

# Derrick Hamilton Entitled To Actual Innocence Hearing Rules New York Appeals Court

New York's Appeals Court [ruled on January 15, 2014](#) that Derrick Hamilton is entitled to a hearing to determine if his new evidence proves his actual innocence of a 1991 murder in Brooklyn. The state court ruling establishes the precedent that an imprisoned or paroled person in New York claiming actual innocence can have their new evidence reviewed to determine if it proves their innocence by clear and convincing evidence.

Hamilton was convicted in 1993 of the shooting death of Nathaniel Cash on a Brooklyn sidewalk at 11 a.m. on January 4, 1991. As a crowd gathered around Cash's body a man who was later identified as one of the shooters came out of hiding and started spreading the rumor that Derrick Hamilton shot Cash. Hamilton was charged with the murder based on Jewel Smith -- one of Cash's woman friends -- believing the rumor was true, and lying to the police that she witnessed Hamilton shooting Cash.

During Hamilton's trial Smith was the only witness who testified to seeing him shoot Cash.

Hamilton's alibi defense was that at the time of the shooting in Brooklyn he was more than 80 miles away in New Haven, Connecticut. Although Hamilton had several credible alibi witnesses, his lawyer didn't subpoena them of them to testify during his trial.

The jury convicted Hamilton of second-degree murder, and he was sentenced to 25 years to life in prison.

After Hamilton's conviction was affirmed by the court of appeals, he filed numerous post-conviction motions for a new trial based on new evidence and ineffective assistance of counsel.

Hamilton's most important new evidence was a 1995 affidavit by New Haven police officer Kelly Turner. Her affidavit details that in 1991 she owned a talent booking agency in New Haven, and that she was with Hamilton in New Haven from about 11 am until about noon on January 4, 1991 to

discuss booking musical talent in New York City. Davette Mahan worked at the talent agency, and she provided an Affidavit that she saw Hamilton at the talent agency office in New Haven the morning of January 4, 1991.

Hamilton's efforts to be granted a new trial based on his new evidence were thwarted by the rulings of New York courts that the new evidence by Turner and Mahan couldn't be considered because his trial lawyer didn't list either of them on Hamilton's alibi witness list.

In late 2007 Hamilton contacted Justice Denied. In the course of investigating his case Justice Denied contacted New Haven Police Officer Kelly Turner and she verified the accuracy of the information in her Affidavit. She also told Justice Denied that if subpoenaed for a hearing she would testify under oath to her Affidavit's contents.

*Justice Denied* published a feature article about Hamilton's case in its Summer 2008 issue: [In Connecticut At Time Of Brooklyn Murder](#) – The Derrick Hamilton Story.”

*Justice Denied's* Editor and Publisher Hans Sherrer provided an Affidavit to Hamilton in June 2009 that stated in part:

9. The affiant believes that Jewel Smith's post-trial recantation of her trial "eyewitness" testimony upon which the jury relied to convict Derrick Hamilton, is 100% consistent with other evidence Derrick Hamilton has accumulated post-conviction that she did not witness the crime.

10. The affiant believes the evidence Derrick Hamilton has accumulated post-trial credibly establishes that he was in New Haven, Connecticut at the time Nathaniel Cash was murdered in New York. Most compelling is the affidavit of current New Haven Police Officer Kelly Turner that she was meeting with Derrick Hamilton in New Haven at the time the murder occurred in New York.

11. The affiant believes the accumulated evidence the jury did not have available to assess Derrick Hamilton's guilt beyond a reasonable doubt supports that he is actually innocent of Nathaniel Cash's murder.

Hamilton filed a state habeas corpus petition in July 7, 2009, that claimed his new



Derrick Hamilton after his release in December 2011 (Jesse A. Ward, NY Daily News)

alibi evidence established his actual innocence and his trial lawyer provided ineffective assistance of counsel.

