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COURT ORDERS POLICE TO STOP PURSUING EX-FELONS FOR DNA

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An appellate court has shut down a Miami-Dade police team dedicated to rounding up felons who never gave DNA samples despite a state law requiring it.

Miami-Dade police showed up at Eric Smith's mother's house on a Sunday last year to take a DNA sample, but he wasn't home.

The next day, Smith, who had completed probation for an aggravated battery conviction in 1998, went to court with his attorney to fight the police action.

Police and prosecutors countered that Smith was required under law to provide authorities his DNA to enter into a statewide database.

His attorney, Brian Bieber, argued the statute didn't apply to his client because Smith had already paid his debt to society and was no longer on probation.

This month, the Third District Court of Appeal agreed with Bieber, effectively shutting down a Miami-Dade police team that tracks down felons and gets their DNA.

The team's efforts have netted at least one sex offender and gone far to round up people who were supposed to give DNA samples years ago because of their convictions but never did.

The state attorney's office is asking the court to reconsider the ruling, which said people who aren't currently on probation or parole don't have to give DNA, no matter what their earlier crimes.

"Taking his DNA eight years after his probation terminated violated the core principles of the Florida and United States constitutions," Bieber explained.

"Once you serve your sentence and pay your debt to society, the prosecutors and the police department cannot compel you to do anything," he said.

"Mr. Smith has absolutely nothing to hide," Bieber said. "This was a matter of principle."

Smith was one of 43 people named in the court order for DNA samples. All had already served their sentences and were not under any form of court-ordered supervision.

To the appellate court, that was a crucial issue.

The statute says DNA samples can be required of anyone who has committed certain felonies and is in prison or under court-ordered supervision.

The appellate court said the language was "plain" and didn't apply to Smith.

The state attorney's office points to a clause of the statute that allows authorities to seek a court order to obtain a DNA sample of anyone convicted of a crime who had not provided one at the time of their conviction.

"The argument is, if you can only do this with people who are under control of the court system, why have a separate section that tells you how to get a court order?" explained Ed Griffith, spokesman for the Miami-Dade state attorney's office. "Why do you need a court order unless you are talking about individuals who are beyond the reach of the law?"

Bieber says the state is trying to use a clause that's meant to make it easier for law enforcement to get DNA from people who are on probation or parole and refuse to cooperate. The clause allows for law enforcement to take someone into custody if he or she refuses to give a sample.

Bieber said the ruling in favor of his client also calls into question the cases of the 717 people who have already given samples after being tracked down by the Miami-Dade Police Department.

He thinks they could get their DNA removed from the statewide database.

"They should hire a smart, aggressive lawyer to undo what the police and prosecutors improperly did," he said. "This is a rare circumstance in the legal field where the bell can actually be unrung."

The efforts by the police have nabbed at least one sex offender, solving a Coral Gables case of a burglary with a lewd assault, Miami-Dade Det. John Gaborik said.

"We've cleared cases we couldn't have cleared any other way; all leads had been followed, and the database found people who weren't even on the radar," Gaborik said.

The department won an award last year from the International Association of Police Chiefs for the program.

Gaborik said Smith and one other man were the only ones to refuse to give their DNA. The other man was taken into custody until he agreed.

"A lot of them say, "Oh that's a good thing," even though they've been convicted of something," he said.

"We feel it's been a very successful and worthwhile project," he added.

The Third District Court of Appeal has not yet scheduled a new hearing date.