

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER.

Abdullah M. Holmes, #345105,

Applicant,

v.

State of South Carolina,

Respondent:

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2012-CP-18-2026

AMENDED FINAL ORDER OF DISMISSAL

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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 Dismissal¹, 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 SCRC 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.

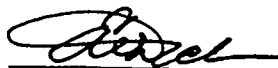
Furthermore, Applicant has provided no reason why the Affidavit of Counsel would have any effect on his decision to plead guilty, or was not discoverable before his second application for post-conviction relief. This Court finds that this allegation must be denied and dismissed with prejudice.

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.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

ABDULLAH M. HOLMES, #345105,

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Amended Final Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

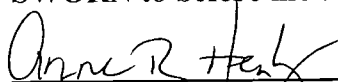
**Abdullah M. Holmes, #345105
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067**

This 2nd day of January, 2014.



MEGAN E. HARRIGAN
ATTORNEY FOR RESPONDENT

SWORN to before me this 2nd day of January, 2014.



Notary Public for South Carolina.
My Commission Expires: 7/18/2017



ALAN WILSON
ATTORNEY GENERAL

January 2, 2014

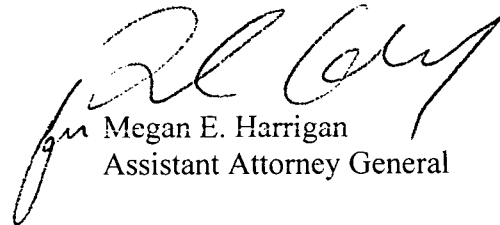
Abdullah M. Holmes, #345105
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067

Re: Abdullah M. Holmes, #345105 v. State of South Carolina
2013-CP-40-0642

Dear Mr. Holmes:

Enclosed please find a copy of the **Amended Final Order** dismissing the above-captioned post-conviction relief application; signed by the Honorable Edgar W. Dickson, Chief Administrative Judge for the First Judicial Circuit.

Sincerely,



Megan E. Harrigan
Assistant Attorney General

MEH/ko
Enclosure(s)

RECEIVED

JAN 17 2014

SC Court of Appeals