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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

RECEIVED
ATTORNEY GENERAL'S OFFICE

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

EDGAR W. DICKSON, CHIEF ADMINISTRATIVE JUDGE

Case No. 2012-CP-18-2026

Abdullah Holmes Appellant
V S.

THE STATE Respondent

WRIT OF CERTIORARI

The Appellant hereby filed this appeal pursuant to Rule 243(A) of the South Carolina Appellate Courts 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 24, 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 base 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 the 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 obtainment from Appellant's body.

This unsought information is in regards to Subject-Matter Jurisdiction which stems from AFTER-DISCOVERED EVIDENCE and indicated that the Court lacked Subject-Matter jurisdiction to accept Appellant's plea due to a violation of Appellant's Four, 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 Derchester 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 (NO. 2009-65-18-1773).

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 Co. I.
4848 Goldmine Hwy.
Kershaw, S.C. 29067.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Abdullah M. Holmes
v. Applicant,

Case No. 2012-CP-18-2026

State of South Carolina
Respondent

APPLICANT'S OBJECTION TO RESPONDENT'S
AMENDED FINAL ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief filed August 24th, 2012. Respondent made its Return and Motion to Dismiss on December 4th, 2012, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal, signed April 25th, 2013 and filed on May 17th, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty days from the date of service of said order in which to show why the dismissal should not become final. The Court issued a Final Order of Dismissal, signed September 24th, 2013 and filed October 14th, 2013. After additional review, the Court amended its Final Order of Dismissal to include the various responses filed by Applicant.

Within the Respondent's Amended Final Order of Dismissal, it is acknowledged that Applicant did file a response to the Conditional Order of Dismissal. First, Applicant submitted a Memorandum of Law, filed November 21st, 2012, where he set forth reasons why he believed his application should not be summarily dismissed. Applicant alleges his plea Counsel, Mary P. LeMatty, was deficient for not challenging the Collection of his DNA prior to his guilty plea. The Respondent finds Applicant's claim without merit as he failed to provide any sufficient reasoning as to why this allegation could not have been raised in his previous application.

(1)

ARGUMENT

Applicant hereby objects to the Respondent's findings due to the fact that Applicant has very much clearly stated within his Memorandum of Law, that his claim stems from NEWLY DISCOVERED EVIDENCE of which Applicant received from the South Carolina Law Enforcement Division on October 31st, 2012. This [REDACTED] NEWLY DISCOVERED EVIDENCE was received "AFTER" Applicant's initial evidentiary hearing which was received on May 24th, 2012. This is exactly five (5) months later. Therefore, Applicant has provided sufficient reasoning as to why the facts of this allegation could not have been raised in his previous application. (For further proof of receipt of previously mentioned evidence, see date of receipt on exhibit - A).

Second, Applicant submitted a Legal Brief in Support of his Second Application for Post-Conviction Relief Regarding NEWLY DISCOVERED EVIDENCE, filed on March 19th, 2013, where he again set forth reasons why he believed his application should not be summarily dismissed. Applicant alleges that Counsel improperly told him not to worry about the DNA collection and as a result, his guilty plea was not knowingly or intelligently made. The Respondent finds Applicant's allegations about NEWLY DISCOVERED EVIDENCE are without merit, as he has failed to present any evidence that shows he did not know about the DNA sample and the effects it would have on his case.

ARGUMENT

Applicant hereby contends the Respondent's findings due to Respondent's misunderstanding. The Applicant is not claiming that he did not have knowledge about the DNA sample. How could he? The DNA sample was taken from his body. The Applicant's claim stems from the fact that he did not have knowledge about the effects of the improper DNA procedure because the ill mannered advice that Applicant's plea counsel gave him in regards to the improper DNA request being an non-issue. This advice was not within the range of

Competence demanded of attorneys in criminal cases.

