Circuit Court for Frederick County
Case No: 10-K-03-034183

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2306

September Term, 2019

FREDERICK JO VAUGHN

v.

STATE OF MARYLAND

Fader, C.J.,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 4, 2021

In 2004, a jury in the Circuit Court for Frederick County found Frederick Jo Vaughn, appellant, guilty of three counts of first-degree rape (including two counts involving the victim A.D.), two counts of conspiracy to commit first-degree rape, and related offenses. The court sentenced him to a total term of four consecutively run life sentences. On direct appeal, this Court affirmed the convictions. *Vaughn v. State*, No. 2638, September Term, 2004 (filed December 21, 2005).[1] In 2019, Mr. Vaughn, representing himself, filed a petition for post-conviction DNA testing in which he asserted that he "had always maintained that he had no involvement in the rape" of A.D., that "DNA testing has advanced enormously since the time of [his] conviction," and that "scientific evidence will prove no such rape occurred[.]" The court denied the petition, a decision Mr. Vaughn appeals. For the reasons to be discussed, we shall affirm the judgment.

Trial

The charges against Mr. Vaughn arose after a group of people gathered at a cottage at the Catoctin Inn that had been rented by two young couples (James Damatt and A.D. and Hayes Frazier and H.B.) in April 2002 for an evening spent drinking and using cocaine. Mr. Vaughn and his nephew, James Gorham, and others joined the two couples later that night. Mr. Gorham was acquainted with Mr. Frazier, to whom he regularly supplied

[1] In 2017, this Court reviewed the circuit court's denial of Mr. Vaughn's motion to correct an illegal sentence and held that the sentencing court had erred in imposing separate sentences for two counts of conspiracy to commit first-degree rape, but otherwise determined that the sentences imposed were legal. The merger of the sentences for conspiracy to commit first-degree rape did not alter the aggregate term of Mr. Vaughn's sentence. *Vaughn v. State*, No. 2918, September Term, 2015 (filed April 6, 2017).

cocaine in exchange for rides to and from New York. After everyone but Mr. Vaughn, Mr. Gorham, and the two couples who had rented the cottage left the party, the State's witnesses testified that Mr. Vaughn held a knife to Mr. Damatt's throat and "hogtied" him on the floor and ordered Mr. Frazier and the two women to undress. A.D. was then ordered to go upstairs. She testified that Mr. Vaughn, whom she had not met before that night, followed her and engaged in oral and vaginal sex with her against her will. When asked whether he had ejaculated, A.D. answered in the affirmative. She was not asked whether Mr. Vaughn ejaculated before or after he withdrew his penis from her vagina; nor was she asked whether he had used a condom.[2]

Mr. Vaughn then directed Mr. Frazier to join them and ordered Mr. Frazier to have sexual intercourse with A.D., which he did because he was "too scared" to confront Mr. Vaughn. Afterward, Mr. Frazier was sent back downstairs and tied up. A.D. testified that Mr. Vaughn then forced her to submit to vaginal intercourse a second time, after which he tore up the sheets and tied her to the bed. A.D. was not asked whether Mr. Vaughn ejaculated during the second encounter. Meanwhile, Mr. Gorham raped H.B., who was then tied up next to A.D.

Eventually, the assailants left the scene in Mr. Frazier's vehicle, and the victims ultimately contacted the police. The police observed ligature marks on Mr. Damatt's wrists and ankles and an abrasion on his neck and noted that he was shaking and crying. The women were described as emotionally tearful and anxious and they were transported to

[2] In his brief, Mr. Vaughn states that A.D.'s trial testimony was that he had twice ejaculated "inside of her." That assertion, however, is not supported by the transcript.

Frederick Memorial Hospital and examined by SAFE (sexual assault forensic examination) nurses.

Detective Charles Jenkins, an employee of the Frederick County Sheriff's Department, testified that in an interview with Mr. Vaughn nearly two years after the incident, Mr. Vaughn admitted that he and Mr. Gorham had attended the party at the Catoctin Inn where he claimed everyone was drinking and using cocaine. He also admitted to Det. Jenkins that he had sexual intercourse with A.D. that night, but claimed that A.D. had agreed to have sex with him in exchange for cocaine. According to the Detective, Mr. Vaughn also admitted tying up Mr. Damatt, whom he claimed became angry when he walked in on him and A.D having sex. Although he admitted that he had also tied up A.D., he claimed that he had done so at A.D.'s request to mislead her boyfriend, Mr. Damatt. Finally, Mr. Vaughn told Det. Jenkins that he did in fact leave the scene in Mr. Frazier's car, but asserted that Mr. Frazier had given him permission to take the vehicle.

At trial, A.D. and Mr. Damatt both denied that A.D. had sex with Mr. Vaughn in exchange for drugs, and both testified that Mr. Damatt had not walked in on Mr. Vaughn and A.D. engaging in sex. A.D. also denied that she had requested Mr. Vaughn to tie her up.

