



STORAGE NAME: h7037.PBC.doc

DATE: 3/19/2008

March 14, 2008

SPECIAL MASTER'S FINAL REPORT

The Honorable Marco Rubio
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 7037 (PCB PBC 08-04) - Policy & Budget Council
Relief of Relief/Alan Jerome Crotzer/DFS

THIS IS AN EQUITABLE CLAIM FOR \$1.25 MILLION AND THE WAIVER OF TUITION AND FEES FOR UP TO 120 HOURS OF INSTRUCTION AT ANY SPECIFIED CAREER CENTER, COMMUNITY COLLEGE, OR STATE UNIVERSITY, TO COMPENSATE ALAN JEROME CROTZER FOR HIS INCARCERATION IN STATE PRISON FOR A CONVICTION THAT WAS VACATED 24.5 YEARS LATER. THERE IS NO PENDING LITIGATION ON THIS CLAIM.

FINDING OF FACT:

The Crime: On the night of July 8, 1981, three young black males robbed five white victims at gunpoint in one of the victim's apartments, abducted two females from the apartment (one of whom was 12 years old) and raped them.

The Evidence Against Crotzer at Trial: The defendants in the case included Crotzer and two brothers, Douglas and Corlenzo James. Crotzer was alleged to be Perpetrator #1, who had the gun and raped both women. All five victims identified Crotzer in court, and one victim identified him using a photo pack. Semen collected from a sexual battery examination of one of the rape victims matched the same blood type as the man who raped both victims (which would

occur in 19% of the population).

The Conviction: On April 22, 1982, Alan Crotzer and Douglas James were convicted in case number 81-6616 by a jury in the Thirteenth Judicial Circuit in and for Hillsborough County. Corlenzo James pled guilty before trial for a sentence of 30 years to run concurrently to a 90 year sentence for armed robbery in Pinellas County. Mr. Crotzer was found guilty of the following crimes:

- Count One: Attempted Robbery with a Weapon
- Counts Two – Four: Robbery with a Weapon
- Count Five: Aggravated Assault with a Weapon
- Count Six: Burglary with a Weapon
- Counts Seven - Eight: False Imprisonment
- Counts Nine – Ten: Sexual Battery

The court sentenced both Mr. Crotzer and Douglas James to a total of 130 years each. Mr. Crotzer maintained his innocence throughout the trial, and to the present day.

Procedural History: In 1982, Mr. Crotzer timely filed his appeal, in which he alleged that the trial court erroneously failed to sever his trial from that of his co-defendant, that sentencing for aggravated assault should have been precluded as a lesser included offense of sexual battery, and that there was insufficient evidence of physical force to convict Mr. Crotzer of sexual battery. The conviction was affirmed on appeal.¹ In 1985 and 1993, he filed motions for post conviction relief under Florida Rule of Procedure 3.850,² alleging newly discovered evidence (statements of three witnesses that would lead to the actual perpetrator). Both motions were denied. In 1995, Mr. Crotzer moved to correct an illegal sentence, alleging that the court did not state with particularity its reasons for retaining jurisdiction; that motion was denied. In 1998, he filed a petition for writ of mandamus to compel the serologist to perform a DNA test on the rape evidence and blood sample of the petitioner; the petition was denied as was his motion for rehearing. In 2002, Mr. Crotzer petitioned the court pro se for post-conviction DNA testing pursuant to Florida Rule of Criminal Procedure 3.853.³ The amended motion

¹ Crotzer v. State, 425 So.2d 159 (Fla. 2nd DCA 1983).

² Rule 3.850 of the Florida Rules of Criminal Procedure provides for the Motion to Vacate, Set Aside, or Correct Sentence.

³ Rule 3.853 of the Florida Rules of Criminal Procedure provides for the Motion for Post Conviction DNA Testing, and requires (among other things) that the movant include a statement that he is innocent.

was denied as facially insufficient.⁴ That order was appealed, and in 2003, the Second District Court of Appeal issued an order permitting Mr. Crotzer to file a facially sufficient motion under the Rule.

In 2003, Mr. Crotzer and the State Attorney's Office for the 13th Judicial Circuit entered into a stipulation which resulted in the Court issuing an order releasing biological evidence for STR (short tandem repeat) DNA testing to Orchid Cellmark Laboratories in Maryland. The results of the testing showed that the DNA profile was not sufficient either to include or exclude Mr. Crotzer as the source of the sperm on one slide.

Because there was insufficient biological material to obtain a DNA profile using STR DNA testing, Mr. Crotzer and the State Attorney's Office entered into a stipulation for LCN (low copy number) DNA testing at the Forensic Science Service in the United Kingdom.⁵ The LCN DNA testing produced only a partial DNA profile due to the degraded condition of the biological material on the slide.

In 2004, Mr. Crotzer and the State Attorney's Office entered into a stipulation agreeing to transfer the slides to Forensic Science Associates, a lab in California, to determine which of several DNA testing methods would be most likely to raise a genetic profile.