*Justice Denied* published a follow-up article about Hamilton's case in its Summer 2011 issue: ["Derrick Hamilton's Alibi By Police Officer He Was 82 Miles From 1991 Murder Ignored By The Courts"](#). Hamilton's petition was denied by the trial court in July 2011, and he appealed.

On December 7, 2011 Hamilton was released on parole after more than 20 years of incarceration from the date of his arrest. He was 46. During his parole hearing Commissioner Christina Hernandez [said to Hamilton](#), "If, in fact, you're incarcerated for something that you did not commit, I hope that you're successful in your appeal."

Hamilton told the *New York Daily News* [after his release](#): "It's just the most remarkable feeling ever and I'm overwhelmed with joy. It's like 1,000 pounds got off your back and you can breathe again." He added, "The fight goes on."

After almost two decades of having his arguments rejected by every court that heard them, on January 15, 2013 the appellate division of the Supreme Court of New York issued its precedent setting ruling in *People v. Hamilton*, 115 A.D.3d 12, 979 N.Y.S.2d 97. The Court's ruling [stated in part](#):

"A freestanding claim of actual innocence is rooted in several different concepts, including the constitutional rights to substantive and procedural due process, and the constitutional right not to be subjected to cruel and unusual punishment." [Op. Cit. 4]....

"...we hold that a "freestanding" claim of actual innocence is cognizable in New York, and that a defendant who establishes his or her actual innocence by clear and convincing evidence is entitled to relief under the statute." [Op. Cit. 1]

and,

"Here, the defendant has made a prima facie showing based upon evidence of a credible alibi and manipulation of the witnesses, and the fact that the witness against him has recanted. Accordingly, there should be a hearing on his claim of actual innocence.

At the hearing, all reliable evidence ... should be admitted. If the defendant establishes his actual innocence by clear and convincing evidence, the indictment should be dismissed..." [Op. Cit. 7-8]

**Hamilton cont. on p. 12**

# Aaron Frank Cadger Acquitted By Oregon Court Of Appeals Of Non-existent Jail Escape

Aaron Frank Cadger [was acquitted](#) by the Oregon Court of Appeals of escaping from a correctional facility the appeals court ruled didn't happen.

In September 2010 Cadger, 20, was serving a 60-day sentence at the Douglas County Jail in Roseburg, Oregon for a probation violation. Cadger was assigned to an "outside inmate worker program," and one day he and several other inmates were picked up at the jail by a civilian supervisor who transported them to the Douglas County fairgrounds. Cadger was given the job of shoveling manure from a parking lot in an area that was outside the fence surrounding the fairgrounds. That morning Cadger's girlfriend arrived at the fairgrounds and they talked for a while where he was working.

During Cadger's lunch break he went to the restroom and rendezvoused with his girlfriend and they left in her car.

A warrant was issued for Cadger's arrest and he was apprehended in California. After his extradition to Douglas County he was charged with escaping "from a correctional facility" (ORS 162.155) which is a second degree felony.

The prosecution presented evidence during



Aaron Frank Cadger  
(Douglas County Jail  
(Roseburg, OR))

Cadger's trial that he left the fairgrounds without permission while on the work detail. After the prosecution rested Cadger's lawyer made a motion for a judgment of acquittal on the basis the fairgrounds isn't a "correctional facility" as required by the escape statute.

The prosecution countered with the argument that Cadger was "constructively confined" in the Douglas County jail at the time he physically left the fairgrounds. After the judge denied Cadger's motion, Cadger rested his defense without presenting any witnesses. The jury convicted Cadger and he appealed.

