

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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1 STATE OF SOUTH CAROLINA

2 -----x

3 TRAVIS LAMONT HINES,

4 Petitioner,

5 Case No.

6 -against-

2016-CP-46-03602

7 STATE,

8 Respondent.

9 -----x

10 July 31, 2017

11 York, SC

12 B E F O R E:

13 HONORABLE R. LAWTON MCINTOSH

14

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

16 JUSTIN HUNTER, Esquire

17 Attorney for the State

18

19 LEAH MOODY, Esquire

20 Attorney for the Petitioner

21

22

23 Aileen Butler

24 Official Court Reporter

25

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				
10	Ms. Moody	50			61
11	Mr. Hunter		59		
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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 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

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

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) _____

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

- (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

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.

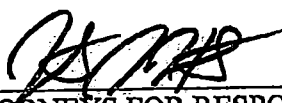
Respectfully submitted,

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) None

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 (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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 _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____ Obtain GED ☐
Payment Terms: _____☐ 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: _____

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: [Signature]

Judge Bar ID: 2467

Sentence Date: 12-19-15

Judge Code: 2049

Clerk of Court/Deputy Clerk:

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

David Hamilton

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: [REDACTED]

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

DL State: DL #:

DOB: [REDACTED] 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 5/26/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

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 ☒ County/ ☐ Municipality of York)

violate the criminal laws of the

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

FILED - RECEIVED
STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT
2015 DEC 15 PM 12:25

STATE OF SOUTH CAROLINA)
KEVIN BRACKETT, SOLICITOR GENERAL)
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 3rd 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: ¹⁴15 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.

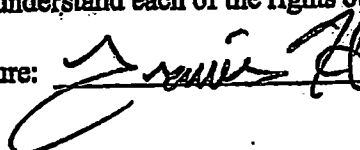
☒ I understand that I have 10 days within which to appeal this guilty plea.

☒ 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: _____ Bar # _____
Attorney Signature

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. Pelic 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

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

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:

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 *****



Source : SummaryReport.jsp

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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 *****

Create PDF

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
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

E X H I B I T S

<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 PLEASJUDGMENT 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: _____

FILED-RECEIVED
AUG-8 PM 12:47
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 (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.

R. Lawton McIntosh
Circuit Court Judge2155
Judge Code8-1-17
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), SCRPC.

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 former and current trial counsel which was not accepted. Current trial counsel refused to review state's discovery before response - 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 possib. bty of perjury. 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.

1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against- 2015-GS-46-3685

7 TRAVIS HINES,

8 Defendant.

9 -----x

10 December 15, 2015

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE DANIEL HALL

15

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

17 RYAN NEWKIRK, Esquire

18 Assistant Solicitor

19

20 CHRISTOPHER WELLBORN, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 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	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	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), 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-Fileers 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

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

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.

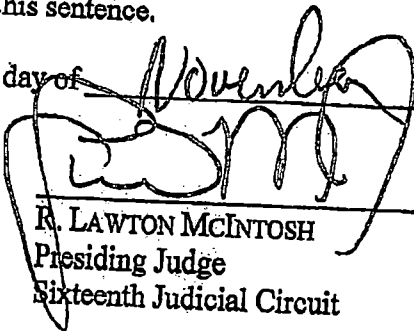
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a 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.

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

RECEIVED

DEC 29 2017

Travis Hines, #310504, ... Appellant,

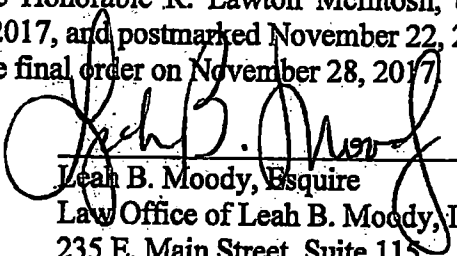
S.C. SUPREME COURT

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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