⁴ The Court found that Crotzer's amended motion failed to contain a statement regarding the present location of the evidence, how it was originally obtained, whether it was previously DNA tested, and how the requested DNA testing will either exonerate him or mitigate his sentence. The Court further found that the amended motion failed to assert that his identity was a genuinely disputed issue in the case. Order on Motion to Amend 3.853 DNA Motion and Motion for Post Conviction DNA Testing; Case No. 81-06616, 13th Judicial Circuit, Judge Jack Espinosa, Jr., Ordered September 26, 2002.

⁵ At the time, LCN DNA testing was not available in any lab in the United States.

⁶ The defense produced a sworn affidavit of Douglas James, convicted co-defendant, which attested that Alan Crotzer was not present during the crime, was in no way involved in the crime, and is completely innocent. He named the actual perpetrator as Alphonso Green (aka "Funyay"). The defense also produced sworn affidavits from Robert Dixon, Thomas Bailey, and Robert Green, all of whom were incarcerated with Douglas James, and swore that they heard him say that Alan Crotzer was innocent.

⁷ The defense produced sworn affidavits of Darryl Hooker who was with the co-defendants the night of the crime and swears that Alphonso Green was with the co-defendants that night; Sharon Watson, the sister of the co-defendants who saw Alphonso Green get in the car with the co-defendants the night of the crime and who had never before seen Alan Crotzer; Pearl Daniels and Margie James, sisters of the co-defendants who saw her two brothers and Alphonso Green drive away the night of the crime, and that Corlenzo James (her brother) told her that Alan Crotzer was innocent during a prison visit; and Margaret Rainford, pen pals with Douglas James, who said that Douglas told her that Alan Crotzer was innocent.

⁸ Theodore Yeshion, supervised the analysis on the cigarette butt in 1981 and the lab report that the cigarette butt failed to give conclusive results as to the blood group factors present. Upon reviewing the notes from the analysis in 1981, Mr. Yeshion believes that in fact the cigarette butt showed findings consistent with reactions expected from non-secretors. Mr. Crotzer is a type O secretor, and thus is now believed to be excluded as the smoker of the cigarette.

Forensic Science Associates issued a report that there was ample semen present on three of the slides and based on STR DNA testing on those slides that Mr. Crotzer was excluded as the source of DNA from the sperm found on the vaginal swab slide.

Based on the DNA evidence, newly discovered statements from the co-defendants,⁶ and statements of other witnesses indicating that Mr. Crotzer was not with the co-defendants on the night of the crime,⁷ Mr. Crotzer filed a Motion to Vacate Judgment and Sentence pursuant to Florida Rule of Criminal Procedure 3.850. The State also filed a Motion to Vacate Judgment, based on the DNA evidence; the statements of the co-defendants; a report from the forensic serologist who supervised the review of the forensic analysis of a cigarette butt collected from the crime scene and who reported that the best interpretation of the testing done in 1981 appeared to exclude Mr. Crotzer as the smoker of the cigarette;⁸ and that a review of all of the evidence lead the State to conclude that significant doubt existed as to Crotzer's guilt in the case.

Order Vacating the Judgment: On January 23, 2006, Judge Padgett of the 13th Judicial Circuit entered the order vacating the judgment and ordering a new trial. The Court found that there was significant doubt as to the Defendant's guilt due to newly discovered evidence that would probably produce an acquittal on retrial. The State subsequently entered a Note of Nolle Prosequi.

The State Attorney submitted a report at the Special Master's hearing on this claim, stating that in addition to the DNA evidence, the following additional factors were considered by his office in deciding to file a motion to vacate the judgment and then enter a nolle prosequi:

1. All of the perpetrators were described as having a Jamaican or Haitian accent. Crotzer does not speak with such an accent.
2. Only one of the rape victims identified Crotzer from a photo pack. Two of the other victims identified his photo after seeing the first victim sign the back of his photo. However, the first victim said that the perpetrator had light skin and was 6' tall. Crotzer is dark skinned and 5'7".
3. No fingerprint evidence matched any of the defendants.
4. There were no known witnesses placing Crotzer with the James brothers at any time near the date and time of the

crime.

5. Crotzer produced several alibi witnesses at trial, who said that Crotzer was with them that night, meeting his girlfriend's grandmother for the first time.
6. Crotzer was wearing a gold chain and an earring at the time of his arrest, but there was no mention of either by the victims.
7. The affidavits of the co-defendant and their sisters stating that it was Alphonso Green with the James brothers that night, not Alan Crotzer.
8. The new information regarding the interpretation of the 1981 cigarette butt analysis showing that it was smoked by a non-secretor.

The State Attorney also determined that there was no basis to believe that witnesses, law enforcement, prosecutors, or defense attorneys acted in bad faith in this case; and that their review of the case did not reveal any attempt to distort, conceal, or ignore evidence.

Mr. Crotzer's Current Status: Mr. Crotzer is now married to a woman who had two minor children of her own. His 30 year-old daughter is angry at him for missing her childhood and refuses to speak to him. He currently works for the city Parks Department, and hopes to soon move to Tallahassee. He hopes to get a degree in sociology and to be able to give back to society.

