



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
03/11/08	SM	Fav/1 amendment
04/01/08	JU	Fav/CS

March 11, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 12 (2008)** – Senator Dave Aronberg
HB 1 (2008) – Representative L. Garcia
Relief of Alan Jerome Crotzer

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR THE PURCHASE OF A \$1.25 MILLION ANNUITY FROM GENERAL REVENUE FUNDS, AND FOR TUITION AND FEE WAIVERS TO COMPENSATE ALAN JEROME CROTZER FOR 24½ YEARS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

Alan Jerome Crotzer is 46 years old. He lives and works in Tallahassee, Florida. During the 24 years, 6 months, and 13 days before his release on January 23, 2006, Mr. Crotzer was incarcerated as the result of his conviction for burglary, robbery, aggravated assault, false imprisonment, and sexual battery. His sentence was 130 years.

Mr. Crotzer was convicted of participating in a July 1981, armed home invasion of a Tampa apartment where a married couple and their 12-year-old daughter and 2-year-old son lived. The husband met a visiting friend and his wife at the Tampa airport and was helping the house guests bring their luggage into the apartment when one of the three men involved put a shotgun in his face and forced his way into the apartment. For approximately 30 to 45 minutes, the four adult victims and the 12-year-old girl were held hostage,

made to lie on the floor with their faces down on the carpet, tied up, robbed, threatened, and terrified. The 2-year-old son remained asleep. When the three men left, they took two of the victims with them, the visiting adult female and the 12-year-old girl. The two females were put in the trunk of the car, driven to a remote location, raped, and left in a remote area. Before the car left the apartment parking lot, the two male victims, who had untied themselves, ran outside in time to get the license tag number of the car.

Alan Crotzer was convicted at trial, primarily due to the eyewitness testimony of the five victims, as being the man with the shotgun and the double rapist, perpetrator #1. Douglas James (perpetrator #2) was convicted at trial for participating in the burglary, robbery, and raping one of the victims. Prior to trial, Douglas James' brother, Corlenzo James (perpetrator #3), pled guilty to taking part in the burglary and robbery, but not participating in the sexual batteries.

Mr. Crotzer has consistently maintained his innocence of all crimes related to this incident. His defense attorney presented the testimony of four alibi witnesses, who placed Mr. Crotzer in St. Petersburg, not Tampa, on the night of July 8, 1981. In addition to the direct appeal of the judgment of guilt, over the years, he has filed Motions for Post-conviction Relief, a Motion to Vacate Judgment and Sentence, an Application for Writ of Habeas Corpus, a Motion for Correction of Illegal Sentence, a Petition for Writ of Mandamus, a Motion for Post-conviction Relief, and Motion to Amend 3.853 DNA Motion. He pursued the denials of these motions and petitions with requests for re-hearings and/or appeals.

While he was in prison, Mr. Crotzer was told by another inmate that the co-defendant with whom he was tried, Douglas James, had admitted that Mr. Crotzer was not guilty and named a different man as perpetrator #1. In 2002, with this information, Mr. Crotzer was able to get the Innocence Project in New York interested in his case. After reviewing police reports, obtaining statements from the co-defendant and other inmates, and finding that slides from the rape kit and clothing of the adult female were among the evidence preserved by the Florida Department of Law Enforcement (FDLE), two lawyers, Martin McClain and David Menchell

filed a Motion to Vacate Sentence and Judgment in February 2005.

The State Attorney Joined in the Motion to Vacate Sentence and Judgment

After reviewing new DNA evidence and re-evaluating the totality of the circumstances surrounding the identification and conviction of Mr. Crotzer, a team of senior prosecutors from the Office of Hillsborough State Attorney Mark Ober, led by the chief assistant state attorney in charge of the felony division, Michael Sinacore, in consultation with FDLE and the Hillsborough County Sheriff's Office, determined that there is significant doubt that Mr. Crotzer was guilty. Together, the team members agreed that they had a "good degree of comfort and confidence" that Mr. Crotzer is innocent. On January 18, 2006, Mr. Sinacore, on behalf of the State, filed the State's Motion to Vacate Judgment and Sentence. On January 23, 2006, the court entered an Order Vacating Judgment and Sentence and Ordering New Trial.

