THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

RECEIVED
JAN 03 2014
S.C. Supreme Court

Edgar W. Dickson, CHIEF ADMINISTRATIVE JUDGE
Appellate Case No. 2013-002638

Abdullah Holmes . . . . Appellent

VS.

THE STATE . . . . Respondent

MOTION TO ALTER OR AMEND JUDGMENT

Abdullah Holmes files this motion pursuant to Rule 60(b) of the SCRCP on the following grounds:

The Court erred with its decision to dismiss Appellant's NOTICE of APPEAL due to an inadverdant mistake. Appellant hereby respectfully request that this Court amend its judgment due to the fact that Appellant has not failed to file a response to the conditional order of dismissal. (See attached Amended Order of Dismissal).

within the Respondent's Amended Final Order of Dismissal, it is acknowledged that Appellant did file a response. Appellant's response was filed and Stamped Clocked dated on April 25th, 2013 by Ms. Cheryl Graham, Clerk of Court of Dorchester County.

In Appellant's response, Appellant claims that due to NEWLY DISCOVERED EVIDENCE, he came to find that his former pre-trial counsel disregarded a brady violation pursuant to Rule - 5 of the South Carolina Rules of Criminal Procedure, when Counsel failed to investigate, obtain, or disclose all results of reports of physical examinations, tests or experiments.

In regards to Appellant's Objections to Respondent's Amended Final Order of Dismissal Appellant clearly showed why his application for Post-Conviction Relief should not be dismissed of which is because of the NEWLY DISCOVERED EVIDENCE previously mentioned.

As discussed within Appellant's objections, he received NEWLY DISCOVERED EVIDENCE from the South Carolina Law Enforcement Division on October 31st, 2012. Five (5) months after his initial Post-Conviction Relief evidentiary hearing of which was held on May 24th, 2012. (See exhibit-A)

In relation to Appellant's argument as to why his case should not be dismissed stems from the fact that he did not have knowledge about the effects of an improper DNA procedure because his pre-trial Counsel informed Appellant that the DNA procedure was not important. Appellant argues that this advice was not within the range of competence demanded of attorneys in criminal cases because the improper DNA request violated Appellant's Constitutional protections in ARTICLE I Section 3, 9, and 10 to the South Carolina State Constitution, along with Appellant's Fourth, Fifth, Sixth and Fourteenth Amendments and provisions to DUE PROCESS of LAW; unreasonable Search and Seizure and EX POST FACTO LAW; therefore making Appellant's Conviction illegal due to an invalid and unlawful guilty plea. (See exhibit-B)

CONCLUSION

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 law of the United States.

Abdullah Holmes

12-30-13

ALAN WILSON
ATTORNEY GENERAL

December 9, 2013

FILED - RECORDED
2013 DEC 11 AM 11:50
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Honorable Cheryl L. Graham
Dorchester County Clerk of Court
5200 E Jim Bilton Boulevard
St. George, South Carolina 29477-8020

Re: Abdullah M. Holmes, #345105 v. State of South Carolina
2012-CP-18-2026

Dear Ms. Graham:

Enclosed please find the signed original **Amended Final Order of Dismissal** in the above mentioned cases for filing in your office. If you have any questions or concerns, please contact me at (803) 734-3737 or MHarrigan@scag.gov.

Sincerely,

Megan E. Harrigan
Assistant Attorney General

MEH/ko
Enclosure

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Abdullah M. Holmes, #345105, Applicant, v. State of South Carolina, Respondent.	)	2012-CP-18-2026 **AMENDED FINAL ORDER OF DISMISSAL**

CERTIFIED COPY
2013 DEC 13 AM 10:12
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court pursuant to an application for post-conviction relief filed August 24, 2012. Respondent made its Return and Motion to Dismiss on December 4, 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 25, 2013 and filed on May 17, 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. This Court issued a Final Order of Dismissal[1], signed September 24, 2013 and filed October 14, 2013. After additional review, this Court is amending its Final Order of Dismissal to include the various responses filed by Applicant.

