

## ITEMS INCLUDED

1) Motion For Leave To Proceed  
In Forma Pauperis

2) Form For Petition For  
Writ of Certiorari

3) Petitioner Brief For Petitioner  
Writ of Certiorari

4) All Appendix A, B, C, D, E,

A- Supreme Court of Georgia

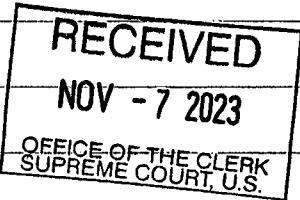
B- Court of Appeals of Georgia

C- Superior Court of Lee County

D- Pages of Transcript of Resentence

E- Letter To D.A From Judge

Thanks For Your Time  
and  
Concerns



# APPENDIX

A

Supreme Court of Georgia

Ruling

August 21, 2023

S23C0890



SUPREME COURT OF GEORGIA

Case No. S23C0890

August 21, 2023

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JOHNNY EUGENE HOLTON v. THE STATE.

The Supreme Court today denied the petition for certiorari in this case.

*All the Justices concur, except Pinson, J., disqualified.*

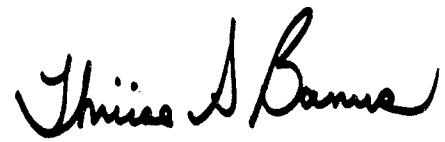
Court of Appeals Case No. A23A0816

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

  
Thresa N. Barnes, Clerk

# APPENDIX

B

Court of Appeal of Georgia

Ruling

February 27, 2023

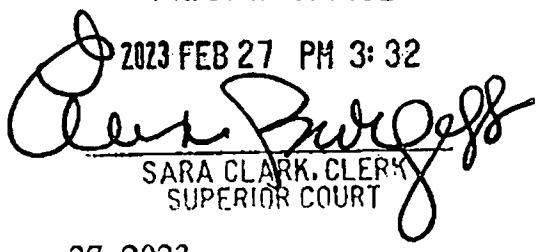
A23A0816

14CP 14395

LEE COUNTY GA  
FILED IN OFFICE

**Court of Appeals  
of the State of Georgia**

2023 FEB 27 PM 3:32

  
SARA CLARK, CLERK  
SUPERIOR COURT

ATLANTA, February 27, 2023

*The Court of Appeals hereby passes the following order:*

**A23A0816. JOHNNY EUGENE HOLTON v. THE STATE.**

Johnny Eugene Holton was charged with one count each of aggravated sodomy and aggravated child molestation, and he entered a negotiated plea to two counts of child molestation as lesser-included offenses of the original charges. After Holton moved to vacate his sentence as void, the trial court resentenced Holton to 20 years with 15 to serve on Count 1, and 20 years with five to serve on Count 2. The prison term of Count 2 was to run consecutively to that of Count 1, and the probation of Count 1 was to run concurrently with the prison term of Count 2, for a total of 20 years to serve followed by 15 years of probation.

Holton appealed his new sentence, arguing that OCGA § 17-10-6.2 (b) authorized only a five-year prison sentence for Count 1, and that he should not have been resentenced on Count 2 because his original sentence was not void. We affirmed his new sentences on appeal in an unpublished opinion. See Case No. A21A1223 (Jan. 5, 2022). Holton subsequently filed a new motion to vacate void sentence, arguing again that he could only be sentenced to a five-year prison sentence for Count 1. The trial court denied the motion. Holton filed this direct appeal. We lack jurisdiction.

“It is well established that any issue that was raised and resolved in an earlier appeal is the law of the case and is binding on this Court[.]” *Ross v. State*, 310 Ga. App. 326, 327 (713 SE2d 438) (2011) (punctuation and footnote omitted). We have already considered the validity of Holton’s sentence in a prior appeal. Holton “is not entitled to multiple bites at the apple.” *Id.* at 328; see also *Paradise v. State*, 321 Ga. App. 371, 373 (740 SE2d 238) (2013) (“Although a void sentence may be challenged

at any time, this important legal principle is, nevertheless, subject to the equally well established principles of res judicata and the law-of-the-case rule once the issue has been raised and ruled upon.") (citation and punctuation omitted); *Echols v. State*, 243 Ga. App. 775, 776 (534 SE2d 464) (2000) (the same issue cannot be relitigated ad infinitum; our determination in an earlier appeal is res judicata). Accordingly, this appeal is hereby DISMISSED.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 02/27/2023*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



*Stephen E. Caston*

\_\_\_\_\_, Clerk.

# APPENDIX

C

Superior Court of Lee County

Ruling

December 19, 2022

14CR143(JS)

IN THE SUPERIOR COURT OF LEE COUNTY  
STATE OF GEORGIA

LEE COUNTY GA  
FILED IN OFFICE

2022-DEC-21 AM 8:59

STATE OF GEORGIA,

§

vs.

§

CASE NO.: 14CR143(JS)

JOHNNY EUGENE HOLTON,

§

Defendant.

