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December 14, 2017

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29221

RECEIVED

DEC 29 2017

S.C. SUPREME COURT

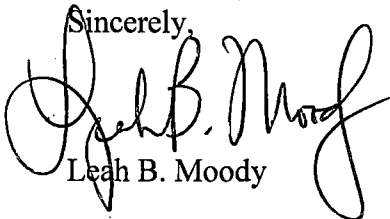
**RE: Travis Hines, #310504, vs. State of South Carolina
Case No.: 2016-CP-46-3602**

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent **Travis Hines** in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal and Proof of Service in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope. Also enclosed is a copy of the Order Dismissing Post-Conviction Relief Application.

Thank you for your assistance with this matter.

Sincerely,



Leah B. Moody

LBM/ sh

Enclosures

cc Travis Hines
Justin Hunter, Esquire, SC Attorney General's Office
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

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

Travis Hines, #310504, Appellant,

v.

State of South Carolina, Respondent.

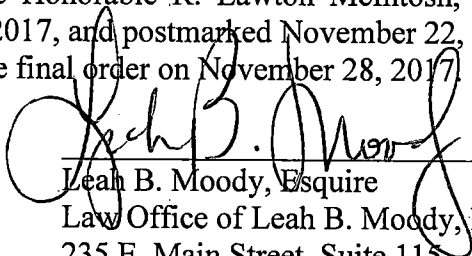
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DEC 29 2017

S.C. SUPREME COURT

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.



Leah B. Moody, Esquire
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235 E. Main Street, Suite 115
Post Office Box 1015
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Other Counsel of record:
Justin Hunter, SC Attorney General's Office
Rembert C. Dennis Building
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Columbia, South Carolina 29211-1549
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IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

DEC 29 2017

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable R. Lawton McIntosh, Presiding in York County

Case No. 2016-CP-46-3602

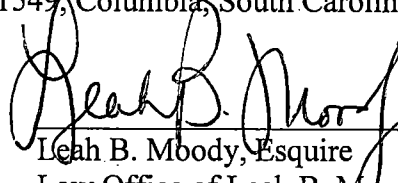
Travis Hines, #310504, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin Hunter, Esquire, SC Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on 12/21 2017, addressed to its attorney of record, Justin Hunter, Esquire, SC Attorney General's Office, Post Office Box 11549, Columbia, South Carolina, 29211-1549.



Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

December 14, 2017

cc Travis Hines
Justin Hunter, Esquire, SC Attorney General's Office
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

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	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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), 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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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.

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.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

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

2016-CP-46-3602

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED-RECEIVED
2017 NOV 21 PM 4:20
CLERK OF COURT
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, 2016.¹ Applicant further testified that Judge Hall did not go over his Faretta² 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.³ 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.⁴ 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

¹ December 15, 2015 Transcript p. 4, ll. 14-25; p. 5, ll. 1-15.

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

³ Applicant's Guilty Plea Transcript December 17, 2015.

⁴ 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.⁵ 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.⁶ 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.”⁷

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.⁸

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

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

⁶ Id.

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

⁸ 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.¹¹ 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.

¹¹ 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."⁹

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."¹⁰

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.

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

¹⁰ 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

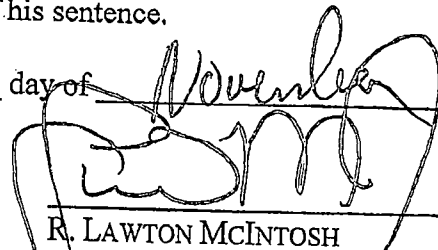
professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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.

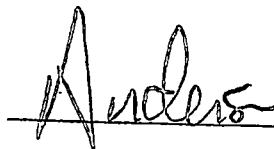
IT IS THEREFORE ORDERED THAT:

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.



R. LAWTON MCINTOSH
Presiding Judge
Sixteenth Judicial Circuit



Anders, South Carolina



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Facsimile (803) 329-1344

December 14, 2017

The Honorable David Hamilton
York County Clerk of Court
Post Office Box 649
York, South Carolina 29745

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S.C. SUPREME COURT

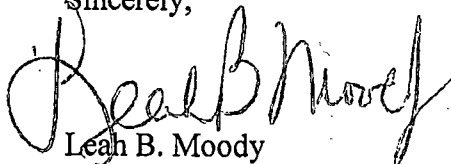
RE: Travis Hines, #310504, v. State of South Carolina
C.A. No.: 2016-CP-46-3602

Dear Mr. Hamilton:

The York County Court of Common Pleas appointed my office to represent **Travis Hines** in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you for your assistance in this matter.

Sincerely,



Leah B. Moody

LBM/sh

Enclosures

cc Travis Hines

Justin Hunter, Esquire, SC Attorney General's Office
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

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December 14, 2017

Justin Hunter, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

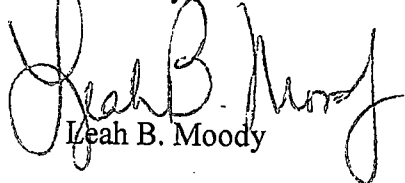
RE: Travis Hines, #310504, v. State of South Carolina
Case No.: 2016-CP- 46-3602

Dear Mr. Hunter:

The York County Court of Common Pleas appointed my office to represent **Travis Hines** in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/sh

Enclosures

Cc Travis Hines

Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

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December 14, 2017

Mrs. Sharon Graham
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11433
Columbia, South Carolina 29211-1433

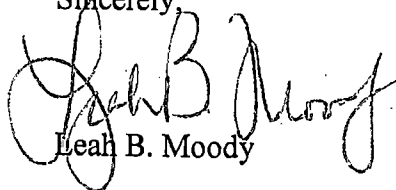
RE: Travis Hines, #310504, vs. State of South Carolina
Case No.: 2016-CP-46-3602

Dear Ms. Graham:

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Sincerely,

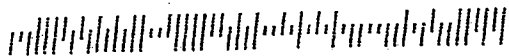


Leah B. Moody

LBM/sh

Enclosures

cc Travis Hines
Justin Hunter, Esquire, SC Attorney General's Office
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County



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Rock Hill, South Carolina 29730

TO:

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
PO Box 11330
Columbia SC 29211-1330