

STATE OF SOUTH CAROLINA)
 COUNTY OF ORAN̄GBURG)
 STATE OF SOUTH CAROLINA)
 VS)
 CECIL HEYWARD DEMPSEY,)
 APPLICANT .)

IN THE COURT OF GENERAL SESSIONS

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APR 17 2015

SC Court of Appeals
ORDER

2014 JAN 31 A 11: 19

FILED IN THE
 WINNIEBURN COUNTY
 CLERK OF COURT
 ORANGEBURG, SC

This matter comes before the Court by way of the Applicant's Application for Forensic DNA Testing pursuant to Section 17-28-10 et seq. of the South Carolina Code of Laws. Defendant was convicted after a jury trial on April 21, 1998 for the offense of Criminal Sexual Conduct with a Minor in the First Degree.

The Access to Justice Post Conviction DNA Testing Act (Section 17-28-10 et seq.) authorizes the application by convicted defendants for forensic DNA testing that may affect their conviction. The Act describes the form and content of the defendant's application as well as the procedure by which the testing is to be conducted.

In addition, the Act requires that the applicant specifically articulate the basis for his request for additional-testing, noting that the applicant must make a reasonable attempt to identify the physical evidence that should be tested and the specific testing sought.

The Act requires that the applicant explain why the identity of the applicant was or should have been a significant issue during the original proceedings.

The Act also requires that the applicant explain why material to be tested was not previously subjected to testing or why additional testing would provide a substantially more probative result.

1/3 *[Signature]*

ATTEST: TRUE COPY
Winniford B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

Finally, the Act requires that the applicant explain why, if the testing were to produce exculpatory results, the results will constitute new evidence that would change the results of the applicant's conviction.

A hearing was held in this matter on November 14, 2013. Present for the hearing was the Applicant, Cecil Heyward Dempsey, arguing pro se, and Senior Assistant Solicitor Harrison Bell, representing the State of South Carolina.

The court heard presentations from both sides. The applicant argued that after the trial, it was discovered that he had Hepatitis C. He further argued that the victim was tested and found not to have any sexually transmitted diseases and that Hepatitis C is a sexually transmitted disease. Therefore, this was exculpatory evidence warranting post conviction DNA testing.

The State countered by arguing that there was no evidence produced at trial that would warrant DNA testing. No samples were taken from the victim and that identity was not an issue at trial.

After due deliberation, review of the memoranda, case law, exhibits, and arguments of the parties, and after giving Applicant an opportunity to respond to the Court's ruling, the Court denies the applicants Petition for Forensic DNA Testing pursuant to 17-28-10, et. seq. of the South Carolina Code of Laws, 1976, as amended.

The Court finds that the Act cited contemplates testing "biological material" which the Court interprets as tangible physical evidence containing biological material, collected as part of the investigation of, and with clear ties to, the crime. Therefore, the Court finds that the Act does not apply to the situation that the Applicant argues, in that what he seeks to be tested was not collected as part of the investigation with clear ties to the crime. Further, collecting blood from a victim, fifteen years after the crime, would be an undue violation of his privacy.

The Court also finds that Applicant has failed to show that testing the DNA of the victim and the Applicant will produce "exculpatory results". Assuming, arguendo, that the victim tested positive for Hepatitis C, the Applicant has produced no medical evidence that Hepatitis C would have been transferred during the rapes. He has also not produced any documentation showing that he was infected with Hepatitis C at the time of the criminal sexual conduct. In fact, he testified that he had no such documentation. Due to the lack of such evidence, Applicant has failed to carry his burden of proof under the Act that the new evidence would "probably change the result of the applicant's conviction or adjudication if a new trial is granted . . ." 17-28-90, South Carolina Code of Laws.

Therefore, for the forgoing reasons, this Court denies Applicants petition for Forensic DNA testing.

IT IS SO ORDERED.



Edgar W. Dickson
Circuit Court Judge
First Judicial Circuit

January 30, 2014
Orangeburg, South Carolina