



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
408 The Capitol

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DATE	COMM	ACTION
12/1/01	SM	Unfavorable
	JU	
	FT	

December 1, 2001

The Honorable John M. McKay
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 20 (2002)** – Senator Buddy Dyer
Relief of Johnny L. Woods

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EQUITABLE CLAIM APPROPRIATING \$15,000 FROM THE GENERAL REVENUE FUND FOR THE RELIEF OF JOHNNY L. WOODS, WHO WAS THE VICTIM OF A HOME INVASION AND WAS SERIOUSLY INJURED BY THE ASSAILANT. LAW ENFORCEMENT AUTHORITIES FAILED TO INFORM MR. WOODS ABOUT THE CRIME VICTIM COMPENSATION PROGRAM. BY THE TIME HE BECAME AWARE OF THE PROGRAM AND FILED A CLAIM, IT WAS AFTER THE 2-YEAR STATUTORY LIMIT AND HIS CLAIM WAS DENIED FOR THIS REASON BY FINAL ORDER OF THE OFFICE OF THE ATTORNEY GENERAL.

FINDINGS OF FACT:

On March 20, 1997, the claimant, Johnny L. Woods, age 54, was the victim of a home invasion. Three men in ski masks broke into his home in Orlando, demanded to know where the money was, and told Mr. Woods to lie down on the floor. One of the men beat him with a pistol on the face and head, causing severe lacerations and resulting in Mr. Woods losing his left eye. The men stole various items from Mr. Wood's home with a total estimated value of about \$12,000, including a car that was later recovered by the police.

After he was assaulted, police arrived at Mr. Woods' home and he was transported by ambulance to Orlando Regional

Medical Center, where he was an in-patient for 3 days and received medical treatment for his eye and head injuries. He lost his left eye and later obtained a prosthetic eye.

At the time of his injury, Mr. Woods was working for an auto body shop earning about \$300 per week, where he had worked for about 2 to 3 years. He had just recently been declared eligible for Social Security disability benefits due to his throat cancer, which rendered him unable to speak without a mechanical vocal device, which he still must use. Having successfully appealed a prior denial of Social Security benefits, Mr. Woods was awarded \$38,000 in back disability payments. The men who broke into Mr. Woods' home had apparently known about the \$38,000 payment, which they were seeking.

Becoming eligible for Social Security disability made Mr. Woods eligible for Medicare. He was also eligible for medical benefits from the Veteran's Administration (VA). Medicare and VA benefits paid for all of his medical expenses except for about \$467 of the charges related to his prosthetic eye, costs of transportation to Gainesville for medical treatment for his eye, and prescription drug costs which Mr. Woods was not able to estimate.

Mr. Woods states that after obtaining his Social Security disability, his intent was to continue working and earning wages within the limits he understood were permitted by the Social Security laws, but that the eye injury rendered him incapable of working. He has not worked since the injury and has continued to receive Social Security payments of about \$924 per month.

Mr. Woods' asserts that he was never told by the police officers with the Orange County Sheriff's Office investigating his case about his right to make a claim against the Crime Victim Compensation Program to seek compensation for his injury. He also states that no one in the State Attorney's Office handling the prosecution of the crime informed him of this program, nor did anyone at the Orlando Regional Medical Center.

Derrick Lowe, the man who apparently injured the claimant, was arrested in June 1997 and the following October he was sentenced to 2 years community control and ordered to pay

\$10,000 in restitution to Mr. Woods. Two years later, on October 13, 1999, Derrick Lowe pled guilty to violation of his probation and was sentenced to 5 years imprisonment. Mr. Woods has never received any funds from Derrick Lowe who remains in prison.

In October 1999 a friend of Mr. Woods informed him of the Crime Victim Compensation Program and assisted him in filing a claim. Mr. Woods filed the claim with the Office of the Attorney General (OAG) on November 4, 1999, over 31 months after the date of the crime.

On February 4, 2000, the OAG sent a Notice of Ineligibility to Mr. Woods, stating that his claim was determined ineligible because it was filed more than 2 years after the date of the crime, citing s. 960.07(2), F.S., and allowing Mr. Woods to request a hearing within 60 days. On May 26, 2000, (after the 60-day deadline) the OAG received a hearing request from Mr. Woods dated February 17, 2000. By letter dated June 5, 2000, the OAG informed Mr. Woods that in order to obtain a formal hearing, a material fact must be in dispute, which Mr. Woods failed to assert. But, Mr. Woods was granted an informal proceeding to contest disputed issues of law, and given until June 26, 2000 to provide written material to support his claim.

