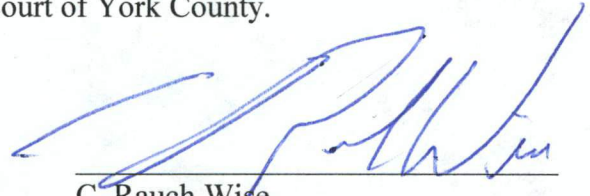
trial was never shown to either Mr. Welborn or Mr. Hines. No principle of law permits the State to decline to turn over all the evidence in a case. And the State has cited no such authority.

Here, as noted in the opening brief, Mr. Welborn was not allowed to see the entire video. He saw only that portion which the State elected to show him. Only the State knows what is on the rest of the video. Prosecutorial misconduct was committed when the solicitor refused to let the counsel he did retain view the entire tape. One can assume the State did not let Mr. Welborn look at the entire tape for a reason. That reason remains unknown.

## CONCLUSION

For the foregoing reasons and for the reasons set forth in the opening brief, this Court should reverse the decision of the Post Conviction Relief judge, reverse the conviction of Travis Hines and remand the matter to the General Session Court of York County.

December 16, 2019



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**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Travis Hines, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-002632

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**ON WRIT OF CERTIORARI**

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Appeal From York County  
R. Lawton McIntosh, Circuit Court Judge

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Opinion No. 5877  
Heard April 13, 2021 – Filed December 8, 2021

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**AFFIRMED**

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Clarence Rauch Wise, of Greenwood, for Petitioner.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Michael Jacob Neubauer, both of  
Columbia, for Respondent.

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**KONDUROS, J.:** In this post-conviction relief (PCR) action, Travis Hines (Petitioner) appeals the denial of his PCR application as to his guilty plea for distribution of heroin, third offense. He contends he did not waive his right to counsel with a full understanding of his rights and the consequences of self-representation. Petitioner also maintains the PCR court erroneously found the

State "turned over all evidence as [it] received it" because the State did not allow Petitioner to view video evidence that allegedly depicted him involved in a controlled drug purchase. We affirm.

## **FACTS/PROCEDURAL HISTORY**

A grand jury indicted Petitioner for distribution of heroin. At a December 15, 2015 hearing, the State informed the circuit court Petitioner "was previously before the [c]ourt last term to enter . . . a [guilty] plea . . . . He informed the [c]ourt at that time that he was unhappy with [his attorney, Chris] Wellborn[,] as his counsel. So this hearing has been scheduled on . . . a motion to relieve counsel . . . ." Petitioner confirmed he wanted to relieve Wellborn and that he was "prepared to go forward without a lawyer." Petitioner clarified, however, that he intended to hire another attorney. The State indicated it planned to serve Petitioner with notice of its intent to seek a life without parole (LWOP) sentence immediately after the hearing, and it planned to call Petitioner's case for trial the following month. Petitioner stated he understood his case would be called for trial the following month and still wanted to relieve Wellborn. The circuit court relieved Wellborn as Petitioner's counsel. Petitioner acknowledged he originally had a court-appointed attorney before hiring Wellborn. The circuit court stated, "[Y]ou have been through two lawyers. The [c]ourt would not appoint you any more lawyers." The court then stated:

At some point if you don't have an attorney I will have to go through and warn you in detail about representing yourself because that will be . . . what you are left with. If you have not hired an attorney by [next month], . . . we'll go over and make sure [you] understand your right about representing yourself.

Petitioner responded, "Okay." The State served Petitioner with its intent to seek an LWOP sentence and stated a fifteen-year plea offer would expire "at the conclusion of this [c]ourt term." The State explained Petitioner was eligible for an LWOP sentence due to prior convictions for distribution of ecstasy within proximity of a school and distribution of cocaine within proximity of a park.

A plea waiver form, signed by Petitioner on December 15, 2015, the same day as the hearing, informed Petitioner of his right to an attorney. It stated, "I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself." Petitioner initialed next to the warning. At a December 17, 2017 plea hearing, Petitioner appeared pro se. The State confirmed

Petitioner was pleading guilty to distribution of heroin, third offense, "a statutory felony that carries with it no less than ten years [and] up to thirty years and a possibility of a fine up to [f]ifty thousand dollars." The State also noted Petitioner's charge was "a serious offense." The State indicated it was dismissing "an accompanying proximity charge" and Petitioner was pleading to a negotiated sentence of fourteen years' imprisonment. The State declared that after speaking with Petitioner following the December 15 hearing, it "ha[d] no doubt in [Petitioner's] intelligence or his understanding of the proceedings." The State informed the plea court Petitioner "indicated . . . he wishe[d] to proceed on his own." The plea court and Petitioner had the following exchange:

[The court]: [Petitioner], how old are you?

[Petitioner]: Twenty-nine.

[The court]: How far did you go in school?

[Petitioner]: I'm in college right now.

. . . .

[The court]: What do you do -- Do you have a job too?

[Petitioner]: Yes, sir.

[The court]: What do you do?