CONCLUSION OF LAW:

Based on the evidence presented, I find that Judge Padgett's Order Vacating the Judgment was reasonable. I also find reasonable the State Attorney's conclusion that he had a good level of comfort that Alan Crotzer was innocent.

Based on 24.5 years of being wrongfully incarcerated, Mr. Crotzer asks for \$1.25 million in compensation. This amount is based on \$50,000 per year of wrongful incarceration, identical to the amount set by federal law.⁹ The only other precedent is the relief act for Wilton Dedge, who was wrongfully incarcerated for 22 years and who was awarded \$2 million by the Legislature in 2005.¹⁰ Neither the federal law nor the previous relief act is binding on the

⁹ 28 U.S.C. s.2513(e).

¹⁰ Chapter 2005-354, L.O.F. Unlike Mr. Crotzer, Wilton Dedge did not have a felony record prior to the conviction giving rise to the wrongful incarceration, nor did he commit a felony while in prison.

Legislature in determining an equitable amount of compensation for Alan Crotzer.

Given the equitable considerations discussed below, I find that \$1.25 million, in addition to the waiver of tuition and fees for 120 hours of instruction at any specified Florida career center, community college, or state university is reasonable and justified. The bill calls for the purchase of an annuity, which will protect the funds and help ensure the availability of funds into the future.

EQUITABLE
CONSIDERATIONS:

Prior to the conviction giving rise to the wrongful incarceration, Mr. Crotzer had been convicted of a felony (armed robbery) as an 18 year-old. Mr. Crotzer described this crime as "snatching beer from a 7-11 store." He served 27 months in prison.

While he was incarcerated, Mr. Crotzer was convicted of smuggling contraband into prison (marijuana). He pled guilty. Mr. Crotzer claimed that he bought the marijuana from a Department of Corrections Sergeant.

LEGISLATIVE PROTECTION:

The bill requires that annuity be purchased by the Chief Financial Officer (CFO) upon delivery by Mr. Crotzer to the CFO, the Department of Financial Services, the President of the Senate, and the Speaker of the House of Representatives an executed release and waiver on behalf of Alan Crotzer and his heirs, successors, and assigns forever releasing the State of Florida and any agency, instrumentality, officer, employee, or political subdivision from any and all present and future claims arising out of the factual situation in connection with the conviction for which compensation is awarded. The bill provides that declaratory action to expunge Mr. Crotzer's judicial and executive branch records is not prohibited by the act. The bill also requires that Mr. Crotzer dismisses his current legal claim with prejudice. However, there is no pending legal claim.

The bill also provides that the Legislature is not deemed by this act to have waived any defense of sovereign immunity or to have increased the limits of liability on behalf of the state or any person or entity subject to the provisions of s. 768.28, F.S.

Lastly, the bill provides that the award is intended to provide the sole compensation for any and all present and future claims arising out of

the conviction and imprisonment, and the state may not make any further award for attorney's fees, lobbying fees, costs, or other similar expenses.

ATTORNEYS FEES:

The attorneys involved in bringing this claim have attested to the fact that neither they nor any lobbyists will receive any compensation from this award and are acting pro bono. It should also be noted that two attorneys, David Menschel and Samuel Roberts, both of New York, also worked pro bono for several years while working towards the Order Vacating the Judgment.

LEGISLATIVE HISTORY:

HB 1327 was filed in 2007 by Rep. L. Garcia. The bill died in the Jobs and Entrepreneurship Council. Its companion, SB 50 filed by Sen. Aronberg, was never heard by a Senate committee.

The substance of HB 1327 was amended as a strike-all amendment onto HB 125 in the Policy and Budget Council in 2007. CS/CS/HB 125 (which had become the substance of the Crotzer claim bill) passed the full House unanimously, and died in the Senate. An attempt was also made to amend the substance of the Crotzer relief bill onto SB 2968 (Relief of Martin Lee Anderson), which motion failed on the floor.

HB 1 (2008) has been filed by Rep. Luis Garcia and SB 12 (2008) has been filed by Sen. Aronberg. Neither have been heard by a committee or council.

A Special Master hearing was conducted in February, 2007 and the parties were given the opportunity to update the record in preparation for the 2008 legislative session. Mr. Crotzer reports that since the initial Special Master's hearing he has moved to Tallahassee and is employed by Tallahassee Nurseries; he is still awaiting rotator cuff surgery and is in need of dental care. Mr. Crotzer's wife has not been able to secure adequate employment since relocating to Tallahassee, so Mr. Crotzer is the sole financial support for his family of four.

Mr. Crotzer's civil rights were restored, and he has registered to vote. He serves as a member of the Board of Directors of The Innocence Project and continues to speak out about his experience. The Innocence Project describes his pain as "profound and ever-present."

RECOMMENDATIONS:

Based on the foregoing, I recommend that PCB PBC 08-04 be considered FAVORABLY.

Respectfully submitted,

STEPHANIE BIRTMAN

House Special Master

cc: Judge Eleanor Hunter, Senate Special Master