

1 what your practice is and they tell me, if both parties  
2 agree, you generally will accept.

3 But, again, I think we've met those elements.

4 *THE COURT:* Well, that's true. But in one of the  
5 defendants in this case, I actually refused a plea offer,  
6 under Waldron, that they had brought before me. But  
7 normally, if both sides say that's what they've agreed  
8 to, I normally don't interfere with it. That is true.

9 *MR. BULLMAN:* And, again, you provide what I think  
10 is that element that we haven't put on the witness stand.  
11 We've provided evidence that they didn't -- the attorneys  
12 did not seek out a plea agreement. They both admit  
13 that's what you routinely do. That's what we think good  
14 defense attorneys do, even if their clients tell them not  
15 to.

16 I've had clients that forbid me to do it. I do it  
17 anyway. I've had them say, "I'm going to stand tough;  
18 I'm going to put them in the box," and then when you  
19 start putting them in the box they break down crying  
20 saying, "Please see if you can get me a plea offer."

21 That's just how this is done.

22 And Mr. Bell said he would have offered this plea  
23 agreement. He says he would have taken it. I think  
24 that's sufficient.

1       **THE COURT:** Okay. Well, thank all of you very much.  
2 I think what I'm going to do is ask the court reporter --  
3 how long would it take for you to type up this hearing?  
4 How many days would it take you?

5       **COURT REPORTER:** I'll have it when you tell me to  
6 have it.

7       **THE COURT:** Oh, no, I'm not rushing you. Thirty  
8 days? Can you have it in thirty days?

9       **COURT REPORTER:** Oh, yes. Yes.

10       **THE COURT:** I'm going to keep the record open for  
11 thirty days and give her a chance to type up a transcript  
12 of this hearing. And if you wish to receive copies of  
13 her transcript, you certainly can request that. Okay?

14       **MR. LaCARIA:** Yes, Your Honor.

15       **MR. KORNISH:** We would like a copy.

16       **MR. LaCARIA:** We would request one, too.

17       **THE COURT:** Okay. And after -- after that I'll take  
18 a little time to look it over, look at the law. And I  
19 don't want to box myself in, but I'll be ruling shortly  
20 after I get that transcript of this hearing. It's not  
21 that I'm going to delay it.

22       I think I understand your positions very well. I  
23 think the scope has been narrowed, as far as the Court is  
24 concerned, to two basic areas: The missing portions of

1 the transcript and the -- whether there was ineffective  
2 assistance of counsel not to pursue a plea agreement in  
3 this case.

4 I'll -- that's not to say I'm not going to look at  
5 all of the other grounds that are in the petition, but as  
6 far as I'm concerned, those are the two primary areas  
7 that stand out to the Court to examine or reexamine.

8 so thank all of you. I think you both presented  
9 your positions very well and this court is adjourned and  
10 you should receive my ruling shortly after I receive the  
11 transcript.

12 Now, I'm going to give you ten days after you get  
13 the transcript to raise any objections. That's from both  
14 sides to raise any objections you may have as to what's  
15 in there.

16 *MR. LaCARIA:* Yes, Your Honor.

17 *THE COURT:* Okay. And you do that simultaneously.  
18 So if we get the transcript -- today is what,  
19 December 5<sup>th</sup>. If we were to -- and this is only an  
20 illustration: If we get the transcript on January  
21 the 5<sup>th</sup>, then you've got until January 15<sup>th</sup>. And you  
22 simultaneously are bound by that date to raise any  
23 objections you may have to it.

24 *MR. LaCARIA:* what are we objecting to, Your Honor?

1 | **THE COURT:** whatever is in the transcript --

2 **MR. LaCARIA:** Okay. Okay.

3        **THE COURT:** -- of this hearing. I'm just doing that  
4 as a matter of course.

5 **MR. KORNISH:** Any potential inaccuracies?

6 | **THE COURT:** Inaccuracies in the record.

7 **MR. KORNISH:** I see.

8 **MR. LaCARIA:** Yes, Your Honor.

9           **THE COURT:** Okay? So if I don't get anything within  
10 that ten days, then that gives me a chance to go forward  
11 and work on my decision.

12 | Okay. That will be all.

13 **MR. LaCARIA:** Thank you, Your Honor.

14       **THE COURT:** Mr. Kornish, prepare a short order on  
15 this hearing.

16 | **MR. KORNISH:** Yes, Your Honor, we'll do it.

17 *THE COURT:* You are remanded back to Mount Olive,  
18 sir.

19 That will be all.

20 | (Proceeding concluded and court adjourned at

21 | 3:34 p.m., December 5, 2016.)

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1 STATE OF WEST VIRGINIA,  
2 COUNTY OF MCDOWELL, to-wit:

3 I, Teresa L. Harvey, Registered Diplomate Reporter,  
4 do hereby certify that the foregoing is a true and  
5 correct transcript of the proceedings had in the matter  
6 of Amos Gabriel Hicks v. David Ballard, Warden, Mount  
7 Olive Correctional Complex, Civil Action No. 12-C-100-S,  
8 conducted in open court on December 5, 2016, as reported  
9 by me in stenotype shorthand notes.

10 I hereby further certify that the transcript within  
11 meets the requirements of the Code of the State of West  
12 Virginia, 51-7-4, and all rules pertaining thereto as  
13 promulgated by the Supreme Court of Appeals.

14 Given under my hand this 24<sup>th</sup> day of December, 2016.

15  
16   
17 Teresa L. Harvey, RMR, RDR, CRR  
18 Substitute Official Reporter  
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