NOTICE

If Applicant's plea counsel would have conducted an investigation of this matter, Counsel would have found that the State of South Carolina by way of and through the Dorchester County Detention Center and St. George Police Department violated Applicant's Constitutional protections in ARTICLE I Section 3, 9, and 10 to the South Carolina State Constitution, along with Applicant's Fourth, Fifth, and Fourteenth Amendments, and provisions to Due Process of Law; Unreasonable Search and Seizure and EX Post Facto protected under the U.S. Constitution.

Because of Applicant's plea Counsel's lack of investigation of the improperly obtained DNA sample, Counsel failed to follow the steps to protect the applicant's rights nor made an attempt to rectify the wrong that has been made regarding Applicant's rights. Otherwise, Applicant's Counsel would not have told Applicant that the improper DNA request was a non-issue. As stated within Applicant's Legal Brief in Support of His Second Application for Post-Conviction Relief, Applicant's counsel also failed to ensure that the proceedings served the function of adjudicating guilt or innocence, while failing to protect the rights of the Applicant. Because Applicant's plea counsel did not adequately advise Applicant of possible defenses in regards to the improperly obtained DNA sample, Applicant lacked knowledge about the effects of the improperly obtained DNA sample.

As stated within Applicant's Memorandum of Law, Applicant's Counsel should have acted competently to safeguard the information relating to representation of Applicant against inadvertant or unauthorized collection of Applicant's DNA.

NOTICE

It was Counsel's duty to provide Applicant with an informal understanding of Applicant's legal rights and obligations and explain their practical implications. It was also Counsel's duty to challenge the rectitude of official action, and to uphold legal process and seek improvement of the law,

access to the legal system, the administration of justice, and quality of service rendered by the legal profession.

Clearly, this did not occur; otherwise Applicant's plea counsel would not have told Applicant that the improper DNA request was a non-issue.

Within the Respondent's Amended Final Order of Dismissal, the Respondent claims that an Affidavit presented by Applicant does not present any evidence that his DNA was taken illegally.

ARGUMENT

Applicant hereby re-submits a letter from Applicant's plea counsel, Mary P. LeMatty of the Office of the Public Defender, First Judicial Circuit dated February 17th, 2011 of which clearly discloses to Applicant that the "Solicitor agrees that the DNA request was not proper. (See exhibit-B).

The Respondent also indicates that Applicant's plea counsel stated in a Affidavit that the DNA had no effect on his case.

ARGUMENT

The improper DNA request indicates that the Court lacked subject-matter jurisdiction to accept Applicant's guilty plea due to a violation of Applicant's Fourth, Fifth, and Fourteenth Amendments; South Carolina State Constitutional protections in ARTICLE 1 Section 3, 9, and 10 along with the provisions to DUE Process of Law; Unreasonable Search and Seizure and Ex Post Facto protected under the U.S. Constitution. These violations effected Applicant's case because it made Applicant a prisoner in custody under sentence of a court established by Act of Congress while his sentence was imposed in violation of the Constitution and laws of the United States.

According to Respondent's Amended Final order of Dismissal the Respondent claims that Applicant's plea Counsel stated within an affidavit that she knew the DNA sample had been taken.

ARGUMENT

Upon reviewing the Affidavit of Applicant's plea counsel, Applicant has come to find that his plea counsel has actually stated that she "had no knowledge of this", referring to the improper DNA request. (See exhibit - C, page 1, line 4).

Respondent has also claimed that Applicant's plea Counsel has stated that "the DNA evidence was never used against Applicant since he pled guilty."

ARGUMENT

The Respondent's claim regarding this issue is wrong. Applicant pled guilty March 8th, 2011. Applicant's plea Counsel forwarded Applicant a letter dated February 17th, 2011, notifying Applicant that the Solicitor informed plea counsel that the sample was not tested and is not going to be used in anyway in Applicant's case.

NOTICE

The Solicitor's statement was disclosed approximately one (1) month before Applicant's guilty plea. Therefore, the Respondent's claim regarding this issue is wrong. (See exhibit - B).

MEMORANDUM

The Applicant's claims are based on the fact that once his plea counsel became aware of the improper DNA request Counsel was supposed to investigate whether or if the person that obtained the Applicant's DNA was authorized to take a DNA sample from Applicant's body before persuading Applicant to plea guilty.

