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Concord

Man won't face new rape trial

Chance to question accuser was denied

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County prosecutors have opted not to retry a man whose rape conviction was overturned by the New Hampshire Supreme Court. Karl Kornbrekke of Concord, who has been out on bail since March, is now free.

The court found that Kornbrekke should have had the opportunity to question his accuser about a previous rape allegation that she recanted. Prosecutors had the option of trying Kornbrekke again, allowing this new evidence, but opted against it.

Merrimack County Attorney Dan St. Hilaire said that after reviewing the case, he was not confident he would be able to convict Kornbrekke in a retrial. Kornbrekke's first trial ended in a hung jury. He was convicted in a second trial after lengthy jury deliberations. Kornbrekke served 18 months in the state prison, but he has been out on bail since the Supreme Court decision in March.

"It was very difficult, even with the suppressed evidence," St. Hilaire said. "Now with the evidence coming in, and reviewing our past two trials, we just determined that we may not be able to prevail the third time around."

There were no witnesses to the alleged rape, and there was no definitive physical evidence of assault, according to the Supreme Court decision. Kornbrekke's lawyers argued that sex between the two was consensual and that the accuser became angry later, after Kornbrekke refused to buy her drugs.

The accuser, whom Kornbrekke met a few days before the alleged rape, had made a previous rape allegation, then recanted that accusation. Because some details of the older incident were similar to those alleged in the Kornbrekke case, the justices found that evidence of the previous accusation should have been allowed at trial.

"Given the nature of this case - a sexual assault case with no eyewitnesses other than the complainant and the defendant - the complainant's testimony, and thus her credibility, is crucial," said the opinion, written by Justice Gary Hicks.

Defense attorneys and prosecutors interviewed at the time of the decision said the court clarified a standard that had been uncertain but only applies in a small number of cases. The decision does not expose victims to cross-examination about their sexual histories, but it does allow defendants to question victims about previous accusations of rape that may have been false, said Ted Lothstein, a Franklin Pierce Law Center professor who handled Kornbrekke's appeal.

"We're not interested in the details of someone's sex life, we're interested in honesty," he said in March.