[Petitioner]: I'm an electrician's helper.

[The court]: You have a right to have an attorney represent you in regard to this charge[,] and if you cannot afford one[,] the State would be required to appoint an attorney to represent you within some limits. That is[,] you would be appointed an attorney to represent you if you wish. If you could not afford one[,] the limitation being that you are assigned an attorney and that would be your attorney. It[']s dangerous for you to proceed without an attorney since you're not

one and there is a benefit in having an attorney represent you. Do you understand that?

[Petitioner]: Yes, sir.

[The court]: Do you wish to have an attorney in regard to this charge or give up that right?

[Petitioner]: I give up that right.

[The court]: I find [Petitioner] has freely[,] voluntarily[,] knowingly[,] and intelligently[,] understanding the benefits of counsel and the danger of self[-]representation[,] exercise[d] his right to proceed pro s[.]e.

The plea court informed Petitioner of the charge against him, its potential sentence, and the consequences of the charge being classified as "serious." Petitioner stated he understood and wished to plead guilty. Similarly, Petitioner stated he understood his trial-related rights and wished to waive them by pleading guilty. The plea court accepted Petitioner's plea and the negotiated sentence. Petitioner pled guilty to distribution of heroin, third offense, and the plea court sentenced him to a negotiated sentence of fourteen years' imprisonment.

Petitioner did not directly appeal; however, he filed an application for PCR. At his PCR hearing, Petitioner explained that at his first plea hearing, the court would not accept his plea because he stated he was not satisfied with Wellborn's representation. He added, "I never really wanted to fire him but when the [court] asked me that[,] that's what happened." Petitioner testified,

We never had a hearing after that to ask me why I didn't want him to be my lawyer or anything like that. The next time I was in court[,] all I knew is I was relieving Mr. Wellborn and I was going pro se. I never wanted to go pro se. I said I was going to get a lawyer. So obviously I didn't want to proceed pro se. I know nothing about the law.

Petitioner asserted he attempted to hire another attorney but was unable to do so because his trial date was approaching and the amount of time was insufficient for the attorney to prepare for trial. He stated he then decided to plead guilty because he could not prepare for trial himself and his plea offer would soon expire. Petitioner testified he had discussed with the State that he "didn't want to go to jail for a long time" and "had kids." He testified the State "scratched out the [fifteen] and put [fourteen] and said that's the best I can do for you." When asked what he understood about proceeding without an attorney, Petitioner answered, "Nothing really. I just knew if I didn't go ahead and take the plea they were going to give me [LWOP]." Petitioner alleged he was not made aware of the dangers of proceeding without counsel. Specifically, Petitioner stated the plea court did not make him aware of his right to a direct appeal and did not question him as to if he actually wanted to proceed pro se and why he did not have a lawyer. Petitioner asserted that if the PCR court granted his application, he "would definitely go to trial," despite his exposure to an LWOP sentence.

Petitioner testified he did not review his discovery materials with Wellborn. He stated, "Really we were waiting on the video tape. That's all it was. We were waiting on the video tape. We couldn't take a plea." Petitioner testified he and Wellborn discussed waiting to view the video before deciding whether to plead guilty. He stated he hired Wellborn in April 2015, but the State did not allow Wellborn to view the video until November 2015. Petitioner stated he "learned [from Wellborn] that [he] was on the video but . . . there was basically no drug transaction." According to Petitioner, the video depicted him "doing something with a plastic bag." He added, "It looked like I probably was messing with drugs." Petitioner testified Wellborn informed him "[he] never gave anybody anything on the tape," but Wellborn nonetheless told him he "looked like [he] was guilty" and advised him to plead guilty.

Wellborn testified he told Petitioner that if the video did not depict a drug sale, that would be a potential defense. He stated he did not feel comfortable or believe it was appropriate to advise Petitioner to plead guilty without first viewing the video. Wellborn explained that when he began representing Petitioner in July 2015, the State's plea offer contemplated a ten-year sentence. However, the State increased the sentence to eighteen years the following month and informed Wellborn no information regarding the informant would be released until Petitioner rejected the plea offer. Wellborn testified the State did not provide "the drug report" to him until October 23, 2015. Similarly, the State only allowed Wellborn to view the video in November 2015, after he signed a protective order to conceal the identity of the confidential informant used in the controlled drug purchase. According to

Wellborn, the video depicted an individual entering Petitioner's home, followed by the audio of a discussion between the individual and Petitioner. Wellborn stated:

I think there was a decent chance that jurors hearing the sound would believe that [the] discussion was related to drugs and transactions related to drugs[,] and [Petitioner] was at a table doing something that if the informant testified -- and we expected the informant to testify if [Petitioner] went to trial -- the informant would say he was packaging up drugs[.]

Wellborn testified Petitioner could be seen in a portion of the video "fiddling with a package." He further testified that because the video was of a controlled purchase, "it would not be an extraordinary circumstantial leap to connect the dots and suggest that [Petitioner] had given the informant the drugs."

