

convicted of first degree murder and aggravated sexual assault, and sentenced to prison terms of 34 and 6 years in the IDOC, to be served consecutively. On February 10, 1998, petitioner Thames entered a negotiated guilty plea to first degree murder and aggravated sexual assault. The trial court sentenced him to 24 years and 6 years in the IDOC, to be served consecutively. Petitioners petition this Court to vacate their convictions, release them on their own recognizance, and grant them all new trials.

BACKGROUND

Petitioners' convictions arose from the sexual assault and murder of Nina Glover. On November 7, 1994, a waste management worker discovered the body of an African-American woman in a dumpster behind a liquor store at 1400 West Garfield Boulevard in Chicago, Illinois. The Chicago Police Department (CPD) was called, and when the police arrived, they found that the body was stripped naked, badly beaten, and wrapped in a white sheet. The body was later identified as Nina Glover.

Four months later, the petitioners, who were all teenagers at the time, were taken to the police station by members of the CPD, and were questioned by CPD detectives. Each of the petitioners gave the detectives lengthy, detailed statements, confessing to the specific participation of each of them in the gang-rape, in which each petitioner took turns raping the victim, and her subsequent murder in the basement of petitioner Thames' family's basement. Petitioner Swift gave a 22-page, court-reported, signed statement. Petitioner Saunders confessed in an 8-page, signed, handwritten statement. Petitioner Richardson gave an oral statement to Assistant State's Attorney Fabio Valentini.

Petitioner Thames confessed in a handwritten statement, and later pled guilty to the rape and murder.

PROCEDURAL HISTORY

Petitioner Swift took a direct appeal to the Illinois Appellate Court, First District, wherein petitioner alleged: (1) that the State failed to prove him guilty of either crime beyond a reasonable doubt; and (2) that his confession to the crimes was not voluntary. On December 13, 1999, the appellate court affirmed the trial court's conviction and sentence. *People v. Swift*, 1-98-2624 (unpublished order under Supreme Court Rule 23) (1999).

Petitioner Saunders took a direct appeal to the Illinois Appellate Court, First District, wherein petitioner alleged: (1) that collateral estoppel barred the trial court from reconsidering its ruling on petitioner's motion to suppress his statement as involuntary; and (2) that the court erred in reversing its original finding. On August 23, 1999, the appellate court affirmed the trial court's conviction and sentence. *People v. Saunders*, 1-98-0352 (unpublished order under Supreme Court Rule 23) (1999).

Petitioner Richardson took a direct appeal to the Illinois Appellate Court, First District, wherein petitioner alleged: (1) that the trial court improperly considered the victim impact statements in violation of the Rights of Crime Victims and Witnesses Act; and (2) that provisions of the same Act were unconstitutional. On November 8, 1999, the appellate court affirmed the trial court's conviction and sentence. *People v. Richardson*, 1-98-1348 (unpublished order under Supreme Court Rule 23) (1999).

judgment itself is void. *Gosier*, 205 Ill. 2d at 206-07; 735 ILCS 5/2-1401(c), (f) (West 2010).

Although a section 2-1401 petition is usually characterized as a civil matter, relief under this section also extends to criminal cases. *People v. Gosier*, 205 Ill. 2d 198, 206 (2004); *People v. Haynes*, 192 Ill. 2d 437, 460-61 (2002); *People v. Sanchez*, 131 Ill. 2d 417, 420 (1989). In criminal cases, a section 2-1401 petition is the forum in which a court can correct unknown errors of fact occurring in the prosecution of the case, which, if known, would have prevented its rendition. *People v. Haynes*, 192 Ill. 2d 437, 461 (2000); *People v. Berland*, 74 Ill. 2d 286 (1978). “[A] trial court may vacate a judgment obtained by duress or fraud, or where by some excusable mistake or ignorance of a party and without negligence on his part he has been deprived of a defense which, if known to the court, would have prevented the judgment.” *Lawton*, 335 Ill App 3d at 1086.

The petition is addressed to errors of fact, not law. *Charles S.*, 83 Ill. App. 3d at 517. However, a section 2-1401 petition is not a general review of all errors at trial, nor is it a substitute for direct appeal. *Haynes*, 192 Ill. 2d at 461; *Berland*, 74 Ill. 2d at 314.

The requirements for relief under section 2-1401 were explained by the Illinois Appellate Court, First District, in *People v. Waters*, 328 Ill. App. 3d 117 (1st Dist. 2002).