§

*Blenda Jepson*  
SARA CLARK, CLERK  
SUPERIOR COURT

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**ORDER DENYING DEFENDANT'S MOTION TO VACATE SENTENCE**

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Based upon the seasoning contained in the court's order of February 4, 2021, the defendant's Motion to Vacate is hereby DENIED

SO ORDERED this 19 day of December, 2022.

  
W. JAMES SIZEMORE, JR., JUDGE  
SUPERIOR COURT  
SOUTHWESTERN JUDICIAL CIRCUIT

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the within and foregoing Order has this date been served upon:

Johnny Holton GDC #561222  
Wheeler Correctional Facility  
Post Office Box 466  
Alamo, Georgia 30411

by placing the same in the United States Mail, with sufficient postage.

This 20th day of December, 2022.

Sherrie W. Watkins

Sherrie W. Watkins  
Administrative Assistant to Judge Sizemore

## APPENDIX

### D

Pages From Resentencing  
Hearing Transcript - Showing This Court  
That D.A and Judge agreed on the  
5 year prison Sentence on both Counts  
Then sentence Petitioner to 15 year prison  
Sentence on Count 1 And 5 years on Count 2.

"Hearing on January 27, 2021"

Order on Denied Motion

December 19, 2022

From Motion To Vacate Void  
Sentence on Count 1 - December 19, 2022

IN THE SUPERIOR COURT OF LEE COUNTY  
STATE OF GEORGIA

THE STATE OF GEORGIA

§

§

§

v.

§

Case No.: 14CR143

§

§

JOHNNY EUGENE HOLTON,

§

Defendant.

§

§

**RESENTENCING HEARING**

**Volume 1 of 1, Pages 1-24**

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January 27, 2021, 10:07 a.m.  
Honorable W. James Sizemore, presiding  
Lee County Courthouse  
Leesburg, Georgia

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APPEARANCES:

For the State:

Lewis Lamb, Esq.  
Appearing remotely  
District Attorney  
Southwestern Judicial Circuit  
P.O. Box 1328  
Americus, Georgia 31709

For the Defendant:

Pro se  
Appearing remotely

---

Marcia L. McCleskey, CCR  
Official Court Reporter, Southwestern Judicial Circuit  
Post Office Box 304 • Hawkinsville, Georgia 31036  
keyreporting@gmail.com

ALSO APPEARING:

Phil Cannon, Esq.  
*Appearing remotely*  
242 W. Broad Avenue  
P.O. Box 727  
Albany, Georgia 31702

Gabe Jacobs  
*Appearing remotely*  
Community Supervision Officer  
Ga. Dept. of Community Supervision  
Americus, Georgia 31709

## PROCEEDINGS

2                   **THE COURT:** All right. This is *The State of Georgia*  
3                   *versus Johnny Eugene Holton.* And we are holding a  
4                   sentencing hearing. Mr. Holton filed a motion concerning  
5                   his sentence based upon the fact that there were two  
6                   counts of child molestation that he was sentenced to and  
7                   he was sentenced to consecutive sentences when the --  
8                   where -- even though the statute at that time required a  
9                   split sentence and that statute is O.C.G.A. §17-10-6.2.  
10                  Now, that statute's been amended but the amendment doesn't  
11                  apply to this situation.

12 And so the purpose of this hearing is for me to  
13 determine whether or not the previous sentence should be  
14 set aside and to resentence the defendant, because I --  
15 and I think I've written both attorneys indicating that it  
16 is my thought that Mr. Holton's motion is correct and that  
17 the sentence does have to be reissued.

18 So my suggestion would be I hear from the state and  
19 then from the defendant as to what the sentence should be  
20 and if there is -- I think we are in agreement that the  
21 previous sentence has to be set aside. Isn't that  
22 correct?

23                   **MR. CANNON:** Yes, sir. This is Phil Cannon, your  
24                   Honor.

25 I've explained to Mr. Holton that, basically, what he

1 agreement and so forth, the state agreed to a sentence  
2 effectively of forty serve twenty.

3 And I guess that while I concur one hundred percent  
4 that the sentence has to be restructured to comply with  
5 the statute, if the Court is -- intends to entertain the  
6 notion of changing the substance of the sentence as  
7 opposed to the form of the sentence, then I'm going to  
8 actually ask for, you know, for that to be done at a later  
9 date because I have not notified the victims, et cetera,  
10 you know, of a potential resentencing.

11 If it is the Court's intent and it's my understanding  
12 with, you know, my agreement with Mr. Cannon was that we  
13 would honor the original agreement, we would just reformat  
14 it, and if the Court intends to it that way, then I don't,  
15 you know, then I'm prepared to go -- to go forward today.

16 **THE COURT:** Well, we're going to go forward today.  
17 What I want to do is hear from the state as to whether or  
18 not the previous sentence should be set aside and what  
19 sentence the state contends should be imposed, and then  
20 I'll hear from the defendant concerning the same, and then  
21 I'm going to rule. And so, I mean, it's been kind of hard  
22 to --

23 **D.A. LAMB:** The state --

24 **THE COURT:** -- get this scheduled to --

25 **D.A. LAMB:** -- concurs that the sentence should be

1 set aside.