Ryan Newkirk, the solicitor who prosecuted Petitioner's case, testified his office's policy was "generally not to release the video of a confidential informant in a drug case unless the defendant is then willing to not accept an offer from the State, especially in cases where the life of the confidential informant could be in danger." He stated protecting the informant in Petitioner's case "was incredib[ly] important" because previously Petitioner had been convicted of intimidating a witness and also charged with murder. Newkirk explained he sent Wellborn "still shots of the video" before ultimately allowing him to view the video.

In its order, the PCR court found Wellborn's testimony "credible and persuasive on all matters." It also found Petitioner failed to prove the State committed prosecutorial misconduct by refusing to disclose discovery materials.

The PCR court also found Petitioner was aware of his right to counsel. It stated:

[T]he plea [court] inquired [about Petitioner's] age and educational background where [Petitioner] stated he was twenty-nine years old, still in college, and worked as an electrician's helper. It is clear [Petitioner] was aware of the nature of the crimes and potential penalties as the plea [court] informed him of this and he was previously served with the State's notice to seek [an LWOP sentence] before negotiating a plea deal with [the State]. This [c]ourt finds that the plea court conducted a proper

[*Faretta*<sup>1</sup>] hearing, after which the plea court found [Petitioner] freely, voluntarily, knowingly, and intelligently understood the benefits of counsel and the dangers of self-representation and exercised his right to proceed *pro se*.

Accordingly, the PCR court found Petitioner failed to prove "he was not properly advised of his right to counsel and self-representation." The PCR court denied the application for PCR. Petitioner filed a petition for a writ of certiorari, which this court granted.

## **STANDARD OF REVIEW**

"In post-conviction proceedings, the burden of proof is on the applicant to prove the allegations in his application." *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008). "Our standard of review in PCR cases depends on the specific issue before us." *Mangal v. State*, 421 S.C. 85, 91, 805 S.E.2d 568, 571 (2017). "We defer to a PCR court's findings of fact and will uphold them if there is any evidence in the record to support them." *Id.* However, "[w]e do not defer to a PCR court's rulings on questions of law." *Id.* "Questions of law are reviewed de novo, and we will reverse the PCR court's decision when it is controlled by an error of law." *Id.* (quoting *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). "On review of a PCR court's resolution of procedural questions arising under the Post-Conviction Procedure Act or the South Carolina Rules of Civil Procedure, we apply an abuse of discretion standard." *Id.* at 92, 805 S.E.2d at 571. "This court gives great deference to the PCR court's findings on matters of credibility." *Putnam v. State*, 417 S.C. 252, 260, 789 S.E.2d 594, 598 (Ct. App. 2016).

## **LAW/ANALYSIS**

### **I. Prosecutorial Misconduct**

Petitioner argues the PCR court erred in failing to find the State committed misconduct by refusing to show Petitioner the video unless he proceeded to trial. Petitioner asserts he was required to plead guilty before having the opportunity to review the video and he did not waive his right to review the video. He maintains

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<sup>1</sup> *Faretta v. California*, 422 U.S. 806 (1975).

the PCR court erroneously found the State "turned over all evidence as [it] received it" because the State did not allow Petitioner to view video evidence that allegedly depicted him involved in a controlled drug purchase. He avers the State forced him to either accept a plea offer without viewing the video or view it and face an LWOP sentence at trial, which he argues was improper and constituted prosecutorial misconduct. Petitioner contends he could not have made an informed decision about whether to plead guilty without viewing the video and as a result, his guilty plea was not freely and voluntarily given. We disagree.

"A defendant who pleads guilty usually may not later raise independent claims of constitutional violations." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999). "However, 'a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case.'" *Id.* (quoting *Sanchez v. United States*, 50 F.3d 1448, 1453 (9th Cir. 1995)). "When a defendant lacks knowledge of material evidence in the prosecution's possession, the waiver of constitutional rights cannot be deemed knowing and voluntary." *Id.* "Accordingly, [a PCR applicant] may challenge the voluntary nature of his guilty plea in a PCR action by asserting an alleged *Brady*<sup>[2]</sup> violation." *Gibson*, 334 S.C. at 524, 514 S.E.2d at 324.

A *Brady* claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.

*Id.* (footnote omitted).

In *Hyman v. State*, the petitioner argued "because he was not provided the opportunity to view the videotape recording of the drug transaction forming the basis of his convictions, he did not enter his guilty plea freely, voluntarily, and knowingly, and as a result, his counsel was ineffective." 397 S.C. 35, 42, 723 S.E.2d 375, 378 (2012), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 181 n.2, 810 S.E.2d 836, 839 n.2 (2018). However, the supreme court disagreed "[t]o the extent Petitioner [was] argu[ing], pursuant to *Brady* . . . , that a criminal defendant may never enter a plea voluntarily without the State first

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<sup>2</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

disclosing all of the evidence in its possession." *Id.* at 45, 723 S.E.2d at 380. The court held no *Brady* violation had occurred in the case and explained:

Petitioner cannot satisfy any of the factors delineated in *Gibson* to establish a *Brady* violation with respect to the videotape. Tantamount to any *Brady* claim is the withholding of evidence. Under the present facts, it is undisputed that the solicitor disclosed the videotape to defense counsel. Therefore, in order to find that this action amounts to impermissible suppression under *Brady*, we must first assume that the Constitution requires disclosure of *Brady* evidence to a criminal defendant *personally*. We are unwilling to make that sweeping assumption, and find that disclosure to defense counsel was satisfactory under the present circumstances. Further, because we deem the manner of disclosure appropriate, Petitioner cannot satisfy the materiality prong of *Brady*. *See Porter v. State*, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2006) ("Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different *had the evidence been disclosed to the defense*." (emphasis added) . . . )[, *abrogated on other grounds by Smalls*, 422 S.C. at 181 n.2, 810 S.E.2d at 839 n.2]. Finally, Petitioner has not proven that the videotape was favorable to him. By all accounts, including defense counsel's testimony, the videotape depicted Petitioner engaged in a drug transaction with a confidential informant. Because the evidence at issue is *inculpatory*, *Brady* is inapplicable.

*Hyman*, 397 S.C. at 45-47, 723 S.E.2d at 380-81.

Additionally, in *Hyman*, the supreme court disagreed with the petitioner's argument that "because he was not permitted to watch the videotape personally in violation of Rule 5 of the South Carolina Rules of Criminal Procedure, counsel was ineffective." *Id.* at 47, 723 S.E.2d at 381. The court held:

Rule 5 permits inspection of evidence in the State's possession "which [is] material to the preparation of his

defense or [is] intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant" upon request by the defendant. Rule 5(a)(1)(C), SCRCrP.

Compliance with Rule 5 is a fact-based inquiry. Under the present facts, the State not only disclosed the existence of the videotape, but also made the evidence available for inspection by defense counsel. The State even took the extra step of generating still photographs to assuage Petitioner's concerns about the contents of the videotape. Plea negotiations were ongoing until the day before jury selection, and there is no indication that the State would have withheld the videotape if a full trial on the merits followed. In fact, the identity of the informant had been disclosed to the defense by the time Petitioner pleaded guilty, removing any remaining impediment to Petitioner's access to the videotape in time for his trial. We note that, in cases involving a confidential informant, a criminal defendant's interest in access to certain evidence must be weighed against the State's interest in protecting the identity and safety of the informant. *See State v. Humphries*, 354 S.C. 87, 90, 579 S.E.2d 613, 614-15 (2003) ("Although the State is generally privileged from revealing the name of a confidential informant, disclosure may be required when the informant's identity is relevant and helpful to the defense or is essential for a fair determination of the State's case against the accused. For instance, if the informant is an active participant in the criminal transaction and/or a material witness on the issue of guilt or innocence, disclosure of his identity may be required depending upon the facts and circumstances." (internal citations omitted)). Here, the State struck the appropriate balance by allowing defense counsel to view the videotape and providing Petitioner with stills during negotiations. Therefore, under these circumstances, the manner and extent of disclosure to defense counsel was satisfactory under Rule 5 of the South Carolina Rules of Criminal Procedure.

Accordingly, it cannot be said that defense counsel acted unreasonably in failing to seek to compel disclosure of the videotape to defendant personally under the facts of this case.

*Hyman*, 397 S.C. at 47-48, 723 S.E.2d at 381 (alterations by court).

The State argues the PCR court correctly denied Petitioner's claim that the State committed prosecutorial misconduct by making his plea contingent on Petitioner not viewing the video of the drug buy in order to protect the confidential informant because the State properly provided still photographs from the video to Petitioner and after Petitioner's counsel signed a protection order, allowed counsel to view the video and relay a summary of the video to Petitioner during plea negotiations.<sup>3</sup>

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<sup>3</sup> Petitioner references a 2004 Memorandum from the then Chief Justice of the South Carolina Supreme Court, Jean Hoefer Toal, to support his argument that the State's practice here violated the Rules of Professional Conduct, Rule 3.4, RPC, Rule 407, SCACR. *See* Rule 3.4, RPC, Rule 407, SCACR ("A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value."). However, this memorandum was not included in the Appendix. Petitioner additionally cites a Utah criminal procedure rule. *See* Utah R. Crim. P. 16(b) ("The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure."); *see also* Utah R. Crim. P. 16(a) ("Except as otherwise provided, the prosecutor shall disclose to the defense upon request the following material or information of which the prosecutor has knowledge: . . . (4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and (5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare a defense."). In Petitioner's reply brief, he asserts he did not cite *Brady* in his Petitioner's brief because no attorney for Petitioner knows if a *Brady* violation has occurred due to the fact that no attorney for Petitioner has seen the complete video and Petitioner's argument here is that the State failed to comply with Rule 5, SCRCR.

