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James v. State, 137 Nev. Adv. Op. 38 (July 29, 2021).

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CRIMINAL LAW: WHEN A GENETIC MARKER ANALYSIS IS REQUIRED

Summary

In an opinion drafted by Justice Herndon, the Court reversed and remanded the denial of a genetic marker analysis. The Court additionally vacated and remanded the district court's decision to deny a habeas petition. The Court found that Nevada's rape shield statute did not apply in this case. The defendant was entitled to an examination of new DNA evidence because there was a reasonable possibility the results could exculpate him. Because the genetic marker analysis may reveal new evidence, the Court could not decide the defendant's habeas petition.

Background

Tyrone David James, Sr. was convicted by jury of sexually assaulting T.H., the fifteen-year-old daughter of the woman James was dating. T.H. received a sexual assault examination after the alleged attack and told the examiner her last consensual sexual activity was one year prior to the incident. There was no physical evidence to corroborate T.H.'s allegations, and James maintained his innocence. James was sentenced to 25 years to life and his subsequent appeal and postconviction proceedings were ineffective.

T.H.'s rape kit was processed nine years after the alleged assault, and the results revealed a DNA match to another man. James filed a petition requesting a genetic marker analysis to confirm the results and a petition for a writ of habeas corpus. The district court denied the petitions. James appealed both petitions, and the Court consolidated each appeal into one decision.

¹ By Alix Goldstein.

Discussion

The Court first considered the district court's denial of the genetic marker analysis. The district court believed the petition would violate Nevada's rape shield statute, which prohibits evidence of past sexual encounters from being brought in sexual assault cases to discredit witnesses.² Such evidence may be admissible when its probative value substantially outweighs its prejudicial effect.³ The Court disagreed with this application of Nevada's rape shield statute. T.H. reported no other sexual encounters within a year of the incident. Because the rape kit was conducted the day of the alleged assault, there was a reasonable possibility the other man's DNA was from the assault and not a prior sexual encounter. Even if Nevada's rape shield statute applied to the facts of the case, the Court still found James could refute the statute and require the district court to consider whether the genetic marker analysis's probative value outweighs its prejudicial effect.

The Court agreed with James, who argued NRS 176.0918(1)(c)(1) required the district court to order a genetic marker analysis when there was a reasonable possibility the defendant would not be convicted had the evidence been found prior to trial.⁴ The Court previously interpreted the meaning of "reasonable possibility" in unpublished orders.⁵ Although the precedent was nonbinding, the Court acknowledged that the results of a genetic marker analysis need to be relevant to the defendant's defense for there to be a reasonable possibility the defendant would not be convicted had the evidence been found.⁶ Here, the discovery of another man's DNA from the rape kit was significant to James' defense, and it was reasonably possible that the genetic marker

² NEV. REV. STAT. § 50.090 (1991).

³ *Summit v. State*, 101 Nev. 159, 163, 697 P.2d 1374, 1377 (1985).

⁴ NEV. REV. STAT. § 176.0918(1)(c)(1) (2013).

⁵ See, e.g., *Langford v. State*, Docket No. 77262 (Order of Affirmance, Apr. 12, 2019).

⁶ *Id.*

analysis would absolve James of guilt. Thus, the Court is required to order a genetic marker analysis.

The Court then considered the district court's denial of the writ of habeas corpus. The Court found it could not appropriately evaluate the habeas petition because the genetic marker analysis would produce new material evidence. The petition will be considered after the genetic marker analysis is performed.

Conclusion

Having determined that the Nevada rape shield statute would not have barred the genetic marker analysis and that there was a reasonable possibility James may not have been convicted if the analysis was produced before trial, the Court reversed the district court's denial of the genetic marker analysis. Because the genetic marker analysis will produce new material evidence, the Court found it could not rule on the habeas petition and thus vacated the district court's denial for a writ of habeas corpus.