2           **THE COURT:** All right.

3           **D.A. LAMB:** We concur the sentence should be set  
4 aside, that it has to be -- that the -- that the split  
5 sentencing statute that existed at that time required a  
6 split sentence on -- not only on the case as a whole but  
7 on each count of the -- of the indictment.

8           Because he's entered a plea to two counts of child  
9 molestation which carry maximum sentence of twenty years,  
10 the state's contention is that the sentence to fulfill the  
11 original -- the intent of the original plea agreement,  
12 which had been -- which was, in fact, accepted by the  
13 defendant and his attorney and accepted by the Court, that  
14 the proper way to structure the sentence would be as  
15 follows:

16           On Count One to sentence him to twenty serve  
17 nineteen, and on Count Two to sentence him to twenty serve  
18 one, and then that -- the Court of Appeals made clear,  
19 actually, in some of the cases interpreting the statute --  
20 that the Court could do what I just said, but also at the  
21 same time, the Court could make the prison sentences  
22 concurrent and then the -- I mean, consecutive, and then  
23 the probated sentences consecutive.

24           So on -- it would be twenty serve nineteen on Count  
25 One, twenty serve one on Count Two. The one on Count Two,

1 the one year in prison on Count Two would run consecutive  
2 to the nineteen years in prison on Count One. And then  
3 the nineteen years probation on Count Two would run  
4 consecutive to the one year probation on Count One.

5 So it would in effect be the same as it is now, which  
6 twenty years of service time, followed by twenty years of  
7 probation, but it would be in the proper format under the  
8 statute as it existed at that time.

9 **THE COURT:** All right. I have a question for you  
10 though. I thought that there was a minimum sentence of  
11 five years. Am I wrong about that? A minimum prison  
12 sentence.

13 **D.A. LAMB:** You're right, Judge. You're right.  
14 There's -- you're absolutely right. And I really didn't  
15 think about it in terms of that. But it's that -- in that  
16 case, then, I guess the proper format would be fifteen --  
17 you know, twenty serve fifteen and twenty serve five, with  
18 the five on Count Two running consecutive to the fifteen  
19 on Count One and the fifteen on Count Two running  
20 consecutive to the five on Count One.

21 **THE COURT:** The effect of that would be that he would  
22 be on probation for five less years; is that right?

23 **D.A. LAMB:** No, sir. No, sir. Because the effect of  
24 it would be that the --

25 **THE COURT:** You just delay the probation on the first

## APPENDIX

### E

Letter To D.A From Judge

Showing Sentence Doesn't Apply to

O.C.G.A 17-10-6.2(b) and Must be vacated

and Resentence under O.C.G.A 17-10-6.2

Requirements AT Exist Time of Sentences

on Both Counts. Letter VIA Hand Delivery

To D.A. on September 10, 2020.

Attachment (1)

OFFICE OF SUPERIOR COURTS

JUDGE  
W. JAMES SIZEMORE, JR.



COUNTIES SERVED:  
LEE STEWART  
MACON SUMTER  
SCHLEY WEBSTER

TELEPHONE 229-924-2269

FACSIMILE 229-924-1614

SOUTHWESTERN JUDICIAL CIRCUIT  
POST OFFICE DRAWER 784  
AMERICUS, GEORGIA 31709

September 10, 2020

Mr. Lewis Lamb  
District Attorney  
VIA HAND DELIVERY

RE: State vs. Johnny Eugene Holton  
Superior Court of Lee County  
Case Number: 2014CR143

Dear Lewis:

I have received a motion to vacate Mr. Holton's sentence. The motion was filed pro se. I am writing to request that you respond to this motion. I have researched the statutes involved. I am concerned that O.C.G.A. § 17-10-6.2 may, in fact, require a split sentence for each of the child molestation counts. The statute was amended in 2017 to eliminate this requirement in a situation where consecutive sentences were imposed. However, this addition cannot be retroactively applied. Harden v. State, 344 Ga. App. 378 (2018). Instead, for convictions predating the amendment it appears that the sentences for each count must comply with O.C.G.A. § 17-10-6.2 as it existed at the time of sentencing. See, State v. Riggs, 301 Ga. 63 (2017). Hence, unless I am missing something, it appears that these sentences should be vacated and a resentencing hearing scheduled.

I would appreciate the State's response to this motion within twenty days. Thereafter, I will determine if a resentencing hearing is necessary. If so, we will likely have to transport Mr. Holton for the same. I am copying this letter to Mr. Holton and his prior trial counsel, Phil Cannon, who I assume will also want some input.

I appreciate your attention to this matter and send best regards.

Sincerely yours,

W. James Sizemore, Jr.

WJSjr/sww

cc: Hon. Sara Clark  
Johnny Eugene Holton GDC #561222  
Phil Cannon