The evidence that led the State to file its motion was, most importantly, the results of DNA analyses. The analyses were difficult to conduct due to the less stringent standards for collection of evidence in 1981 and possible contamination, degrading of samples due to age, and the limited number of available samples. Three different laboratories performed tests. Results from the first laboratory only led to the conclusion that the DNA was from a male. The results from the second laboratory that uses an amplification method requiring smaller samples excluded Mr. Crotzer, but that method is not considered reliable enough to be admissible in court. A third laboratory found sufficient sperm on a slide from a vaginal swab to allow a comparison to Mr. Crotzer's DNA and excluded him as the source of the semen. At the request of the State Attorney, the work of the laboratories was reviewed by Melissa Suddeth, the head of the biology section of the regional FDLE laboratory. Initially, Ms. Suddeth was concerned that the third laboratory is not accredited and, therefore, may not follow industry standards and protocols, and is also of questionable objectivity based on its repeated use by the Innocence Project. In this instance, however, Ms. Suddeth knew the person who conducted the analysis, Dr. Stan Blake, to be generally well-known and respected, and found no indication of an error or problem in this testing and the results.

In addition to the DNA evidence, the following are additional factors that the State Attorney's team considered:

1. Perpetrator #1 and the other perpetrators were described by all witnesses as speaking with an accent indicating they were from Jamaica, Haiti, or the Bahamas. Mr. Crotzer does not speak with such an accent, and does not speak another language. Another man, seen by witnesses with the James brothers on the evening of the crimes, was known reportedly to mimic the James' island accent when he was with them. The man who most likely was perpetrator #1 cannot be prosecuted because the statute of limitations has run and the evidence is too degraded to serve as a basis for a conviction. Investigators have been unable to locate the man or any pictures of him.
2. Only the adult female who was abducted and raped identified Mr. Crotzer from a photo pack. After she made the identification and signed the single photograph, other victims either saw Mr. Crotzer at a prior hearing or saw the single, signed photograph before identifying him as perpetrator #1. Because she was the only witness to make a clean pretrial identification of Mr. Crotzer and because she spent more time and was in closer contact with perpetrator #1 than the other witnesses, the adult female rape victim was the most important identification witness. When first questioned, however, she said that perpetrator #1 had light skin, but Mr. Crotzer has dark skin. She initially described perpetrator #1 as being 6 feet tall, but Mr. Crotzer is no taller than 5'7". She initially described perpetrator #1 as being taller than the others, but at trial she switched and said that perpetrator #1 was shorter than perpetrator #2. Douglas James, perpetrator #2, who was tried with Mr. Crotzer and who represented himself during the trial, was the taller of the two defendants. The adult female victim was contacted by the state attorney's office and provided new DNA samples for the most recent tests. She still maintains that she identified the right man and, as a result this violent crime, her health, her marriage, and her life have been ruined. She is frightened that the person she still believes committed the crime is now free.

3. No fingerprint evidence matched any of the defendants, even though perpetrator #1 was not wearing gloves and touched a recliner that he sat in, an ashtray, the bar, and a telephone in the apartment. Only a palm print, matched to Corlenzo James, was found on the inside of the trunk of the car.
4. At trial, Mr. Crotzer attempted to establish an alibi defense. The defense presented the testimony of a friend, his girlfriend, his girlfriend's aunt, and his girlfriend's grandmother, all of whom claimed that Mr. Crotzer was with them the night of the incident. They claimed that it was memorable because he met his girlfriend's grandmother for the first time that night, and that they all watched the evening news at 11:00 p.m., approximately the same time as three men were abducting the female victims. On cross-examination, however, the grandmother said that her daughter told her the date and that it could have been the day before.
5. At the time of his arrest early on the following morning, Mr. Crotzer was wearing a gold chain, but there is no mention in reports or testimony that the gold chain was similar to the heavy chain with an ornament worn by perpetrator #1, as described by the adult female rape victim. There is no evidence matching his clothing or jewelry at the time of arrest to the clothing and jewelry described by the victims.
6. The forensic evidence available at trial was blood type comparison, which indicated that Mr. Crotzer has the same blood type as the rapist, as does 19 percent of the population. While Chief Assistant State Attorney Sinacore describes that evidence as probative, he states that it pales by comparison to the reliability of current DNA technology.
7. Douglas James provided an affidavit naming the person who is now considered most likely to be perpetrator #1 as the person involved in the crimes that evening with him and his brother, Corlenzo. The James' two sisters and a friend of theirs provided affidavits naming the same person as the one seen riding with the brothers on the day of the crime.

