

State of Rhode Island and Providence Plantations

Kent County, SC

Superior Court

Randy Anderson (Currently Daniel J. Iam)

Applicant, pro-se

Vs.

A.T. Wall in his official capacity as the

Director of the Rhode Island

Department of Corrections Respondent

Application for Post-Conviction Relief

1. This is a Civil Action filed by the applicant pursuant to Chapter 9.1 of title 10, of the General Laws of Rhode Island.

Parties

2. The applicant, Randy Anderson, is a State Custodial inmate, currently incarcerated at the Adult Correctional Institution, Medium Security Facility, Cranston, RI 02920
3. The respondent, A.T. Wall is duly appointed Director of the Rhode Island Department of Corrections. He is sued in his official capacity

Venue

4. Venue in Kent County Superior Court is proper pursuant to Section 2 of Chapter 9.1 of Title 10 of the General laws of Rhode Island (as amended)

Factual Affidavit by Applicant

On July 1, 2009, the head of the Rhode Island Public Defenders Office, John J. Hardiman presented a Post-Conviction Application on behalf of this Applicant which contained a prosecutorial Misconduct issue. The issue was that the office of the Attorney General had failed to furnish the defense with a copy of the Complainant's medical record which was generated as a result of the charges lodged against the applicant. The medical examination was conducted on June 15, 1995. The same time a signed medical report waiver form was obtained by the office of the Attorney General. Counsel John Hardiman, in his Post-Conviction, cited the long-standing Laws governing discovery and inspection via Brady vs. Maryland 373U.S. 83 (1963), State vs. Wyche 518A.2d 907 (1986) (R.I.) and the language of the Superior Court's Criminal Rule 16 (5)(a) discovery and inspection.

The office of the Attorney General through their assistant, Steve Regine, responded by stating that while the Attorney General's office was in possession of the medical records waiver form, his office had not moved to obtain a copy of the medical record and, as such, did not violate the rules of discovery. Counsel Hardiman, in his response to the Attorney General's assistant's claim that because his office was not in possession of the medical record, they had not violated the rules of discovery cited the language in State vs. Wyche 518 A.2d 907.

A hearing was held before the Honorable Superior Court Justice, Robert Krause on May 17, 2010 and shortly after both sides presented their arguments, Justice Krause denied the

Applicant's Post-Conviction claim. A subsequent appeal to R.I. Supreme Court was also denied.
(Randy Anderson vs. State of Rhode Island. No 2010-218)

Applicant's Claim

That Counsel John J. Hardiman was ineffective as Counsel for applicant because of the following reasons:

1. That Counsel should have moved to secure a subpoena to obtain the log record of the records department at Woman and Infant's Hospital to learn if the Office of the Attorney General had served the Records department with a copy of the Medical Records Waiver Form that they obtained in June of 1995. Counsel Hardiman had eluded to the fact that it was routine in sexual assault cases that the Attorney General's Office move to obtain the medical records as part of their investigation. [Applicant believes that the Attorney General's Office had used the Medical Records Waiver Form to obtain a copy of the Medical Report] Counsel's failure to file a subpoena to obtain a copy of the log of who received copies of the medical report is Ineffective Assistance of Counsel.
2. Counsel John Hardiman was ineffective as Counsel when he failed to submit that the Attorney General's Office also failed to turn over a copy of the waiver form.
3. Counsel John Hardiman was ineffective when he failed to also argue that the "content" of the Medical Report which indicated that as late as June 15, 1995, the Complainant was still a virgin despite the many claims of prior sexual abuse, and claims that she had consensual sexual intercourse with the use of condoms. This information was extremely important because this Applicant's jury did not hear that:

- a. The Complainant had told her two best friends, Corisa Forlia, and Bethan Coletta that she was raped by an ex-boyfriend, Joseph Theroux at his home in May 1994.
- b. That she wrote in her opening statement at the Warwick Police Station that she had sex prior to the alleged assault by the Applicant. This statement was taken on May 5, 1995.
- c. That she told Woman and Infant's Hospital, pre-examination intake information that she was sexually active with the use of condoms, though she did not mention any prior rape by her ex-boyfriend. The examination revealed the fact that the Complainant's Hymen was intact, patient unable to tolerate a inner vaginal exam...patient hyper sensitive.
- d. That just 12 days after the examination, she took the stand at the Applicant's Probation Violation hearing and testified under oath that she was raped by the ex-boyfriend, Joseph Theroux at his home in May of 1994, 13 months before the vaginal examination.
- e. That at a voir dire hearing pursuant to a Superior Court Criminal Rule 26.3, motion to attempt to attempt to impeach the credibility of the Complainant with prior false accusations of sexual abuse. In response to questions relating to the alleged May of 1994 rape by the ex-boyfriend, Complainant suddenly claimed that the ex-boyfriend only "attempted" to rape her. Upon further questioning, Assistant Attorney General Steve Regine asked the Complainant, did there come a time in which she did have a consensual sexual intercourse relationship with the ex-boyfriend, and she replied, "Yes, about a week after." Clearly all her prior claims of sexual contact, be it by rape, or consensual was a lie. Counsel John

Hardiman failed to point out that because the State's case was based solely on the credibility of the Complainant, the Jury should have heard the prior false claims and should have seen the Medical Report.

Applicant contends, in the interest of Justice, as set forth in the language of the Post-Conviction Remedy Act, he should be given a full and fair hearing. To be allowed to submit a subpoena to Woman and Infants Hospital Records Department for a copy of their log on this case to learn if the Attorney General's Office received a copy of the Medical Record.

I, _____ Hereby state that I have sent a true copy to the Office of the Attorney General at: 150 South Main Street, Providence, RI 02903 on this, the _____ day of _____, 2017.

Respectfully,

C: D.J. Iam

Box #8274, Cranston, RI 02920