

November 20, 1997

SPECIAL MASTER'S FINAL REPORT

DATE

COMM.

ACTION

The Honorable Toni Jennings
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

12/2/97

CJ
WM

Favorable

Re: SB 12 - Senator Crist
Relief of Mary Beth Wiggers

THIS IS A CLAIM AGAINST THE DEPARTMENT OF
CORRECTIONS FOR \$450,000 BASED ON THE
CRIMINAL ACTIONS OF ANTHONY NEIL
WASHINGTON AGAINST MARY BETH WIGGERS.

FINDINGS OF FACT:

On August 17, 1989, Anthony Neil Washington was an inmate participating in a Department of Corrections (DOC) work-release program in Pinellas County Florida. On that date, Washington checked out of the work release facility, ostensibly to go to work at Cocoa Masonry. Instead of going to work, Washington sexually assaulted and killed Alice Berdat.

Prior to Mr. Washington's placement in the work-release program in Pinellas County in 1989, Mr. Washington had been arrested on 18 separate occasions for 31 different charges prior to the age of 32. Mr. Washington was convicted of burglary of an occupied structure with assault in August of 1988, for which Mr. Washington was sentenced to 6 years in prison.

Having served less than 12 months in prison for his conviction in August of 1988, but consistent with DOC guidelines under Chapter 33-9, Florida Administrative Code, Mr. Washington was placed in the work-release program in Pinellas County and housed at the Largo Correctional Center (LCC). Mr. Washington acquired employment at Cocoa masonry which was within 500 yards of LCC. Mr. Washington's work-release employment began in late July, 1989.

On August 17, 1989, Mr. Washington signed out of the LCC at 6:00 a.m. Mr. Washington walked to and from work without supervision. On the morning of August 17, 1989, it is unknown whether Mr. Washington actually went to Cocoa Masonry as there was no procedure in place requiring him to check in with personnel and/or sign in at Cocoa Masonry after having left LCC. Mr. Washington signed back in at LCC at approximately 9:15 a.m. It is known, however, that during this time period, Mr. Washington raped and brutally murdered Ms. Berdat who lived approximately 2 miles from LCC and Cocoa Masonry.

Eight days later, but prior to Mr. Washington's arrest for the rape and murder of Ms. Berdat, he raped Mary Beth Wiggers who was completing her housekeeping duties for the Residence Inn Motel.

Again, Mr. Washington signed himself out of the LCC that morning and returned later that same day.

Following his arrest for the crimes, Mr. Washington was convicted and currently sits on Death Row awaiting execution.

Regarding Mary Beth Wiggers, at the time of her attack she was 36 years of age. She is the mother of two teenage children. As a result of the attack in question, Ms. Wiggers suffers from post-traumatic stress disorder wherein she continues with psychological counseling. Ms. Wiggers has been unable to enter into any relationships. Ms. Wiggers is fearful she may have contracted AIDS from Mr. Washington, wherein she undergoes an AIDS test every 6 months. Ms. Wiggers has lost closeness with her children. Finally, Ms. Wiggers was unable to be gainfully employed for approximately 2 years following the attack in question. Ms. Wiggers received workers' compensation benefits that paid for her medical care and lost wages and she received a settlement from Cocoa Masonry of \$25,000.

At the time of Alice Berdat's rape and murder, she was 92 years of age, self-sufficient, and lived alone. She was a widow, wherein her only child is Henry Berdat. Following the murder, Henry Berdat had to identify his mother for the

homicide investigators, clean his mother's condominium, and endure the medical examiner's graphic testimony during Mr. Washington's murder trial, wherein the medical examiner testified about the violent death of Mr. Berdat's mother.

Mr. Berdat has endured the emotional turmoil of the loss of his mother.

There have been no collateral source payments or any other type of payment made relevant to the death of Alice Berdat.

CONCLUSIONS OF LAW:

Pursuant to the Order by the Circuit Court of Pinellas County, the State of Florida, Department of Corrections, did not owe a duty of care specifically to the claimant/plaintiff and therefore granted summary judgment in favor of the DOC. Relying on *Vann v. DOC*, 662 So.2d 339 (Fla. 1995), which held that the state, through its DOC, may not be held liable as a result of criminal acts of an escaped prisoner, the Circuit court held, as a matter of law, that the DOC had no legal liability for Mr. Washington's brutal crimes.

Despite the fact that the Circuit Court's opinion was not appealed, the claimant contends that the DOC owed a specific duty of care to her and in fact breached that duty in the following ways:

- * Mr. Washington, a career felon with crimes of violence against persons, was allowed to participate in the work-release program after only serving eleven months of a 6-year sentence for burglary with assault;
- * Mr. Washington was allowed to walk from Largo Correctional Center to Cocoa Masonry, unsupervised;
- * The Department of Corrections failed to establish any procedure for contact by Mr. Washington at Cocoa Masonry to assure his arrival or departure;
- * A lack of protocol as to assure proper supervision over work-release inmates, including Mr. Washington;
- * Mr. Washington was allowed to dress in "street clothes" wherein private citizens were unaware of his status as an

inmate, thus private citizens were not aware of his criminal status;

- * The DOC/LCC knew that the Largo Community Correctional Work Release Center was located in and about a residential neighborhood, which included the area in which Alice Berdat lived and Mary Beth Wiggers worked. However, the DOC/LCC failed to notify and warn local residences of the location and identify the Largo Correctional Work Release Center and the unsupervised nature of the program in order that residents and persons working in the area, including Alice Berdat and Mary Beth Wiggers, could undertake necessary precautions; and,
- * Due to the lack of appropriate information provided to Cocoa Masonry by the DOC/LCC as set forth above, there was no system in effect to assure Mr. Washington's timely and guaranteed return to LCC when his work was completed with Cocoa Masonry. The DOC/LCC allowed Mr. Washington to be dropped off at LCC by employees of Cocoa Masonry.

Consequently, the claimant contends that due to the foregoing negligence by the DOC/LCC, a window of opportunity existed for Mr. Washington to rape and murder Alice Berdat and rape Mary Beth Wiggers.

As a matter of law, the undersigned Special Master recognizes no legal duty of care specifically owed to the claimant based on the facts and, therefore, no accompanying negligence by the DOC.

ATTORNEYS FEES:

Limited to 25 percent of recovery under the provisions of s. 768.28, F.S.

RECOMMENDATIONS:

An equitable claim bill is an extraordinary remedy which can only be invoked when other forms of relief are unavailable. Although the injuries sustained by the claimant are significant and permanent, in this case, an equitable claim bill is an inappropriate remedy for several reasons. First, the Circuit Court of Pinellas County found, as a matter of law, that the Department of Corrections had no legal liability under these

circumstances. Second, granting the requested relief is not in the best interest of the State of Florida in that it would:

1. Strengthen similar claims for equitable relief in cases where state agencies have no legal liability which would in turn increase the cost to the state to defend and potentially satisfy these claims;
2. Punish the Department of Corrections in a situation where the Department of Corrections did not violate any legal duties;
3. Impose a financial hardship upon the State of Florida, its citizens, and tax payers in a case which has no legal merit; and
4. Potentially provide restitution to a claimant for the planning level functions exercised by the DOC contravening established case law. See *Commercial Carrier v. Indian River County*, 371 So.2d 1010 (Fla. 1979).

For the foregoing reasons, the undersigned recommends that SB 10 be reported UNFAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

cc: Senator Crist
Faye Blanton, Secretary of the Senate
Richard Hixson, House Special Master