Applicant's plea counsel was supposed to investigate whether an order was issued pursuant to statute governing search warrants for property connected with commission of crime that allows the government to procure evidence from a person's body before persuading Applicant to plea guilty.

Applicant's plea counsel was supposed to investigate the possible Constitutional violations under the State and

Federal protected under the U.S. Constitution before advising Applicant to plea guilty.

CONCLUSION

Based on the above mentioned facts and submitted exhibits, it is clearly shown that Applicant's plea counsel's advice about the improper DNA request not being an issue was dishonesty and misleading information. Also, Counsel's advice about the improper DNA request not being an issue clearly shows an attempt to mislead Applicant into believing that there were no issues of Due Process and Constitutional violations that could have been presented to the Court's attention prior to Applicant's guilty plea. If plea counsel had adequately advised Applicant of the possible violations and defenses, Applicant would not have pled guilty but instead would have insisted on going to trial.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF
COMMON PLEAS

Abdullah Holmes...APPLICANT
VS.

MEMORANDUM OF LAW

STATE OF SOUTH CAROLINA...RESPONDENT / FILE No. 2012-CP-1026

CELESTIFIED COPY
NOV 21 AM 11:16
Clerk of Court
DORCHESTER COUNTY

APPLICANT HEREBY submits a memorandum in support of his arguments within his post conviction relief application. Applicant is alleging that his pre-trial counsel Ms. Mary P. Le Matty of the First Judicial Circuit, Office of the Public Defender located at 107 W. 6th North Street, Summerville, S.C. 29483 presented an issue of ineffective assistance of counsel by intentionally failing to investigate and disclose a violation to the applicant's Constitutional Amendment Rights of which regards a improper DNA sample that was obtained from Applicant on December 4th, 2009.

Applicant claims that this counsel did not adequately advise applicant of possible defenses, otherwise applicant would not have pled guilty but would have insisted on going to trial. To support this claim the applicant hereby submits newly discovered evidence of which Applicant has received from the South Carolina Law

Enforcement Division on October 31st, 2012. This newly discovered evidence shows that Applicant's counsel failed to investigate the prosecution's reason for not allowing Applicant's Counsel or Applicant to inspect and copy any and all discovery material. Applicant's counsel failed to investigate whether such materials came into existence or became available after the initial disclosures and whether the prosecution was in possession of the newly discovered evidence of which is the results and reports of the physical examinations and scientific tests of the victim and applicant regarding case 2009-GS-181773.

In this case, the applicant was arrested and charged on September 29th, 2009 and was sentenced on March 8th, 2011. The results of the reports of the physical examinations and scientific tests of the victim and the applicant were documented by SLED on August 17th, 2010. Therefore, applicant's Counsel (Ms. Mary P. LeMatty) had approximately six months between the dates of August 17th, 2010 and March 8th, ²⁰¹¹ to conduct a substantial investigation of the results and reports of the physical examinations and scientific test of the victim and the applicant

before advising the applicant to plead guilty. Instead Ms. Le Matty chose to advise the applicant that this element was a "non-issue". This advice was not within the range of competence demanded of attorneys in criminal cases due to the fact that as of October 31st, 2012 the applicant has come to find that the physical examinations and scientific test of the victim in case (2009-GS-181773) produced exculpatory results that could have and still could exonerate the applicant of his criminal charge.

If Ms. Mary P. LeMatty would have conducted an investigation of this matter and obtained the results and reports so that the applicant could have inspected these documents with his counsel, the applicant would not have pled guilty, but instead gone to trial. Also, Ms. Le Matty's lack of investigation of the improperly obtained December 4th, 2009 DNA sample of the applicant shows a violation of the applicant's Due Process Rights because Ms. LeMatty failed to follow the steps to protect the applicant's rights nor made an attempt to rectify the wrong that has been made regarding the applicant's rights. Otherwise, Ms. LeMatty would not have told the applicant that the improper DNA request was a non-issue.