On October 16, 2013 the Oregon Court of Appeals issued [their unanimous ruling](#) in *State of Oregon v. Aaron Frank Cadger*, No. A147651 (OR Ct of Appeals, 10-16-2013) reversing Cadger's conviction on the basis the judge erred denying his motion for a judgment of acquittal. Judge Lynn R. Nakamoto wrote in the Court's opinion:

We agree with defendant and resolve this case in conformance with *Gruver*. In that case, we held that the defendant -- a county jail inmate who was transported and left to work at the local animal shelter under the supervision of a civilian manager -- could not be con-

victed of escape because he was not "under the direct supervision of a law enforcement official" when he absconded from his work site. *Gruver*, 258 Or App at 555. Gruver was based on facts substantially similar to those in the present case ... [Op. Cit., 3]

Like the defendant in *Gruver*, defendant in the present case was authorized to leave the jail, for work at the fairgrounds, and he did not "abscond while under the direct supervision of a law enforcement official." [Op. Cit., 4]

Thus, as in *Gruver*, defendant was not constructively confined in the county jail, but was instead on a "form of temporary release" at the time of his departure. Accordingly, the trial court erred when it denied defendant's motion for judgment of acquittal, ... [Op. Cit., 5]

Cadger's case is an example that the devil is in the details and his lawyer had a better understanding of what constitutes a correctional facility than the prosecution did when it charged him with a crime he didn't commit.

The Oregon Court of Appeals ruling in *State of Oregon v. Aaron Frank Cadger*, No. A147651 (OR Ct of Appeals, 10-16-2013) [can be read by clicking here](#).

Source:  
[State of Oregon v. Aaron Frank Cadger](#), No. A147651 (OR Ct of Appeals, 10-16-2013)  
[Court overturns Roseburg inmate's escape conviction](#), KPIC (Roseburg, OR), October 17, 2013



## Hamilton cont. from p. 11

The Court also reversed the lower court's denial of Hamilton's ineffective assistance of counsel claim, ruling:

"The failure of the defendant's trial counsel to name all the alibi witnesses in the notice of alibi could constitute ineffective assistance of counsel. Accordingly, at the hearing, the defendant should also be afforded an opportunity to prove, by a preponderance of the evidence, that trial counsel's representation was ineffective. Although the remedy for ineffective assistance of counsel generally is to grant a new trial, if the defendant prevails on his claim of actual innocence, a new trial would not be necessary." [Op. Cit. 8]

The date of Hamilton's hearing hasn't been set. The hearing should be interesting since

the State no longer has any evidence he committed Cash's murder in Brooklyn which occurred at a time his unrebutted new alibi evidence establishes he was 82 miles away in New Haven. Consequently, if the trial court judge conscientiously applies the appeals court's directive it can be expected the hearing will result in the overturning of Hamilton's conviction and the dismissal of his indictment.

The appeals court's ruling in Hamilton's case paves the way for all imprisoned or paroled persons in New York to have their claim of actual innocence considered on its merits, without them having to endure his arduous 20 year quest for justice.

[Click here to read](#) *People v. Hamilton*, 115 A.D.3d 12, 979 N.Y.S.2d 97 (1-15-14).

[Click here to read](#) "In Connecticut At Time Of Brooklyn Murder – The Derrick Hamil-

ton Story," *Justice Denied* magazine, Summer 2008, pp. 10-13.

[Click here to read](#) "Derrick Hamilton's Alibi By Police Officer He Was 82 Miles From 1991 Murder Ignored By The Courts," By Hans Sherrer, *Justice Denied* magazine, Summer 2011, p. 16.

Source:  
[People v. Hamilton](#), 115 A.D.3d 12, 979 N.Y.S.2d 97 (1-15-14)

[Derrick Hamilton's Alibi By Police Officer He Was 82 Miles From 1991 Murder Ignored By The Courts](#), *Justice Denied* magazine, Issue 47, Summer 2011, p. 16

[Brooklyn Appellate Court makes unprecedented ruling](#), *Brooklyn Daily Eagle*, January 16, 2014

[Man released from prison](#) after 20 years can prove innocence in landmark ruling, *New York Daily News*, January 16, 2014

[Brooklyn man is freed from prison](#) after 20 years, *New York Daily News*, December 14, 2011

Derrick Hamilton #93A5631, New York Department of Corrections, [inmate information page](#)

