

DNA Evidence Exonerated Man Who Pleaded to Rape-Related Kidnapping

By Mary Pat Gallagher

A New Jersey man who faced indefinite civil commitment on a charge stemming from a 1996 rape walked free on March 14, exonerated by DNA evidence that had been thought lost.

Charged with aggravated sexual assault and kidnapping, Rodney Roberts pleaded guilty to kidnapping because he claimed his public defender told him the 17-year-old victim had picked him out of a photo array and knew him from the neighborhood.

Years later, however, the victim, known as S.A., denied she ever identified Roberts.

Roberts entered the plea on July 16, 1996, about two months after the crime, so quickly that the rape kit, which contained semen samples, had not yet been tested to see whether they matched Roberts. Once he pleaded, the testing was not done.

Roberts drew a seven-year sentence.

He began to regret the guilty plea when his request for parole was turned down in 2000.

The Parole Board explained that its decision was motivated by the circumstances of his crime, which involved forcing the victim to have sex under threat she would be shot otherwise.

In January 2001, Roberts filed a pro se motion to withdraw his guilty plea on the ground that his PD, Charles Martone, had assured him that the sexual assault charge could not be used to penalize him in any future proceeding.

Superior Court Judge Eugene Codey denied the motion, saying there was "absolutely no basis to support it."

In 2004, after Roberts had served his full sentence, the state had him civilly committed, as a sexually violent predator, in the Special Treatment Unit for sex offenders at the Adult Diagnostic and Treatment Center in Avenel.

John Douard of the Public Defender's Office, assigned to represent him in appealing the commitment, obtained a signed statement from S.A.

in September 2005 that she had never identified her attacker but the commitment was upheld.

Roberts' efforts to obtain post-conviction relief based on ineffective assistance of counsel began in February 2006 with a pro se petition.

Stefan Van Jura of the Public Defender's Office was assigned to represent him.

Once again, Codey refused to let Roberts withdraw his plea, citing his 2001 decision. He denied the petition as filed past the five-year time limit.

In May 2007, the Appellate Division reversed and sent the matter back to Codey for a hearing that took place two months later.

Part of the rape kit was lost, but vaginal slides were available and testing in 2005 found no DNA from Roberts.

Codey denied the petition but in 2009 an appeals court reversed and remanded for an evidentiary hearing.

After testimony from Roberts, S.A., the detectives and Martone, Codey again denied relief, calling Roberts' petition a "blatant attempt to withdraw a voluntarily entered plea, whose sentence has already been served, solely to enhance his efforts to have his status as a Sexually Violent Predator reconsidered."

DNA testing ordered by Codey during the proceedings showed that Roberts was not the father of S.A.'s child, whom S.A. believed was conceived during the attack.

In reversing a third time, on March 8, 2012, an appellate court faulted Van Jura for referring to the failed paternity testing at the hearing while not mentioning the 2005 test that found no DNA from Roberts.

On remand, Roberts got a new lawyer, pool attorney Michael Pastacaldi, a Jersey City solo who says he got lucky in two ways: The rest of the rape kit was found and Codey retired.

The semen in the rape kit did not match Roberts' DNA, and faced with those test results, the new judge on the case, Sherry Hutchins-Henderson, vacated the kidnapping



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conviction last November and ordered the guilty plea set aside.

Roberts remained at Avenel while the state decided whether or not to appeal.

Assistant Essex County Prosecutor Clara Rodriguez decided against it, in part because S.A. did not want to go through a trial.

Hutchins-Henderson dismissed the indictment in February.

Pastacaldi says he gave the dismissal order to Nora Locke of the public defender's office, who used it to convince the Attorney General's office to end the civil commitment.

The question now facing Roberts, 47, is the effect of a law signed by Gov. Chris Christie on Dec. 27 that increases compensation to those who have been wrongfully convicted from \$20,000 to \$50,000 for each year of incarceration, but that expressly excludes those who plead guilty.

It is not clear if the law applies to Roberts, whose conviction was vacated before the law was enacted, or whether it covers time spent civilly committed beyond a criminal sentence, says Pastacaldi.

He says he is trying to find a lawyer to take on Roberts' compensation claim.

Leslie Risinger, of Seton Hall's Last Resort Exoneration Project, who advised Pastacaldi in the Roberts case, notes that New York law on compensation is similar to New Jersey's but newly proposed legislation there would allow recovery despite a false confession or guilty plea.

Risinger has sent information about Roberts' case to the Innocence Project and hopes it will add him to its database of people exonerated by DNA evidence.

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