

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

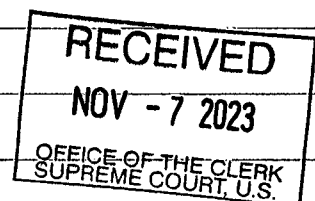
B- Court of Appeals of Georgia

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.

Theresa A. Barnes, Clerk

APPENDIX

B

Court of Appeal of Georgia

Ruling

February 27, 2023

A23A0816

14CR14395

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

LEE COUNTY GA
FILED IN OFFICE

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. Castle

_____, 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

Bienda Jernigan
SARA CLARK, CLERK
SUPERIOR COURT

STATE OF GEORGIA,

§

§

vs.

§

CASE NO.: 14CR143(JS)

§

JOHNNY EUGENE HOLTON,

§

§

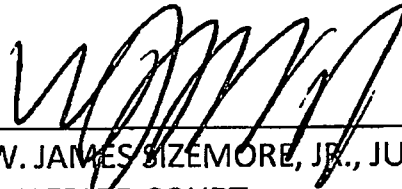
Defendant.

§

ORDER DENYING DEFENDANT'S MOTION TO VACATE SENTENCE

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

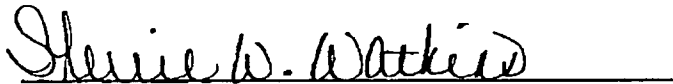
CERTIFICATE OF SERVICE

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.

A handwritten signature in cursive script, reading "Sherrie W. Watkins", is written over a horizontal line.

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.

JOHNNY EUGENE HOLTON,

Defendant.

§
§
§
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§

Case No.: 14CR143

RESENTENCING HEARING

Volume 1 of 1, Pages 1-24

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

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

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P R O C E E D I N G S

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

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

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

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

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

SOUTHWESTERN JUDICIAL CIRCUIT

POST OFFICE DRAWER 784
AMERICUS, GEORGIA 31709

FACSIMILE 229-924-1614

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