Virginia Marrone, a nurse at Frederick Memorial Hospital, was accepted by the court as an expert in the area of sexual assault forensic examinations. Nurse Marrone testified that she examined A.D. about 3:00PM on the afternoon following the late-night assault. Nurse Marrone related that A.D. told her that "oral sex was done to her, she relayed she performed oral sex," and she stated that she had been "raped" three times. Nurse

Marrone observed a "red mark" on A.D.'s chest between her breasts; a red mark on her perineum; a "tear" one centimeter in length on her genitalia; "some generalized redness on her labia majora"; "some redness below her clitoris"; and "generalized uptake through the bottom of the vagina" – "a very dark blue mark."

The State presented DNA evidence through the testimony of Argiro Magers, an employee of the Maryland State Police, Forensic Science Division, who was accepted as an expert in the field of serology and STR (short tandem repeat) DNA analysis. Ms. Magers testified that she had conducted a DNA analysis from DNA obtained from a vaginal cervical swab obtained from A.D. during the sexual assault forensic examination. The analysis determined the presence of semen, which matched the DNA profile of Mr. Frazier. Mr. Vaughn was *excluded* as contributor to that DNA sample.[3]

The jury convicted Mr. Vaughn of 17 counts, including two counts of first-degree rape of A.D. On direct appeal, Mr. Vaughn challenged the sufficiency of the evidence to support his convictions. We summarized his contention as follows:

> Appellant's argument is not directed specifically toward lack of proof as to the elements of any of the 17 charges. He challenges generally the credibility of the witnesses against him and suggests alternative theories for some of the evidence. For example, he claims that the sex was consensual, based upon his leaving cocaine next to [A.D.] in the bedroom; *that no DNA evidence was traceable to appellant from the examination of* [*A.D.*]; that the four alleged victims leisurely used the cocaine after appellant left before contacting the police; and that all of these acts are inconsistent with rape.

Vaughn v. State, No. 2638, Sept. Term, 2004, slip op. at 6 (emphasis added).

[3] Ms. Magers testified that a DNA sample from H.B. contained sperm matching the DNA profile of Mr. Gorham.

We rejected Mr. Vaughn's contention that the evidence was insufficient to support the convictions, and stated:

> All of the events that occurred at the Catoctin Inn were presented to the jury. Admittedly, counsel for the State and for the accused emphasized their discordant analyses of the testimony. The jury saw and heard the witnesses. They were, therefore, fully qualified to determine beyond a reasonable doubt appellant's guilt. All four of the witnesses testified that they were repeatedly threatened with being killed unless they complied with the demands by [Mr. Gorham] and [Mr. Vaughn]. The jury clearly concluded that fear, not consent, resulted in rape and assault by appellant. The evidence supports that judgment.

Id. at 6-7.

Petition for Post-Conviction DNA Testing

In June 2019, Mr. Vaughn, representing himself, filed a petition for post-conviction DNA testing, the denial of which is the subject of this appeal. In that petition, he asserted that he had always denied raping A.D. and was seeking "the opportunity to establish through DNA testing . . . that he did not sexually assault" her. He claimed that DNA testing "has advanced enormously" since his trial and that the "current method of Short Tandem Repeat (STR) DNA testing [has] the capacity to detect and characterize a male genetic profile from sexual assault kit materials that were collected in this case." He maintained that "scientific evidence will prove no such rape [of A.D.] occurred" and "the version of events as presented by [the two couples] were all fabricated to 'set up' [him] because he did not leave the amount of drugs (two more 'eight balls') in exchange for the use of Mr. Hayes's [Frazier's] car."

A hearing was held on October 29, 2019 before the court (Judge Scott Rolle, presiding) at which time it appears that Mr. Vaughn requested assistance of counsel and

the court granted the State additional time to file an Answer. It further appears from a "courtroom worksheet" in the record that the Office of the Public Defender would not be representing Mr. Vaughn in this matter and that a subsequent hearing would be set for May 12, 2020. Mr. Vaughn then filed a "petition to prohibit the State from destroying tangible evidence," which the State did not oppose and which the court (Judge Rolle) granted on December 11, 2019.

On December 20, 2019, the State filed an Answer opposing the petition for post-conviction DNA testing on the grounds that Mr. Vaughn had "consistently argued" – in his statement to the police, at trial, and on direct appeal – that he had engaged in consensual sexual activity with A.D. and, therefore, further DNA testing would not have "the potential to produce exculpatory or mitigating evidence." On January 7, 2020, the court (Judge G. Edward Dwyer, Jr., presiding) denied the petition. Mr. Vaughn then filed a motion to alter or amend the judgment in which he claimed not to have received the State's Answer. He specifically requested that Judge Rolle reverse the judgment denying relief and "compel the State to file an Answer." Judge Rolle denied the motion to alter or amend.

DISCUSSION

Post-conviction DNA testing is governed by Md. Code Ann., Criminal Procedure § 8-201, which in pertinent part provides that a court shall order DNA testing if the court finds that:

> (i) a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing; and
> (ii) the requested DNA test employs a method of testing generally accepted within the relevant scientific community.