8. Perpetrator #1 smoked and discarded a cigarette butt in the apartment during the robbery. The 1981 serology results were deemed inconclusive. The FDLE supervisor of the analyst's work at the time, Ted Yeshion, now says the report should have excluded Mr. Crotzer. Ms. Suddeth disagrees and believes the finding that the test was inconclusive was correct because the results could not be replicated, but she agrees that the results can be taken into consideration cautiously with the additional evidence to establish that Mr. Crotzer was not guilty.

ISSUES AT TRIAL:

At various times before and during the trial, defense attorneys moved to sever the cases because of Douglas James' decision to defend himself. In doing so, James took inconsistent and repulsive positions harmful to himself and Mr. Crotzer. At one point while questioning the woman rape victim, James implied that she may not have resisted being raped.

Before each of the questionable eyewitness identifications, the defense attorney moved to suppress the identifications as tainted. The motions were all denied.

MR. CROTZER'S TESTIMONY,
CRIMINAL HISTORY, AND
CURRENT SITUATION:

At the joint special masters' hearing held on March 1, 2007, Mr. Crotzer testified that, prior to the 1981 crimes, he had been convicted and served 27 months for a felony for participating with others in stealing beer from a convenience store and that while he was in prison, he was guilty as convicted of a felony for possession of marijuana, which he testified that he bought from a prison guard who turned him in because of a dispute over the price. While in prison, Mr. Crotzer earned a GED, worked as a license tag presser, earned a pest control license, worked as a horticulturalist, and learned good work skills, all while pursuing his legal appeals.

Mr. Crotzer has scars and is disfigured from prison-issued boots that were too small. He was cut while he was in the Hillsborough County jail. He has a grown daughter and grandchildren who do not speak to him. In 2001, his mother died. Mr. Crotzer has a need for adequate dental care and has medical problems with his shoulder that his lawyer attributes to poor care while imprisoned.

When he was first released, Mr. Crotzer worked as a hospital janitor. After that, he worked trimming trees and otherwise maintaining parks for the City of St. Petersburg Parks and Recreation Department. In February 2007, Mr. Crotzer married and became the stepfather to two children. The family moved to Tallahassee, where Mr. Crotzer works full-time on grounds maintenance at Tallahassee Nurseries. He testified, in 2006, that ultimately he would like to become an ultrasound technician and to earn a college degree in sociology.

Mr. Crotzer serves on the Board of Directors, and as a spokesperson and mentor, for the Innocence Project of Florida, Inc.

PRIOR CASES OF
COMPENSATION FOR
WRONGFUL
INCARCERATION:

In the past 10 years, four claimants have received compensation for wrongful incarceration: Freddie Lee Pitts, Wilbert Lee, Jesse Hill, and Wilton Dedge. In 1998, the Legislature directed the Division of Administrative Hearings to hear the cases of Pitts and Lee and to determine whether a cause for equitable relief existed, and if so, to award the claimants up to \$500,000 each plus attorney's fees and costs not to exceed \$250,000. The claimants were ultimately awarded the maximum allowable. Pitts and Lee had been convicted and sentenced to death for the murders of two Port St. Joe men in 1963. They served 12 years, until 1975, when Governor Reubin Askew and the Cabinet pardoned them, concluding that "substantial doubt exists as to the guilt of Pitts and Lee," in part, because the prosecution withheld exculpatory evidence.

Jesse Hill was arrested for failure to report to his probation officer, but 7 days later he was released after a court officer realized his original probation was non-reporting. During his incarceration a pre-existing high school football injury, a broken and surgically fused bone in his neck was aggravated when, due to crowded conditions, he had to sleep on the floor with only a pillow and a blanket for 3 days. His attempts to explain his medical condition to jail officials were ignored, and his probation officer hung up on him when he telephoned her. He sued for false imprisonment. The jury determined that the Department of Corrections was liable, and assigned 75 percent of the liability to the Department and 25 percent to Hill, and assessed damages

of \$750,000. In a 1996 claim bill, Jesse Hill was awarded \$250,000.

