

Dennis Maher Settles Rape Lawsuit For \$160,000



Dennis Maher the day of his release.

Dennis Maher was a 22-year-old Army paratrooper stationed at Fort Devens, Massachusetts when in December 1983 he was arrested for possessing one-half ounce of marijuana. At the time he was wearing a red sweatshirt, and during the search of his car a green Army jacket and a military knife were found. Those items matched descriptions given by a rape and an attempted rape victim in Lowell. Maher became a suspect in those crimes, in addition to the rape of a woman in the nearby town of Ayer. Although at the time of the Lowell rape Maher was meeting with his commanding officer 22 miles away at Fort Devens, his jacket and knife were common for Army personnel, and his eye and hair color didn't match the women's attacker, he was

charged with the crimes.

In the spring of 1984 Maher was tried and convicted of the Lowell rape and attempted rape based on the victim's identification of him, and the items of clothing and the knife. He was sentenced to 12 to 20 years in prison. He was then tried and convicted of the Ayer rape based on the victim's testimony. He was sentenced to life in prison for that crime.

Maher learned about DNA testing in 1993, but the prosecution denied for years that evidence from the Lowell rape trial still existed. The evidence was finally located in the Cambridge court house basement. In January 2001 DNA testing proved it was not Maher's semen on the Lowell rape victim's underpants. Prosecutors then disclosed that a slide from the Ayer victim's rape kit had been located. DNA testing also cleared Maher in that case. Maher was released on April 3, 2003 after his convictions were overturned and the charges were dismissed by Middlesex's D.A., who called the

convictions a "miscarriage of justice."

Maher filed a claim under Massachusetts' law providing compensation for wrongful incarceration. In September 2005 he settled with the state for \$550,000. In March 2006 Maher filed a federal civil rights lawsuit naming as defendants the city of Lowell, the town of Ayer and several police officers — including Edward Davis, who was the Lowell policeman who arrested Maher in 1983, and is now Boston's police commissioner. Maher alleged the defendants used improper identification techniques, failed to disclose evidence and investigate, and fabricated evidence.

In early December 2008 Maher settled his claims against Lowell for \$160,000. His claims against the town of Ayer and its police officer remain unresolved.

Sources: 19 years later, innocence comes home, *The Boston Globe*, October 12, 2003.

Lowell settles with man wrongly imprisoned in sex assaults, *Lowell Sun*, December 12, 2008.

Hamilton cont. from page 12

Hamilton's claims. Among his rulings were that neither the inability of Dixon to testify because of ill health, nor the failure of Freeman to testify because of fears for the safety of her and her child, had anything to do with the competence of Hamilton's attorney. The judge also denied Hamilton's *Brady* and *Rosario's* claims, ruling there was "insufficient proof the prosecution was in possession of this exculpatory evidence."

However, Judge Rappaport did grant Hamilton an evidentiary hearing regarding Tasheen Douglas' affidavit of September 1993. Douglas subsequently testified in detail about the events described in his affidavit. On April 2, 1996 Judge Edward M. Rappaport judge ruled there was no *Brady* violation regarding the four statements that Douglas claimed to have made to NYPD detectives, because of insufficient evidence that the prosecution was in possession of Douglas' exculpatory statements. Even though Hamilton's conviction was based solely on the trial testimony of Smith that she recanted, the judge also ruled that Douglas' affidavit wasn't "new evidence" warranting a new trial, because it wasn't sufficient by itself to have altered the jury's verdict. In addition, the judge refused to consider the exculpatory alibi affidavits of Turner and Mahan, who were not listed as witnesses on Hamilton's Notice of Alibi Defense.

The New York Appellate Division granted Hamilton leave to appeal the motion's denial, and consolidated his direct appeal into that appeal. In 2000 the appeals court denied

Hamilton's direct appeal and affirmed the dismissal of the motion to vacate his conviction he filed in 1994. (See, *People v. Hamilton*, 272 A.D.2d 553 (2000).) In its ruling the court determined that Hamilton's attorney wasn't ineffective for failing to investigate or subpoena alibi or exculpatory witnesses.

Federal habeas corpus petition

Having exhausted his state remedies, Hamilton filed a pro-se federal *habeas corpus* petition on March 16, 2001. U.S. District Court Judge Gleeson denied the petition on January 16, 2004. However, Gleeson did acknowledge that if Hamilton's attorney had known that Jewel Smith made crime scene declaration that she did not witness the shooting, it could have been used to undermine her trial testimony.

Coram nobis writ denied

Hamilton filed a *pro se* writ of error *coram nobis* in state court to vacate the appeals court's 2000 decision denying his direct appeal. Hamilton claimed ineffective assistance of his appellate counsel. On September 9, 2008 the New York Appellate Division denied Hamilton's writ in a one-line ruling, "The appellant has failed to establish that he was denied the effective assistance of appellate counsel." *People v. Hamilton*, 2008 NY Slip Op 06851 (N.Y. App. Div. 9/9/2008).

Smith supports Hamilton's release

In addition to Smith's admission during Hamilton's post-conviction hearing that she perjured herself during her grand jury and

trial testimony, and her affidavit admitting her perjury, she wrote letters to the appellate judges prior to their denial of Hamilton's direct appeal in 2000, and she wrote letters on his behalf to NY Attorney General Elliott Spitzer in 2007 and to the New York State Board of Parole.

Current status

Hamilton is gathering affidavits and letters to include with a pardon application. Hamilton's court appointed attorney in 1992 and 1993 during his post-trial challenge to his conviction was New York attorney Howard Weiswasser. Fifteen years later Weiswasser executed an Affirmation on April 25, 2008 that was based on his extensive knowledge of Hamilton's case. Weiswasser swore: "Based upon all I know about this matter it is my opinion that DERRICK HAMILTON is an innocent man with an unjust conviction."

Derrick Hamilton can be written at:
Derrick Hamilton 93-A-5631
Shawangunk CF
P.O. Box 700
Wallkill, NY 12589

Nicole Hamilton is Derrick Hamilton's wife and she is his outside contact. Email her at, Nickmickron@yahoo.com

* It is 82 miles from the Quality Inn in New Haven, CT to the location of Cash's murder in Brooklyn, according to Mapquest.com, and the travel time is 1 hr. 53 minutes.