Amir Ladan, Assistant State Attorney with the Ninth Judicial Circuit of Florida (Orlando), sent a letter dated June 22, 2000, to the OAG on behalf of Mr. Woods. The letter stated that Mr. Woods had contacted his office requesting assistance in providing information necessary to establish his eligibility for victim compensation. The letter stated, "My office has reviewed both the case file and our case management system and has been unable to locate any documentation indicating that Mr. Woods was informed of the Victim's Comp. Program. In addition, it appears that a victim advocate was never assigned to Mr. Woods case, which lends credibility to his contention that he was not informed of the program."

No informal hearing was held by the OAG, apparently due to Mr. Woods not understanding or not being clearly informed that a further request from Mr. Woods was required to request the informal hearing and to make an oral presentation. On July 11, 2000, the OAG issued a Final

Order, based on the written testimony and evidence, denying Mr. Woods' claim for compensation. The Final Order stated that the claim was filed more than 2 years after the crime upon which the claim was based occurred, citing s. 960.07(2), F.S., and stating that the time period was statutory and that no discretion was involved. The Final Order was not appealed to the District Court of Appeals. According to Ms. Ellen Winslow, Assistant Attorney General, previous appeals on this issue have been unsuccessful and the Court has affirmed such OAG final orders per curium (without an opinion).

Ms. Ellen Winslow, Assistant Attorney General, Division of Victim Services (OAG) handles "appeals" of victims compensation claims that are initially denied by the OAG. Ms. Winslow testified that during her 3½ year tenure, there have been no exceptions granted to the 2-year statutory limitation for filing a claim because it is not legally allowed. All such claims had been denied. The only exceptions that she had heard about prior to her tenure were pursuant to a Presidential Order by President Clinton that applied to claims of survivors of an embassy bombing which extended deadlines for filing compensation claims.

Employees of the OAG's Division of Victim Services and Criminal Justice Programs are assigned to judicial circuits to educate law enforcement personnel and members of the community about the Crime Victim Compensation Program and to train victim advocates for law enforcement agencies. In addition, State Attorneys employ victim advocates. But, complaints are received by the OAG from crime victims that they were not informed about the Victim Compensation Program.

The Florida Auditor General issued a report in September 2001 (Report No. 02-044) finding that crime victims do not always receive all notification and services required by law and that agencies do not always adequately document victim notification. The report recommended that local law enforcement, State Attorneys, court administrators, and institutions of confinement should ensure that policies and procedures are in place and operating effectively to provide all notifications and services required by law; and that documentation should be maintained to evidence victim notification and services provided. The Executive Office of

the Governor accepted the recommendations of the report and stated certain actions that were being taken to address these deficiencies.

The OAG received 10,663 claims against the Crime Victim Compensation Fund in calendar year 2000, of which 8,414 were determined eligible and 2,002 were determined ineligible, and 247 remaining in some other status (e.g., application withdrawn, inactivation). Of the claims denied, 107 were denied due to being filed after the 2-year deadline. The claimant, an African-American, requested statistics based on the race of the applicant, which were submitted by the OAG. Of the 10,663 claims, 2,509 (23.5%) were filed by African Americans. Of the 107 claims denied due to the 2-year deadline, 23 (21.5%) were African American.

There is no dispute that law enforcement personnel in either the Sheriff's Office or State Attorney Office did not inform Mr. Woods regarding his rights to file a claim with the Crime Victim Compensation Program. These offices did have a duty to provide this information. (See, Conclusions of Law, below, regarding this duty.) The only evidence on this point presented at the hearing was Mr. Woods' testimony, his prior written submissions to the OAG, and the letter from the Assistant State Attorney, cited above. The Special Master contacted the Office of the State Attorney for the Ninth Judicial Circuit and the Orange County Sheriff's Office to request a review of the case files for any documentation as to whether Mr. Woods was informed of the Victim Compensation Program, but was not provided any additional information. Representatives of the OAG who appeared at the hearing, agreed that Mr. Woods was not so informed.

SB 20 contains the following factual errors: (1) On page 1, line 20, the reference to "attorney general" should be to "state attorney." (2) On page 2, line 2, the reference to "attorney general's" should be to "state attorney's." (3) On page 2, line 12, the date "July 11, 2000," should be changed to "July 11, 2001."

