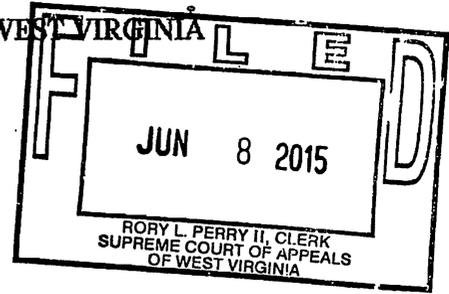


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No.: 14-0780



**RICKEY VON RAINES, II,**

**Appellant**

v.

**DAVID BALLARD, Warden**  
**Mount Olive Correctional Complex**

**Respondent.**

**APPELLANT'S REPLY  
TO RESPONDENT'S BRIEF**

Submitted by,

**RICKEY VON RAINES, II,**  
**Appellant pro se**  
**Mt. Olive Correctional Complex**  
**One Mountainside Way, Box 5**  
**Mt. Olive, WV 25185-0005**

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APPELLANT'S REPLY TO RESPONDENT'S BRIEF

Now comes your Appellant Rickey Von Raines, II, (*hereinafter Appellant*), pro se, to present his reply to Respondent's brief filed in this matter. Appellant wishes to advise this Court that he is filing his reply brief *pro se*, without the assistance to guidance of counsel due to the fact that Appellant has repeatedly made requests to his Counsel of Record, that said counsel bring the issues raised by appellant, and bring such to the attention of this Court, but thus far Appellant's counsel has failed or refused to do so. Given the position that these conditions have placed the Appellant in, he prays that this honorable court will take such into consideration, further accept Appellant's reply brief and its contents.

**ISSUE #1: APPELLANT WAS GIVEN ERRONEOUS ADVISE BY HIS COUNSEL OF RECORD CONCERNING A 2 to 15 YEAR PLEA AGREEMENT OFFERED BY THE STATE PRIOR TO TRIAL:**

Prior to trial Appellant was informed by his trial counsel of record, Mark Hobbs, that the State could not bring a recidivist action against Appellant if he were to proceed to trial stating that the fact that Appellant's past felonies were nonviolent precludes such an action.

Counsel of record at that time, Mark Hobbs also informed Appellant that due to the fact that one of his previous legal encounters was an attempted burglary which was dropped to serving county jail time, and given that Appellant did not go to prison or another DOC facility, nor was he issued a DOC

sentencing number, that matter could not be utilized by the State to enhance any action of utilize it for a recidivist action due to that matter being considered nonviolent in nature. Informing Appellant further that he would have to be sentenced to prison on a charge before it could be utilized to enhance another sentence for a recidivist action. (See Tr. Transcripts - First day)

On the first day of trial after informing the Judge that he had discussed the possibility of recidivism with Appellant, Trial counsel, Mark Hobbs, further informed the Judge that he "overlooked, or didn't listen," but he had thought all of Appellant's previous charges were nonviolent. This is clearly erroneous.

In furtherance of the conditions that existed in the mind of Appellant's trial counsel, prior to trial Appellant was offered a Plea offer of two to fifteen (2 to 15) years. However Trial counsel Mark Hobbs drove home the point that in Appellant were to proceed to trial the "worst" that Appellant could possibly receive was to be eligible for parole in fifteen (15) years anyway, even if the State were able to find some way to bring a recidivist action against Appellant. Trial counsel Mark Hobbs further drove home another point that even if that were to happen, he could appeal such an action to the Supreme Court because the Judge couldn't use Appellant's past convictions in a recidivist action because they were nonviolent. Although Mr. Hobbs did urge Appellant to accept the plea at that time, Appellant declined it directly due to the erroneous information and advise that he had been receiving from his Trial Counsel Mark Hobbs.

**ISSUE #2: APPELLANT WAS GIVEN ERRONEOUS ADVISE BY HIS COUNSEL OF RECORD CONCERNING A PLEA BARGAIN OFFERED BY THE STATE AFTER APPELLANT'S CONVICTION:**

After Appellant was convicted at trial, he was later brought to the Circuit Court on June 23, 2009, and was offered a Plea Bargain of sixty-five (65) years making Appellant eligible for parole in seventeen and a half (17½) years.

Given that Appellant's trial counsel Mark Hobbs had repeatedly advised him that the "worst" that could happen to Appellant even if he were to go to trial, would result in his being eligible for parole in fifteen (15) years, and recognizing that the latest offer would result in Appellant serving an extra two and a half (2½) years for no reason, Appellant declined the latest plea offer.

Furthermore, it must be remembered that Appellant was further operating under previous advise and information from trial counsel that given the status of his previous conviction, the State could not

bring any recidivist action against him. This erroneous advisement further contributed to Appellant's rejection of the plea offers brought to him, setting up his mind set to proceed to a jury trial concerning the recidivist actions.

It was only later on, after all had been concluded, that it came to light that Appellant's trial counsel Mark Hobbs was in fact wrong about the laws concerning recidivist actions and sentencing in the state of West Virginia. After the Judge had been informed that Appellant refused the plea offer, counsel Mark Hobbs and the Judge had several conversations on record concerning what advise Mark Hobbs had been giving Appellant, and further conversations concerning how the Judge couldn't actually sentence Appellant under a recidivist action. (See Trans. June 23, 2009).