The *Waters* court stated:

To obtain relief under section 2-1401, a petitioner must set forth specific factual allegations demonstrating the existence of a meritorious defense or claim, due diligence in presenting the defense or claim to the circuit court in the original action, and due diligence in filing the section 2-1401 petition. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21, 102 Ill. Dec. 368, 499 N.E.2d 1381 (1986). In order to justify setting aside a judgment on the basis of newly discovered evidence, it must be shown that the new evidence was not known to the petitioner at the time of trial and could not have been discovered by the petitioner with the exercise of reasonable

diligence. *People v. Hallom*, 265 Ill. App. 3d 896, 906, 202 Ill. Dec. 897, 638 N.E.2d 765 (1994). Further, the new evidence must be so conclusive that it would probably change the result if a new trial is granted, must be material to the issues, and must be more than merely cumulative to the trial evidence. *Hallom*, 265 Ill. App. 3d at 906. The petition's allegations must be proved by a preponderance of the evidence. *Smith*, 114 Ill. 2d at 221, 223. Whether to grant a section 2-1401 petition is a decision within the sound discretion of the circuit court. *Haynes*, 192 Ill. 2d at 461.

Waters, 328 Ill. App. 3d at 127.

Initially, the Court is satisfied that petitioners have set forth specific factual allegations. Further, petitioners have presented their claims with due diligence, and the new evidence accompanying the claims was not known and could not have been discovered at the time of trial. Therefore, this Court is left with decision of whether, by preponderance of the evidence, the newly discovered evidence is material and so conclusive that it would likely change the result if a new trial were granted.

In the present case, the newly discovered evidence before this Court is the DNA testing results. These results were from tests performed on semen recovered from the vaginal swabs taken from the body of the victim. These results excluded the DNA profiles of all four the petitioners and matched the DNA profile of Johnny Douglas.

The exclusion of the petitioners' DNA profiles is significant to this Court. In cases where DNA excludes defendants, or cases of non-matching evidence, "the trial court must consider the actual results of the DNA testing and determine the legal significance of the non-match." *People v. Dodds*, 344 Ill. App. 3d 513, 519 (1st Dist. 2003). This DNA exclusion is significant here. As stated above, all four petitioners confessed to the rape and murder of Nina Glover in great length and detail. In petitioners' statements, each of them confessed to raping the victim. However, none of

them mentioned use of a condom. This Court is given pause by the assertion that four adolescent males could engage in unprotected sexual intercourse without leaving any semen in the victim. In fact, the Court finds it highly unlikely, and casts a degree of doubt on the veracity of parts of petitioners' statements.

Further, the legal significance of the non-match to petitioners' DNA profiles is increased by the positive match of the semen sample collected from the victim to the DNA profile of Johnny Douglas. In their claims, petitioners note this match, and assert that Johnny Douglas is Nina Glover's actual assailant.

In further support of petitioners' assertion, they offer Johnny Douglas' criminal history. Between July 1980 and April 1998, Douglas was arrested 83 times, and was convicted of crimes 38 times. Most significantly to this Court, Douglas was charged with murder 3 times and convicted once. Also, he was arrested from sexual assault twice and convicted once. Also, it is significant to note that on the morning of November 7, 1994, when members of the CPD were investigating the area where the victim's body was discovered, Johnny Douglas was present and was actually interviewed at that time, and denied knowing the victim. Regardless of whether this speaks to Douglas' *modus operandi* as a serial rapist and killer, as petitioners allege, it is further evidence of Douglas' presence in the area, and possible evidence of prior knowledge of the location of the disposal of the victim's body.

The potential effect on a new trial of Douglas' DNA match, criminal history, and presence in the area are especially important to this Court when they are considered in light of the words of the well-respected and now retired Judge Thomas R. Sumner, who was the judge presiding at petitioner Swift's, petitioner Saunders', and petitioner

Richardson's trials, as well as at Thames' plea. In granting a pre-trial motion for DNA testing, Judge Sumner stated that, "If there's a DNA match . . . then we're talking about something different altogether." *People v. Harold Richardson*, Transcript of Proceedings, December 18, 1997. It is significant to this Court that Judge Sumner verbalized the potential impact that a positive DNA match would have on his decision. Therefore, in considering Judge Sumner's statement in light of all the evidence now presented, it is clear to this Court that this new evidence is material, and not cumulative, and it would, by preponderance of the evidence, probably change the result in a new trial. *Waters*, 328 Ill. App. 3d at 127.

CONCLUSION

Based upon the foregoing discussion, this Court finds that petitioners have presented sufficient material evidence for the purposes of a Section 2-1401 claim. Thus, this Court vacates petitioners' convictions, and orders a new trial.

ENTERED:

Paul P. Biebel, Jr. 1688

Hon. Paul P. Biebel, Jr.
Presiding Judge, Criminal Division
Circuit Court of Cook County

DATE:

Nov. 16, 2011