We affirm the PCR court's denial of relief on Petitioner's claim of prosecutorial misconduct because Petitioner failed to show the State violated *Brady* by prohibiting him from viewing the video. First, no evidence here supports an argument that the video was in any way exculpatory. *See Gibson*, 334 S.C. at 524, 514 S.E.2d at 324 (providing "the evidence [must be] favorable to the accused" for its nondisclosure to constitute a *Brady* violation). Wellborn testified the video depicted an individual entering Petitioner's home, followed by the audio of a discussion between an individual and Petitioner that a jury would likely believe "was related to drugs and transactions related to drugs." He stated Petitioner could also be seen on the video "fiddling with a package." Wellborn believed the informant would have testified at Petitioner's trial that Petitioner was "packaging up drugs" in the video. Additionally, Petitioner admitted the video depicted him "doing something with a plastic bag," adding, "It looked like I probably was messing with drugs." Accordingly, the video was not favorable to Petitioner and did not implicate *Brady*. *See Hyman*, 397 S.C. at 47, 723 S.E.2d at 381 ("Petitioner has not proven that the videotape was favorable to him. By all accounts, including defense counsel's testimony, the videotape depicted Petitioner engaged in a drug transaction with a confidential informant. Because the evidence at issue is *inculpatory*, *Brady* is inapplicable.").

Moreover, the State allowed Wellborn to view the video.<sup>4</sup> As a result, the State did not refuse to disclose the evidence, another necessary element of a *Brady* claim. *See Gibson*, 334 S.C. at 524, 514 S.E.2d at 324 (providing evidence must be "suppressed by the prosecution" to support a *Brady* violation claim); *Hyman*, 397 S.C. at 46, 723 S.E.2d at 381 ("[I]t is undisputed that the solicitor disclosed the

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<sup>4</sup> Petitioner asserts Wellborn only saw the portion of the video the State deemed relevant. He points to Wellborn's testimony at the PCR hearing that the State told him it would "prepare relevant portions of the video for [him] to watch." The State contends Wellborn testified he viewed "the video." The PCR court's order quoted the State's email that it would "prepare the relevant portions of the video" and found Wellborn "testified he viewed the video." Petitioner did not argue to the PCR court that because Wellborn only saw a portion of the video, he could not know if the omitted portions of the video were exculpatory. A point not raised in a PCR application or at the PCR hearing is not proper for review on appeal. *Hyman v. State*, 278 S.C. 501, 502, 299 S.E.2d 330, 331 (1983). "In post-conviction proceedings, the burden of proof is on the applicant to prove the allegations in his application." *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008). The video was not admitted into evidence at the PCR court or submitted to this court.

videotape to defense counsel. Therefore, in order to find that this action amounts to impermissible suppression under *Brady*, we must first assume that the Constitution requires disclosure of *Brady* evidence to a criminal defendant *personally*. We are unwilling to make that sweeping assumption, and find that disclosure to defense counsel was satisfactory under the present circumstances.") Accordingly, we affirm as to this issue.

## II. Waiver of Right to Counsel

Petitioner contends the PCR court erred in not finding the plea court failed to establish he was adequately informed of the dangers of self-representation and the advantages of having an attorney represent him at the time of the plea hearing when the record established such issues were only dealt with in a pro forma fashion. Petitioner argues he did not waive his right to counsel with a full understanding of his rights and the consequences of self-representation. He asserts the plea court did not inquire about the circumstances under which his counsel was relieved or adequately warn him of the dangers of self-representation. Petitioner also asserts the State coerced his waiver of counsel by declaring its intent to seek an LWOP sentence at trial and refusing to allow him to review all the evidence against him. As a result, Petitioner argues he did not knowingly and voluntarily waive his right to counsel. We disagree.

"A defendant in a criminal case 'has the right to the assistance of counsel.'" *Osbey v. State*, 425 S.C. 615, 618, 825 S.E.2d 48, 50 (2019) (quoting *State v. Justus*, 392 S.C. 416, 419, 709 S.E.2d 668, 670 (2011)). "In *Faretta*, the United States Supreme Court held that criminal defendants have a fundamental right to self-representation under the Sixth Amendment." *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 491 (2018). "In order to effectively invoke this right of self-representation, the defendant must clearly and unequivocally assert his desire to proceed *pro se* and such request must be made knowingly, intelligently[,] and voluntarily." *Id.*

Although a defendant need not himself have the skill and experience of a lawyer in order [to] competently and intelligently . . . choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open."

*Faretta*, 422 U.S. at 835 (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942)). "In a PCR action, if the record fails to demonstrate the petitioner made an informed choice to proceed *pro se*, with 'eyes open,' then the petitioner did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial." *Gardner v. State*, 351 S.C. 407, 412, 570 S.E.2d 184, 186 (2002).

In *Iowa v. Tovar*, the Supreme Court addressed "the extent to which a trial [court], before accepting a guilty plea from an uncounseled defendant, must elaborate on the right to representation." 541 U.S. 77, 81 (2004). The Court considered whether, as the Iowa supreme court found, a court must specifically (1) advise a defendant that waiving counsel risks overlooking potential defenses and (2) admonish the defendant that by waiving counsel he would lose an independent opinion about whether pleading guilty was wise. *Id.* It held the Sixth Amendment did not require either warning, reasoning "[t]he constitutional requirement is satisfied when the trial court informs the accused of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments attendant upon the entry of a guilty plea." *Id.* at 81. The Court explained:

We have not . . . prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel. The information a defendant must possess in order to make an intelligent election . . . will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.