Therefore, the applicant's claim of legal mal-practice does have merit due to the fact that once Ms. Le Matty advised the applicant that the DNA ~~was~~ improper request was improper, Counsel should have conducted a substantial investigation of the matter along with a disclosure to the

Court of the acting solicitor's role in this case of which did not comply with the standards of justice when the acting solicitor failed to notify the applicant's counsel about the obtaining of the applicant's DNA and also of the missing documents which is of concern of the applicant's DNA.

Counsel's representation was an act of official misconduct due to counsel's corrupt ~~violations~~ violations of assigned duties by malfeasance coupled with wanton misconduct which is an act of failure to act when there is a duty to do so, in reckless disregard of applicant's rights.

The applicant's claim of fraud does have merit due to the fact of counsel's statement of the improper DNA request not being an issue clearly shows an attempt to mislead applicant into believing that there were no issues of Due Process and Constitutional violations that could have been presented to the court's attention.

Ms. LeMatty should have acted competently to safeguard the information relating to representation of her client against inadvertant or unauthorized collection of the applicant's DNA. Instead, counsel failed to disclose to the court of the intrusive actions that violated the applicant's Fourth Amendment Right.

Ms. LeMatty also violated Rule 407 of the S.C. Rules of Court, titled "A Lawyer's Responsibilities" of which states that as advisor, counsel must provide a client with an informal understanding of the client's

legal rights and obligations and explains their practical implications. It is counsel's duty when necessary, to challenge the rectitude of official action. It is also counsel's duty to uphold legal process and seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal ~~prof~~ profession.

Clearly, this did not occur; otherwise Ms. Mary P. LeMatty would not have told the applicant that the improper DNA request was a "non-issue."

The applicant's claim of a violation of Subject Matter Jurisdiction does have merit due to the fact that the applicant is the subject, the improper DNA request is the matter, and the custodian of Applicant's DNA did not have jurisdiction to obtain the applicant's DNA.

Oct. 31, 2012

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

Page 5 of 5

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



NIKKI R. HALEY
Governor

MARK A. KEEL
Chief

October 25, 2012

Abdullah Holmes # 345105
Kershaw CI
4848 Goldmin Hwy.
Kershaw, SC 29067

RE: Freedom of Information Act Request

Dear Mr. Holmes:

Per your payment received October 24, 2012, please find enclosed the information available to you under the Freedom of Information Act.

Sincerely,

Thomas Berry
Freedom of Information Coordinator

2013 APR 22 PM 3:41
OFFICE OF THE
ATTORNEY GENERAL



> CERTIFIED
2013 APR 16 AM 10:01

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-18-2026

ABDULLAH HOLMBS
APPLICANT
VS.

APPLICANT'S LEGAL BRIEF IN SUPPORT
OF HIS SECOND APPLICATION FOR POST
CONVICTION RELIEF REGARDING NEWLY
DISCOVERED EVIDENCE

THE STATE OF SOUTH CAROLINA
RESPONDENT

FILED - RECORDED
2013 MAR 19 AM 10:52
SHERYL G. BARNETT
CLERK OF COURT
DORCHESTER COUNTY

DUE TO NEWLY DISCOVERED EVIDENCE APPLICANT HAS

COME TO FIND THAT MS. MARY P. LEMATTY OF THE OFFICE OF THE PUBLIC DEFENDER, FIRST JUDICIAL CIRCUIT LOCATED AT 107 W. 6th NORTH STREET, SUMMERVILLE, S.C. 29483 IS IN VIOLATION OF RULE 8.4 TITLED MISCONDUCT OF THE APPELLATE COURT RULES - S.C. STATE RULES OF COURT PROCEDURE. THIS CLAIM STEMS FROM THE FACT THAT APPLICANT'S DNA WAS ~~LEGALLY~~ ILLEGALLY OBTAINED BY A DETENTION OFFICER OF DORCHESTER COUNTY DETENTION CENTER ON DECEMBER THE 4th, 2009. APPLICANT LATER INFORMED MS. LEMATTY ABOUT THE IMPROPER DNA REQUEST. APPLICANT ALSO REQUESTED KNOWLEDGE AS TO WHETHER THE DNA REQUEST VIOLATED HIS CONSTITUTIONAL RIGHTS. MS. LEMATTY RESPONDED IN A LETTER DATED FEBRUARY 17th, 2011. THE IMPORTANT ISSUE WITHIN HER RESPONSE IS THAT

