

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

M. Holmes # 345105

2012-CP-18-2026

Applicant,

Applicant's Objection to Respondent's
Amended Final Order of Dismissal

South Carolina
Respondent.

FILED - RECORDED

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CERYL BRADY
CLERK OF COURT
DORCHESTER COUNTY

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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 NEWLY DISCOVERED EVIDENCE was received "AFTER" Applicant's initial evidentiary hearing which was held 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 a 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 1 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 United States 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 I 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 any way in Applicant's case.

NOTICE

The Solicitor's Statement was ~~disclosed~~ 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.

November 28, 2013 .

Abdullah Holmes
Plaintiff