*Id.* at 88.

Under South Carolina case law,

To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. In the absence of a specific inquiry by the trial [court] addressing the disadvantages of a *pro se* defense as required by the second *Faretta* prong, this [c]ourt will look to the record to determine whether [the]

petitioner had sufficient background or was apprised of his rights by some other source.

*Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990).

In *State v. Bryant*, the probation revocation court and Bryant had the following exchange regarding Bryant's right to counsel:

Q: Do you understand that you have a right to have a lawyer represent you in connection with these proceedings?

A: Yes, sir.

Q: Do you wish for the court to inquire as to whether you would be entitled to a court appointed lawyer or do you wish to go forward today?

A: I want to go forward.

Q: Okay. Do you understand that an attorney may be of benefit to you, for example, there may be things I need to be told that you do not know to tell me, and that if you talk with a lawyer you and the lawyer would learn these things, do you understand that?

A: Yes, sir.

Q: Understanding that, do you still wish to waive your right to counsel and go forward?

A: Yes, sir.

Q: Alright. At any[ ]time before I make a determination in this matter, if you desire to talk to a lawyer all you have to do is tell me and I'll stand aside and give you a chance to talk to a lawyer, do you understand?

A: Yes, sir.

383 S.C. 410, 416, 680 S.E.2d 11, 14 (Ct. App. 2009). This court found the above "colloquy adequately informed Bryant of her right to counsel and informed Bryant of the benefits of retaining counsel. Further, the probation court indicated Bryant could invoke her Sixth Amendment right at any point prior to a final ruling." *Id.* This court noted "the probation court did not expressly address the dangers and disadvantages of appearing pro se as required by *Faretta*." *Id.* Ultimately, however, this court found Bryant validly waived her right to counsel because she "had both a sufficient background and was apprised of her rights by some other source."<sup>5</sup> *Id.* at 417, 680 S.E.2d at 15.

"The extent of inquiries made by the trial [court] . . . is not conclusive." *Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). "While a specific inquiry by the trial [court] expressly addressing the disadvantages of a *pro se* defense is preferred, the ultimate test is not the trial [court]'s advice but rather the defendant's understanding." *Id.* "If the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." *Id.*

When determining if an accused has a sufficient background to understand the dangers of self-representation, the courts consider many factors including: (1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether the accused knew the nature of the charge(s) and of the possible penalties; (4) whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation; (5) whether the accused was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the

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<sup>5</sup> The court based that finding on "Bryant's previous experience in the criminal justice system, her previous representation by counsel, [a] signed Probation Notice [informing her she could have an attorney represent her and that there are dangers and disadvantages to self-representation], and the probation court's colloquy with her." *Bryant*, 383 S.C. at 417, 680 S.E.2d at 14-15.

rules of procedure at trial; (8) whether the accused knew of legal challenges he could raise in defense to the charge(s) against him; (9) whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment.

*Gardner*, 351 S.C. at 412-13, 570 S.E.2d at 186-87.

In *Wroten*, the supreme court found "the [plea court] made no specific inquiry to determine whether [the] petitioner made his choice to proceed *pro se* 'with eyes open.'" 301 S.C. at 294, 391 S.E.2d at 576. The court noted the petitioner "was forty-five years old at the time of his plea and had a fifth-grade education." *Id.* at 295, 391 S.E.2d at 576. The petitioner contacted a public defender after his bond hearing but never heard back from the attorney, and on the day of his plea, "the attorney did not have time to speak with him." *Id.* at 295, 391 S.E.2d at 576-77. When asked whether he wanted an attorney, the petitioner replied that he did not know what to do, and his prior experience with the court consisted of one other guilty plea. *See id.* at 295, 391 S.E.2d at 577. The supreme court found "the record . . . d[id] not demonstrate [the] petitioner was sufficiently aware of the dangers of self-representation to make an informed decision to proceed without counsel." *Id.* It reversed the PCR court's denial of relief and remanded for a new trial. *Id.*

In *Prince*, the supreme court similarly reversed the PCR court's denial of relief, finding "the record d[id] not demonstrate petitioner was sufficiently aware of the dangers of self-representation to make an informed decision to proceed *pro se*." 301 S.C. at 424, 392 S.E.2d at 463. The court noted Prince "was twenty-two years old at the time of his plea," "was a high-school graduate [with] some college education," "had previously pleaded guilty to armed robbery," "was mentally disturbed at the time of his plea," and "exhibited little understanding of criminal proceedings" at his PCR hearing. *Id.*