MS. LEMATTY STATED TO APPLICANT THAT "THE SOLICITOR AGREES THAT THE DNA REQUEST WAS NOT PROPER". MS. LEMATTY ALSO STATED TO APPLICANT, "THAT IS A NON-ISSUE THAT WE DO NOT NEED TO SPEND TIME ON". MS. LEMATTY'S REPRESENTATION VIOLATED RULE 8.4. (d) TITLED MISCONDUCT OF THE APPELLATE COURT RULES - S.C. STATE RULES OF COURT PROCEDURE BECAUSE HER CONDUCT INVOLVED DISHONESTY, DECEIT AND MISREPRESENTATION. DEFENSE COUNSEL ALSO FAILED TO ENSURE THAT THE PROCEEDINGS SERVED THE FUNCTION OF ADJUDICATING GUILT OR INNOCENCE, WHILE FAILING TO PROTECT THE RIGHTS OF THE APPLICANT.

THE APPLICANT'S CLAIM IS SURE TO BE TRUE: DUE TO THE POSITIVE AFFIRMATION OF THE HONORABLE JUDGE DIANE GOODSTEIN OF THE DORCHESTER COUNTY COURTHOUSE LOCATED AT ST. GEORGE, S.C. AND MS. ALISSA R. COLLINS OF STUCKEY LAW OFFICES LOCATED AT 123 MEETING STREET, CHARLESTON, SOUTH CAROLINA. ON JANUARY 23RD, 2013 APPLICANT ATTENDED A HEARING OF WHICH REGARDS THE MATTER OF THE IMPROPER DNA REQUEST. THIS HEARING WAS HELD AT THE DORCHESTER COUNTY COURTHOUSE LOCATED AT 5200 EAST JIM BILTON BLVD. ST. GEORGE, S.C.

THE HONORABLE JUDGE DIANE GOODSTEIN PRESIDED OVER THIS HEARING. DURING THE HEARING THE APPLICANT PRESENTED HIS CLAIM OF FOURTH AMENDMENT VIOLATION DUE TO THE ILLEGAL DNA REQUEST. JUDGE GOODSTEIN AND MS. ALISSA R. COLLINS WERE BOTH IN AGREEMENT WITH THE PLAINTIFFS CLAIM OF A FOURTH AMENDMENT VIOLATION. THIS AGREEMENT FROM JUDGE GOODSTEIN AND MS. COLLINS CLEARLY SHOWS THAT MS. LEMATTY'S ADVICE ABOUT THE ILLEGAL DNA REQUEST NOT BEING AN ISSUE WAS DISHONESTY, DECEITFUL, AND MISLEADING INFORMATION. THEREFORE, APPLICANT'S PLEA WAS UNKNOWINGLY AND UNINTELLIGENTLY MADE DUE TO THE ILL ADVICE OF APPLICANT'S PRE-TRIAL COUNSEL WHO OF WHICH PERSUADED AND COERCED APPLICANT TO PLEA GUILTY WHILE HIS FOURTH AMENDMENT RIGHT WAS IN VIOLATION.

IN APPLICANT'S SECOND ATTEMPT FOR POST-CONVICTION RELIEF, APPLICANT HAS ALREADY ESTABLISHED THE FACT THAT HIS DNA WAS ILLEGALLY OBTAINED WHILE HIS CRIMINAL CASE WAS BEING LITIGATED BY MS. MARY P. LEMATTY. IN ORDER TO SHOW THIS COURT PROOF THAT APPLICANT HAS A CURRENTLY ACTIVE CIVIL

MATTER OF WHICH HE IS NOW LITIGATING OF WHICH REGARDS THE ILLEGAL DNA REQUEST, APPLICANT HEREBY (SUBMITS NEWLY DISCOVERED EVIDENCE) OF WHICH IS AN AFFIDAVIT OF MARY P. LEMATTY IN REFERENCE TO THE ABOVE MENTIONED CIVIL ACTION, CASE NO. 2012-CP-18-1917.

