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S.C. SUPREME COURT

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.

PETITION'S REPLY TO RETURN

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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 Respondent erroneously suggests that Judge Daniel Hall and Judge John Hayes warned Travis Hines "in separate appearances regarding the dangers of preceding *pro se.*" Return of Resp. at 7. This is simply not correct. In his appearance before Judge Hall, Mr. Hines was told that on January 4, 2016 if he did not have a lawyer, Mr. Hall at that point would "go over and make sure you understand your right about representing yourself." App. at 117, l 12-14. No dangers of self representation were given because Mr. Hines stated he was going to hire a lawyer.

Nor did Judge Hayes warn "Petitioner of the dangers of proceeding without an attorney." Return of Resp. at 8. Telling a defendant "Its [sic] dangerous for you to proceed without an attorney since you're not one and there is a benefit in having an attorney represent you" is hardly a warning as to the dangers of self representation. It certainly does not comply with *Faretta v. California*, 422 U.S. 806 (1975). The plea waiver fares no better. It does not tell the person signing the waiver what the dangers are. It does not list the dangers. A finding that a defendant "freely voluntarily knowingly and intelligently" (App. at 102, ll 17-18) must be based upon actual facts and not mere pro forma questions. The record must reflect this conclusion. *Gardner v. State,* 351 S.C.407, 570 S.E.2d 185 (2002).

The State cites *State v. Cash*, 309 S.C. 40, 419 S.E.2d 811 (Ct. App. 1992) and *State v. McLauren,* 349 S.C. 488, 563 S.E.2d 356 (2002) in support of the preposition that Mr. Hines was properly warned. As those cases involved a trial and much greater warnings than were given here, they have no application except to illustrate the lack of warnings given in this case. The State has repeatedly stated that Mr. Hines was warned about the dangers of self representation. The State has never cited to where in the record a single specific warning was given. The reason is simple, there are none.

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 State has contended that pursuant to *Brady v. Maryland*, 373 U.S. 3 (1963) the prosecutor has committed misconduct. This is incorrect. Mr. Hines never cited to *Brady* in his brief or argument. Whether or not the video contains *Brady* material is unknown to Mr. Hines, Mr. Welborn or Ms. Moody, his PCR lawyer. Only Mr. Welborn has seen a portion of the video, but not all of it. What is contained in the unseen portion is unknown to anyone who has represented Mr. Hines.

To make the position on this issue clear, Mr. Hines contends that prosecutorial misconduct occurs when the State forces a defendant to choose between 14 years in prison and not seeing all the evidence and seeing the evidence and being exposed to a life without parole sentence. The violation is prejudicial in this case because the State knew Mr. Hines had

terminated his former attorney and that Mr. Hines had not seen the video, the major portion of the discovery.

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. This 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.

Mr. Hines is not contending that trial counsel was ineffective, for he had none. He is contending that the solicitor committed prosecutorial misconduct in failing to prove him with the video tape prior to forcing him to make his decision. And 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 Petition, this Court should grant this Petition for Certiorari and establish a minimum standard for *Faretta* warning to include the question has all discovery been supplied to the defendant. If the State has not supplied all the discovery, this Court should require an affirmative waiver on the record of the right of the defendant to obtain all discovery before entering his plea.

August 14, 2018

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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the Secretary for C. Rauch Wise, Attorney for the Petitioner in the above entitled case. That on August 14, 2018, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Petitioner's Reply to Return in the above case addressed to Janell H. Gregory, Office of the Attorney General, P.O. Box 11549, Columbia, SC, 29211.

Sandy Traynham

SWORN to and Subscribed
before me this 14th day
of August, 2018.
_____ (L.S.)

Notary Public for South Carolina
My Commission expires: 12/7/2019

LAW OFFICE OF
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August 14, 2018

Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Travis Hines vs. State of South Carolina, Appellate Case No. 2017-002632

Dear Mr. Shearouse:

I am enclosing herewith for filing the original and six copies of the Petitioner's Reply to Return together with the original Affidavit of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,

C. Rauch Wise

CRW/slt
Enclosure

cc Janell H. Gregory