In *Gardner*, the supreme court found "the plea [court] did not give [the p]etitioner any warning about the dangers of proceeding *pro se*. [It] did not inform him of the nature of the charges or of the possible penalties." 351 S.C. at 413, 570 S.E.2d at 187. The court noted the petitioner had "a [twelfth-]grade education, and he had been represented by counsel on a previous charge to which he pled guilty. He also had a private attorney when he was first charged. However, the record [gave] no

indication this attorney explained to him the dangers of self-representation." *Id.* The court further observed the plea court "did not advise [the p]etitioner of the crucial elements of the charged offenses, or of the possible penalties if the recommended sentence was not accepted by the [court]. In addition, the [court] did not ask questions to ensure [the p]etitioner's understanding of the consequences of his plea." *Id.* at 414, 570 S.E.2d at 187. The supreme court determined the petitioner did not knowingly and intelligently waive his right to counsel, and it reversed the denial of PCR and remanded for a new trial. *Id.* at 410, 413-14, 570 S.E.2d at 185, 187.

Here, Petitioner's waiver of counsel was voluntary and not coerced by the State, as Petitioner argues. *See Samuel*, 422 S.C. at 602, 813 S.E.2d at 491 ("In order to effectively invoke this right of self-representation, the defendant must clearly and unequivocally assert his desire to proceed *pro se* and such request must be made knowingly, intelligently[,] and voluntarily." (emphasis added)). Petitioner was represented at his first plea hearing, at which he informed the plea court he was dissatisfied with Wellborn. Several days later, Petitioner reappeared in court and although intending to hire another attorney, affirmed he was "prepared to go forward without a lawyer." Soon thereafter, Petitioner "g[a]ve up [his] right" to an attorney, pled guilty, and received a fourteen-year sentence. At his PCR hearing, Petitioner claimed he decided to plead guilty because his plea offer would soon expire and after being unable to hire another attorney, he could not prepare for trial himself. However, Petitioner voluntarily chose both to remove Wellborn as his counsel and to take advantage of the State's plea offer, which reduced his sentence exposure from LWOP to fourteen years' imprisonment. Consequently, the State's decision to seek an LWOP sentence at trial and its handling of Petitioner's discovery materials did not coerce him into waiving his right to counsel or pleading guilty.

Next, Petitioner's waiver of counsel was knowingly and intelligently made. *See Samuel*, 422 S.C. at 602, 813 S.E.2d at 491 (noting a defendant's request to proceed *pro se* must also be made knowingly and intelligently). In *Gardner*, a PCR action that followed a guilty plea, our supreme court stated, "According to the United States Supreme Court, in order to waive the right to counsel, the accused must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation." 351 S.C. at 411, 570 S.E.2d at 186. The supreme court recently reaffirmed this requirement in another PCR case following a guilty plea. *See Osbey*, 425 S.C. at 619, 825 S.E.2d at 50 ("For a knowing and intelligent waiver to occur, the defendant must be '(1) advised of his right to counsel; and (2)

adequately warned of the dangers of self-representation." (quoting *Prince*, 301 S.C. at 423-24, 392 S.E.2d at 463)).

In *Tovar*, which followed a guilty plea and was decided in 2004—after *Gardner* but before *Osbey*—the Court held two specific warnings required by the Iowa Supreme Court were not "mandated by the Sixth Amendment," adding that "[t]he constitutional requirement is satisfied when the trial court informs the accused of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments attendant upon the entry of a guilty plea." 541 U.S. at 81. This information is more limited than *Faretta's* requirements of warning against proceeding pro se and that a defendant "be made aware of the dangers and disadvantages of self-representation." 422 U.S. at 835. However, the circumstances in this case demonstrate either standard was met.

Under *Tovar*, which limited the duty of a plea court when warning a defendant of the dangers of self-representation in a collateral attack of the guilty plea, Petitioner's waiver was valid. 541 U.S. at 81. Here, the plea court informed Petitioner of the charge against him, its potential sentence, and the consequences of the charge being classified as "serious." It also informed Petitioner he had the right "to have an attorney represent [him]." *See id.* ("The constitutional requirement is satisfied when the trial court informs the accused of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments attendant upon the entry of a guilty plea."). The plea court further warned Petitioner, "It[']s dangerous for you to proceed without an attorney since you're not one and there is a benefit in having an attorney represent you."<sup>6</sup> We find, under the circumstances of this case, the plea court's warning was sufficient to satisfy the Sixth Amendment, and Petitioner "made an informed choice to proceed *pro se* . . . with 'eyes open.'" *Gardner*, 351 S.C. at 412, 570 S.E.2d at 186.