The clear reflections of advise given to Appellant by his counsel, which were made a part of the record, clearly proves that erroneous advise was given to Appellant at pretrial stages, during trial, and continued to well after trial, all the way to the SCAWV when Mark Hobbs brought his concerns to that body, who offered their opinion on the matter showing that Appellant's counsel of record was wrong. Given this, counsel's advise to Appellant on those matters was therefore wrong.

ISSUE #3: INVOLUNTARY PLEA:

All voluntariness as to Appellant's accepting the post conviction plea which was offered by the State, was stripped away by virtue of the Judge and state prosecutor utilizing the threat of multiple sentences derived from numerous lumped charges, and holding such over Appellant's head should he reject the plea offered, proceed to trial, and be convicted. In this light the distinction was made perfectly clear that Appellant would be hit with the highest lumped sentences possible, including a Life sentence and a aggravated robbery sentence of eighty (80) years, if the Appellant did not accept the State's plea offer of sixty-five (65) years.

As detailed above, once Appellant had rejected the plea as offered due to the advise rendered to him through his counsel of record, said counsel, Mark Hobbs did then inform the Judge that I had decided to decline the plea, and wanted to proceed to a jury trial concerning the recidivist action.

Then and only then did it become clear that the advise given by Appellant's counsel concerning the recidivist issues had been erroneous. This realization came to light when both the Judge and State

prosecution went on record and said that if Appellant proceeded to trial the following day, and was convicted in a recidivist action, he would be sentenced to eighty (80) years for robbery; fifteen (15) years to life habitual; two to fifteen (2 to 15) years; one to ten (1 to 10) years; and one to five (1 to 5) years; all to be ran consecutively.

Appellant's counsel Mark Hobbs informed the Judge that he had been informing Appellant that the most Appellant could face, and the worst that could happen to him should he go to trial, would be to receive a sentence that make Appellant parole eligible in fifteen (15) years, however Appellant's counsel did add that if the judge felt he could actually sentence the Appellant to a life sentence and an eighty (80) years sentence, plus several others lumped sentences as stated, then he (Appellant's counsel Mark Hobbs) would order Appellant to accept the plea.

At that time the Court ordered a recess so that Counsel could consult with Appellant. During that conversation Appellant's counsel Mark Hobbs stated to Appellant: "Rickey, I order you to accept this plea because Judge O'Brian has stripped you of any voluntariness by using and holding a life sentence over your head, and a eighty (80) year sentence for robbery, plus a lot more if you don't accept it."

Appellant informed his counsel that he wanted to appeal it, and that he, Mark Hobbs had better make the Court record clear that he, Mark Hobbs had been giving Appellant erroneous information and advise. Counsel then informed the Appellant that the Judge was erroneous in this matter and he would prove him wrong in the Supreme Court of Appeals. This argument was later denied by the SCAWV when brought by Appellant's counsel.

The State did change the lower end of the plea agreement to allow parole eligibility in ten and a half (10½) years instead of the previous seventeen and a half (17½), however Appellant was forced to say that he perjured himself during testimony in order to be permitted the benefits of the plea. (See Trans. of Habeas proceedings – Testimony of Mark Hobbs).

Mark Hobbs gave testimony that he felt that the State had stripped Appellant of all voluntariness with respect to the plea by using the threat of all those charges, and their assurances that each would be ran consecutively to force Appellant to concede to a plea. Appellant's counsel Mark Hobbs further testified that he had believed in his advise given to Appellant and that the Judge was wrong about the

Law concerning the sentencing aspects and possibilities with respect to recidivism, all the way up until the point when the SCAWV denied Appellant's appeal filed by Mr. Hobbs, in their memorandum decision.

WHEREFORE, Appellant prays that this honorable court takes his reply brief under consideration and upon a full and proper review, that this court will grant Appellant the relief sought due to the repeated erroneous advise he was issued by his counsel at each and every stage, pretrial, at trial, and during all plea negotiations, and during post-trial proceedings.

Respectfully submitted,

/s/ Rickey Von Raines  
Rickey Von Raines, II, - Appellant *pro se*

CERTIFICATE OF SERVICE

I, Rickey Von Raines, II, Appellant *pro se* do hereby certify by virtue of my signature that on this 13<sup>th</sup> day of May, 2015, I issued a true and accurate copy of the foregoing "APPELLANT'S REPLY TO RESPONDENT'S BRIEF" to the parties identified and addressed below, by placing such in the US Mail, with postage being prepaid.

Mark L. French, Esq.  
WV Bar No.: 9061  
Criswell French Condaras, PLLC  
105 Capitol Street, Suite 200  
Charleston, WV 25301

WV AG, Appellate Division  
ATTN: David A. Stackpole  
State Capitol Complex  
Bldg. 1, Rm. E-26  
Charleston, WV 25305

Respectfully,

/s/ Rickey Von Raines  
Rickey Von Raines, II, - Appellant *pro se*

VERIFICATION

I, Rickey Von Raines, II, after making an oath or affirmation to tell the truth, say that the facts which I have stated within this filing are true and correct to the best of my knowledge and belief; and where such provided information is base upon information given by others, I believe that information which I have asserted to be true and accurate as well.

Rickey Raines  
Signature

May 13<sup>th</sup> 2015  
Date

This verification was sworn to or affirmed before me on this 13 day of May, 2015.

My Commission expires: 03 October 2022

Official Seal:

Tracy L. Dorsey  
NOTARY PUBLIC SIGNATURE