NOTICE

THIS AFFIDAVIT IS DATED JANUARY 18th, 2013. IN THIS AFFIDAVIT, MARY P. LEMATTY STATES THAT DURING HER REPRESENTATION, THE APPLICANT CONTACTED HER AND ADVISED HER OF THE SUPPOSED TAKING OF A SAMPLE OF THE APPLICANT'S DNA WHILE HE WAS IN THE DORCHESTER COUNTY DETENTION CENTER. MS. LEMATTY THEN REQUESTED MORE INFORMATION FROM APPLICANT. SOMETIME LATER, MS. LEMATTY SPOKE WITH ASSISTANT SOLICITOR, RUSSELL HILTON ~~REGARDING~~ REGARDING THIS MATTER.

IN MS. LEMATTY'S AFFIDAVIT, SHE STATES THAT RUSSELL HILTON WAS NOT AWARE THAT ANY SUCH DNA SAMPLE HAD BEEN TAKEN OR BY WHOM. THIS STATEMENT IS FALSIFIED DUE TO THE FACT THAT APPLICANT HEREBY SUBMITS NEWLY DISCOVERED EVIDENCE OF WHICH HE RECEIVED ON JANUARY 25th, 2013. THIS NEWLY DISCOVERED EVIDENCE IS A SLED FORENSIC SERVICES

LABORATORY REQUEST ADDRESSED TO LT. ALLEN D. KINSEY OF ST. GEORGE POLICE DEPARTMENT OF ST. GEORGE, SOUTH CAROLINA, FROM WHICH IS SUBMITTED BY JENNIFER L. CLAYTON, A FORENSIC SCIENTIST. THIS REQUEST IS DATED NOVEMBER 10TH, 2009. ALSO, A COURTESY COPY HAS BEEN SUBMITTED TO THE DORCHESTER COUNTY SOLICITOR'S OFFICE. THIS MATTER SHOULD PRESENT SOME QUESTIONS OF EXCEPTIONAL IMPORTANCE WITHIN THIS COURT'S MIND OF WHICH ARE AS FOLLOWS:

1.) IF SOLICITOR RUSSELL D. HILTON HAD NO KNOWLEDGE OF THE ILLEGALLY OBTAINED DNA SAMPLE, THEN WHY DID (SLED FORENSIC SCIENTIST, JENNIFER L. CLAYTON) SUBMIT A COURTESY COPY REQUEST TO THE DORCHESTER COUNTY SOLICITOR'S OFFICE?

2.) WHY DIDN'T MS. MARY P. LEMATTY INVESTIGATE WHETHER OR IF THE PERSON THAT OBTAINED THE APPLICANT'S DNA WAS AUTHORIZED TO TAKE A DNA SAMPLE FROM APPLICANT'S BODY BEFORE PERSUADING APPLICANT TO PLEA GUILTY?

3.) WHY DIDN'T MS. LEMATTY INVESTIGATE WHETHER AN

ORDER WAS ISSUED PURSUANT TO STATUTE GOVERNING SEARCH WARRANTS FOR PROPERTY CONNECTED WITH COMMISSION OF CRIME THAT ALLOWS THE GOVERNMENT TO PROCURE EVIDENCE FROM A PERSON'S BODY BEFORE PERSUADING APPLICANT TO PLEA GUILTY?

4.) WHY DIDN'T MS. LEMATTY INVESTIGATE THE POSSIBLE VIOLATION TO APPLICANT'S FOURTH AMENDMENT RIGHT BEFORE ADVISING APPLICANT TO PLEA GUILTY?

