

2013A36-20200346

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

FILED

2020 MAY 12 AM 9:46

IN THE COURT OF GENERAL SESSIONS
FOR THE EIGHTH JUDICIAL CIRCUIT

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JUL 15 2020

SC Court of Appeals

Mario Valerio-Gonzalez Hernandez
Inmate NO. 361963,

ELIZABETH R. FOLK
CLERK OF COURT

vs.

State of South Carolina,

Defendant.

ORDER OF DISMISSAL

2013-GS-36-498, -500

Petitioner MARIO VALERIO GONZALEZ HERNANDEZ is currently an inmate of the South Carolina Department of Corrections, having been found guilty after a jury trial for the offense of Criminal Sexual Conduct with a Minor, Second Degree, on October 30, 2014. Defendant was represented at trial by attorney Edgar Michael Pinilla, Esquire. Following his conviction, the Honorable Eugene Griffith sentenced Petitioner to a term of imprisonment of Sixteen (16) years.

Petitioner files for relief under South Carolina Code 17-28-10, et seq., which provides that a person convicted of criminal sexual conduct with a minor and who is currently incarcerated and asserts that he is innocent of the offense "may apply for forensic DNA testing of his DNA and any physical evidence or biological material related to his conviction or adjudication no later than seven years from the date of sentencing." Id., 17-28-30(B). Specifically, Petitioner requests the testing of State's Exhibit 11 (Q-tip swabs), exhibits 4 and 14 of victim's nightgown, number 15 rape kit of victim and exhibit 18 (cuttings from nightgown).

The Chief Administrative Judge for the Eighth Circuit assigned this petition to the Newberry County Public Defender, Charles Verner, by order dated November 22, 2019, with directives to inquire as to Petitioner's requested relief. On March 3, 2020, counsel for petitioner and Assistant Solicitor Taylor Daniel appeared before the Court to brief the status of this matter to the Court. Petitioner was not present.

copy sent to solicitor's office of Charles Verner 5/12/2020

Both counsel for petitioner and the State agreed that the individual items that petitioner seeks to have tested for DNA results were in fact tested prior to petitioner's trial and were turned over to petitioner's trial counsel prior to trial. Specifically, item 4 (the cotton swab) was the buccal swab taken directly from petitioner. As for the victim's nightgown, the SLED serology analysis, dated January 18, 2014, (which again was provided to petitioner prior to his jury trial), indicates that "no semen identified. No saliva indicated." The minor victim's sexual assault evidence was also examined for DNA, including smears, vaginal swabs, rectal swabs, pubic hair combings and victim's buccal swab. None of the items tested positive for petitioner's DNA. Additionally, the cuttings from victim's nightgown did not test positive for petitioner's DNA. (Nor did cuttings from underwear, not specifically referred to by petitioner but included in the report).

Assuming petitioner has made a prima facie claim for DNA testing of the requested items, the Court notes that each item has been tested for DNA by SLED and the report was made available to petitioner and counsel prior to his jury trial. The only relief the Court could grant to petitioner under 17-28-90(B) is to have items in possession of the State tested for DNA. As this has already been done, there is no relief under South Carolina 17-28-10, et seq., to afford petitioner. The application is therefore, DENIED.

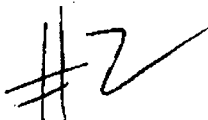
This Order shall be served on Petitioner by the State. Petitioner shall have ten (10) days, excluding weekends and holidays, to file any objections or motions, after which this order shall become final.

IT IS SO ORDERED.

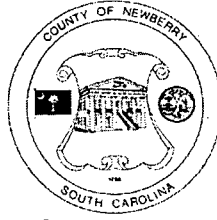


Honorable Donald B. Hocker
Chief Administrative Judge
Eighth Judicial Circuit

May 7, 2020
Laurens, South Carolina



Office of Clerk of Court
County of Newberry



Elizabeth P. Folk
Clerk of Court

Newberry, S.C. 29108

P.O. Drawer 10
(803) 321-2110
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July 6, 2020

Mr. Mario V. Gonzalez Hernandez, #361963
ACI Colleton Unit F-1 B#64
P.O. Box 1151
1057 Revolutionary Trail Hwy 47
Fairfax, SC 29827

Re: 2013A3620200346 and 2013GS36-500

Mr. Hernandez,

I am writing in response to your letter received by our office today I am sending you a copy of an order filed with our office on May 12th. You can reach Mr. Verner at The Newberry County Courthouse, P.O. Drawer 10, Newberry, SC 29108. I have enclosed a copy of the court schedule for July through December of 2020. There may be some changes to this calendar due to COVID19. Please let me know if you have any questions or concerns,

Sincerely,

Beverly J. Brehmer
Deputy Clerk of Court