

CASE MANAGEMENT ORDER

IN THE MATTER OF APPLICATIONS SEEKING RELIEF IN ADJUDICATED MATTERS ALLEGING THAT, KALMALKANT SHAH, FORENSIC SCIENTIST AT THE NEW JERSEY STATE POLICE OFFICE OF FORENSIC SCIENCES, NORTH REGIONAL LABORATORY (LITTLE FALLS) DRUG UNIT, FAILED TO APPROPRIATELY CONDUCT LABORATORY ANALYSES, PEER REVIEW, OR ADMINISTRATIVE REVIEW OF PURPORTED DRUG EVIDENCE

This matter having been opened by the Court on its own motion, on notice to and with the consent of the Offices of the Attorney General and Public Defender, pursuant to the Supreme Court Order dated April 25, 2016, and as part of the Centralized Case Management (CCM) program, the following procedures are established for adjudicated cases alleging that Kamalkant Shah, Forensic Scientist at the New Jersey State Police Office of Forensic Sciences, North Regional Laboratory (Little Falls) Drug Unit, failed to appropriately conduct laboratory analyses, peer review, or administrative review of purported drug evidence;

This Court makes the following findings:

The Attorney General is identifying whether the purported drug evidence for each case is available to be retested or if it has been destroyed; and

The Attorney General has begun retesting the available purported drug evidence using gas chromatography mass spectrometry testing; and thus far the Attorney General has retested purported drug evidence samples for approximately 1,326 defendants, with the retest in each case affirming the original positive test results for drugs/controlled dangerous substances; if upon retesting the laboratory results are negative for drugs/controlled dangerous substances, the Attorney General will notify this Court to determine how to proceed; and

To date, the Attorney General has identified approximately 1,169 defendants whose purported drug evidence has been destroyed, and those matters may be recommended for administrative dismissal; the Attorney General continues to evaluate the status of drug evidence in remaining cases; and

It is on this 9th day of May 2018,

HEREBY ORDERED THAT:

For the resolution of this Centralized Case Management Program, this Court is implementing a three-phase approach to categorize whether a particular defendant is entitled to relief:

1) Phase I – Defendants Where a Motion for Relief has been Filed

485 motions for relief have been filed with the Court; and of those filings, 415 motions have been resolved.

For the remaining filed motions where the evidence is available, the Attorney General shall, within 180 days of this Order, have the purported drug evidence retested using gas chromatography mass spectrometry testing. If retesting is unable to be completed within 180 days, the State, upon a showing of good cause, may apply for an extension of time to complete retesting. If the evidence has been destroyed, the Attorney General shall recommend the appropriate course of action for those matters (see Phase II, *infra*).

2) Phase II – Defendants Where a Motion for Relief has not been Filed and the Drug Evidence has been Destroyed

The Attorney General shall review the cases where the purported drug evidence has been destroyed and determine whether the underlying drug charge(s), conviction(s) or adjudication(s) should be dismissed.

For defendants where the purported drug evidence has been destroyed and the Attorney General determines not to dismiss all of the charges or seeks to reinstate the charging document, the Attorney General shall provide notice to this Court to determine an appropriate course of action for the matter.

For defendants where all charges are recommended for dismissal, the Attorney General shall file a proposed Order which may provide, as appropriate, for dismissal of applicable charges and/or convictions and that the defendant may immediately file a petition for expungement in the local Superior Court, Criminal Division in the vicinage of origin, with such filing fees waived. Each defendant will be provided with a copy of the dismissal and eligibility for an expungement order at their most recent address reflected in the judiciary's records. Upon entry of a dismissal order, this Court will refer the matter to the local Municipal Court or Superior Court in the vicinage of origin to make the appropriate updates to the case management system.

3) Phase III – Defendants Where a Motion for Relief has not been Filed and the Drug Evidence is Available

The Attorney General has agreed to retest all available drug evidence. To date, the Attorney General has retested purported drug evidence samples for approximately 883 defendants who have not filed a motion for relief; in each such case the retest affirmed the original positive test results for drugs/controlled dangerous substances. Once Phase II is fully operational, this Court will enter an order requiring the State to submit a proposed plan to retest the remaining drug evidence samples.

This Order will be published on the judiciary's website at the following link:
<https://njcourts.gov/public/notable/labcase.html>



Hon. Edward A. Jerejian, J.S.C.