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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