Moreover, Petitioner's background also weighs in favor of his understanding the dangers of self-representation. *See Prince*, 301 S.C. at 424, 392 S.E.2d at 463 ("In the absence of [sufficient warnings of the dangers of self-representation] . . . , this [c]ourt will look to the record to determine whether [the] petitioner had sufficient background or was apprised of his rights by some other source."). Here, Petitioner

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<sup>6</sup> Petitioner also signed a plea waiver form that warned, "I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself."

was twenty-nine years old, in college, and nothing indicates he suffered from any physical or mental health issues. *See Gardner*, 351 S.C. at 412, 570 S.E.2d at 186 (providing that some of the factors courts consider are "the accused's age, educational background, and physical and mental health"). He was previously charged with murder and convicted of distribution of ecstasy within proximity of a school, distribution of cocaine within proximity of a park, and intimidating a witness. *See id.* (stating courts also consider "whether the accused was previously involved in criminal trials"). Petitioner was aware of the nature of his charges and the possible penalty, and Wellborn represented him until two days prior to his guilty plea. *See id.* at 412-13, 570 S.E.2d at 186-87 (noting courts can look at "whether the accused knew the nature of the charge(s) and of the possible penalties" and "whether the accused was represented by counsel before trial"). Petitioner testified at his PCR hearing he decided to plead guilty before the State's plea offer expired; thus, he was not "attempting to delay or manipulate the proceedings." *Id.* at 413, 570 S.E.2d at 187. Wellborn also testified at the PCR hearing he told Petitioner if the State's video evidence did not depict a drug sale, it would be a potential defense. *See id.* (providing courts also examine "whether the accused knew of legal challenges he could raise in defense to the charge(s) against him").

Additionally, Petitioner's colloquy prior to his waiver of counsel did not entirely consist of *pro forma* questions; instead, the plea court inquired about Petitioner's age, education, and employment and explained "the State would be required to appoint an attorney to represent" him if he could not afford one. *See id.* (finding courts consider "whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions"); *State v. Cash*, 309 S.C. 40, 46, 419 S.E.2d 811, 814-15 (Ct. App. 1992) (stating "the exchange between the [court] and Cash did not consist merely of *pro forma* answers to *pro forma* questions" because the court "explained that a lawyer would be appointed for Cash if he could not afford one"; "inquired about Cash's age and educational background, about the teachers he had in prison, and about the amount of time he had spent in prison"; "stressed that Cash could be sentenced to thirty years" for the indicted offense; and asked Cash why he did not want an attorney to represent him).

Finally, as stated above, Petitioner's plea was not coerced. *See Cash*, 309 S.C. at 43, 419 S.E.2d at 813 (noting courts consider "whether the accused's waiver resulted from either coercion or mistreatment"). Although the appendix contains no evidence of a warning to Petitioner that "he would be required to comply with the rules of procedure at trial" or that Wellborn "explained to him the dangers of

self-representation," and the plea court did not appoint stand-by counsel, the majority of the above factors weigh toward a finding that Petitioner's background was sufficient for him to be aware of the dangers of self-representation. *See Gardner*, 351 S.C. at 413, 570 S.E.2d at 187. *Compare Osbey*, 425 S.C. at 620-21, 825 S.E.2d at 51 (finding two prior convictions and prior violations of probation and parole were "an insufficient basis on which to find Osbey actually understood the dangers of self-representation"), *with Bryant*, 383 S.C. at 417, 680 S.E.2d at 15 ("Based on Bryant's previous experience in the criminal justice system, her previous representation by counsel, the signed Probation Notice, and the probation court's colloquy with her, we believe Bryant had both a sufficient background and was apprised of her rights by some other source."), *and Cash*, 309 S.C. at 43-46, 419 S.E.2d at 813-15 (finding Cash's background was sufficient because he was forty-six years old; spent thirty-four years in prison; completed the equivalent of six years in college; was not mentally or physically impaired; had previous experience with criminal proceedings, including a prior pro se appearance at a *habeas corpus* hearing; understood the nature of the charge and the possible penalty; had not been previously represented by counsel in the case but appreciated the difficulty of his case; was not attempting to delay or manipulate the proceedings; had stand-by counsel; knew he had to comply with procedural rules; was aware of potential defenses; did not engage in a merely *pro forma* colloquy with the court; and did not waive counsel due to coercion or mistreatment), *and State v. McLauren*, 349 S.C. 488, 495-96, 563 S.E.2d 346, 349-50 (Ct. App. 2002) (finding McLauren's background was sufficient when he was a mature man with both formal and informal education; the record contained no evidence of any physical or mental impairment; he had participated in his own previous criminal proceedings and was involved in the criminal proceedings of other individuals at the correctional facility where he was held; he knew the nature of the charge he faced; although he was not represented by an attorney before trial and appeared pro se at his arraignment, the court assigned an attorney to assist him during the trial if he needed, who sat at the defense table with him; nothing indicated he was attempting to delay or manipulate the proceedings as he made a motion for a speedy trial and trial began a few months after his arraignment; he knew to comply with procedural rules and had at least some familiarity with the rules—he made motions, called several witnesses, and objected to questions; he knew of legal challenges he could raise in defense to the charges against him—he argued a novel theory of law; and no evidence indicated his waiver resulted from coercion or mistreatment—he expressly stated he wanted to represent himself and would waive his right to an attorney).

Based on the foregoing, we affirm as to this issue.

## **CONCLUSION**

The PCR court's denial of Petitioner's application for PCR is

**AFFIRMED.**

**GEATHERS and MCDONALD, JJ., concur.**