

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23544
v.	:	T.C. NO. 1989CR0121
QUARNAIL THOMAS	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 30<sup>th</sup> day of July, 2010.

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QUARNAIL THOMAS, #215-290, Lebanon Correctional Institution, P. O. Box 56, Lebanon, Ohio 45036  
Defendant-Appellant

DONOVAN, P.J.

{¶ 1} This matter is before the Court on the pro se Notice of Appeal of Quarnail Thomas, filed July 21, 2009. Thomas appeals from the denial of his third Application for DNA Testing, and we hereby affirm the judgment of the trial court.

{¶ 2} In October, 1988, the body of the victim herein, a nineteen-year old female, was discovered. She had been raped vaginally and anally, strangled and stabbed. Her throat had also been slit. In September, 1989, Thomas was convicted, after a jury trial, of aggravated murder and two counts of rape in connection with the victim's murder. Thomas was sentenced to life imprisonment and to two terms of 10 to 25 years, all to run consecutively. Thomas appealed, arguing in part that the DNA evidence at trial was inadmissible, and that his trial counsel was ineffective. We affirmed Thomas' conviction and sentence. In Thomas' direct appeal, we noted in part, "Denise Rankin, a criminalist in the microanalysis section of the Miami Valley Crime Laboratory testified she sent samples of the victim's blood, the appellant's blood, semen samples from the victim, and part of the stain from the appellant's black t-shirt to Cellmark Diagnostic for testing.

{¶ 3} "Dr. Robin Cotton, manager for research and development at Cellmark and a Ph.D. in Molecular Biology, testified about the validity of DNA testing and the tests performed on the samples in this case. She testified that Cellmark's procedures are widely accepted in the scientific community. Dr. Cotton concluded that the blood on the defendant's t-shirt came from [the victim] and the sperm recovered from [the victim] came from the defendant." *State v. Thomas* (July 3, 1991), Montgomery App. No. 11861. This decision was appealed to the Ohio Supreme Court and was dismissed on the ground that there were no substantial constitutional questions. Thomas then filed a petition for a writ of certiorari in the United States Supreme Court. In that petition, Thomas argued, inter alia, that defense counsel was ineffective in failing to object to the admission of the DNA evidence. On May 18, 1992, the Supreme Court denied certiorari.

{¶ 4} On September 23, 1996, Thomas filed a petition for post-conviction relief pursuant to R.C. 2953.21, arguing again that his counsel was ineffective for failing to object to the admission of DNA evidence at his trial. The trial court entered summary judgment in favor of the State, determining that Thomas' arguments were barred by the doctrine of res judicata. We affirmed the trial court's decision.

{¶ 5} On September 16, 2004, Thomas filed an Application for DNA testing, and on October 28, 2004, he filed a pro se Application for DNA Testing. On November 1, 2004, the court overruled the September 16<sup>th</sup> Application. Thomas filed a pro se motion for reconsideration on November 15, 2004, which the trial court overruled on December 29<sup>th</sup>, along with Thomas' pro se Application of October 28th.

{¶ 6} On February 22, 2008, Thomas filed another Application for DNA testing, and the State filed a memorandum contra. Thomas sought to have "pubic hair found on the victim in addition to the anal and vaginal samples which were collected from the victim and stains found on my clothing" tested. According to the Application, "the DNA testing conducted in 1989 was primitive and newly developed, there were several risks for problems with the tests. A possibility would be the phenomenon of bandshifting. If bandshifting did occur in this test a re-test of the evidence would clearly prove my innocence. \* \* \*" Thomas asserted that his test results were inconclusive.

{¶ 7} The trial court determined that Thomas is an eligible inmate pursuant to R.C. 2953.72. The court further determined, "after a review of the evidence and testimony presented at Defendant's trial, that a prior definitive DNA test has been conducted regarding the perianal swab, vaginal swab, the victim's blood sample, the Defendant's blood sample,

and the stain removed from the Defendant's black undershirt." The court overruled the application "as to these items/samples."

{¶ 8} The court went on to note that "there was not a prior definitive test done on pubic hairs found on the victim and at the scene; a Salem cigarette butt found at the scene under the victim's head; nail scrapings from the victim; and the rectal sample." According to the court, testimony "adduced at trial shows that other individuals were at the victim's house, including males, on the date the victim was raped and murdered. Defendant argues in his application that '[a]ny semen found at the scene must belong to the perpetrator.' Defendant has maintained his innocence and does not claim that he had consensual intercourse with the victim. A prior definitive DNA test was done on the perianal and vaginal swabs taken from the victim that found sperm cells belonging to Defendant. Denise Rankin, a criminalist at the Miami Valley Regional Crime Lab, testified at trial that no seminal fluid was present on the rectal swab. Further, the black undershirt belonging to Defendant contained blood matching the victim's blood.

