PROCEDURAL HISTORY

Appellant Abduilah Holmes is suing for relief and damages for an illegal search and seizure and denial of due process, asserting that while he was a pretial detainee in the Dorchester County Detention Center, that a DNA sample was taken from him without a search warrant. This action was filed on August 7th, 2012.

After two previously filed motions for joinder of parties under Rule 19, SCRCP, Appellant filed a third motion for joinder of parties on the grounds that the State of S.C. by way of and through the Dorchester County and St. George Police Department violated Appellant's constitutional protections in ARTICLE 1 Section 3, 9 and 10 to the S.C. State Constitution; Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution along with the Constitutional provisions to DUE PROCESS of LAW; UNREASONABLE SEARCH and SEIZURE and EX POST FACTO protected under the U.S. Constitution.

Appellant's third motion was filed on August 2nd, 2013. This case came before the Court on November 12th, 2013 where Appellant also defended his claim against the Defendant's Motion for Summary Judgment. The Court granted the Defendants' Motion for Summary Judgment and denied Appellant's Motion for Joinder of Parties whereas rendering

Appellant's motion Moot on November 18th, 2013

During the hearing of both motions, Defendants made their argument in light of a U.S. Supreme Court ruling in Maryland vs. King, 133 S. Ct. 1958, 569 U.S. ___ (2013), on June 3, 2013.

In Maryland vs. King the Court held that DNA identification of arrestees is a reasonable search that can be considered part of a routine booking procedure. The Defendants also argued that under Maryland vs. King, the taking of a buccal swab containing Appellant's DNA, with or without a court order is reasonable under the Fourth Amendment.

ARGUMENT

The Court erred with its decision to dismiss and deny Appellant's civil claim due to the following grounds:

i.) Appellant was appointed counsel as of October 20, 2009. According to Defendant Corporal P. Hightower's sworn Affidavit, of which Defendant Hightower states that during November, 2009, Officers of the St. George Police Department obtained a sample of Appellant's DNA. This claim shows that a Due Process of procedural error was administered with Appellant's State and

Federal Constitutional Rights because of the fact that Appellant was represented by counsel at the time his DNA was obtained but Appellant's counsel was not properly informed of the procedure or request prior to obtainment of Appellant's DNA. This procedure deprived Appellant's counsel the right to object to the request or observe the taking of the DNA sample procedure.

2.) In regards to the ruling in Maryland vs. King of which is that identification of arrestees is a reasonable search that can be considered part of a routine booking procedure.

Appellant's argument to this ruling is that Appellant was arrested on September 29th, 2009. Appellant was also booked in Dorchester County Detention Center on September 30th, 2009. As previously mentioned in Defendant Corporal P. Hightower's sworn Affidavit, Police obtained a sample of Appellant's DNA during November, 2009. This only indicates that the DNA procedure did NOT occur as a part of a routine booking procedure because Appellant was already arrested and booked over thirty (30) days prior to the DNA sample request. Therefore, violating Appellant's constitutional provisions to DUE PROCESS of LAW; UNREASONABLE SEARCH and EX POST FACTO.

The Court failed to consider that South Carolina Criminal laws, Rules and Regulations indicate that where DNA is needed only to determine DNA type to existing evidence, a warrant "MUST BE OBTAINED" even though there has been a lawful arrest. (Gantt v.s. State), 354 S.C. 183, 580 SE. 2d 133 (2003). Also, the Court failed to entertain or consider the fact that S.C. Criminal laws, Rules and Regulations, under section 23-3-630 states that "persons authorized to take DNA samples are only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, or other appropriately trained health care worker.

The Court erred in the decision to dismiss Appellant's Claim by not first investigating whether or not the rules and regulations were actually followed by either Defendant or the St. George Police Department in regards to the taking of Appellant's DNA as indicated under section 23-3-630.

CONCLUSION

Withit being that Appellant's DNA was not taken as part of a booking procedure clearly indicates that the person which obtained Appellant's DNA should have first obtained an order 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. (State vs. Baccus) S.C. 2006, 367 S.C. 41, 625 S.E. 2d, 216; South Carolina Constitution, Article 1, § 10. Searches and Seizures; (1970) (56) 2684; 1971 (57) (315).

Also, Appellant's counsel should have been notified about the DNA request before Appellant's DNA was obtained. Proper notification to Appellant's counsel would have been a lawful act to safegard any unauthorized collection of Appellant's DNA.

Furthermore, along with these above mentioned facts, Appellant also contends that the Court erred with its decision to dismiss Appellant's claim without first investigating whether anyone from either the Dorchester County Detention Center or the St. George Police Department had the power to grant a bill of attainder in regards to Appellant's DNA without having an order of a jurisdictional magistrate.

The Court also failed to recognize that both entities abridged and deprived Appellant of the immunities in regards to his DNA without due process of law when the St. George Police Department assisted

in applying Appellant's DNA to the State's DNA Database Act without proper jurisdiction and without notifying Appellant's counsel. This is an act that falls within the Ex Post Facto Law under the Sixth (6) Amendment because it retroactively negatively affected Appellant's right to have the assistance of counsel for his defense. (See Constitutional Amendment 6).

Also, withit being that Defendant Knight's office holds jurisdiction over Dorchester County Detention Center, it was both defendants' duty to properly protect Appellant's rights as well as his well being while detained at Dorchester County Detention Center.

Therefore, the Court's decision to dismiss Appellant's claim as moot is an act of abjudicatio because Appellant was deprived of his rights by a judicial decision.

Based on the above mentioned facts, Appellant respectfully prays that this Court overturn the lower Court's decision and grant him the relief that he seeks.

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12-16-13