In response to this Court's Conditional Order of Dismissal, Applicant submitted a "Memorandum of Law," filed on November 21, 2012, where he set forth reasons why he believed his application should not be summarily dismissed. In this response, Applicant alleges his plea counsel, Mary P. LeMatty, was deficient for not challenging the collection of his DNA

[1] This original Final Order of Dismissal indicated that Applicant made no response. As discussed herein, Applicant did file response to the Conditional Order of Dismissal. The original Order was served on Applicant October 24, 2013. Thereafter, he filed a document captioned, "Applicant's Objection to Respondent's Proposed Final Order of Dismissal", which is also discussed below.

while in jail. Specifically, Applicant alleged that Counsel committed fraud against Applicant and this fraud was malpractice committed by Counsel. This Court finds Applicant's claim without merit, as he has failed to provide any sufficient reasoning as to why this allegation could not have been raised in his previous applications or within the statute of limitations as proscribed by S.C. Code Ann. § 17-27-45.

In a second document captioned "Applicant's Legal Brief in Support of his Second Application for Post-Conviction Relief Regarding Newly Discovered Evidence," filed on March 19, 2013, Applicant set forth similar reasons why he believed his application should not be summarily dismissed. In this response, Applicant alleges newly discovered evidence shows his Counsel was deficient for not challenging the collection of his DNA. Specifically, Applicant alleged 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. In support of his newly discovered evidence claim, Applicant submitted an Affidavit from his Counsel, Mary P. LeMatty, Esquire, dated January 18, 2013. In the Affidavit, Counsel states the DNA taken from Applicant was never used against him and not involved in any way with his case. This Court 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. The Affidavit presented by Applicant does not present any evidence that his DNA was taken illegally, and Counsel states in the Affidavit that the DNA had no effect on his case. In fact, the Affidavit shows that Applicant was aware of this claim prior to his guilty plea.

In two subsequent documents captioned, "Applicant's Response to Conditional Order of Dismissal" and "Applicant's Legal Brief in Support of His Response to Conditional Order of Dismissal," filed on April 24, 2013 and April 22, 2013, Applicant raised the same argument as in

his two prior filings, where he argues that the newly discovered evidence of Counsel's Affidavit shows his plea was not voluntary while his Fourth Amendment rights were violated. Applicant's argument is again without merit, as he has failed to present any evidence which would show he could not have obtained this information prior to his guilty plea or the involuntary nature of his guilty plea.

Applicant filed another document captioned, "Petitioner's Motion for New Trial Based on After Discovered Evidence" on September 10, 2013. In this document, Applicant files his motion, "pursuant to SCRCP 29(b) on the basis of lack of subject matter jurisdiction." Specifically, Applicant claims the Court lacked subject matter jurisdiction to accept Applicant's guilty plea while his Fourth Amendment Rights were violated. Applicant also alleges that the Court did not have jurisdiction to obtain a sample of Applicant's DNA. This Court finds Applicant's allegations do not present any evidence to overcome the Conditional Order of Dismissal. Counsel stated the DNA evidence was not used in the case against Applicant, and Applicant has failed to provide any evidence of prejudice as a result of the DNA test.

Applicant filed an additional document captioned, "Applicant's Objection to Respondent's Proposed Final Order of Dismissal" on October 7, 2013. In Applicant's document he alleges that the Court did not have subject matter jurisdiction to accept Applicant's plea due to a Fourth Amendment violation. Applicant again provided an Affidavit by Counsel in which Counsel states she knew the DNA sample had been taken. However, Counsel also states in the Affidavit that the evidence was overwhelming against Applicant, and the DNA evidence was never used against Applicant since he pled guilty. Applicant's allegation that he did not knowingly plead guilty is without merit, as the trial transcript clearly shows that Applicant responded affirmatively to all questions regarding his understanding and desire to plead guilty.

Furthermore, Applicant has provided no reason why the Affidavit of Counsel would have any effect on his decision to plead guilty, or was not discoverable before his second application for post-conviction relief. This Court finds that this allegation must be denied and dismissed with prejudice.