Crim. Proc. § 8-201(d)(1).

On appeal, Mr. Vaughn reiterates the claims he made in his petition and also asserts that the circuit court erred in denying relief because (1) he never received the State's Answer to his petition; (2) he was not given the opportunity to respond to the State's Answer; (3) Judge Dwyer "lacked jurisdiction" to rule on his petition for DNA testing because he was the judge who had presided over his trial; and (4) Judge Dwyer "should not have been allowed by law" to rule on his petition because he "is well over 70 years of age" and "has been retired since March 1, 2016."

The State first responds that the circuit court correctly denied relief because Mr. Vaughn had told the police that he had engaged in consensual intercourse with A.D. in exchange for drugs and the DNA analysis excluding him as a contributor to the DNA sample taken from A.D. had been presented at his trial. Moreover, the State asserts that, given his admission that he had had sex with A.D., "coupled with the testimony of A.D. and others[,]" "the lack of DNA evidence was of minimal import to the overall case against Vaughn." The State also points out that on direct appeal this Court rejected Mr. Vaughn's contention that the evidence was insufficient to support the convictions, even in light of the fact that "no DNA evidence was traceable to [Mr. Vaughn] from the examination of [A.D.]." And the State asserts that, "at best for him," additional DNA testing would simply "again fail to find his DNA." In other words, the State maintains that new DNA results would not exculpate Mr. Vaughn nor produce any new mitigating evidence.

We agree with the State that, given the evidence at trial that DNA testing had excluded Mr. Vaughn as a contributor to the DNA sample retrieved from A.D. after the

assault, additional DNA testing would not create "a reasonable probability" that more "DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing" in this case. As the State points out, the best Mr. Vaughn could hope for is that additional DNA testing would again exclude him as a contributor. But his lack of DNA on the swab taken from A.D. is evidence that the jury already heard. The jury also heard the unrefuted evidence that Mr. Vaughn admitted to the police that he in fact had sex with A.D. at the Catoctin Inn on the night in question, claiming it was consensual in exchange for drugs. And, of course, the jury heard A.D.'s testimony and that of the other State witnesses related to the events of the night. Thus, even if DNA analysis has significantly advanced since Mr. Vaughn's trial and assuming new testing would confirm the original finding that excluded Mr. Vaughn from the sample taken from A.D., we are not persuaded that "updated" DNA results could potentially exculpate him or mitigate the evidence presented at his trial. We, therefore, hold that the circuit court did not err in denying relief.

We also find no merit to Mr. Vaughn's remaining claims that the circuit court erred in denying relief for various procedural reasons. First, he asserts that he never received a copy of the State's Answer to his petition and that the court erred in ruling without giving him an opportunity to respond to the State's Answer. The record reflects, however, that the State filed its Answer on December 20, 2019 and included a certificate of service certifying that a copy had been mailed to Mr. Vaughn at the same address he had provided on his petition. Although it is true that the court ruled on the petition less than three weeks after the State had filed its Answer and without waiting for a response from Mr. Vaughn,

the court was not obligated to wait for Mr. Vaughn to respond. Maryland Rule 4-707 provides that, upon consideration of the State's answer to a petition for post-conviction DNA testing, the court "may deny the petition if it finds as a matter of law that (1) the petitioner has no standing or (2) the facts alleged in the petition do not entitle the petitioner to relief." Here, although the court denied relief without stating a reason, it is clear to us that the court found that he was not entitled to additional DNA testing based on the facts alleged in his petition, which included Mr. Vaughn's summary of Det. Jenkins's trial testimony (with citations to the trial transcripts) that, although he had denied raping A.D., he had "acknowledged having sex with" her in exchange for drugs. In other words, from the facts set forth in the petition, the court was aware that the evidence at trial established that Mr. Vaughn had admitted to having sex with A.D. on the night in question.

We also find no merit to Mr. Vaughn's assertion that Judge Dwyer was disqualified from ruling on his petition because he had presided over the trial. There is nothing in the statute, Crim. Proc. § 8-201, or Maryland Rules 4-701 through 4-711 which govern the implementation of the statute, which prohibits the trial judge from ruling on a subsequently filed petition for post-conviction DNA testing.

Finally, we find no merit to Mr. Vaughn's assertion that Judge Dwyer, given his age and retirement status, was prohibited from ruling on his petition on January 7, 2020. As the State points out, Article IV, § 3A of the Maryland Constitution and Md. Code Ann., Courts & Judicial Proceedings § 1-302 provide that the Chief Judge of the Court of Appeals may appoint a former judge to sit temporarily in the circuit court. We take judicial notice of the fact that on December 19, 2019, Chief Judge Barbera, with the approval of a majority

of the Court of Appeals of Maryland and with the approval of the Administrative Judge of the Sixth Judicial Circuit, designated Judge Dwyer to sit as a judge in the Sixth Judicial Circuit of Maryland (Frederick and/or Montgomery County) "for the period of January 1, 2020 through December 31, 2020[.]"

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.