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# State's highest court orders prosecutors to drop weak Dookhan cases



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**Former state chemist Annie Dookhan mishandled drug evidence in thousands of cases.**

**By Andy Rosen | GLOBE STAFF JANUARY 18, 2017**

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The state's highest court on Wednesday ordered prosecutors to drop a large portion of the more than 24,000 drug convictions affected by the misconduct of former state drug lab chemist Annie Dookhan, issuing an urgent call to resolve a scandal that has plagued the legal system since 2012.

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lawyers for the defendants had sought. But in the ruling, the justices acknowledged that the state's handling of the cases so far has been inadequate.

The court said district attorneys across the state must "exercise their prosecutorial discretion and reduce the number of relevant Dookhan defendants by moving to vacate and dismiss with prejudice all drug cases the district attorneys would not or could not re prosecute if a new trial were ordered." The cases affected by the ruling include people who pleaded guilty, were convicted, or admitted that prosecutors had enough evidence to convict them. By vacating the cases, the convictions would effectively be erased.

In the ruling, the court acknowledged the enormity of the task before prosecutors, giving them 90 days to decide which cases to throw out and which are supported by other evidence.

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The court's remedy "maintains the fairness and integrity of our criminal justice system in the wake of a laboratory scandal of unprecedented magnitude," the court ruling states.

Before Wednesday's decision, defendants were responsible for appealing their cases if they thought they should be dismissed. Though the court had earlier directed prosecutors and defense attorneys to set up a system for appeals, the justices ruled that the case-by case approach was moving at an unacceptable crawl — with only 2,000 cases addressed.

Civil liberties advocates said they expected thousands more Dookhan cases to now be scrubbed from the record.

Dookhan, who was a chemist in the state-run drug lab in Jamaica Plain, admitted that she tampered with drug evidence and served more than three years in prison.

“This has been a years-long saga, and this is really a crucial breakthrough for the thousands of people who were convicted based on tainted evidence,” said Matt Segal, legal director of the American Civil Liberties Union of Massachusetts, which worked on the case.

The court said defendants whose cases aren't dismissed should receive a notice that their cases had been affected by Dookhan's misconduct. Then, any indigent defendants would receive public counsel to explore requests to vacate their pleas or get new trials.

In a statement, Middlesex District Attorney Marian Ryan, who leads the state District Attorneys Association, said her office was reviewing the decision in advance of a Monday meeting with a judge.

“Today the court recognized the longstanding principle that prosecutors should determine the cases appropriate for trial,” she said. “We are already beginning to implement the court's directive about the evaluation of cases.”

There was no estimate of how many cases might be dropped as a result of the decision, but the SJC noted that 90 percent of the affected convictions occurred in district courts, which handle less serious crimes. The justices also noted that a majority of the defendants were convicted of possession alone, and that “virtually all of these defendants have already served the entirety of their sentences.”

Randy Gioia, deputy chief counsel of the public defender division of the state Committee for Public Counsel Services, said he hopes that fact will move prosecutors to aggressively abandon tainted convictions.

“The vast majority of the cases are finished,” he said. “People have completed their sentences, they’ve done their probation, so it’s not a question of public safety.”

Associate Justice Geraldine S. Hines wrote the only dissent, arguing that the court should have thrown out all affected convictions. The court had also considered dismissing all the convictions and allowing prosecutors the option to retry those cases, but Hines rejected even that prospect.

“The need to adopt a swift and sure remedy for the harm caused by [Dookhan’s] deceit presents itself with palpable urgency. The time has come to close the book on this scandal, once and for all, by adopting a global remedy,” Hines wrote.

Peter Elikann, a criminal defense lawyer and spokesman for the Massachusetts Bar Association, said the court walked a fine line with its majority opinion.

“Much of it hinges on relying on the prosecutors to cull the good from the bad cases and reduce the number of cases out there,” he said.

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