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Merrimack County drops charges against Foad Afshar

By CAITLIN ANDREWS

Monitor staff

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All sexual assault charges against a former Concord psychologist accused of molesting a patient have been dropped.

The Merrimack County Attorney's Office announced Wednesday it would not be seeking a retrial in the Foad Afshar case. Afshar of Bow was sentenced in August 2016 to a three- to six-year prison term after a jury determined he inappropriately touched a young patient during a Jan. 6, 2015, session.

The decision comes days after the state's Supreme Court unanimously agreed with the trial court's ruling that Afshar deserved a new trial due to juror bias.

The decision was made after consulting the family, according to assistant Merrimack County Attorney Joseph Cherniske, who cited "the impact this process has had on them." He and the family declined to comment further.

Afshar's lawyer Ted Lothstein said the uncertainty for his client is now over.

"To borrow a phrase from a different part of the legal system, you're presumed innocent until proven guilty," he said. "What's missing from that is, 'in a fair trial.'

"He was never proven guilty in a fair trial," Lothstein said. "It's not that prosecutors have exonerated him – there's no case against him. There's no conviction."

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The decision brings to a conclusion an emotional trial that has spanned nearly three years.

Afshar was initially found guilty on one felony count of aggravated sexual assault and an alternative misdemeanor count of simple assault, as well as two counts of unlawful mental health practice.

His conviction rocked the community and drew concern from some psychologists (<https://www.concordmonitor.com/criminal-conviction-highlights-duel-risk-of-therapeutic-setting-2998604>) who said they were apprehensive about taking on the liability of treating children.

Afshar has maintained his innocence throughout the case and has received ongoing support from friends, family and colleagues, many of whom would show up at court proceedings wearing "Justice for Foad" buttons.

One in particular, Durham psychologist Michael Kandle, has maintained a website, which has provided updates and donation options to support Afshar's legal counsel. He called the news Wednesday "an enormous relief."

"I think it was an extremely sad occurrence for all parties involved," he said. "I add the family of the accuser because I don't think Foad and his supporters are the only ones who have suffered through this.

"The whole process, from start to finish ... has been a painful ordeal for all parties," he said. "I don't want to dismiss the stress this put on the family and the boy."

The case

Afshar's appeal argued that two jurors who were victims of sexual assault brought up their personal experiences during a critical moment in deliberations when other jurors were questioning Afshar's guilt or innocence.

The state argued the jurors did not disclose their status earlier because they misunderstood the question posed about whether they or a family member had ever been a victim of a crime, because neither juror's experience involved police, according to separate post-trial interviews the prosecution conducted.

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Merrimack County Superior Court Judge Diane Nicolosi disagreed, saying the male foreman had a clear bias in favor of victims, while the other juror showed emotional difficulty with her own experience, Nicolosi wrote. In each circumstance, the jurors would have been excused from the jury pool, the judge said.

The case made its way to the state's Supreme Court this summer.

There, Assistant Attorney General Sean Locke criticized Nicolosi's methods of bias-finding, particularly where the judge examined the jurors' demeanors during questioning. Nicolosi had written that the male juror seemed to have a hard time seeing himself as a victim, while the female juror became emotional during questioning.

But last week, all five judges agreed Afshar was entitled to a new trial.

They focused in particular on the foreman, who testified after the trial that he did not disclose that he was assaulted by a babysitter as a child because he did not see himself as the victim of a crime.

But he also reached out in support to a sexual assault victim and testified he would be unable to sit on a sexual assault case involving a girl due to his feelings about his daughter, "an admission the trial court found troubling given that Juror 6 has a son as well."

"Juror 6's demeanor, as well as 'his actions and communications before, during and after trial,' demonstrated 'his personal identification with persons who report being victims of sexual assault, which resulted in, at the very least, a subjective bias that could not be set aside,'" wrote Supreme Court Chief Justice Robert Lynn.

The New Hampshire Coalition Against Domestic Violence and Sexual Violence, pushed back against the decision last week, saying sexual assault survivors are not inherently biased as jurors and are capable of serving on juries without bias.

"Considering that 1 in 4 women and 1 in 20 men in N.H. have been sexually assaulted, a jury of one's peers will likely always include sexual assault survivors," said director of public police affairs Amanda Grady Sexton in an emailed statement.

On Wednesday, she said the family's decision to not pursue a second trial was not surprising.

"The system is not designed to protect the privacy or dignity of the victim, making it even more difficult for them to rebuild their lives," she wrote in an email. "... Our thoughts are with the courageous young survivor in this case, and we stand with his family in their request for privacy during this time."

(Caitlin Andrews can be reached at 369-3309, candrews@cmonitor.com or on Twitter at @ActualCAndrews.)

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