

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
DOCKET NO. KNO-89-071

DENNIS DECHAINED,

Petitioner

v.

ORDER

STATE OF MAINE,

Respondent

This case comes before the Court on Petitioner Denis Dechaine's Motion to Withdraw a Post-Conviction Motion for DNA Analysis and for a New Trial pursuant to 15 M.R.S.A. § 2136, et seq. The issue before the Court is whether the Motion will be dismissed with prejudice or without prejudice.

**BACKGROUND**

Petitioner initially filed this motion on May 20, 2003. The hearing was scheduled for September 23, 2005. Because a DNA analysis hearing had never been held in Maine, the Court was appropriately asked by both parties to identify the scope of the hearing. On September 16, 2005, the Court Ordered that the evidence at the hearing be restricted to the DNA analysis of Sarah Cherry's fingernails balanced with the evidence already on the record from the 1989 trial. On the day of the hearing, Petitioner asked the Court to reconsider its Order of September 16, 2005, which narrowed the scope of the hearing. The motion was denied. At that point, Petitioner conceded that he could not meet his burden under the statute and moved the Court to withdraw the motion.

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DISCUSSION

The State argues that the Court, in its discretion, should dismiss the motion with prejudice because Petitioner deliberately, intentionally, and strategically waived and abandoned the motion.<sup>1</sup> Furthermore, the State contends that withdrawing the motion at the last minute prejudiced the State due to the costs incurred in retaining the services of experts, as well as the time spent preparing for the hearing.

Pursuant to 15 M.R.S.A. § 2136, et seq, there is no express prohibition against withdrawing a motion. In any other criminal proceeding, a defendant may withdraw a pending motion at any time prior to a ruling of the Court. In the post-conviction review context, unless the State demonstrates that it would be unfairly prejudiced, motions to withdraw shall be granted without prejudice. See M.R. Crim. P. 70(d). In this case, although the State has incurred expense in preparing for the hearing, that expense does not rise to the level of prejudice. Furthermore, there is no evidence that Petitioner acted in bad faith. Rather, in light of the fact that the scope of the DNA analysis hearing was uncertain until one week before the date of the hearing, Petitioner's strategic move to withdraw his motion was reasonable. Ultimately, however, the Court does not have the statutory authority to dismiss this motion with prejudice.

It is hereby ORDERED that Petitioner's Motion to Withdraw is GRANTED WITHOUT PREJUDICE.

DATE: 11/9/05

  
Justice, Superior Court

<sup>1</sup> After admitting that he could not meet his burden, Petitioner indicated that he would first go to the Legislature to change the law.