5.) WOULD HAVE JUDGE DIANE GOODSTEIN ACCEPTED THE APPLICANT'S PLEA IF THE MATTER OF THE ILLEGAL DNA REQUEST, AND IT'S VIOLATION OF THE APPLICANT'S FOURTH AMENDMENT RIGHT WERE KNOWN?

NOTICE

APPLICANT HEREBY SUBMITS AN AFFIDAVIT OF CORPORAL PAUL B. HIGHTOWER OF DORCHESTER COUNTY DETENTION CENTER. IN THIS AFFIDAVIT CORPORAL HIGHTOWER CLAIMS THAT OFFICERS OF ST. GEORGE POLICE DEPARTMENT OF ST. GEORGE, SOUTH CAROLINA OBTAINED THE APPLICANT'S DNA. THIS CASE (2012-CP-18-19-17) IS CURRENTLY UNDER LITIGATION AND INVESTIGATION.

CONCLUSION

MS. LEMATTY'S REPRESENTATION WAS AN ACT OF PREJUDICE TOWARDS THE APPLICANT DUE TO THE FACT THAT HAD APPLICANT KNOWN ABOUT THE VIOLATION OF HIS FOURTH AMENDMENT RIGHT, APPLICANT WOULD NOT HAVE PLED GUILTY. ALSO, MS. LEMATTY'S REPRESENTATION WAS AN ACT OF INEFFECTIVE ASSISTANCE OF COUNSEL DUE TO THE INVALID ADVICE OF WHICH SHE GAVE TO APPLICANT REGARDING THE ILLEGAL DNA REQUEST. IF MS. LEMATTY HAD INVESTIGATED AND DISCLOSED THIS ISSUE TO THE COURT THEN THIS CIVIL ACTION WOULD NOT BE CURRENTLY ACTIVE. ONCE AGAIN, THIS MATTER SHOWS THAT APPLICANT PLED GUILTY WHILE HIS FOURTH AMENDMENT RIGHT WAS IN VIOLATION. THEREFORE, APPLICANT'S PLEA WAS UNKNOWINGLY AND UNINTELLIGENTLY MADE.

BASED ON THESE FACTS, APPLICANT REQUEST THAT THIS COURT GRANT HIM THE RELIEF THAT HE SEEKS.

RESPECTFULLY SUBMITTED,
ABDULLAH HOLMES #345105

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE No. 2012-CP-18-2026

ABDULLAH HOLMES
APPLICANT

CERTIFICATE OF SERVICE

VS.

STATE OF SOUTH CAROLINA
RESPONDENT

FILED - RECORDED
2013 MAR 19 PM 12:23
JERRY L. HARRIS
CLERK OF COURT
DORCHESTER COUNTY

THE UNDERSIGN HEREBY CERTIFIES THAT A COPY OF
APPLICANT'S LEGAL BRIEF IN SUPPORT OF HIS SECOND
APPLICATION FOR POST-CONVICTION RELIEF WAS SERVED UPON
MEGAN E. HARRIGAN, ASSISTANT ATTORNEY GENERAL BY
MAILING A COPY PROPERLY ADDRESSED, VIA FIRST CLASS U.S.
MAIL, WITH SUFFICIENT POSTAGE AFFIXED THERETO THIS 14th
DAY OF MARCH, 2013 TO:

P.O. BOX 11549
COLUMBIA, S.C. 29211-1549

ABDULLAH HOLMES
#345105

Office of the Public Defender

First Judicial Circuit



MARK A. LEIENDECKER
Chief Public Defender

107 W. 6th North Street
Suite 100
Summerville, SC 29483
(843) 821-9800
FAX (843) 871-0523

5200 East Jlm Bilton Boulevard
Dorchester County Courthouse
St. George, SC 29477
(843) 832-0154

Courthouse, 190 Gibson, Room 110
PO Box 1112
Orangeburg, SC 29116-1112
(803) 536-4858
FAX (803) 536-9986

716 Huff Drive
St. Matthews, SC 29135
(803) 874-2100
FAX (803) 874-2400

Please respond to the Summerville Office

February 17, 2011

Mr. Abdullah M. Holmes
Dorchester County Detention Center
100 Sears Street
St. George, SC 29477

RE: State of South Carolina v. Abdullah M. Holmes
Warrant No.: I-665618 CSC w/Minor(<16 yoa) 2nd

Dear Mr. Holmes:

[REDACTED]

I am not sure what you are talking about with this subpoena for DNA or the "copy of the papers that you signed." Please help me understand what you are asking for. I do not have any documents other than what I have already given you in discovery. The Solicitor agrees that the DNA request was not proper and has informed me that the sample was not tested and is not going to be used in any way in your case. Therefore, that is a non-issue that we do not need to spend time on.

