

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-182026

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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 counsel Ms. Mary P. Le Matty of the First Judicial Circuit, Office of the Public Defender located at 407 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. LeMatty 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. LeMatty'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. LeMatty 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 ~~violation~~ 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true
Copy of the applicant's Memorandum of Law and
Exhibits for Case # 2012-CP-182026 was served upon
CHERYL GRAHAM via First Class U.S. Mail, with sufficient
postage affixed ^{thereon} ~~thereon~~, this 19th day of November
to: 5200 East Jim Bilton Blvd.

St. George, S.C. 29477

Abdullah Holmes #345105

4848 Goldmine Hwy.

Kershaw, S.C. 29067

CLERK OF COURT
DORCHESTER COUNTY

Abdullah Holmes

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