

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JACK WILLIAM WOLF,	§	
	§	
Defendant Below-	§	No. 581, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. No. IN84-09-0789
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: March 5, 2004  
Decided: May 12, 2004

Before **HOLLAND**, **BERGER** and **STEELE**, Justices.

**ORDER**

This 12th day of May 2004, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jack William Wolf, filed an appeal from the Superior Court's November 17, 2003 order denying his motion for DNA testing and a new trial, and his motion for a bill of particulars. We find no merit to the appeal. Accordingly, we affirm.

(2) In 1984, Wolf was found guilty by a Superior Court jury of Kidnapping in the First Degree and Rape in the Second Degree.<sup>1</sup> Wolf was sentenced to 25 years incarceration at Level V, to be suspended after 12 years for

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<sup>1</sup> The State voluntarily dismissed the Kidnapping charge.

probation. Wolf's convictions and sentences were affirmed by this Court on direct appeal.<sup>2</sup>

(3) In August 1989, Wolf was released on parole. He was re-incarcerated in 2000 due to parole violations. Thereafter, Wolf filed several unsuccessful motions for postconviction relief. In 2002, Wolf made a request for DNA testing, which the Superior Court denied. This Court affirmed the Superior Court's decision.<sup>3</sup>

(4) In this appeal, Wolf again claims that he is entitled to DNA testing, which will prove he is innocent of the crime of rape. He seeks to have certain items of clothing, including men's underwear, tested to show that the semen present is not his and also seeks to have the victim's underwear tested to show that the semen present is not his.

(5) An individual whose conviction became final prior to September 1, 2000 may file a motion requesting DNA testing no later than September 1, 2004.<sup>4</sup> Six separate statutory elements must be satisfied in order to secure such testing: a) the requested testing will be performed on evidence that was secured in relation to the trial that resulted in the conviction; b) the evidence was not previously subject

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<sup>2</sup> *Wolf v. State*, 1986 WL 16986 (Del. May 20, 1986).

<sup>3</sup> *Wolf v. State*, 2002 WL 31684962 (Del. Nov. 25, 2002).

<sup>4</sup> Del. Code Ann. tit. 11, § 4504 (2001).

to testing because the technology was not available at the time of trial; c) identity was an issue at trial; d) the evidence was not tampered with; e) the requested testing has the potential to produce new, non-cumulative evidence relevant to the assertion of actual innocence; and f) the requested testing will employ a methodology generally accepted within the relevant scientific community.<sup>5</sup>

(7) To the extent that Wolf's motion is not barred as formerly adjudicated,<sup>6</sup> it fails to satisfy five of the six required statutory elements. First, the record reflects that the clothing Wolf seeks to have tested has been destroyed by order of the Superior Court dated June 6, 1995. Second, the clothing was tested in connection with Wolf's trial in 1984. That testing indicated that the semen on the men's underwear and the semen on the victim's underwear came from two different individuals, the first with Type A blood and the second with Type B blood. Third, identity was not an issue at trial. Wolf admitted at trial in 1984 that he picked up the victim in his car and that he engaged in sexual activity with her. Fourth, Wolf is unable to show that the clothing he seeks to have tested was not tampered with, since it was destroyed by court order in 1995.

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<sup>5</sup> Del. Code Ann. tit. 11, § 4504 (a)(1)-(6); *Anderson v. State*, 831 A.2d 858, 864-65 (Del. 2003) .

<sup>6</sup> Super. Ct. Crim. R. 61(i) (4).

(8) Finally, the testing Wolf seeks would not produce any more favorable result than that produced during the trial, since the testing done at that time indicated that the semen from the victim's underwear did not come from Wolf. Wolf was convicted of rape based upon his testimony and that of the victim. The jury found the victim's testimony to be more credible than that of Wolf. Thus, no new evidence relevant to Wolf's assertion of actual innocence will result from any additional testing.<sup>7</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>7</sup> On April 26, 2004, Wolf filed a motion for the appointment of counsel. There is no statutory or constitutional right to counsel in collateral proceedings and we find no compelling reason to justify the appointment of counsel in this appeal. *Pennsylvania v. Finley*, 481 U.S. 551, 555-56 (1987).