

FILED
APRIL 1, 2015
Court of Appeals
Division III
State of Washington

NO. 321827

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,
Respondent,

v.

SHANE ALLAN JONES,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KLICKITAT COUNTY, STATE OF WASHINGTON
Superior Court No. 02-1-00146-9

BRIEF OF RESPONDENT

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I. ISSUE PRESENTED

Did the trial court abuse its discretion in denying Shane Allan Jones's motion for post-conviction DNA testing?

II. STATEMENT OF THE CASE

In 2003, Jones pleaded guilty to two counts of Rape of a Child in the First Degree, one count occurring in 1995 and the other in 1998. CP 49. The pre-sentence investigation report indicates that officers began investigating these incidents starting in May of 2002. CP 28. The investigation consisted of speaking with witnesses and included statements by Jones admitting to the abuse. CP 28-29, 33-34. The acts described in the investigation involved Jones receiving oral and manual stimulation from his then 6 year old step daughter; and receiving oral stimulation from and giving oral stimulation to his then 2 year old nephew. CP 28. There was no physical, biological evidence introduced or referenced in Jones's case.

In 2013, Jones filed a motion for DNA testing of "all of the physical evidence collected" in the case. CP 61. The court denied the motion because Jones pleaded guilty to the charges and because he had not shown that DNA evidence would demonstrate his innocence on a more probable than not basis. CP 74.

III. ARGUMENT

RCW 10.73.170 allows a convicted person currently serving a prison sentence to petition the trial court for post-conviction DNA testing. The petitioner must satisfy both procedural and substantive requirements of the statute. RCW 10.73.170(2), (3). The statute, adopted in 2000, reads in pertinent part:

- (1) A person convicted of a felony in a Washington state court who currently is serving a term of imprisonment may submit to the court that entered the judgment of conviction a verified written motion requesting DNA testing, with a copy of the motion provided to the state office of public defense.
- (2) The motion shall:
 - (a) State that:
 - (i) The court ruled that DNA testing did not meet acceptable scientific standards; or
 - (ii) DNA testing technology was not sufficiently developed to test the DNA evidence in the case; or
 - (iii) The DNA testing now requested would be significantly more accurate than prior DNA testing or would provide significant new information;
 - (b) Explain why DNA evidence is material to the identity of the perpetrator of, or accomplice to, the crime, or to sentence enhancement; and
 - (c) Comply with all other procedural requirements established by court rule.
- (3) The court shall grant a motion requesting DNA testing under this section if such motion is in the form required by subsection (2) of this section, and the convicted person has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

RCW 10.73.170.

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING JONES'S MOTION FOR POST -CONVICTION DNA TESTING

- i. Jones did not show that favorable DNA evidence would prove his innocence on a more probable than not basis when combined with the body of evidence available at the time of his guilty plea.**

RCW 10.73.170 requires a trial court to grant a motion for post-conviction testing when exculpatory results would, in combination with the other evidence, raise a reasonable probability the petitioner was not the perpetrator. *State v. Riofta*, 166 Wn.2d 358, 367-68 (2009). The legislature intended to restrict the availability of post-conviction DNA testing to a limited class of extraordinary cases where the results could exonerate a person who was wrongfully convicted of a crime. *Riofta*, 166 Wn.2d at 369 n.4. In *State v. Crumpton*, 181 Wn.2d 252, 255 (2014), the Court held that, when making its determination, the trial court should presume that DNA results would be favorable to the defendant.

Here, Jones argues that DNA evidence would show that he was mistakenly identified as the assailant. CP 63-64. The *Riofta* court accepted that mistaken eyewitness identification is a leading cause of wrongful conviction. 166 Wn.2d at 371. This court should analyze both

the impact of a favorable DNA test and the likelihood of misidentification when addressing mistaken eyewitness identification.

There was no biological evidence collected in this case and no such evidence was used as the basis for Jones's guilty plea, conviction, or sentencing. However, even if officers had obtained swabs from the victims when investigating in 2002 and those samples contained DNA from someone other than the victims or Jones, this does nothing to exculpate him of the offenses to which he pleaded guilty, which occurred in 1995 and 1998. The presence of hair belonging to someone other than the victims or Jones on any articles of clothing, such as underwear, collected by officers in 2002 also would not make Jones more likely than not innocent of the 1995 and 1998 crimes to which he pleaded guilty. To argue otherwise is illogical.

Additionally, this case does not involve an unfamiliar assailant. The identity of the perpetrator was not raised at trial (because there was no trial), and did not appear to be at question in this case. The victims both knew and at times lived with Jones. His relationship to the victims was stepfather and uncle. Nothing in the record indicates that the victims were unclear as to the identity of their assailant.

Although DNA testing serves a worthwhile purpose, its employment is not helpful here, because there was no evidence collected that would be subject to DNA testing and because the victims of the crimes were acquaintances of Jones and would not misidentify him. Because of this, it was not an abuse of discretion for the trial court to deny Jones's motion for DNA testing.

ii. Jones did not prove that DNA testing was appropriate per RCW 10.73.170

There was no DNA evidence presented or tested in this case and no physical evidence collected, so Jones would not be capable of satisfying any of the subsections of RCW 10.73.170(2)(a). There was no testing that failed to meet acceptable scientific standards; there was no evidence that was unable to be tested due to insufficient technology; and current DNA testing would not provide any new significant information compared to prior DNA testing because there was no prior testing and there is nothing to test. Because Jones does not meet the procedural requirements of RCW 10.73.170, the court did not abuse its discretion in denying his motion.

IV. CONCLUSION

The trial court did not abuse its discretion in denying Jones's post-conviction motion for DNA testing. Therefore, the State respectfully requests that the trial court's order be affirmed.

Dated this 31st Day of March, 2015.

Respectfully Submitted,



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
Division III

STATE OF WASHINGTON,)	
Respondent,)	No. 32182-7-III
)	
v.)	
)	
SHANE A. JONES,)	
Appellant.)	DECLARATION OF SERVICE
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I, Shari Seward, declare that on March 31, 2015, I deposited via Email, a copy of the Brief of Respondent to:

Kenneth H. Kato, WSBA #6400
Attorney for Appellant
1020 N. Washington Street.
Spokane, WA 99201
Email: khkato@comcast.net

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 31st day of March, 2015.


SHARI SEWARD
Legal Assistant III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
Division III

STATE OF WASHINGTON,)	
Respondent,)	No. 32182-7-III
)	
v.)	
)	
SHANE A. JONES,)	
Appellant.)	DECLARATION OF SERVICE
)	

I, Shari Seward, declare that on March 31, 2015, I deposited in the United States mails by first class mail, proper postage affixed, a copy of the Brief of Respondent to:

Shane A. Jones
DOC #: 802250
Airway Heights Corrections Center
P.O. Box 1899
Airway Heights, WA 99001-1899

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 31st day of March, 2015.


SHARI SEWARD
Legal Assistant III