{¶ 9} "As to the pubic hairs found on the victim and at the scene; a Salem cigarette butt found at the scene under the victim's head, nail scrapings from the victim; and the rectal sample, the Court finds that if these items were tested and indicated an exclusion result as to Defendant, the exclusion result would not be outcome determinative based on the prior definitive DNA results." The court overruled Thomas' application in its entirety.

{¶ 10} Thomas asserts two assignments of error which we will consider together. They are as follows:

{¶ 11} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR AND

ABUSED ITS DISCRETION IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE OHIO AND U.S. CONSTITUTION WHERE THE COURT SUMMARILY OVERRULED THE DNA APPLICATION WITHOUT FIRST CONDUCTING AN EVIDENTIARY HEARING.”

{¶ 12} And,

{¶ 13} “THE TRIAL COURT COMMITTED PLAIN ERROR WHERE IT CONCLUDED THAT A NEW DNA TEST IN APPELLANT’S FAVOR WOULD NOT BE OUTCOME DETERMINATIVE IN VIOLATION OF THE APPELLANT’S ABSOLUTE RIGHT TO PROCEDURAL DUE PROCESS OF LAW AS GUARANTEED UNDER THE OHIO AND UNITED STATES CONSTITUTION.”

{¶ 14} “Advances in DNA testing prompted the General Assembly in 2003 to enact R.C. 2953.71 through 2953.81. The statutes permit an eligible prison inmate who has been convicted of a felony and who has at least a year remaining on his prison term to file with the common pleas court a postconviction application for DNA testing of biological evidence upon which no DNA test, or an inconclusive test, has been conducted. See R.C. 2953.71(F), 2953.72(A) and (C), 2953.73(A), and 2953.74(A)( and (B). The trial court may ‘accept’ an eligible inmate’s application for DNA testing only if the following factors are present: (1) biological material was collected from the crime scene of the victim(s), and the parent sample of that biological material still exists, (2) the parent sample of the biological material is sufficient, demonstrably uncorrupted, and scientifically suitable for testing, (3) the identity of the perpetrator of the charged offense was in issue at the inmate’s trial, (4) a defense theory at trial was such that it would permit a conclusion that an ‘exclusion result would be

outcome determinative,’ and (5) ‘if DNA testing is conducted and an exclusion result is obtained, the results of the testing would be outcome determinative.’ R.C. 2953.74(B) and (C).

{¶ 15} “‘Outcome determinative’ is defined in the postconviction DNA testing statutes to mean that ‘had the results of DNA testing been presented at the trial of the subject inmate requesting DNA testing \* \* \* and been found relevant and admissible with respect to the felony offense for which the inmate is an eligible inmate and is requesting the DNA testing \* \* \* under section 2953.82 of the Revised Code, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the inmate’s case as described in division (D) of section 2953.74 of the Revised Code, there is a strong probability that no reasonable factfinder would have found the inmate guilty of that offense \* \* \* .’ R.C. 2953.71(L).

{¶ 16} “If any of the factors listed in R.C. 2953.74(C) is not satisfied, the court is \* \* \* precluded from accepting the application. ‘In other words, if the court finds, for example, that the identity of the perpetrator was not an issue at trial, DNA testing will not be allowed, even if all the other criteria are satisfied. Likewise, if the court finds that the test would not be outcome determinative, the application must be rejected.’ *State v. Hayden*, Montgomery App. No. 20747, 2005-Ohio-4025, \* \* \* , ¶ 19.” *State v. Reynolds* (Oct. 16, 2009), 186 Ohio App.3d 1, 4.

{¶ 17} R.C. 2953.74(A) provides, “If an eligible offender submits an application for DNA testing under section 2953.73 of the Revised Code and a prior definitive DNA test has been conducted regarding the same biological evidence that the offender seeks to have

tested, the court shall reject the offender's application.”

{¶ 18} Having reviewed the applicable statutes and the record, we conclude that the trial court was correct in denying Thomas' application without an evidentiary hearing. Regarding the items that were previously analyzed, namely the perianal swab, the vaginal swab, and the stain removed from Thomas' black undershirt, definitive DNA test results were admitted at trial; the victim's blood was on Thomas' shirt and his semen was recovered from her body. Given that definitive testing, further analysis of the pubic hairs found on the victim and on the scene, the Salem cigarette butt, the nail scrapings and the rectal sample would not be outcome determinative, as the trial court correctly found.

{¶ 19} Thomas' assigned errors are overruled, and the judgment of the trial court is affirmed.

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GRADY, J. and FROELICH, J., concur.

Copies mailed to:

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Hon. Timothy N. O'Connell