[REDACTED]

Very truly yours,

Mary P. LeMatty

Mary P. LeMatty
Assistant Public Defender

MPL:mm

Enclosure

Dictated but not read.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
Case No. 2012-CP-18-1917

Abdullah Holmes,)
)
Plaintiff,)

-versus-)

AFFIDAVIT OF MARY P. LeMATTY

Corporal Hightower /)
Sheriff L.C. Knight)
)
Defendants.)

After first being duly sworn MARY P. LEMATTY says:

1. I am an attorney with the Public Defender's Office for the First Judicial Circuit located in Summerville, S.C. I've been a member of the South Carolina Bar since 1992. I am an Assistant First Judicial Circuit Public Defender.
2. I have read the Statement of Claim filed by plaintiff. I am not a named defendant in this lawsuit. I am making this affidavit in support of the defendants' Motion for Summary Judgment.
3. In 2009, as Public Defender, I was assigned to defend plaintiff Abdullah Holmes in criminal proceedings when he was charged with Criminal Sexual Conduct with a Minor for having sex with a thirteen (13) year old female, a violation of S.C. Code § 16-3-655.
4. During my representation, Mr. Holmes contacted me and advised me of the supposed taking of a sample of his DNA while he was in the Dorchester County Detention Center. I had no knowledge of this, and wrote him a letter asking for more information. (See Exhibit A).
5. I recall speaking with Russell Hilton, the assistant solicitor prosecuting the case, about the alleged DNA sample being taken from Mr. Holmes. Attorney Hilton was not aware that any such DNA sample had been taken, or by whom. We agreed that if any such had been taken that it would not be used in court or in the case, and if a sample was ever needed for trial and deemed relevant, that the prosecution would seek to obtain another sample.
6. The charge against Abdullah Holmes was a "violent offense" under S.C. Code § 16-3-655 and S.C. Code § 16-1-60. If found guilty under that charge Mr Holmes would have no

right to parole, meaning he would to serve 85%-100% of his sentence. The charge carried up to twenty (20) years in prison. If convicted he would also be mandated to register as a sex offender and required to provide DNA to the database for SLED upon his release. Additionally, he would also be subject to the violent predator statute, which meant that the Attorney General's office would have a petition to review his case upon his release and if they deemed him to be a violent predator they could confine him pursuant to the terms of the statute.

7. After consulting with my client and explaining the evidence the state had, including his admission of guilt and possible sentences, Mr. Holmes pled guilty to the former definition of Assault and Battery of a High and Aggravated Nature (ABHAN). In June, 2010, the sentencing changed for ABHAN. Mr. Holmes plead under the old ABHAN statute, which was considered a non-violent misdemeanor, and he faced only up to a ten (10) year sentence. He was parole eligible, and my last check showed SCDC currently has him getting out sometime next year, with a max out date of 2015.
8. After the sentencing, for my representation and efforts on his behalf, Mr. Holmes filed a Post Conviction Relief petition against me, but it was withdrawn the day it was scheduled to be heard.
9. If any DNA was taken from Mr. Holmes while he was incarcerated at the Dorchester County Detention Center, it was never used against him, and was not involved in any way in the case I handled for him.

FURTHER AFFIANT SAITH NOT AT THIS TIME.


MARY P. LEMATTY

SWORN to and subscribed before
me this 18th day of January, 2013.



NOTARY PUBLIC OF SOUTH CAROLINA

My Commission Expires: 4-12-2016