



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

FILED

2013 AUG -5 P 12:01

STATE OF OHIO

CASE NO.: 573583

Plaintiff

JUDGE COLLIER-WILLIAMS
CLERK OF COURTS
CUYAHOGA COUNTY

vs.

OPINION AND ORDER

STEVEN DIXON

Defendant

JUDGE C. COLLIER-WILLIAMS:

This matter is before the court pursuant to Defendant's Motion for Dismissal Based on Pre-Indictment Delay. For the reasons set forth below, this Court finds Defendant's Motion to be well taken, and consequently the indictment against Defendant is hereby dismissed.

Statement of the Facts:

The facts of this case are not in dispute. Defendant Steven Dixon was arraigned on May 1, 2013, on a two (2) count indictment charging one (1) count of rape and one (1) count of kidnapping. The incident that forms the basis for these charges allegedly occurred on or about April 20, 1993, nearly 20 years earlier.

On October 8, 1992, Defendant Dixon was released from prison on an unrelated charge and placed on Parole supervision. When the alleged victim reported to the police the allegations of rape and kidnapping, Defendant Dixon was arrested. Even though the alleged victim signed a "no prosecution" form, Defendant was brought before the parole authorities in two (2) separate hearings relative to these charges.

On May 10, 1993, at his Pre-revocation On-Site Parole Hearing, probable cause was found to exist regarding the subject charges. On June 23, 1993, a Formal Parole Revocation Hearing was held. This hearing is important because while it is not considered a trial, it was a full evidentiary hearing. At that hearing police officers testified, the alleged victim testified, witnesses for the defense testified, and the Defendant testified. During this hearing, the Defendant admitted to having sexual intercourse with the alleged victim.

OKR+C

#150558

Cuyahoga Co Jail

Page 1

m 8-5-13

DS

Sheriff Signature

VW 85-12 cost

However, while she testified it was rape, the Defendant testified that the sexual intercourse was consensual.

As a result of this hearing, Defendant Dixon was found to have committed the rape and kidnapping. His parole was revoked, and he was sent back to prison for another two (2) years.

On April 10, 2013, the Cleveland Police Department received a CODIS hit confirmation from the Federal Bureau of Criminal Investigation that they had made a preliminary association between a submitted rape kit and the Defendant. Upon receiving this "new" evidence the State proceeded to indict the Defendant prior to the expiration of the statute of limitations.

On June 28, 2013, Defendant Dixon filed his Motion for Dismissal Based on Pre-Indictment Delay.

Law and Analysis:

When determining whether to dismiss an Indictment based upon pre-indictment delay, the Court must determine if the delay resulted in actual prejudice to the Defendant. "Pre-indictment delay resulting in actual prejudice to a defendant 'makes a due process claim concrete and ripe for adjudication.'" *State v. Luck*, 15 Ohio St.3d 150, citing *United States v. Marion*, 404 U.S. 307, at 324, and *United States v. Lovasco* (1977), 431 U.S. 783 at 789. If it is established that the Defendant suffered actual prejudice, the Court is to turn to the second part of the test set forth in *United States v. Lovasco*, *supra*, which requires that there be no justifiable reason for the delay in prosecution that caused this prejudice. *Id.*

In the instant case, Defendant Dixon argues that he suffered substantial prejudice due to this nearly 20 year pre-indictment delay. He argues that his own memory has faded which will prevent him in assisting his counsel. He further argues that he is unable to locate critical witnesses. Further he argues that the credibility of the victim in this case is suspect due to the years between the alleged crime and the indictment.

The State contends that this delay is justifiable because of the following: 1) DNA results show that the semen found in the alleged victim is the Defendant's; and 2) the alleged victim is no longer afraid to prosecute the Defendant.

This case presents unique facts from other cases regarding pre-indictment delay. First, this is not a "cold" case. The reason the case was not indicted and prosecuted twenty years ago was because the victim signed a "no prosecution" form indicating that she did not want to prosecute this matter.

Even though the prosecution argues that there is new evidence, this Court does not agree. This case was never one of "who did it." The Defendant always admitted that he had sex with the victim. The question was, 20 years ago, "was the sex consensual or not." The "new" evidence obtained by the State still does not answer or address that question.

Even though the victim did not want to prosecute, she still testified twice at the parole hearings and the Defendant was sentenced to an additional two (2) years in prison.

The fact that the police held the victim's rape kit for 20 years with their cold files seems to be simple error. There was no need to check the DNA, because all parties agreed 20 years ago that sexual intercourse took place. There was no mystery. There was nothing to solve. This was not a "cold" case, it was a "closed" case. The only reason why this case did not go forth 20 years ago is because the victim chose not to prosecute. The fact that the victim now states that she will prosecute is irrelevant and certainly not "new" evidence.

Therefore, the State's "new" evidence is not new at all. While the evidence from the rape kit does conclusively indicate that the Defendant had intercourse with the victim, the Defendant admitted that fact 20 years ago.

Conclusion and Order:

This Court finds that the pre-indictment delay in this case of 20 years has caused actual and substantial prejudice to the Defendant, and that there was no justifiable reason for the delay. Therefore, Defendant's Motion for Dismissal Based on Pre-Indictment Delay is granted as Defendant's due process rights were violated and this case is hereby dismissed.

Defendant is ordered released from custody.

IT IS SO ORDERED.

August 5, 2013
DATE


JUDGE CASSANDRA COLLIER-WILLIAMS