Wilton Dedge served 22 years in prison for sexual battery, aggravated battery, and burglary. DNA evidence exonerated him, and he was awarded \$2 million and tuition and fee waivers by the Legislature in 2005.

LEGISLATIVE OPTIONS:

1. The Senate may decline to follow the precedents of Pitts, Lee, Hill, and Dedge.
2. The Senate may apply the statutory provisions for set-offs against any compensation as contemplated by several Florida Statutes and reduce the proposed compensation. See, e.g., s. 944.485, F.S., (Prisoners with the income and/or assets may be required to pay a portion of their daily subsistence.); s. 960.293, F.S., (In a civil suit by a victim for restitution, the State or its subdivision may also recover \$50 per day of the convicted offender's sentence.); and s. 960.297, F.S., (State is authorized to seek restitution for costs of incarceration).
3. The Senate may distinguish between Wilton Dedge's prior criminal history (misdemeanors) and Alan Crotzer's (prior felony robbery conviction for stealing beer and felony possession of contraband (marijuana) in prison).
4. The Senate may follow its precedent in Pitts, Lee, Hill, and Dedge, by compensating Mr. Crotzer, as recommended below.

CONCLUSIONS OF LAW:

The fact that the State Attorney joined in the motion to vacate the sentence and judgment for the reasons given by Mr. Sinacore, as did the State Attorney in the case of Wilton Dedge and, in effect, the Governor and Cabinet did for Pitts and Lee, is the most persuasive evidence in support of compensation. The proposed compensation of \$1.25 million or approximately \$51,000 for each year of wrongful incarceration is, considering Legislative precedent, reasonable. It is less than the \$2 million for 22 years or \$91,000 a year in the Dedge bill and arguably an appropriate reduction considering Mr. Crotzer's other crimes, but it is more than the Pitts and Lee bill award of \$500,000 each, or approximately \$42,000 a year for 12 years in prison. The

Hill compensation bill of \$250,000 for 7 days, or approximately \$36,000 a day, is not considered in this comparison because of the inability to determine how the jury and the Legislature apportioned damages for his personal injuries, as distinguished from his wrongful incarceration. Like Mr. Dedge, Mr. Crotzer also seeks and has expressed a desire to use tuition and fee waivers and it is reasonable to include those in his compensation, based on Legislative precedent.

OTHER ISSUES::

Technical amendments to the bill are recommended (1) to clarify the fact that the State Attorney and Court concluded that there is "substantial doubt" that Mr. Crotzer is guilty, and (2) to eliminate any requirement that a legal action be dismissed as there is no pending legal action against the State by or on behalf of Mr. Crotzer.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

The affidavit of a shareholder in the law firm of Carlton Fields, P. A., affirms that the firm's attorney and lobbyist services are being provided pro bono in representing Mr. Crotzer, as reaffirmed by a letter from Michael Olenick dated October 25, 2007.

LEGISLATIVE HISTORY:

This is the second year that a claim bill has been filed on behalf of this Claimant. During the 2007 session, the bill died in the Committee on Special Master on Claim Bills on May 4, 2007.

RECOMMENDATIONS:

Based on these findings, I recommend that Senate Bill 12 (2008) be reported FAVORABLY, as amended.

Respectfully submitted,

Eleanor M. Hunter
Senate Special Master

cc: Senator Dave Aronberg
Representative L. Garcia
Faye Blanton, Secretary of the Senate
Stephanie Birtman, House Committee on Constitution and Civil Law
Counsel of Record

Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 1, 2008:

The committee substitute:

Eliminates a requirement for Mr. Crotzer to deliver a court order dismissing with prejudice a legal claim filed by his parents and him. The special master's report notes that there is no pending legal action against the state by or on behalf of Mr. Crotzer.

Provides that no part of the award shall be paid for attorney's fees, lobbying fees, costs, or similar expenses, rather than the bill's provision that no more than 25 percent of the award may be paid for these items. The special master's report notes that Mr. Crotzer's legal and lobbyist services are being provided *pro bono*.

Revises and expands the "whereas" clauses in the title.