

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

SUPERIOR COURT

RANDY ANDERSON  
Petitioner/Plaintiff

V.

PM 2009-0108

STATE OF RHODE ISLAND  
Respondent/Defendant

**RESPONDENT'S MEMORANDUM IN OPPOSITION  
TO PETITION FOR POST CONVICTION RELIEF**

**Travel and Statement of Relevant Facts**

The petitioner, Randy Anderson, was convicted of one count of first-degree molestation [fellatio] following a jury trial in Kent County Superior Court (Krause, J., presiding) in October of 1998. The same jury acquitted Anderson of another count of first-degree molestation [digital penetration] at the same trial.<sup>1</sup> On January 8, 1999, defendant was sentenced to fifty years at the Adult Correctional Institutions, with thirty years to serve, in addition to a ten-year consecutive sentence for being a habitual offender.<sup>2</sup> The Rhode Island Supreme Court upheld Anderson's conviction on June 8, 2000.<sup>3</sup> See State v. Randy Anderson, 752 A.2d 946 (R.I. 2000).

<sup>1</sup> With respect to the acquittal on Count 2, the trial justice noted during the post-conviction relief hearing that those "allegations stand in a totally different light because of the dates involved that could not be clearly identified in the Count 2 allegations." (Tr. 6/27/03, p. 19).

<sup>2</sup> This sentence was to be served consecutive to the eighteen-year sentence he was serving at the time of trial as a probation violator on previously received robbery and breaking and entering sentences. See State v. Anderson, 705 A.2d 996 (R.I. 1997).

<sup>3</sup> In that direct appeal, Anderson raised three issues: prosecutorial misconduct, motion for new trial and jury instructions.

The defendant subsequently filed a motion for post conviction relief asserting that his attorney was ineffective for a number of reasons, including the fact that he did not "locate the complainant's medical records, which he claimed would show no evidence of any physical injury to the complainant." Anderson v. State, 878 A.2d 1049, 1049 (R.I. 2005). In denying that motion for post conviction relief this Court found, in pertinent part, that considering the specifics of the conduct charged and the fact that the medical records were prepared more than a month after the conduct in question that their value in attempting to prove that no molestation had occurred was "highly speculative". Anderson v. State, 878 A.2d at 1050. And both this Court and our Supreme Court found that the acquittal on one of the two counts was a "testament to the effective representation that defendant received at trial." *Id.* In upholding this Court's denial of that post conviction filing, the Supreme Court concluded the following:

In this case, we are satisfied that the hearing justice neither was clearly wrong nor overlooked or misconceived material evidence. The petitioner was represented at trial by a highly skilled and respected court-appointed lawyer, who undertook a lengthy and pointed cross-examination of the complaining witness spanning more than 100 pages of trial transcript. Notwithstanding this advocacy, the jury chose to believe the complainant and returned a verdict of guilty on one of two counts. The conviction in this case was not a result of petitioner's attorney but, rather, the weight of the credible evidence against Anderson.

Anderson v. State, 878 A.2d at 1050.

Now, four years after his previous post conviction petition was denied, defendant has once again filed a motion for post conviction relief based upon the same medical records previously at issue. However, this time, rather than blaming his own attorney for not procuring and/or introducing them at trial he is pointing the finger at the state.

### Discussion

The defendant now claims that he is entitled to post conviction relief as the result of prosecutorial misconduct and the state's failure to comply with Rule 16 of the Superior Court Rules of Criminal Procedure. *Defendant's Memorandum*, p. 1. In support of this purported violation, Anderson refers back to statements made by the then-prosecutor about medical records at his probation violation hearing in June of 1995. *Defendant's Memorandum*, p. 2.

Rhode Island General Laws § 10-9.1-8 entitled "Waiver of or failure to assert claims" provides:

All grounds for relief available to an applicant at the time he or she commences a proceeding under this chapter must be raised in his or her original, or a supplemental or amended, application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds that in the interest of justice the applicant should be permitted to assert such a ground for relief.

Our Supreme Court has indicated that this section basically codifies the doctrine of *res judicata* for post conviction-relief applications. This procedural bar to *consecutive* post conviction filings means that a judgment on the merits on the first petition is not only conclusive on issues that *were* raised, but also on issues that *could have been* raised. See Ramirez v. State, 933 A.2d 1110, 1112 (R.I. 2007) and Figuroa v. State, 897 A.2d 55, 56 (R.I. 2006).

In this, his second post conviction filing, defendant claims prosecutorial misconduct and discovery violations based upon information gleaned *fourteen* years ago at his violation hearing. Despite the fact that the issue complained of predated his 1998 trial,

it was not raised at the trial, or in his direct appeal or in his first post conviction complaint. And unlike his allegations of ineffective assistance of counsel, which had to be initially addressed via the post conviction mechanism, this issue certainly *could have* been addressed in those prior proceedings. These alleged discovery violations do not constitute novel issues of law or newly discovered evidence that the “interests of justice” dictate must be addressed for the first time at this late date. See Miguel v. State, 924 A.2d 3, 5 (R.I. 2007).

In Ramirez, our Supreme Court pointed out that defendant “raised claims for the first time in his third post conviction-relief application, yet he provided scant reason why such arguments could not have been raised in either his first or second application.”

Ramirez v. State, 933 A.2d at 112. In this case, defendant has not even offered “scant reason” why these issues could not have been raised below. Rather, he simply ignores the obvious procedural bar and skips ahead to the substantive merits of his argument, merits that need not and should not be addressed by this Court.<sup>4</sup>

The defendant failed in his first attempt to challenge the fact that the victim’s medical records were not introduced at trial by his own counsel via a claim of ineffectiveness of counsel in a post conviction relief filing. He now attempts to challenge

---

<sup>4</sup> However, with respect to the merits, nothing in defendant’s most recent filing indicates that the medical records would have likely affected the outcome of this trial. As this Court previously held, the use of medical records relating to an examination that occurred over a month after the incidents that showed no permanent scarring or trauma to the victim’s vaginal area in a case involving digital penetration and fellatio would be speculative at best, *particularly* when defendant was acquitted of the count involving digital penetration. Moreover, the fact that the victim’s hymen was apparently intact does not contradict either her testimony or that of her former boyfriend that they had consensual sexual contact. The victim described consensual “sexual relations” with her boyfriend and he described, “consensual engaging” such as touching each others’ genital areas. (Trial Transcript I, 195, 199-200).

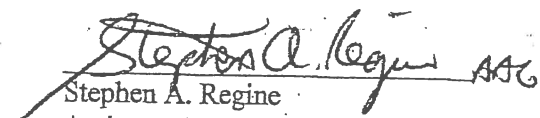
the fact that the victim's medical records were not introduced at trial via a claim of prosecutorial misconduct and discovery violations in a second post conviction relief filing. However, his current claims are procedurally barred by about eleven years.

**Conclusion**

For the reasons discussed above, the state requests that this Court deny Anderson's second request for post conviction relief.

STATE OF RHODE ISLAND

PATRICK C. LYNCH  
ATTORNEY GENERAL

  
Stephen A. Regine  
Assistant Attorney General

**CERTIFICATION**

I hereby certify that a true copy of the within memorandum was hand-delivered to Public Defender John Hardiman on this 18<sup>th</sup> day of September, 2009.

  
Stephen A. Regine, AAG