CONCLUSIONS OF LAW:

The Florida Crimes Compensation Act (ss. 960.01 - 960.28, F.S.) provides that a victim of a crime can apply for an award from the Crime Victim Compensation Program. Victims who received personal physical injury as the direct result of a crime may qualify. Some of the other requirements are that

the crime be reported to the proper authorities within 72 hours and that the victim not have contributed to his or her own injuries. Effective January 1, 2000, additional requirements (not applicable to the claimant) include that the victim must not have been adjudicated as a habitual felony offender, habitual violent offender, violent career criminal, or adjudicated guilty of a forcible felony offense. The claimant would have qualified for compensation both under the law at the time of his application and under current law, except for the fact that his claim failed to meet the filing deadline established by s. 960.07(2), F.S., which states, in part:

*. . . a claim must be filed not later than 1 year after:
(a) The occurrence of the crime upon which the claim is based. . . However, for good cause the department may extend the time for filing for a period not exceeding 2 years after such occurrence.*

The OAG does not have any discretion in waiving the 2-year limitation cited above and properly denied Mr. Woods' claim for this reason.

Awards of compensation include unreimbursed expenses for medical care, remedial care, and psychological counseling, and for loss of earnings or support, which are generally required to be made in accordance with the schedule of benefits specified in the workers' compensation law in ss. 440.12 and 440.15, F.S. The department must deny the award if it finds that the claimant will not suffer serious financial hardship as a result of the loss of earnings or support and the out-of-pocket loss incurred as a result of the injury, if not granted assistance. [s. 960.13, F.S.]

At the time of the claimant's application, an award could not exceed \$15,000 for all compensable losses. Current law limits awards to \$25,000, or \$50,000 if the victim suffered a catastrophic injury, as defined. [s. 960.13, F.S. (1999); s. 960.13, F.S. (2001); ch. 99-373, L.O.F.] Awards of up to \$500 may be paid to elderly persons or disabled adults who suffer a property loss that causes a substantial diminution in their quality of life. (s. 960.195, F.S.) I

Section 960.01, F.S., requires the Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Parole Commission

the State Courts Administrator, circuit court administrators, the Department of Law Enforcement, and every sheriff's department and police department to develop and implement guidelines for their agencies to inform crime victims about the availability of crime victim compensation. A victim of a crime must be provided with a victim's rights information card or brochure containing essential information concerning the rights of a victim and services available to a victim as required by state law. However, s. 960.01(5), F.S., further provides:

Nothing in this section or in the guidelines adopted pursuant to this section shall be construed as creating a cause of action against the state or any of its agencies or political subdivisions.

In addition, the Crime Victims' Service Office is created within the Department of Legal Affairs and is charged with ensuring that the rights of victims are properly publicized and encouraged, to seek to identify the victims of crime and inform them of the provisions of ch. 960, F.S., and related duties. (s. 960.05, F.S.)

The apparent failure of any of the law enforcement agencies to inform Mr. Woods of the compensation program was a violation of their statutory duty, but this violation does not create a cause of action and, therefore, does not impose any liability on the state or any of its agencies or political subdivisions.

As stated in Findings of Fact, above, the OAG is aware of complaints by crime victims of not being informed about the compensation program, and the State Auditor General has recently found that problems exist in this regard and that enhancements are needed to provide and document notifications. The OAG reports that 107 claims were denied in calendar year 2000 due to being filed beyond the 2-year deadline, and it is likely that many of these were filed late due to lack of notice about the program.

However, approving this claim bill would create an inappropriate precedent and open the door for many similar claims. The 2-year limit is clearly established by law and the Legislature has expressly stated that the failure of law enforcement agencies to provide required information to

crime victims does not create a cause of action. That being said, the failure of anyone in the Orange County Sheriff's Office or the State Attorney Office of the Ninth Circuit is very unfortunate and hard to excuse, given the obvious and serious injuries to the claimant, the numerous contacts with him made by investigating police officers and the assistant state attorney, the duty of law enforcement agencies to notify victims of the program, and the responsibility of the Bureau of Victims Compensation of OAG to educate and inform law enforcement personnel of the program.

ATTORNEYS FEES:

The claimant is not represented by an attorney.

RECOMMENDATIONS:

I recommend that Senate Bill 20 be reported UNFAVORABLY.

Respectfully submitted,

Brian Deffenbaugh
Senate Special Master

cc: Senator Buddy Dyer
Faye Blanton, Secretary of the Senate
House Claims Committee