

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

Edgar W. Dickson, CHIEF ADMINISTRATIVE JUDGE
Case No. 2012-CP-18-2026

Abdullah Holmes Appellant

VS.

THE STATE Respondent

NOTICE OF APPEAL

Abdullah M. Holmes, appeals the Honorable Judge Edgar W. Dickson's Dismissal of Appellant's Post-Conviction Relief application. This appeal is filed by Appellant Abdullah M. Holmes.

November 8, 2013

Abdullah Holmes #345105
Kershaw C.I.
4848 Goldmine Hwy.
Kershaw, S.C. 29067

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SC Court of Appeals

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WRIT OF CERTIORARI

The Appellant hereby files this appeal pursuant to Rule 243 (a) of the South Carolina Appellate Court Rules (SCACR) on the following grounds:

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Appellant was true bill indicted at the January 2011 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor - Second Degree (2009-GS-18-1773). Applicant was represented by Mary LeMatty, Esquire. On March 8, 2011 the Appellant appeared before the Honorable Diane S. Goodstein where he pled guilty to Assault and Battery of a High and Aggravated Nature and was sentenced to ten years imprisonment.

A timely Notice of Appeal was filed. By written order filed June 24th, 2011, the appeal was dismissed. The Remittitur

was sent on August 17, 2011.

Appellant filed an application for post-conviction relief on August 10, 2011 (Case No. 2011-CP-18-1565). The state made its Return on December 21, 2011. An evidentiary hearing was convened on May 24, 2012 at which Appellant was present and represented by counsel. In a written order dated June 4, 2012, and filed June 7, 2012, the Honorable DeAndrea G. Benjamin dismissed the application with prejudice.

The Appellant filed a secondary Post-Conviction Relief application on August 24, 2012 based on Newly Discovered Evidence. The Respondent made its Return and Motion to Dismiss on December 4, 2012. Pursuant to this request, the Court issued a Conditional Order of Dismissal, signed April 25, 2013 and filed on May 17, 2013 provisionally denying and dismissing this action, while giving the Appellant twenty days from the date of service of said Order in which to show why the dismissal should not become final.

A Final Order of Dismissal was signed by the Honorable Edgar W. Dickson on September 24, 2013. Within the Final Order of Dismissal, the Respondent Stated that Appellant made no response to the Conditional Order of Dismissal. Appellant served a copy of his Objection to Respondent's Proposed Final Order of Dismissal on the Honorable Edgar W. Dickson, Ms. Cheryl Graham (Dorchester County Clerk of Court), and Ms. Megan E. Harrigan (Assistant Attorney General) on September 23, 2013. Within Appellant's Objection, the Appellant has shown that he has responded timely to the Court's Conditional Order of Dismissal. The Honorable Edgar W. Dickson denied and dismissed Appellant's secondary Post-Conviction Relief application on September 24, 2013. The Honorable Edgar W. Dickson erred in his decision to dismiss on the following grounds:

ARGUMENT

Appellant's response to the Honorable Judge Edgar W. Dickson's order was based on the ineffectiveness of his former pre-trial Counsel of which failed to abide by the

provisions of rule 5 of the South Carolina Rules of Criminal Practice, when Appellant's pre-trial counsel failed to investigate any and all information regarding the reports of physical examinations and of scientific test or DNA obtainments from Appellant's body.

This unsought information is in regards to Subject-Matter Jurisdiction which stems from AFTER-DISCOVERED EVIDENCE and indicates that the Court lacked subject-matter jurisdiction to accept Appellant's plea due to a violation of Appellant's Fourth, Fifth and Fourteenth Amendment Rights along with the Constitutional protections in ARTICLE 1, §3, Section 9 and 10, also the Constitutional provisions to DUE PROCESS OF LAW; UNREASONABLE SEARCH and SEIZURE and EX POST FACTO LAW.

Appellant contends that while he was incarcerated at the Dorchester County Detention Center of St. George, South Carolina, an officer illegally obtained the Appellant's DNA without a Court order during the late months of 2009. This miscarriage of legal authority occurred before the Appellant's guilty plea hearing. Subject-matter jurisdiction applies to this appeal due to the fact that the occurrence of this violation was during the litigation of Appellant's criminal case (2009-GS-18-1773).

PRAYER FOR RELIEF

WHEREFORE, the Appellant respectfully request that this Court grant him relief from the Honorable Judge Edgar W. Dickson's dismissal of Appellant's post-conviction relief application on the grounds that the Appellant is a prisoner in custody under sentence of a court established by Act of Congress and is claiming the right for new trial upon the ground that his sentence was imposed in violation of the Constitution and laws of the United States, and that the Court was without jurisdiction to impose such sentence.

November 8, 2013

Respectfully submitted,
Abdullah M. Holmes #345105
Kershaw C.I.
4848 Goldmine Hwy.
Kershaw, S.C. 29067

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of a Notice of Appeal has been served upon V. Claire Allen (Deputy Clerk) by mailing one (1) copy in the United States mail, postage prepaid addressed to:

1015 Sumter Street
Columbia, South Carolina 29201

This 8th day of November, 2013

Abdullah Holmes
Pro se Litigant