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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2022-000341

Travis Hines.....Petitioner,

v.

State of South Carolina.....Petitioner.

PETITIONER’S REPLY BRIEF

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In its response, Respondent appears to argue Petitioner viewed the video that is in issue in this case. Respondent additionally claims this is the first time this issue has been raised. See Respondent's brief, footnote 3. ("Crucially, Petitioner never testified that he has not seen the video of his drug transaction . . . – arguments he has not injected into the appellate process for the first time at this late stage."). Neither of these statements is accurate. As prior counsel, Rauch Wise, raised before the court of appeals, the record in this case shows that Christopher Wellborn, *Petitioner's counsel* before being relieved by Petitioner, testified he was allowed to view *a portion* of the video the State deemed relevant. App. 145. The PCR hearing additionally confirms this issue of denial of the right to review evidence in the case was raised at the beginning of the post-conviction relief proceeding.

Also, Petitioner's lack of access to the discovery guaranteed to him by our state legislature as embodied in South Carolina Rules of Criminal Procedure, Rule 5 has been a persistent issue in this case since Petitioner filed his application for post-conviction relief. See app. 78 (In his PCR application, Petitioner alleged two instances of ineffective assistance of counsel relating to the failure to review evidence in the case). The issue here has been, and continues to be, the State's denial of access to discovery—information that was, in fact, material to Petitioner's defense--that is guaranteed to a criminal defendant by our state statute.

Petitioner's counsel testified at the PCR hearing the video was material to Petitioner's assessment of defenses in his case:

"Look this is a real issue there's a video because if the video shows that this person in fact is not buying from you, not purchasing from you, not trying to purchase from you, but is either just there hanging out or they are there for another reason this is a potential defense."

App. 34.

Counsel testified he was not comfortable advising him to plea guilty until he saw the video. App. 34. Again, counsel testified to the materiality of this video: “We talked about it and the decision that was made between us was we wanted to see this video because the video might have given him a defense to the charge that he would otherwise plead guilty to a ten-year deal on.”¹ App. 35.

As to whether Wellborn viewed the entire videotape, his testimony at the hearing indicates he was allowed to view those portions of the videotape the State allowed him to view.

“The video by the way was—let’s see- as of November 13th I received an e-mail from Mr. Newkirk saying pursuant to our conversation this week I’ll prepare relevant portions of the video for you to watch on Tuesday November 17th. And this was at our suggestion because the State was still playing this sort of interesting scenario of wow, if we show you this video it’s going to expose our informant and I was still informing the State my client knows who the informant is. This is his name. You know, no mystery here. But just so we can make it I guess give them some comfort I suggested that we do what we do in Federal Court where we would sign a Protective Order. And so that was—that was part of this email, pursuant to our conversation I will prepare relevant portions of the video for you to watch.”

App. 41, ll. 5-20.

But in any event, whether Wellborn fully reviewed the videotape or not is the central issue in this case-- what the State does *not* contest is that Petitioner *himself* was never allowed to view the videotape. As the record in this case shows, against the backdrop of significant issues in resolving the case due to Petitioner’s inability to view the discovery to which he was entitled under the statute, the Solicitor’s Office extended and withdrew a number of plea offers—from

¹ Before Petitioner could review his discovery or accept the offer, the Solicitor changed that offer to a negotiated 18-year sentence. App. 36. Counsel was not given any reason to suspect the 10-year offer was going to be withdrawn. App. 38-39.

initially offering 10- years to an inexplicable increase to 18 years, to the threat of life without parole unless he pleaded guilty, to the uncounseled offer and acceptance of 14 years. This Court should not approve a solicitor office policy that predicates the existence of a plea offer on a defendant's abdicating his statutory right to personally review the discovery in his case, especially discovery that his lawyer determined was relevant to his possible defenses. Forcing a defendant to give up this right is not countenanced by the Rule 5 which, by its plain language, allows a defendant, personally, to view his or her discovery.

The court of appeals erred in holding Petitioner's guilty plea was voluntarily and intelligently entered when the State coerced the plea by threatening a life sentence if Petitioner did not accept the plea which was wholly contingent on Petitioner's giving up his right to review the discovery in his case. The circuit court's colloquy with Petitioner did not constitute the meaningful inquiry into the circumstances of Petitioner's situation that this Court approved of in *State v. Samuel*, 422 S.C. 596, 813 S.E.2d 487 (2018). Respectfully, this Court should grant the petition and allow Petitioner to withdraw his guilty plea.

CONCLUSION

This Court should hold Petitioner's guilty plea was involuntarily induced and allow him to withdraw his guilty plea.

Respectfully submitted,

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