

Derrick Hamilton's indictment for the murder of Nathaniel Cash in New York City in 1991 [was dismissed](#) on January 9, 2015. Kings County Supreme Court Justice Raymond Guzman granted the motion to dismiss submitted by the Kings County (Brooklyn) District Attorney's Office.

Justice Denied first reported on Hamilton's case in the summer of 2008 after it verified his alibi that at the exact time Cash was murdered on a Brooklyn sidewalk, Hamilton was 82 miles away in New Haven, Connecticut meeting with Kelly Turner — who is now a decorated New Haven police officer. Hamilton had unrefuted ironclad new evidence of his factual innocence the jury didn't hear during his trial. Yet he wasn't exonerated for another 6-1/2 years because the King's County DA's Office fought tooth and nail to maintain his conviction until District Attorney Kenneth Thompson took office in 2014.

Derrick Hamilton's case

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

Derrick Hamilton Exonerated 22 Years After Wrongful New York Murder Conviction

By Hans Sherrer

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.



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

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 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."



New Haven police officer Kelly Turner (USmile magazine)

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, 2014 the appellate division of the Supreme Court of New York issued its precedent setting ruling in *People v. Hamilton* (2014 NY Slip Op 00238). 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

Hamilton cont. on page 4

Hamilton cont. from page 3

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]

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 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.

Two weeks before the appeals court’s ruling Kenneth Thompson took office on January 1, 2014 — replacing Charles J. Hynes who had been in office for more than two decades. Thompson was elected on a platform to clean up the DA’s Office that under Hynes had a reputation as being one of, if not the most corrupt DA’s Office in the United States. In Thompson’s first year in office the Kings County DA’s office supported the exoneration of eleven persons — two posthumously — who had fought for years to have their convictions overturned. Hamilton’s case was

one of around 100 under review by the DA’s Office. On January 5, 2015 [Thompson met](#) with Hamilton and informed him that on January 9 his office would submit a motion to dismiss the murder charge.

On January 9, 2015 the Kings County Supreme Court Justice Raymond Guzman granted the motion submitted by the Kings County (Brooklyn) District Attorney’s Office to dismiss Hamilton’s murder indictment.

Homicide Detective Louis Scarcella obtained Smith’s false statement implicating Hamilton in Cash’s murder. Scarcella, who is now retired, was the investigating officer in the cases of five men exonerated in 2014. After the judge dismissed the charge against him, Hamilton [told reporters](#) at the courthouse: “I have no sentiment for him (Scarcella). I believe he belongs in jail.” Scarcella was the homicide detective in more than 70 of the cases still under review by the Kings County DA’s Office.

With dismissal of his indictment Hamilton can file a compensation lawsuit with the New York State Court of Claims for his more than 20 years of wrongful imprisonment.

Justice Denied has published three articles about Hamilton’s case:

[Click here to read](#) “In Connecticut At Time Of Brooklyn Murder – The Derrick Hamilton 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,” *Justice Denied* magazine, Summer 2011, p. 16.

[Click here to read](#) “Derrick Hamilton Entitled To Actual Innocence Hearing Rules NY Appeals Court,” *Justice Denied* magazine, Spring 2014, p. 11.

Source:

[In Connecticut At Time Of Brooklyn Murder](#) – The Derrick Hamilton Story, by Nicole Hamilton, *Justice Denied* magazine, Issue 41, Summer 2008, pp. 10-13.

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

[Derrick Hamilton Entitled To Actual Innocence Hearing Rules NY Appeals Court](#), *Justice Denied* magazine, Issue 57, Spring 2014, p. 11.

[People v Hamilton](#), 115 A.D.3d 12, 979 N.Y.S. 2d 97 (NY Supreme Ct, Appellate Div., Second Jud. Dept. 1-15-14).

[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.

[Brooklyn man wrongfully convicted of murder exonerated](#) after spending more than 20 years behind bars, *New York Daily News*, January 9, 2015.

Motorcyclist Acquitted On Appeal Of Indecent Exposure Conviction

Nicolaas Chrisoffel Gert Petrus Nagel [has been acquitted](#) of committing indecent exposure while riding his motorcycle in Auckland, New Zealand in March 2013.

In March 2013 a woman in the North Shore area of Auckland saw a motorcycle go by her with a man standing on the seat with his pants pulled down and holding the handlebars with one hand and masturbating with his other hand. She then saw a motorcycle go by traveling in the opposite direction. She wrote down the license plate number of the second motorcycle. When the woman reported the incident to the police she estimated the first motorcycle was going about 20 mph, and she said the rider of the second motorcycle was seated normally.

The police tracked Nagel down as the owner of the second motorcycle and he was charged with indecent exposure.

Nagel testified during his bench (judge only) trial that he not only wasn’t on the motorcycle the woman saw with the masturbating rider, but that he couldn’t have been because he did not have the ability to ride standing on his motorcycle’s seat traveling at about 20 mph and masturbate at the same time. During the woman’s testimony she didn’t identify Nagel as the rider of the first motorcycle, and she wasn’t able to point to any distinctive characteristics of the bikes or riders she saw. She explained that she was focused on what the rider of the first motorcycle was doing, and she was then focused on writing down the license plate number when the second motorcycle passed by her.

The North Shore District Court judge found Nagel guilty of indecent exposure.

Nagel appealed. In late November 2014 the Auckland High Court [quashed Nagel’s conviction](#) on the basis the woman’s testimony was insufficient evidence he was guilty. Justice Pamela Andrews ruled that while their was credible evidence Nagel was the rider of the second motorcycle, there was no evidence he was the rider of the first motorcycle the woman saw traveling in the opposite direction.

Source:

[Motorcyclist wins appeal](#) over ‘masturbating’ conviction, TV3 Auckland (Auckland, NZL), December 2, 2014

[Motorcyclist not the masturbator](#): judge, By NZ Newswire, MSN.com, Dec. 1, 2014