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# All charges dropped against Concord psychologist sent to prison on word of 12-year-old patient

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CONCORD — The Merrimack County Attorney has dropped all charges against a Concord psychologist who was found guilty two years ago of molesting a 12-year-old patient.

The decision announced on Wednesday comes a week after the state Supreme Court upheld a Superior Court ruling ordering a new trial for Foad Afshar.

"After consultation with the victim and his family, considering the impact this process has had on them, and in light of the Supreme Court's Oct. 12 opinion, the state will not pursue a second trial at this time," said Assistant Merrimack County Attorney Joseph Cherniske, who declined further comment.

Afshar's conviction led his supporters last year to press for legislation that would require independent corroboration of sexual assault charges in certain cases, while victim advocates rallied in opposition to the bill that was ultimately defeated.

Two unnamed jurors were at the heart of Afshar's appeal. Both had been victims of sexual assault as children and both failed to disclose those assaults during questioning of potential jurors before Afshar's trial.

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In March of 2017, Merrimack County Superior Court Judge Diane Nicolosi threw out the guilty verdict and called for a new trial, citing juror misconduct. The Attorney General appealed Nicolosi's decision, claiming she used hindsight inappropriately and essentially recreated the jury selection process.

The Supreme Court concluded that Nicolosi properly determined that the dishonest responses were intentional and that had the potential jurors been honest, they would have been disqualified.

All convictions tossed

Afshar was convicted by the jury of simple assault and aggravated felonious sexual assault based on charges that he touched the genitals of his 12-year-old client during a therapy session.

He was also convicted on two counts of unlawful mental health practice based on charges that he had failed to renew his mental health counselor's license at the time he was treating the victim.

"Those charges were the most absurd," said Afshar's attorney on appeal, Ted Lothstein of Concord. "He had held a license without blemish for many years and he just failed to get the renewal paperwork in time for routine renewal."

Afshar was sentenced to three to six years and began serving that sentence after his conviction in June of 2016 at the Merrimack County House of Corrections. He was later transferred to the state prison in Concord and ultimately to the Massachusetts state prison in Walpole.

"He was released the moment that the trial court granted a new trial in March of 2017," said Lothstein. "For Foad and his family this is an incredible relief. It has been a very long, very difficult battle. He and his family are huddled together and trying to grasp what's happened here, from a four-year long nightmare to all of the sudden, it's over."

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A native of Iran, Afshar has practiced for 30 years, is the father of three and was past president of the New Hampshire Psychological Association. He also taught psychology and philosophy at the New Hampshire Institute of Art.

'Enormous relief'

Psychologist Michael Kandle of Durham maintained a website that followed the trial and appeals process, with the title "Justice for Foad."

"I feel an enormous sense of relief as well as reassurance that our state courts were able to serve justice in a case this polarizing, and at a time in our society where the wise and fair management of sexual abuse concerns has become increasingly difficult," said Kandle.

"I think that when it comes to matters of sexual assault that our entire country has a long way to go in learning how to come together in a recognition of the problems on both sides of these matters, and in learning how to respond to them or adjudicate them in ways that are both fair and non-polarizing."

Amanda Grady Sexton, director of public relations for at the N.H. Coalition Against Domestic and Sexual Violence, said the criminal justice system can be extraordinarily difficult for victims and their families to endure, and it is not uncommon when there is a mistrial or hung jury for the victim to simply want to move on.

"New Hampshire's system of justice is not designed to protect the privacy or dignity of those who have been victimized, which makes it even more difficult for a victim of crime to rebuild their lives," she said. "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."

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