

Judge Sonia Sotomayor Denied My Appeal and I Spent 16 Years in Prison For a Crime I Didn't Commit

By [Jeffrey Deskovic](#), [AlterNet](#). Posted July 10, 2009.

Sotomayor put procedure over innocence as a federal judge.

My name is Jeffrey Deskovic. At age 17, I was wrongfully convicted of murder and rape, a conviction that was based upon a coerced, false confession, the fabrication of evidence, prosecutorial misconduct and fraud by a medical examiner. I was cleared 16 years later -- almost three years ago -- when DNA evidence proved my innocence, while also identifying the real perpetrator, who subsequently confessed to the crime. Since my release, I have made it my life's mission to battle against wrongful convictions and fight for legislation that would minimize the chances of what happened to me happening to someone else. It is this fight that compels me to speak out about Supreme Court nominee Sonia Sotomayor.

Before I was exonerated, I sought out every legal avenue I could to win my freedom. I defended my innocence before the New York Appellate Division, raising such proof as the fact that the physical evidence found did not match me and arguing that the police violated my rights by coercing a false confession from me at the age of 16. The court ruled against me 5 to 0, concluding that there was nothing wrong with my interrogation and stating that there was "overwhelming evidence of guilt," despite the fact that there was no evidence beyond my forced confession. In truth, the DNA and the hairs found on the victim's body were evidence of my innocence.

When my lawyer was denied a chance to reargue the case on the grounds that the court's decision ran counter to the law and to the facts, we moved to the Court Of Appeals, the highest court in New York. I filed a Writ Of Habeas Corpus, in which I argued that my conviction was a violation of the U.S. Constitution. The year was 1997. The year before, Congress had passed Bill Clinton's Anti-Terrorism-Effective-Death-Penalty Act (often called AEDPA in legalese), which mandated that from then on, all state prisoners would have only one year to appeal to a federal court after being denied an appeal by their state's highest court. As a result, there was some confusion in the federal courts regarding the filing procedure; it was not clear how this new law would apply to cases already in the system. Different jurisdictions were answering the question in different ways; my lawyer called the court clerk and asked whether it was enough that my petition be post-marked on the due date, or if it had to physically be filed and in the building on the due date. The court clerk told my attorney that it was enough that it be postmarked. That information turned out to be false. Consequently, my petition arrived four days too late.

Westchester District Attorney Jeanine Pirro seized on the late petition, arguing that the court should dismiss my case without even considering my innocence claim. The court sided agreed. I then appealed my case to the 2nd Circuit. It was there that I first encountered Judge Sonia Sotomayor.

My lawyer gave three reasons why Judge Sotomayor and her colleague should

overturn the procedural ruling: 1) Upholding such a ruling would cause a miscarriage of justice to continue; 2) Reversing the procedural ruling could open the door to more sophisticated DNA Testing; 3) The late petition was not my fault or my attorney's. To our dismay, Judge Sotomayor and her colleague refused to reverse the ruling. "The alleged reliance of Deskovic's attorney on verbal misinformation from the court clerk constitutes excusable neglect that does not rise to the level of an extraordinary circumstance," they wrote. "Similarly, we are not persuaded that ... his situation is unique and his petition has substantive merit." A second appeal to Sotomayor's court resulted in the same decision. The U.S. Supreme Court refused to hear my case, and I remained in prison for six more years.

When I first learned that Judge Sotomayor was nominated to the U.S. Supreme Court, I was immediately alarmed. What would it mean for other people who were wrongfully convicted? Judge Sotomayor put procedure over innocence in my case. Could she be trusted not to do so again in the future? Could she be counted on to correct injustices when the facts indicated that and/or the legal arguments could demonstrate that a trial was unfair?

Judge Sotomayor condemned me to serve a life sentence for a murder and rape that I did not commit. That other innocent people could be denied relief based on procedural technicalities is no mere possibility; Take the case of Troy Davis, who faces execution in Georgia despite overwhelming proof of his innocence -- proof that has never been allowed in a court room. Consider, too, the recent U.S. Supreme Court ruling in *Alaska V.S. Osbourne*, in which the U.S. Supreme Court stated that no prisoner has a constitutional right to access DNA Testing even when such testing could demonstrate innocence. That decision came down to a 5 to 4 vote; if Judge Sotomayor had been on the court, can anybody say with confidence that she would have voted in favor of DNA access?

There are human consequences to these decisions. I can still see the prison cell, the barbed wire, the isolation from my family, the depression, helplessness, frustration, abuse by prison guards, the constant physical danger in prison, no opportunities to build for my future, missing births, deaths, and holidays. We need to awaken this country to the role that judges play in perpetuating wrongful convictions by putting procedure over innocence, by putting finality of conviction over accuracy, and by rubber stamping appeal denials regardless of whether a trial was truly fair.

Judge Sotomayor will appear before the Senate next week. Given that she has been nominated to a lifetime appointment that affects all of our rights, what she did in my case -- condemning me to a life sentence based on procedure in the face of an airtight innocence claim -- should be part of the discussion. I want my case to be a part of the national discussion. I want Senators to ask Judge Sotomayor if she stands by her ruling, and whether she would rule that way in the future. If I could I would testify at the Senate confirmation hearing, about the human impact of Judge Sotomayor's putting procedure over innocence. Thus far, however, I have gotten no response from either side on Capitol Hill.

It is deeply dismaying that neither the Republicans nor the Democrats have introduced my case to the national conversation about Judge Sotomayor. Do people

remember Anita Hill? As serious as her allegations of sexual harassment were, I would think that my serving time in prison wrongfully and being condemned to a life sentence for a crime that I was innocent of would be even more serious. Why does Judge Sotomayor continue to ignore this story? Does President Obama agree with Judge Sotomayor's ruling? Does he think that ruling served justice? Is that the type of "empathy" he wanted? I lost 16 years of my life. It seems evident that politics is trumping justice; that I am once again being wronged by the system.