Applicant subsequently filed a document captioned, "Applicant's Motion to Alter or Amend Judgment," on November 1, 2013. In Applicant's document he alleges the Court failed to respond to his objections to the Conditional Order of Dismissal and Final Order of Dismissal. This Court finds that Applicant's objections are now being addressed in this current Amended Final Order of Dismissal. This Court also finds, the objections made by Applicant have no effect on this Court's decision in dismissing Applicant's application.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, and the reasons set forth herein, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 4th day of December, 2013.

EDGAR W. DICKSON
Chief Administrative Judge
First Judicial Circuit

Orangeburg, South Carolina.

EXHIBIT-A

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

CERTIFIED COPY
2013 APR 22 PM 3:41
CLERK OF COURT

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

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

This Space Reserved For Lab Receipt Barcode

SLED LABORATORY
FORENSIC SERVICES REQUEST

SLED LAB No. L09-13447
Submission: 2 11/23/2009 10:11:59AM

Name of Investigating officer: Lt. Allen D. Kinsey
Agency: St. George Police Department Phone No: 843-563-3643
Fax No: Email:
Mailing Address: 601 S. Parler Ave.
City / State / Zip: St. George, SC 29477
CC:

ORI No: SC0180100
Agency Case No: 09090067
Offense: SEXUAL ASSAULT
County: Dorchester
Offense Date: 09/29/2009
Officer Involved Shooting ☐ Yes
Rush: ☐ Yes

Is this evidence related to another lab number?
☐ Yes ☒ No
If yes, Lab Number:

SLED ITEM No (LAB ONLY)	Agency Item No.	Description of Evidence	Analysis Requested
3		Buccal swab - Abdullah Holmes	DNA ANALYSIS

Subject(s)	Sex	Race	DOB	SSN
Abdullah Holmes	M	B	[redacted]976	

Victim(s)	Sex	Race	DOB	SSN
[redacted]	F	B	[redacted]96	

Comments

All sealed evidence packages accepted by the laboratory are assumed to contain what they are "said to contain" by the submitter. The laboratory does not conduct a detailed inventory of evidence package contents during the evidence intake process.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

REGINALD I. LLOYD
Director

DNA ANALYSIS DEPARTMENT

November 10, 2009
SLED Lab Number: L09-13447
Your Case Number: 09090067
Incident Date: 9/29/2009
[S] Abdullah Holmes
[V] Jonetta Cobb

Lt. Allen D. Kinsey
St. George Police Department
601 S. Parler Ave.
St. George, SC 29477

The requirements for routine analysis by the SLED DNA Casework Department have not been met.

Known DNA standard(s) are needed to initiate DNA testing. Please submit a buccal swab (preferred) or liquid blood sample from the subject(s) for comparison purposes.

If the requested DNA standards are not submitted within three months, the evidence will be returned to the submitting agency without analysis. If a standard cannot be obtained or analysis is necessary prior to the submission of the requested standard(s), please contact the SLED DNA Casework Department at (803) 896-7383.

Sincerely,

Jennifer L. Clayton
Forensic Scientist

cc: Dorchester County Solicitor's Office

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7360 Fax (803) 896-7351

ATTACHMENT A

(EXHIBIT - B)

Office of the Public Defender

First Judicial Circuit

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

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

MARK A. LEIENDECKER
Chief Public Defender

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.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Abdullah M. Holmes . . . . Petitioner
vs.
State of South Carolina . . . Respondent

Appellate Case No. 2013-002638

PROOF OF SERVICE

Whereas Abdullah M. Holmes served a copy of a Motion to Alter or Amend Judgment on Daniel E. Shearouse Clerk of Court by mailing a copy in the U.S. States mail, postage paid addressed to:

P.O. Box 11330
Columbia, S.C. 29211

12-30-13 Abdullah M. Holmes

Abdullah Holmes #345105 (PB-52)
Kershaw, C.I.
4848 Goldmine Hwy.
Kershaw, S.C. 29067

Daniel E. Shearouse
Post Office Box 11330
Clerk of Court
Columbia, S.C. 29211

RECEIVED
JAN 09 2013
KCI
BUSINESS OFFICE